

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Honorable Marcia S. Krieger

Civil Action No. 07-cv-01557-MSK-MEH

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CONAGRA FOODS, INC.,

Defendant.

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**ORDER APPROVING CONAGRA FAIR FUND DISTRIBUTION PLAN**

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This matter is before the Court on Plaintiff's second Unopposed Motion for Entry of Order Approving Plan of Distribution for the ConAgra Fair Fund ( #27). The Plaintiff filed an earlier motion requesting approval of the same Plan (#24), which motion was granted by text order at (#25). The current Motion requests that the Court sign the proposed Plan in order to facilitate the distribution process.

As the Court explained at a hearing on the Motion, it is not appropriate for the Court to execute the proposed Plan because it is not a party to it, and because the Plan is not an order of the Court. However, to assist those who require a separate written document evidencing the Court's prior approval of the proposed Plan, the Court issues this Order.

**IT IS THEREFORE ORDERED** that the Motion (# 27) is **GRANTED, in part**. This Court has approved the ConAgra Fair Fund Distribution Plan (# 24-2 ). It may be attached to this Order.

DATED this 22<sup>nd</sup> day of June, 2009.

**BY THE COURT:**

*Marcia S. Krieger*

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Marcia S. Krieger  
United States District Judge

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**CONAGRA FAIR FUND DISTRIBUTION PLAN**

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**I. Definitions**

1. As used in this Distribution Plan, the following definitions shall apply:

**“Approval Date”** shall mean the date on which this Distribution Plan is approved by the Court.

**“Check Cashing Period”** shall mean 90 days from the check date of a check mailed for the final distribution to an Eligible Claimant in accordance with this Distribution Plan. For a check that has been reissued, the Check Cashing Period shall mean 30 days from the check date of the reissued check.

**“Claims Bar Date”** shall mean the date established in accordance with this Distribution Plan by which a Potentially Eligible Claimant’s Proof of Claim Form must be received by the Fund Administrator to avoid the barring of any right of the Potentially Eligible Claimant to participate in any distribution from the ConAgra Fair Fund. The Claims Bar Date shall be 90 days after the date of the first mailings of the Distribution Plan Notice to Potentially Eligible Claimants.

**“Claims Deficiency Notice”** shall mean the notice sent by the Fund Administrator to a Potentially Eligible Claimant whose Proof of Claim Form is incomplete or otherwise deficient, or whose claim is ineligible under the terms of this Distribution Plan. The Claim Deficiency Notice shall advise the Potentially Eligible Claimant of the reason(s) for the deficiency and the manner, if any, in which the deficiency may be cured. Except

as otherwise provided herein, Claim Deficiency Notices shall be mailed on a rolling basis and all such notices shall be mailed no later than 45 days after the Claims Bar Date. The Fund Administrator must receive the requested documents and/or information from the Potentially Eligible Claimant within 20 days from the date of the Claim Deficiency Notice.

**“Claims Packet”** shall mean all materials to be provided to Potentially Eligible Claimants known to the Fund Administrator or to those who request such materials, including a copy of the Distribution Plan Notice and a Proof of Claim Form (together with instructions for completion of the Proof of Claim Form).

**“ConAgra Fair Fund”** shall refer to the fair fund established under prior orders of this Court for the purpose of distributing ConAgra’s payment of disgorgement, prejudgment interest, and civil penalties in this case, and any funds that may be added to that amount by court order or otherwise, minus any reserves withheld as of the Claims Bar Date, tax payments, payment of fees to the Tax Administrator, or other non-reimbursed costs and expenses incurred by the ConAgra Fair Fund. The funds comprising the ConAgra Fair Fund are currently located in the Court Registry Investment System (“CRIS”).

**“De Minimis Payment”** shall mean the minimum distributable amount that an Eligible Claimant could receive. No Potentially Eligible Claimant shall receive a distribution from the ConAgra Fair Fund unless the amount of that distribution, as computed in accordance with this Distribution Plan, shall be at least equal to the De Minimis Payment. In this case, the amount of the De Minimis Payment shall be determined, in consultation with the SEC, after all claims have been received and processed.

**“Disclosure Dates”** shall refer to dates on which a Potentially Eligible Claimant must have held shares of ConAgra stock (either or both of the two dates) to be eligible to receive a distribution from the ConAgra Fair Fund. These dates are listed in Appendix A.

**“Distributable Amount”** shall mean the amount in the ConAgra Fair Fund, including any accumulated interest and income, if any, net of tax liabilities paid or set aside for the interest or income earned, non-reimbursed costs and expenses and a reserve as of the Claims Bar Date.

**“Distribution Plan”** shall mean this Distribution Plan in the form approved by the Court.

**“Distribution Plan Notice”** shall mean the notice given to Potentially Eligible Claimants of their potential right to participate in the distribution of the ConAgra Fair Fund and their obligation to file a Proof of Claim Form in order to participate. The Fund Administrator, in consultation with the SEC, shall design the Distribution Plan Notice, consistent with the provisions of this Distribution Plan, and such notice shall include, at a minimum, the names of the eligible securities, means of obtaining Claims Packets

(which include Proof of Claim Forms), instructions for submitting Proof of Claim Forms, and the Claims Bar Date. The Distribution Plan Notice shall advise Potentially Eligible Claimants that by participating in the distribution of the ConAgra Fair Fund, they will not be releasing any rights or claims they may have against any party, including, but not limited to, ConAgra and ConAgra's past and present directors, officers, advisors, and agents (other than with respect to the Fund Administrator).

**“Eligible Claimants”** shall mean those Potentially Eligible Claimants filing a Proof of Claim Form with the Fund Administrator on or before the Claims Bar Date who are finally determined by the Fund Administrator to be eligible for a distribution from the ConAgra Fair Fund as provided herein because they purchased Relevant Stock during the Relevant Purchase Period and held such securities during dates defined under the methodology section in Appendix A. “Eligible Claimants” in no event shall include:

- (i) any past or present director or officer of ConAgra (or any of their affiliates, assigns, heirs, distributes, spouses, parents, children or controlled entities) who was in a position to detect or prevent the alleged fraud or alleged misconduct;
- (ii) any individual or entity named as a defendant in any of the following actions brought by the Commission: SEC v. ConAgra Foods, Inc., Case No. 07-CV-01557 MSK-MEH (D. Colo.); SEC v. James Charles Blue, et al., Case No. 07-CV-00095 REB-MEH (D. Colo.); SEC v. James P. O'Donnell, et al., Case No. 07-CV-01373 RPM-MJW (D. Colo.); SEC v. Kenneth W. DiFonzo, Case No. 07-CV-01374 WDM-MEH (D. Colo.); SEC v. Dwight J. Goslee, et al., Case No. 07-CV-01377 REB-MEH (D. Colo.) (or any of their affiliates, assigns, heirs, distributes, spouses, parents, children or controlled entities);
- (iii) any defendant in any class action lawsuit related to the fraud or alleged misconduct described in the SEC's complaint(s) in this action (or any of such defendant's affiliates, assigns, heirs, distributes, spouses, parents, children, or controlled entities), unless and until such defendant is found not liable in all such civil suits prior to the Claims Bar Date, and proof of the finding(s) is included in such defendant's timely filed Proof of Claim Form.

**“Eligible Loss Amount”** shall refer to the amount of loss an Eligible Claimant has incurred as computed in accordance with the provisions of the Distribution Plan. The method of calculating Eligible Loss Amount is detailed in Appendix A to this Distribution Plan.

**“Escrow Account”** shall mean the account(s) in which the Fund Administrator will deposit ConAgra Fair Fund monies upon receipt of such monies from the Court's registry

for the purpose of effectuating the distributions contemplated by the Distribution Plan as provided herein.

**“Final Accounting”** shall mean an accounting in a format to be provided by the Commission staff of all monies received, costs, expenses, fees incurred whether reimbursed or not and tax liabilities in connection with administration of this Distribution Plan. The Fund Administrator shall prepare and file this Final Accounting with the Court, and serve the SEC with a copy, within 150 days of completing the distribution of the ConAgra Fair Fund and prior to its discharge. The Final Accounting must be approved by the Court.

**“Final Determination Notice”** shall mean the notice sent by the Fund Administrator to a Potentially Eligible Claimant who has timely responded to a Claim Deficiency Notice. If the claim of the Potentially Eligible Claimant has been disallowed in whole or in part, the Final Determination Notice shall set forth the Fund Administrator’s reason(s) for each disallowance.

**“Final Payee List”** shall mean a list of all Eligible Claimants who will receive a distribution from the ConAgra Fair Fund and their respective Eligible Loss Amount and the amount of the proposed distribution to each Eligible Claimant as determined pursuant to the terms of this Distribution Plan.

**“Fund Administrator”** shall refer to Rust Consulting, Inc., the entity responsible for administering the ConAgra Fair Fund, in accordance with the terms of this Distribution Plan and the Court’s orders, as well as its employees, attorneys, accountants, partners or associates, or third parties retained in furtherance of its duties.

**“Performance Penalty”** shall mean an assessment, as determined appropriate by the Court, of 10% of the Fund Administrator’s fees billed, net of charges and out-of-pocket expenses, should the Final Payee List for all Eligible Claimants not be provided to the staff of the Commission within 270 days of the Approval Date of this Distribution Plan.

**“Person”** shall mean natural individuals as well as legal entities, such as, corporations, partnerships, and governmental entities.

**“Potentially Eligible Claimants”** shall mean those Persons identified by the Fund Administrator as having possible claims to the ConAgra Fair Fund under this Distribution Plan, or Persons asserting that they have possible claims to the ConAgra Fair Fund under this Distribution Plan.

**“Proof of Claim Form”** shall mean the form designed by the Fund Administrator in consultation with the staff of the Commission in accordance with this Distribution Plan for the filing of proof of a Potentially Eligible Claimant’s claim, which form shall require, at a minimum, sufficient documentation reflecting the Potentially Eligible

Claimant's purchases of the Relevant Stock during the Relevant Purchase Period and, if so required, a Substitute W-9 signed by the Potentially Eligible Claimant. In the event a Potentially Eligible Claimant is a non-resident alien, the Potentially Eligible Claimant shall complete, if so required, a W-8 form prior to receiving a payment.

**"Quarterly Accounting"** shall mean an accounting by the Fund Administrator on the 15<sup>th</sup> day or the next business day of the month following the end of the calendar quarter in a format to be provided by the Commission staff.

**"Recognized Loss per Share"** shall refer to the amount that a share of ConAgra common stock was overvalued due to the alleged improper and fraudulent accounting alleged by the SEC in this action. See Appendix A.

**"Relevant Purchase Period"** shall mean for the purposes of this Distribution Plan, the period from October 13, 1998, and continuing through the close of the markets on May 23, 2001.

**"Relevant Stock"** shall refer to ConAgra common stock, issued by ConAgra and registered with the SEC.

## **II. Rights and Responsibilities of the Fund Administrator**

### **A. Generally; Compensation and Reimbursement of the Fund Administrator**

2. It is the Fund Administrator's responsibility, after consultation with the Court and the SEC, to distribute the ConAgra Fair Fund in accordance with this Distribution Plan.

3. In accordance with the Final Judgment entered in this case, ConAgra shall pay all fees and costs incurred by the Fund Administrator resulting from the development and implementation of this Distribution Plan.

4. At the conclusion of each month, the Fund Administrator may invoice ConAgra for reimbursement and compensation for the fees and expenses it incurred during the month. The Fund Administrator shall contemporaneously provide the staff of the SEC a copy of the invoice, which shall include supporting documentation to justify the expense or services rendered. Charges for services shall include (a) the date of the service; (b) the name or initials of the

individual(s) rendering the service; (c) a description of the service; (d) the hourly rate; (e) the time charged; and (f) the amount (rate x time). The description of the service or activity should be brief and informative. Payment of invoices by ConAgra are due upon receipt.

5. A Performance Penalty may be assessed if the Fund Administrator fails within 270 days of the Approval Date of this Distribution Plan to provide a Final Payee List of all Eligible Claimants to the staff of the Commission. The Fund Administrator may seek from the Court a reasonable extension of the 270 day period in the event any delay beyond the control of the Fund Administrator arises during the implementation and/or the administration of this Distribution Plan. Delays which may be occasioned by matters pending before the Court shall toll the 270 day period for the period of such pending delay. The Court shall have full discretion to determine whether or not to grant a request made by the Fund Administrator to extend the period in which to make its distribution. The Court shall also have full discretion to determine whether to impose the Performance Penalty.

**B. Receipt and Accounting for the ConAgra Fair Fund's Assets**

6. All monies in the ConAgra Fair Fund shall remain in the CRIS account until such time as the Court orders the transfer of the funds to the Fund Administrator, as directed below, for deposit into the Escrow Account established pursuant to the Distribution Plan to effectuate disbursement of the monies to the Final Payee List. However, from the time of its appointment by the Court, the Fund Administrator shall serve on counsel for the Commission an accounting of all assets in the ConAgra Fair Fund within fifteen (15) days or the next business day of the month following the end of each calendar quarter, or as directed by Commission staff, in a format to be approved or provided by the staff of the Commission. Such an accounting shall



inform the staff of the Commission of the activities and status of the ConAgra Fair Fund during the requested reporting period, and shall specify, at a minimum, the location of the various accounts comprising the ConAgra Fair Fund, the value of those accounts, all monies earned or received into those accounts, any monies transferred between ConAgra Fair Fund accounts, funds distributed to Eligible Claimants pursuant to this Order, and any monies expended to satisfy any taxes, tax liabilities and other expenses incurred.

7. At such time as the Court authorizes and orders the Clerk of the Court to transfer all monies in the ConAgra Fair Fund, less any tax payment or other fees or expenses requested by the Tax Administrator prior to transfer, from the CRIS account to the Escrow Account, the Clerk of the Court shall, following its receipt of the Order of the Court directing transfer of the ConAgra Fair Fund and as promptly as the work of the Clerk's office allows, transfer all monies in the CRIS account to the Fund Administrator. The transfer shall be made by wire, check or money order made payable to the SEC v. ConAgra Distribution Fund, and directed to the attention of the financial institution holding the Escrow Account established pursuant to this Distribution Plan. The Fund Administrator and counsel for the Commission shall cooperate with the Clerk of the Court to provide any information required to facilitate transfer of the funds pursuant to this paragraph.

8. Within ten (10) days of receipt of ConAgra Fair Fund, the Fund Administrator shall sign a receipt acknowledging the receipt of the ConAgra Fair Fund and its deposit into a designed Escrow Account, specifically identifying the amount received and the location of the Escrow Account, and shall file that signed receipt with the Court and serve a copy of the receipt to counsel for the SEC. The Escrow Account will be maintained at a major United States

commercial bank to be proposed by the Fund Administrator subject to approval by the staff of the Commission. Pursuant to an escrow agreement approved by the staff of the Commission, the Fund Administrator and the bank shall establish both an Escrow Account and a controlled distribution account in the name of and bearing the Employer Identification Number (“EIN”), of the Qualified Settlement Fund (“QSF”) as custodian for the distributees of the Distribution Plan. The name of each account shall be in the following form: QSF, SEC v. ConAgra Distribution Fund, bearing its EIN, as custodian for the benefit of investors allocated a distribution from the ConAgra Fair Fund.

9. The Fund Administrator shall preserve and protect the ConAgra Fair Fund, and to that end, may invest the ConAgra Fair Fund as provided herein. Any investment of the Escrow Account made during the term of the Escrow Agreement shall be invested and reinvested in short-term U.S. Treasury securities all backed by the full faith and credit of the U.S. Government of a type and term necessary to meet the cash requirements of the payments to investors, tax obligations, and fees or invested in AAA-rated Money Market Mutual Funds registered under the Investment Company Act of 1940 that directly invest in short-term U.S. Treasury securities and obligations, provided however, that investments in the U.S. Treasury will not be made through repurchase agreements or other derivative products.

10. Within 150 days after completing the distribution of the ConAgra Fair Fund and prior to the discharge of the Fund Administrator, the Fund Administrator shall file with the Court and serve a copy upon SEC counsel a Final Accounting of all monies received, earned, or spent and tax liabilities in connection with administration of this Distribution Plan.

### **C. Other Rights and Responsibilities of the Fund Administrator**

11. The Fund Administrator is authorized to enter into agreements with financial institutions as may be appropriate or necessary in the administration of the ConAgra Fair Fund.

12. The Fund Administrator may be removed at any time by the Court, and replaced with successors. In the event the Fund Administrator decides to resign, the Fund Administrator shall first give written notice to the staff of the SEC and to the Court of such intention, and such resignation shall not be effective until the Court has appointed a successor and the Fund Administrator has followed the instructions given by the Court or the Court-appointed successor to the Fund Administrator to facilitate the transfer of management and control over the ConAgra Fair Fund. In the event of incapacity of the Fund Administrator, the Court, after consultation with the staff of the SEC, shall appoint a successor as soon as practical. In the event that the Fund Administrator resigns or is replaced pursuant to the terms of this Distribution Plan, the Fund Administrator shall be entitled to seek reimbursement as directed in the Distribution Plan for all work performed up to and including the date of replacement and such reimbursement may include the costs of preparing and transferring data to a successor Fund Administrator, subject to Court review and approval.

13. The Fund Administrator is entitled to rely on all outstanding rules of law and court orders, and shall not be liable to anyone for any action taken or omitted by it in connection with this Distribution Plan, except upon a finding by this Court that it acted or failed to act, in bad faith or in reckless disregard of its duties under this Distribution Plan. The Court retains exclusive jurisdiction over all claims arising in connection with the distribution of the ConAgra

Fair Fund, including, but not limited to, claims against the Fund Administrator asserting liability for violation of any duty imposed by this Distribution Plan.

14. The Fund Administrator may, after consulting with and receiving the written consent of the staff of the Commission, and subject to review by this Court, modify these procedures to effect the general purposes of this Distribution Plan.

15. The Fund Administrator is excused from all legal requirements to post a bond in connection with its fiduciary duties and obligations under the Distribution Plan. The Fund Administrator has and shall maintain insurance for liability and crime coverage for an amount not less than its current coverage of up to \$35 million.

16. Upon final distribution of the Distributable Amount and the close of the Check Cashing Period, the Fund Administrator shall arrange for the final payment of taxes with the assistance of the Tax Administrator, and shall file and serve a Final Accounting as provided in paragraph 10. The ConAgra Fair Fund shall be eligible for termination, and the Fund Administrator eligible for discharge, after all of the following have occurred: (a) the Final Accounting by the Fund Administrator has been submitted and approved by the Court; (b) all taxes and other expenses have been paid; and (c) all remaining funds or any residual monies have been transferred to the Commission for transfer to the U.S. Treasury.

17. Following the distribution of the ConAgra Fair Fund in accordance with this Distribution Plan, the filing of the Final Accounting, and the completion of the Fund Administrator's other duties under this Distribution Plan, the Court may, upon the filing of a request by the Fund Administrator with service of a copy of such request on counsel for the SEC, and after an opportunity for comment, enter an Order discharging the Fund Administrator from

any claims or liability in connection with the Distribution Plan and the administration of the ConAgra Fair Fund, and enjoining all Potentially Eligible Claimants and other parties from prosecuting or asserting any such discharged claim or liability against the Fund Administrator.

#### **IV. Tax Compliance and Fees**

18. The Court has previously appointed Damasco & Associates, LLC as the Tax Administrator for this case. Upon receipt of the ConAgra Fair Fund, the Fund Administrator will cooperate fully with the Tax Administrator in providing any information necessary to ensure income tax compliance. After all monies in the ConAgra Fair Fund are transferred to the Fund Administrator for distribution, the Fund Administrator shall tender to the Tax Administrator funds necessary to pay taxes and other fees or expenses upon the request of the Tax Administrator and approval by the staff of the Commission without further Order of this Court.

#### **V. Allocation Among Eligible Claimants**

19. The Distributable Amount shall be used to pay Eligible Claimants as provided under the terms of this Distribution Plan. To be considered an Eligible Claimant, a claimant must have purchased, or otherwise acquired shares of Relevant Stock during the Relevant Purchase Period, and they must have held these shares after markets closed on one or both of the Disclosure Dates: February 13, 2001 and May 23, 2001.<sup>1</sup> An Eligible Claimant's Eligible Loss Amount is calculated by multiplying the Recognized Losses per share by the number of shares held during the Disclosure Dates.

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<sup>1</sup> Relevant Stock obtained through a merger or the exercising of options or through a gift or inheritance is eligible for payment. However, purchases of Relevant Stock to cover short positions are not eligible for payment, since, by definition, these shares are not held by the purchaser, and therefore would not have been held over a disclosure date.

20. The Recognized Loss per Share for purposes of this Distribution Plan was determined by means of an event study analysis. Appendix A sets forth the Recognized Loss per Share and outlines the methodology employed to calculate this figure.

21. If the Distributable Amount is greater than or equal to the total Eligible Loss Amount due to all Eligible Claimants, the Fund Administrator shall distribute to each Eligible Claimant its Eligible Loss Amount. Should the aggregate Eligible Loss Amount due to Eligible Claimants exceed the Distributable Amount, the Fund Administrator shall distribute the funds to the Eligible Claimants *pro rata* based upon the ratio of the Eligible Loss Amount of each Eligible Claimant to the aggregate Eligible Loss Amount of all Eligible Claimants.

22. Any claim from an Eligible Claimant that is determined to result in a distribution of less than the De Minimis Payment will not be included in the distribution of the ConAgra Fair Fund.

## **VI. Administration of the Claims Procedure**

### **A. General Administrative Provisions**

23. If the Fund Administrator invests the ConAgra Fair Fund monies, it shall invest and reinvest the assets in the Escrow Account or accounts containing the assets of the ConAgra Fair Fund as specified in paragraph 9 herein. The Fund Administrator shall provide duplicate original bank and/or investment statements to the Tax Administrator on a monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

24. The Fund Administrator shall oversee the administration of the claims, procedures and distribution as provided in this Distribution Plan. The Fund Administrator shall review the claims of Potentially Eligible Claimants and make determinations under the criteria established

herein as to the eligibility of Potentially Eligible Claimants to participate in the ConAgra Fair Fund distribution and as to the amount to be distributed from the ConAgra Fair Fund to Eligible Claimants in accordance with the provisions of this Distribution Plan.

25. Any claim asserted by a Potentially Eligible Claimant shall be in writing and shall provide adequate documentary evidence (which may be submitted electronically) to substantiate the claim, including all documentary evidence which the Fund Administrator deems necessary or appropriate, including but not limited to, all documentation required by the Proof of Claim Form, available account statements and trade confirmations.

26. All claims and all supporting representations necessary to ascertain a Potentially Eligible Claimant's eligibility to receive a distribution under the terms of this Distribution Plan must be verified on the basis of a sworn affidavit or declaration executed by the Potentially Eligible Claimant under penalty of perjury under the laws of the United States of America. The Fund Administrator may make alternative arrangements for verifying claims for institutional investors or custodial banks.

#### **B. Identification of and Notice to Eligible Claimants**

27. The Fund Administrator shall, insofar as is practicable, use its best efforts to identify Potentially Eligible Claimants from sources reasonable available to the Fund Administrator. Additionally, should mailings made to Potentially Eligible Claimants and/or Eligible Claimants be returned to the Fund Administrator as non-deliverable, the Fund Administrator shall make such additional efforts as are practicable and reasonable to obtain information to locate such Persons.

28. The Fund Administrator will provide customer support and a communications program which will become active before the first publication of the Distribution Plan Notice occurs. These services will include a toll free telephone number and a public website for the ConAgra Fair Fund. The staff of the SEC will be given an opportunity to review and approve any telephone scripts and any material posted on the website.

29. Within 45 days following the entry by the Court of an order approving the Distribution Plan (“Approval Date”), the Fund Administrator shall:

- a. request that ConAgra post a copy of this Distribution Plan and a copy of the Distribution Plan Notice on its website; and
- b. provide a copy of the Distribution Plan and Distribution Plan Notice to the staff of the SEC for posting on the SEC’s website [<http://www.sec.gov>]; and
- c. publish a copy of the Distribution Plan Notice in select national newspapers, journals, and/or other media websites for a period of time and frequency to be determined in consultation with the staff of the SEC.

The Fund Administrator will also give additional notice of the distribution process in such manner as the Fund Administrator, in its sole discretion, deems appropriate, including: direct notification to custodians, securities brokers and dealers identified by the Fund Administrator.

30. The Fund Administrator will commence an outreach program upon approval of the Distribution Plan to known nominees and broker-dealers and request that they provide, within 45 days, to the Fund Administrator:

- a. The names, addresses, and tax identification numbers of identified beneficial owners of Relevant Stock during the relevant time period; and
- b. All transactional data of purchases, acquisition, sales, transfers, exchanges and holdings of Relevant Stock during the relevant time periods for each beneficial owner.



31. Within 90 days following the Approval Date, the Fund Administrator shall cause to be mailed by United States First Class Mail a Claims Packet consisting of the Distribution Plan Notice and Proof of Claim Form, together with instructions for completion of the Proof of Claim Form, to those Potentially Eligible Claimants known to the Fund Administrator. Potentially Eligible Claimants will include: a) investors for whom transactional data has been received from nominees and broker/dealers whose clients purchased, held, or otherwise acquired the Relevant Stock during the Relevant Purchase Period; b) class members who filed valid claims in the Gebhardt, et al. v. ConAgra Foods, Inc., Case No. 4:01-CV-427 RGK (Neb.); and c) investors identified from information received from transfer agents and other agencies with such relevant information. In order to facilitate distribution of Claims Packets to Potentially Eligible Claimants, within the same time period, the Fund Administrator shall ensure that the Claims Packet in a downloadable format is available to Potentially Eligible Claimants on its website.

32. The Fund Administrator shall promptly provide a Claims Packet to any Potentially Eligible Claimant who requests one electronically, in writing, or by telephone.

33. To avoid being barred from asserting a claim, on or before the Claims Bar Date, each Potentially Eligible Claimant must submit to the Fund Administrator a properly completed Proof of Claim Form reflecting such Potentially Eligible Claimant's claim, together with all required supporting documentation. The Claims Bar Date may be extended for one or more Potentially Eligible Claimants by the Fund Administrator in consultation with the staff of the SEC, in which event such extension shall constitute the Claims Bar Date for such Potentially Eligible Claimants. Unless otherwise determined by the Fund Administrator in its sole discretion for good cause shown, any Potentially Eligible Claimant that fails to submit a timely and properly

completed and documented Proof of Claim Form, such that the completed form and documentation are not received by the Fund Administrator on or before the Claims Bar Date, shall be barred from asserting a claim against the Fund Administrator or to the ConAgra Fair Fund. The burden shall be upon the Potentially Eligible Claimant to ensure that its Proof of Claim Form has been properly and timely received by the Fund Administrator.

**C. Notification to Potentially Eligible Claimants of Deficient Claims**

34. The Fund Administrator shall review each Proof of Claim Form submitted in accordance with this Distribution Plan to determine the validity and amount of such Potentially Eligible Claimant's Eligible Loss Amount, together with any additional conclusions of the Fund Administrator on other issues relevant to the claim. Each Potentially Eligible Claimant shall have the burden of proof to establish the validity and amount of its claim, and that it qualifies as an Eligible Claimant; and the Fund Administrator shall have the right to request, and the Potentially Eligible Claimant shall have the burden of providing to the Fund Administrator, any additional information and/or documentation deemed relevant by the Fund Administrator.

35. The Fund Administrator shall provide to each Potentially Eligible Claimant whose Proof of Claim Form is incomplete, ineligible, or otherwise deficient, a Claim Deficiency Notice setting forth the reasons why the claim is deficient. The Claim Deficiency Notice shall be mailed to the affected Potentially Eligible Claimants within 45 days after the Claims Bar Date.

36. Any Potentially Eligible Claimant who has received a Claim Deficiency Notice may submit additional information to the Fund Administrator to cure any deficiencies identified in the Claim Deficiency Notice. In order to be eligible for consideration, such information must be

received by the Fund Administrator no later than 20 days from the date of the Claim Deficiency Notice.

37. The Fund Administrator shall respond to such cure requests by mailing a Final Determination Notice to Potentially Eligible Claimants regarding such cure requests no later than 20 days after receiving the cure request. This notice will inform Potentially Eligible Claimants either that they have successfully cured the deficiencies identified by the Fund Administrator or that their claims have been deemed ineligible and the reasons for such ineligibility.

#### **D. Payment of Approved Claims**

38. Prior to the SEC petitioning the Court for an order authorizing the transfer of the ConAgra Fair Fund, at the SEC's request, the Fund Administrator shall retain an independent outside auditing firm that is not unacceptable to the staff of the SEC. The auditing firm will perform an independent review of agreed upon procedures designed to ensure that claims have been accurately processed, calculated and validated based upon a statistically designed random sample.

39. Within 5 days following the completion of processing of all Potentially Eligible Claimant claims by the Fund Administrator, including the mailing of any Final Determination Notices, the Fund Administrator shall prepare a list of all Eligible Claimants, the Eligible Loss Amount, and the amount of the proposed distribution for each Eligible Claimant ("Final Payee List"). The Fund Administrator shall provide the Final Payee List to the staff of the SEC, and upon review, the staff of the SEC shall petition the Court for the authority to transfer all funds in the CRIS account to the Fund Administration in accordance with the provisions of this Distribution Plan for distribution to Eligible Claimants pursuant to this Distribution Plan. In

conjunction with the motion seeking transfer of the ConAgra Fair Fund to the Fund Administrator for distribution, the Final Payee List shall, upon request, be made available to the Court. The distribution amount specified to the Court will have already taken into account reserves for taxes, as requested by the Tax Administrator and approved by the SEC staff, and reserves necessary for any other fees or reasonably anticipated expenses. The Fund Administrator shall commence the distributions to all Eligible Claimants as promptly as possible following the transfer of the funds to the Escrow Account.

40. The Fund Administrator in its discretion, after consultation with the staff of the SEC, may, for purposes of the Distribution Plan, but shall not have any obligation to, aggregate claim amounts.

41. To the extent that an Eligible Claimant, his or her representative, heir or assign requests a distribution check to be issued or reissued in a different name than the Eligible Claimant (*e.g.*, as the result of a name change because of marriage or divorce, or as the result of death), the Fund Administrator shall honor such request upon receipt of documentation which the Fund Administrator in its sole discretion deems appropriate to substantiate the request.

42. Claims on behalf of a tax qualified retirement plan and such plan's participants are properly made by the custodian or fiduciary of the plan and not by the plan's participants. The Fund Administrator shall distribute any payments on such claims directly to the custodian or fiduciary of the retirement plan. The custodian or fiduciary of the retirement plan shall distribute any payments received in a manner that is consistent with its fiduciary duties and the account or plan provisions. With respect to any tax qualified retirement plan that has been closed prior to the Fund Administrator's identification of Potentially Eligible Claimants, the Fund Administrator

shall endeavor to distribute funds directly to the beneficial account holders of such tax qualified retirement plan if the information required for such distribution is known to or provided to the Fund Administrator prior to the Claims Bar Date.

43. Upon receipt and acceptance by an Eligible Claimant of a distribution from the ConAgra Fair Fund, such Eligible Claimant shall be deemed to have released all claims that such Eligible Claimant may have against the Fund Administrator, in connection with the Distribution Plan and the administration of the ConAgra Fair Fund, and shall be deemed enjoined from prosecuting or asserting any such claims.

44. All ConAgra Fair Fund checks issued to Eligible Claimants by the Fund Administrator shall bear a stale date of 90 days from the check date (equivalent to the Check Cashing Period). Checks that have been reissued shall bear a stale date of 30 days from the check date of the reissued check. Accordingly, checks that are not negotiated within these periods shall be voided and the Fund Administrator shall instruct the issuing financial institution to stop payment of those checks. Where an Eligible Claimant's check has not been negotiated within the Check Cashing Period and has been voided by the Fund Administrator, that Eligible Claimant's claim shall be extinguished. All such funds will be returned to the ConAgra Fair Fund.

45. The submission of the Proof of Claim Form and the receipt and acceptance of a distribution by an Eligible Claimant shall not affect an Eligible Claimant's rights and claims against any party (other than the Fund Administrator), including but not limited to, ConAgra and its respective past or present directors, officers, employees, advisors and agents.

46. The staff of the SEC may apply to the Court to approve modifications or amendments to the provisions of this Distribution Plan.

## **Appendix A**

### **Calculating Eligible Loss Amount**

#### ***Methodology***

The method for calculating the Eligible Loss Amount for the purposes of this Distribution Plan for the ConAgra Fair Fund was determined through the use of an event study analysis. This analysis is designed to identify investors injured by the improper and fraudulent accounting practices described in the Complaint and to estimate the amount of investor losses related to these practices.

The event study methodology is used by economists to assess the impact of a broad range of information disclosures on security prices. The analysis involves (i) identifying information releases; (ii) measuring the stock price reaction to these releases in the days following these releases, while holding constant other factors that may have affected the stock price of the company at the same time; and (iii) testing whether these price reactions are statistically distinguishable from the movement of an index of comparable companies over the same time period, thus evaluating whether the stock price movement was related to a disclosure or to general market events that affected comparable stocks in a similar fashion.

After determining the date on which the accounting practices first artificially inflated the publicly disclosed financial statements of ConAgra common stock (“Relevant Stock”), the event study analysis in this case was used to assess whether, and to what degree, corrective information disclosures made by the company related to these practices removed the inflation in the price of the Relevant Stock. The event study analysis also measured the number of days it took the market to fully respond to the corrective disclosures.<sup>2</sup> Because in some instances the full impact of incorrect information on the price of stock is not corrected in a single information release, the event study analysis used here considered multiple disclosure dates. The degree of inflation in the stock price during the period the improper and fraudulent practices described in the Complaint affected the price of its stock was then measured by the cumulative change in the stock price for the identified corrective disclosures.

The potential effect of the accounting practices on a specific investor’s shares of Relevant Stock is measured as the difference between the inflation on the day of the purchase and the inflation on the day of the sale of these shares. Therefore, for an investor to be adversely affected, the inflation at the time of the purchase must have been higher than the inflation at the time of the sale. This is the case for investors who purchased Relevant Stock when its price was inflated, and held these shares over at least one of the disclosure dates identified by the event study analysis. The harm measured for these investors is then based on the sum of the price reactions

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<sup>2</sup> Technically, this adjustment period is the number of consecutive days during which the stock price return (movement) was statistically different from the market return. So if, for example, the stock price experienced statistically significant fluctuations for two trading days following the information release, and then on the third day the return was insignificant, the adjustment period will comprise the two days and the cumulative return over these two days will be considered for calculating the stock price inflation.

to each of the disclosures over which they held their stock. Relevant Stock purchased before the effects of the accounting practices inflated the stock price is ineligible to participate in the distribution of the ConAgra Fair Fund. Similarly, Relevant Stock purchased after the last disclosure date is also ineligible to participate in the distribution, as all stock price inflation was removed by this time.

### ***Relevant Dates***

For purposes of the analysis used in this Distribution Plan, the artificial inflation in the Relevant Stock began on October 13, 1998, after ConAgra announced its earnings for the first quarter of 1999. Indeed, the company's restatement indicates that the earnings reported in this announcement, as well as subsequent earnings, were inflated by the accounting practices.

The analysis identified February 13, 2001, when ConAgra made its first reference to possible accounting restatements, as the date of the first corrective disclosure.<sup>3</sup> As a result, ConAgra's stock price experienced two consecutive trading days of statistically significant movement. On the third trading day, the stock price stabilized and was not statistically distinguishable from the market return. During the two days on which the stock price reacted to the disclosure, the stock price decreased by \$3.47, after controlling for the return of comparable companies over these days.<sup>4</sup> Because additional negative information that may have affected ConAgra stock price was also announced on the same day, only \$0.87, a quarter of this price drop, was attributed to ConAgra's reference to its accounting restatements.<sup>5</sup>

The second disclosure date identified is May 23, 2001. On this day, ConAgra revealed the extent of its financial restatements.<sup>6</sup> As a result, the stock price experienced one day of statistically significant movement, and decreased by \$0.72, after controlling for the return of comparable companies. The significant return on this day is an indication that the full extent of the restatements was not yet known after the February 13, 2001 disclosure. The return on the day following the second disclosure date was not statistically significant.<sup>7</sup> Therefore, it is assumed that the remaining stock price inflation was removed on the first trading day following the second disclosure.

### ***Recognized Loss per Share and Eligible Loss Amount***

Based on the event study analysis used in this case, to be an Eligible Claimant, an investor must have purchased, or otherwise acquired, shares of ConAgra common stock (Relevant Stock--

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<sup>3</sup> See Form 8-K, Current Report, ConAgra Foods Inc., February 13, 2001.

<sup>4</sup> This is done using a statistical technique called regression analysis. Comparable companies include other members of the S&P Packaged Food Index, an index ConAgra uses in its financial reports as a benchmark for its performance.

<sup>5</sup> The other factors include higher energy costs, problems in UAP's agricultural division, and higher marketing expenditures.

<sup>6</sup> See Form 8-K, Current Report, ConAgra Foods Inc., May 23, 2001.

<sup>7</sup> An additional potential Disclosure Date, June 22, 2001, was also considered in the event study analysis. However, the analysis did not reveal any significant effect on the stock price following this disclosure.



ticker: CAG; cusip: 20588710) on or after October 13, 1998 through May 23, 2001, inclusive (“Relevant Purchase Period”), and they must have held these shares after markets closed on one or both of the disclosure dates: February 13, 2001 and May 23, 2001.<sup>8</sup>

The following list summarizes the Recognized Loss per Share for the purposes of the ConAgra Fair Fund Distribution Plan, based on the purchase and sale dates:<sup>9</sup>

1. Recognized Loss per Share for Relevant Stock purchased on or before 10/12/1998: \$0
2. Recognized Loss per Share for Relevant Stock purchased on or after 10/13/1998 through 2/13/2001, inclusive:
  - a. If sold on or before 2/13/2001: \$0
  - b. If sold on 2/14/2001 or 2/15/2001:  $(\$24.86 - \text{Sell Price}) * 0.22$
  - c. If sold on or after 2/16/2001 through 5/23/2001, inclusive: \$0.87
  - d. If sold on 5/24/2001:  $\$0.87 + (\$20.61 - \text{Sell Price}) * 1.333$
  - e. If held or sold on or after 5/25/2001: \$1.59
3. Recognized Loss per Share for Relevant Stock purchased on or after 2/14/2001 through 5/23/2001, inclusive:
  - a. If sold on or before 5/23/2001: \$0
  - b. If sold on 5/24/2001:  $(\$20.61 - \text{Sell Price}) * 1.333$
  - c. If held or sold on or after 5/25/2001: \$0.72
4. Recognized Loss per Share for Relevant Stock purchased on or after 5/24/2001: \$0

The Eligible Loss Amount is calculated by multiplying the Recognized Loss per Share by the number of shares of Relevant Stock held on each of the two Disclosure Dates.

Potentially Eligible Claimants must submit documentation evidencing their purchases and sales of Relevant Stock during the Relevant Period to be considered eligible to participate in the distribution. Purchases will be matched to sales based on a last-in first-out (“LIFO”) approach.<sup>10</sup>

#### Eligible Loss Amount Calculation - Examples:

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<sup>8</sup> Relevant Stock obtained through a merger or the exercising of options is eligible for payment. However, purchases of Relevant Stock to cover short positions are not eligible for payment, since these shares are not held by the purchaser, and therefore would not have been held over a disclosure date.

<sup>9</sup> Stock sold on days in which the stock price reacted to a disclosure (2/14/2001, 2/15/2001, and 5/24/2001) will be paid a prorated portion of the stock price reaction, based on the actual price of their sale.

<sup>10</sup> Sells will be processed in chronological order, where each sell is matched to a buy(s) immediately preceding it. One sell could be matched to multiple buys, and many sells could be matched to one buy to adjust for quantity differences. If a Potentially Eligible Claimant did not sell all Eligible Shares, then the quantity held after 5/24/01 will be treated as if it was sold on 5/25/01 and then matched to a purchase(s).

A. Joan Smith bought 100 shares of ConAgra on 10/15/98 and sold on 2/14/2001 for \$19.50 per share. Her Eligible Loss Amount would be calculated as follows:

$$\text{Shares held on Disclosure Date (February 13, 2001)} * \text{Recognized Loss per Share} = 100 \text{ shares} * (\$24.86 - \$19.50) * 0.22 = \$117.92$$

B. Jane Smith bought 100 shares of ConAgra on 10/15/98 and sold on 2/27/2001 for \$19.50 per share. Her Eligible Loss Amount would be calculated as follows:

$$\text{Shares held on Disclosure Date (February 13, 2001)} * \text{Recognized Loss per Share} = 100 \text{ shares} * \$0.87 = \$87.00$$

C. John Smith bought 100 shares of ConAgra on 10/15/98 and sold on 5/24/01 for \$20.50 per share. His Eligible Loss Amount would be calculated as follows:

$$\text{Shares held on Disclosure Date (May 23, 2001)} * \text{Recognized Loss per Share} = 100 \text{ shares} * [\$0.87 + (\$20.61 - \$20.50) * 1.333] = \$101.66$$

D. Joe Smith bought 100 shares of ConAgra on 10/15/98 and sold on 6/1/2001 for \$20.50 per share. His Eligible Loss Amount would be calculated as follows:

$$\text{Shares held on Disclosure Date (May 23, 2001)} * \text{Recognized Loss per Share} = 100 \text{ shares} * \$1.59 = \$159.00$$

### ***Distributions***

It is anticipated that the total Eligible Loss Amount for all claims to the ConAgra Fair Fund will exceed the amount that is available to be distributed. In this event, the Distribution Plan provides that distributions will be made *pro rata*, based upon the ratio of the Eligible Loss Amount of each Eligible Claimant to the aggregate Eligible Loss Amount of all Eligible Claimants. Therefore, it is likely that Eligible Claimants will receive a distribution amount that is less than the Eligible Loss Amount calculated in accordance with the preceding examples.