hearing officer stated that the record would support a finding that the repurchase of 42% of Associated's shares by the underwriter and his associates, shortly after the offering was purportedly completed, was part of an undisclosed method of distribution. That conclusion appears to have support in the record. However, this is not the violation that was charged. The charge was that no bona fide public offering was intended, not that the public offering was to be made in a manner undisclosed in the offering circular.

The extent and nature of the repurchases were most suspicious. Hence it would be possible to infer that nominal purchasers were used to create the appearance of a public offering and that the nominal purchases were followed by a re-acquisition of the shares by the underwriter and his associates. But the hearing officer found no such scheme. The findings that he did make, that there was neither an agreement to repurchase shares nor any market domination by the underwriter, were unchallenged. Moreover, the record supports those findings.

There is no direct evidence of any repurchase scheme. Indeed, the issue of the underwriter's intention was left almost wholly unexplored. But such scant evidence as there was tends, if anything, to cut against any pre-arranged repurchase scheme. Hence we conclude that the administrative law judge's finding that the underwriter did not intend to make a bona fide public offering of the 100,000 shares of Associated is unsupported by the record.

The administrative law judge's statement about the existence of an undisclosed "method of distribution" raises a serious question as to the adequacy of the disclosures in Associated's offering circular. But the parties were never given any notice of this alleged defect in the offering circular. Nor did they have an adequate opportunity to answer that charge. To suspend the exemption permanently at this time on the basis of that finding would therefore be unfair.[2]

Accordingly, IT IS ORDERED that the order of December 3, 1971, temporarily suspending the exemption herein be, and it hereby is, vacated.

By the Commission (Chairman GARRETT and Commissioners LOOMIS, EVANS, SOMMER and POLLACK).

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[2] Moreover, no such suspension is needed to protect investors. The underwriter's broker-dealer registration has already been revoked. Separate administrative proceedings subsequently instituted against the underwriter alleged violations of registration and anti-fraud provisions in connection with the purchase and sale of Associated stock, and violations of credit extension, net capital, reporting and recordkeeping provisions. For the purpose of settling those proceedings and without admitting or denying the allegations, the underwriter consented to findings of violations as alleged, to revocation of his broker-dealer registration, and to a bar from the securities industry with a provision that after one year he might apply to re-enter such business in a non-supervisory and non-proprietary capacity. *Samuel Weisberger, d/b/a First New York Equities Co.*, Securities Exchange Act Release No. 10504 (November 15 1973), 3 SEC Docket 46. The findings and order in that proceeding expressly noted that they were of no effect with respect to this proceeding.

IN THE MATTER OF

CHRISTIANA SECURITIES COMPANY

E. I. DU PONT DE NEMOURS AND COMPANY

File No. 3-3928. Promulgated December 13, 1974

Investment Company Act of 1940

MERGER OF A REGISTERED INVESTMENT COMPANY INTO ITS AFFILIATE

Mergers Generally—Applicable Standards—Disparity in Benefits—Historical Factors

Where registered closed-end investment company and affiliated operating company made joint application under Investment Company Act for exemption from statutory prohibition so as to permit proposed merger of investment company into affiliated company, *held*, the terms of the proposed merger, including exchange ratio based on underlying net asset value of investment company rather than aggregate market price of its own shares, are reasonable and fair and do not involve overreaching, and are consistent with the Act's general purposes. Exemption *granted*.

Where registered closed-end investment company formed in 1915, a quarter of a century prior to the enactment of the Investment Company Act, for the sole purpose of controlling an industrial company, whose securities were its only asset of any consequence, wished to merge into such industrial company and where, because of tax factors and other reasons, benefits to investment company were greater than those to industrial company, *held*, imbalance of benefit does not render transaction inherently unfair; some transactions are more important to one side than to the other.

Where functionless investment company sought to merge into its affiliated portfolio company, *held*, public policy against the perpetuation of unnecessary entities makes it inappropriate for the Commission to insist on terms likely to result in investment company's continued existence.

Intrinsic Investment Values versus Market Prices

Intrinsic investment values, *held*, controlling in assessing fairness of proposed merger of closed-end investment company into portfolio company. Contention that hypothetical adverse market impact of merger of closed-end investment company into its affiliated portfolio company should be given great weight in assessing fairness of merger proposal, *rejected*, just result could be attained on basis of investment company's net asset value without conjectural assessment of market impact.

Restraints on the Power of Alienation

Proposal by objecting stockholders for restraints on the alienability of marketable securities to be issued pursuant to proposed merger on ground that unre-

stricted sales of such securities would lower the market price of the objector's shares, *rejected*, as unnecessary under the circumstances.

Taxation

Where registered investment company's managers' decision to merge it into its affiliated portfolio company was motivated by tax factors which led them to prefer a merger that would require the Commission's approval under the Act to a liquidation that would give investment company's shareholders the net asset value of their holdings but impose substantial and uncertain tax liabilties on them, *held*, Act's "reasonable and fair" standard does not entitle portfolio company's shareholders to the benefits of the taxes that the United States would otherwise have collected.

Dissolution of Registered Investment Company

Merger of registered investment company into its affiliated portfolio company that would eliminate duplicative operating expenses and taxation, *held*, consistent with Investment Company Act's purposes. Finding of consistency with investment company's purposes under Section 17(b)(2) of the Act, *not required*, where company's existence is to be terminated.

PRACTICE AND PROCEDURE

Asserted Inadequacy of the Record
Request for Remand
Pre-Trial Discovery
Depositions
Due Process
Rules of Practice

Objecting security holders' request for remand to supplement assertedly inadequate record, *denied*, because matters into which they wished to inquire irrelevant under governing legal principles. Hearing officer's denial of requests for depositions, *affirmed*, where Commission's rules make no provision for such depositions.

Due process does not require depositions.

APPEARANCES:

Kenneth W. Gemmill, *Matthew J. Broderick*, *Stephen R. Miller* and *Richard S. Seltzer*, of Dechert, Price & Rhoads, for Christiana Securities Company.

Daniel M. Gribbon, *Cyril V. Smith, Jr.* and *Peter B. Archie*, of Covington & Burling, for E. I. du Pont de Nemours and Company.

Gerald Osheroff, for the Division of Investment Management Regulation of the Commission.

Lewis C. Murtaugh, of Murtaugh, King, Neiman & Grais, *pro se.*

Richard J. Collins, Jr., of Rassieur, Long, Yawitz & Schneider, *pro se.*

Ernest N. May, *pro se.*

Daniel W. Maher, *pro se.*

FINDINGS AND OPINION OF THE COMMISSION

I

This case involves one of the World's great industrial complexes. It is here under the Investment Company Act of 1940. Its origins, however, go back to 1915.

At that time T. Coleman du Pont[1] was the largest single stockholder of E. I. du Pont de Nemours and Company ("Du Pont").[2] He wished to dispose of that interest. To keep Coleman's large block of stock within the family thus assuring its continued control of the enterprise, Coleman's cousin Pierre joined with others to form a holding company.[3] That was Christiana Securities Company.[4] It began life with the substantial amount of Du Pont stock acquired from Coleman plus other blocks of that security contributed by Pierre and by other family members in exchange for Christiana shares.[5] Thus Christiana was organized by members of the du Pont family for the service of their own interests. Through Christiana, the family's dominant faction made sure that its massive holdings in Du Pont would be voted as a block.[6] Christiana was a control device. Historians friendly to Pierre and to the family point out that:

> "[I]t was as chairman of the Christiana Securities Company that his power was most explicitly defined. His immediate family held over 60% of Christiana common stock, and Christiana in turn held over 30% of the Du Pont common stock outstanding (through Delaware Realty[7] and personal holdings the share held by Pierre's family in Du Pont was even higher). Since the Du Pont Company still owned close to 35% of the voting stock of General Motors, the family had practical control of that corporation."[8]

II

The du Pont family is large. And since the family rewarded outstanding managerial performance with Christiana stock, there were

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[1] The du Pont family spells its name with a lowercase "d."

[2] In this opinion the company's name is hereinafter spelled with an uppercase "D."

[3] With one exception, all of the people involved were members of the du Pont family. And the outsider was a man closely linked to the family.

[4] Christiana was at first called Du Pont Securities Company. It took its present name in 1918.

[5] The historical treatment is based on CHANDLER & SALSBURY, PIERRE S. DU PONT AND THE MAKING OF THE MODERN CORPORATION 322–358 (1971). For other accounts see JAMES, ALFRED I. DU PONT: THE FAMILY REBEL (1941) (critical of Pierre and his associates and castigating them as "the secret six"); DONALDSON, CAVEAT VENDITOR (privately printed 1964) presenting the situation from Coleman's viewpoint.

[6] The historical writings cited in the preceding footnote show that a family feud between Pierre and his cousin Alfred had much to do with Christiana's origins.

[7] *See Delaware Realty and Investment Company*, 40 S.E.C. 469 (1961) (Footnote added).

[8] CHANDLER & SALSBURY, PIERRE S. DU PONT AND THE MAKING OF THE MODERN CORPORATION 564–565 (1971). On page 565 the authors note that "During the 1920s Pierre and his brothers were obsessively concerned about assuring control."

some non-du Pont stockholders in Christiana from the very beginning.[9] So by 1940, when the Investment Company Act went into effect, Christiana had far more than a handful of stockholders.

Christiana registered under the Act. It had to do so for two reasons:

(A) Christiana had more than the 100 security holders whose presence, with other facts, brings the Act into play.[10]

(B) Christiana maintained, and still maintains, that it did not and does not run Du Pont. It insists that it is not Du Pont's parent. It concedes that it "has the potential to exercise a controlling influence over Du Pont," but it has consistently contended that this potential lies dormant and unexercised and that there is no actual control relationship. This, its own version of the facts, made, and makes, Christiana an investment company of the closed-end, non-diversified type rather than an industrial holding company.[11]

III

Today Christiana is still what it was at its birth in 1915, a receptacle for a huge block of Du Pont common stock. It holds 28.3% of the issue. This massive commitment accounts for something like 98% of Christiana's total assets.[12]

Christiana's stock is still highly concentrated. While it has over 11 million common shares outstanding, 95.5% of them are held by a mere 338 people. Christiana remains in overwhelming measure a du Pont family affair, 75% of its outstanding shares being held by familv members.

This does not mean that Christiana is just a collective name for the descendants of the original stockholders. It is a publicly held company with about 8,000 stockholders. There is an over-the-counter market in the issue, and for reasons hereinafter explained, Christiana shares have over the years had a certain appeal to a few of the many people who wanted to invest in Du Pont. It was—and for that matter, still is—cheaper to buy into Du Pont indirectly by buying Christiana than it was to acquire the underlying Du Pont shares themselves. Someone with $10,000 that he wanted to invest in Du Pont common could do so in one of two ways. The first was to buy $10,000 worth of Du Pont on the New York Stock Exchange. The second was to buy $10,000 worth of Christiana in the over-the-counter market. Since Christiana, like most other closed-end investment company issues, has long tended to sell at a substantial discount from net asset or liquidation value, the Christiana buyer got what could be regarded as a real bargain. His $10,000 purchased an interest in Du Pont that might have cost him $12,000, $13,000 or $14,000 had he acquired it in the direct Du Pont form rather than in the indirect Christiana form. One did not have to be a du Pont in order to see the point. The record suggests that some of the 338 large holders previously referred to may be wholly unconnected with the founding family. Although members of the du Pont family still hold about 75% of Christiana, the other 25% belongs to public investors.

IV

Those who control Christiana (and who presumptively at least are for present purposes deemed to control Du Pont as well[13]) think that Christiana has outlived its usefulness. Du Pont, they say, is no longer a family firm. Hence the family no longer needs Christiana. It has no contemporary function.

And Christiana is expensive. It costs something to run. Much more important than administrative costs are the taxes that have to be paid because of Christiana's existence. For practical purposes, Christiana's income consists entirely of the dividends it collects from Du Pont. Yet Federal income tax has to be paid on those dividends before they can be distributed to Christiana's stockholders. Were there no Christiana and were the present Christiana stockholders to own their Du Pont shares directly, there would be no such tax.

Accordingly, Christiana's management urges that Christiana merge into its portfolio company, Du Pont. Du Pont's management agrees.[14] The salient features of the joint Christiana-Du Pont proposal are these:[15]

(1) Christiana's assets and liabilities will become those of Du Pont.[16]

(2) Accordingly, Du Pont will reacquire the 13,417,120 shares of its own common now in Christiana's portfolio.[17] Those shares will be retired.

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[9] Chandler & Salsbury, Pierre S. Du Pont and the making of the modern corporation 581 (1971).

[10] Section 3(c)(1).

[11] For fuller discussion see this Commission's 1966 report on the PUBLIC POLICY IMPLICATIONS OF INVESTMENT COMPANY GROWTH, House Report No. 2337, 89th Cong., 2d Sess. 40, n. 54.

[12] It also holds a small block of Du Pont preferred. The non-Du Pont assets consist of the two daily newspapers in Wilmington, Delaware, and 3.5% of the stock of the Wilmington Trust Company. *Qua* trustee for various du Ponts and du Pont relatives, the Trust Company holds more than half of Christiana's common stock.

[13] Under Section 2(a)(9) of the Act an interest of more than 25% in voting securities is presumed to constitute control. We also note that Christiana and Du Pont have five common directors.

[14] In addition to the five common directors referred to in the preceding footnote, another seven of Du Pont's 26 directors own Christiana common stock.

[15] The application before us states that the 12 Du Pont directors who are also directors or stockholders of Christiana did not participate in the consideration of the merger proposal.

[16] Du Pont intends to dispose of the newspaper interests and the bank stock (see n. 12 on p. 652, *supra*) to be acquired from Christiana.

[17] Christiana's 16,256 shares of Du Pont's $4.50 preferred (0.96% of the outstanding shares of that class) will also be reacquired by Du Pont.

(3) Each Christiana common share will become 1.123 shares of Du Pont.[18]

The merger is designed to be tax-free to Christiana and its stockholders. Accordingly, it is conditioned on a ruling to that effect by the Internal Revenue Service.

V

Like other corporate mergers, this one cannot be consummated unless the law of the state of incorporation (in this case Delaware for both companies) is followed. Hence the stockholders of both companies must approve. Were this an ordinary amalgamation between industrial or mercantile firms, the merits of the matter would be none of our concern. Our responsibility would be solely that of seeing to it that the two companies' stockholders were told enough about the proposal to enable them to reach an informed judgment. The decision would be theirs, not ours.

But Christiana is an investment company, and the Congress that passed the Investment Company Act deemed transactions of this character to be fraught with potential for overreaching and unfairness.[19] Accordingly, it prohibited them,[20] subject to our power to lift the prohibition [21] "if evidence establishes that . . . the terms of the

[18] In time the present Christiana holders may also receive some additional Du Pont stock. This would stem from a contingent, unliquidated tax refund claim that Christiana now has against the United States. Du Pont will acquire that claim. If it collects on it within five years from the effective date of the merger, it will distribute additional shares of its common whose then current market value will equal the proceeds of the claim. Should the tax refund claim remain unsettled and unadjudicated within the aforementioned five-year period, the number of additional shares issued will be based on the then fair value of the claim.

The plan makes provision for the holders of Christiana's 106,500 7% callable preferred. Those shares are callable at $120. Accordingly, the plan calls for their conversion into shares of Du Pont with a then market value of $120, based on the average closing price of Du Pont common stock on the New York Stock Exchange for the ten trading days immediately preceding the effective date of the merger, plus cash equal to the accrued dividend. Du Pont states that its present intention is to offer dissenting Christiana preferred holders who follow Delaware's statutory appraisal procedures $120 in cash (plus the accrued dividend) for each share.

[19] Section 1(b)(2) of the Act states that "the national public interest and the interest of investors are adversely affected . . . when investment companies are . . . managed . . . in the interest of directors, officers, . . . or other affiliated persons thereof . . . , in the interest of special classes of their security holders, or in the interest of other investment companies or persons engaged in other lines of business, rather than in the interest of all classes of such companies' security holders." Of special significance here is Section 1(b)(2)'s reference to investment companies' affiliated persons. Christiana and Du Pont are "affiliated persons" of each other. That is so because Christiana owns more (far more) than 5% of Du Pont's voting securities. See Sections 2(a)(3)(A) and 2(a)(3)(B).

[20] Section 17(a)(1) of the Act makes it "unlawful for any affiliated person [of] . . . a registered investment company . . . knowingly to sell any security or other property to such registered company." The proposed combination would take the form of a statutory merger. But this would constitute a "sale" by Christiana of its assets to Du Pont within the meaning of Section 17(a)(1). *E. I. du Pont de Nemours & Company*, 34 S.E.C. 531 (1953), overruling *Phoenix Securities Corporation*, 9 S.E.C. 241 (1941).

[21] Section 17(b) provides that "notwithstanding subsection (a), any person may file with the Commission an application for an order exempting a proposed transaction . . . The Commission *shall* [emphasis added] grant such application and issue such order of exemption if . . ."

proposed transaction including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of *any* person [22] concerned." [23]

Does this transaction meet that test? That is the central question before us.[24] A negative answer will end the matter. Should our answer be in the affirmative, the managers of both companies will be at liberty to proceed to seek the approval of their stockholders.

VI

At first blush it is hard to see a real problem here. In economic reality Christiana stock already is Du Pont stock—under another name. Substantially, all that we are dealing with is an exchange of equivalents.

Christiana owns 13,417,120 shares of Du Pont common. But there are only 11,710,103 Christiana common shares outstanding. It follows that a Christiana common share is in economic substance 1.15 shares of Du Pont common. Make a few simple adjustments for the relatively inconsequential preferred stocks of the two companies and for the newspaper interests and the bank stock that Du Pont will get from Christiana,[25] and the whole thing is over.

That in essence is the view of the two companies involved. Our Division of Investment Management Regulation agrees. But three Du Pont stockholders disagree.[26]

[22] Because of its special impact here the word *"any"* has been italicized. Its presence means that we must find this transaction fair to the stockholders of both companies. See *Bowser, Inc.*, 43 S.E.C. 277 (1967).

As we said in *Fifth Avenue Coach Lines, Inc.*, 43 S.E.C. 635, 639 (1967): "[T]hat Section 17(a) by its terms makes it unlawful for the affiliate, rather than the investment company, to engage in specified types of transactions, does not . . . indicate a Congressional concern for the shareholders of the investment company to the exclusion of the other stockholders affected. While it is true that the protection of fund shareholders was a primary consideration which led to the passage of the Act, we find nothing in the legislative history which persuades us that Congress intended the broad language of Section 17(b) to be read in the restrictive manner which applicants suggest, nor have we ever done so. We cannot believe the Congress intended, after requiring an agency of the Government to examine a transaction such as this, to put that agency in the position of effectively authorizing the transaction when there are circumstances raising questions as to possible overreaching of a person concerned which has public investors."

[23] Section 17(b)(1).

[24] But it is not the only question presented. Under Section 17(b)(2) we must also find the proposed transaction consistent with Christiana's policy. And Section 17(b)(3) precludes approval unless we find the merger consistent with the Act's general purposes. Its primary general purpose, of course, is the protection of investors. Finally, the parties invoke Section 17(d) and our Rule 17d-1 thereunder, which taken together prohibit joint enterprises and joint arrangements between investment companies and persons affiliated with them, unless we approve the specified transaction involved.

[25] See n. 12 on p. 652, *supra*.

[26] These stockholders, Lewis C. Murtaugh, Richard J. Collins, Jr. and Daniel W. Maher, participated in the hearings before the administrative law judge. An initial decision having been waived, the case came to us after the record was closed. Briefs were filed, and we heard oral argument. Our findings are based on an independent review of the record.

VII

The objecting Du Pont stockholders consider the view just outlined misleadingly simplistic. They contend that this transaction will:

(A) Confer great benefits on Christiana's stockholders;

(B) Give Du Pont's stockholders nothing worth mentioning but actually injure them; and

(C) Serve no real business purpose for Du Pont.

VIII

The objectors are clearly right when they say that the merger will be a very good thing indeed for Christiana's stockholders. Their benefits will stem from:

(A) The federal tax structure; and

(B) Stock market phenomena.

We begin with the tax factors. There are two of them. One is the federal corporate income tax that Christiana now pays.[27] The United States Treasury takes 7.2 cents out of every dollar of dividend income that Christiana gets before such dividend income is disbursed to the Christiana stockholders.[28] So the merger will increase each Christiana stockholder's individual pre-tax income by 7.2% over what he would receive if Du Pont dividends continued to be passed through Christiana.[29] Of course, this 7.2% accretion will be taxable income in the individual stockholder's hands. A particular Christiana stockholder's net tax benefit will therefore depend on the tax bracket in which he happens to find himself. To the extent that Christiana stock is held by people in high tax brackets, the actual increment to the Christiana stockholders' net after taxes will be significantly less than 7.2%.[30] The second tax factor relates to the tax cost of alternative methods of achieving the end that the applicants wish to reach. Christiana could be killed off without any need for our prior (or for

[27] Many closed-end investment companies do not pay federal corporate income taxes. They, like most of the open-end companies, avail themselves of the special treatment that Subchapter M of the Internal Revenue Code gives to so-called regulated investment companies, i.e., companies regulated by this Commission under the Investment Company Act. Such companies are free from all corporate income taxes so long as they distribute all of their income to their stockholders. But this special tax benefit is available only to "diversified" investment companies. Christiana, of course, is as undiversified as an investment company can possibly be. Hence its federal income tax status is no different from that of any other corporation. Sections 851–855 of the Internal Revenue Code.

[28] The applicable normal corporate income tax is 48%. Section 11 of the Internal Revenue Code. But *all* corporations (whether investment companies or not) are entitled to deduct from their income 85% of any dividends that they receive. Section 243 of the Code. Thus the maximum effective federal corporate income tax on dividend income is 48% to 15% or 7.2%.

[29] Christiana pays out substantially all of its after-tax income in dividends.

[30] Additional savings will stem from the elimination of Christiana's operating expenses. The application states, however, that those expenses are "relatively minor."

that matter subsequent) approval. Nothing in the Act or anywhere else in the law inhibits a registered investment company from liquidating. But a liquidation might be much more expensive for Christiana's stockholders than this tax-free plan.[31] Liquidation would certainly be a great deal more conjectural.[32]

In view of what has just been said about the special 7.2% tax burden on Christiana's stockholders, it would be unsurprising to find Christiana's shares selling at a discount of about that magnitude from net asset value.[33] Actually, however, the discount has been much higher than that. When the merger negotiations were first announced it was 23%. During the preceding two years it had been as high as 25% and was never below 20%.

The mere announcement of the planned merger led to an appreciable narrowing of the discount. Its consummation will, of course, extinguish the discount forever. Thus the merger will substantially enhance the market value of the Christiana stockholders' property.

What is the offsetting benefit to Du Pont's stockholders? Applicants point to the fact that Christiana's stockholders will get only 97.5% of its adjusted net asset value. This looks like a 2.5% discount from net asset value. But the actual dilution to be suffered by the Christiana stockholders will be only 1.8%. That is so because Christiana is so substantial a Du Pont stockholder. Since Christiana has a 28.3% interest in Du Pont, 28.3% of the 2.5% discount will go right back into the Christiana holders' pockets. Accordingly, objectors dismiss the discount as derisory, a mere "pacifier."

The objectors' claim of positive harm to themselves and the other similarly situated Du Pont stockholders rests entirely on market factors.[34] They point out that from a stock market point of view Christiana's massive block of Du Pont is sterilized. Christiana has never sold

[31] Christiana's tax picture is said to be clouded by reason of the distributions of General Motors common stock resulting from the antitrust divestiture decree entered against Du Pont. *United States* v. *E. I. du Pont de Nemours & Co.*, 366 U.S. 316 (1961). We are told that this is so because:

"(a) the fair market value of the General Motors stock received by Christiana pursuant to the antitrust divestiture decree . . . is the subject of a tax refund suit by Christiana against the United States Government and is thus presently indeterminable;

"(b) the effect of pro rata distributions by Christiana of General Motors stock to its own stockholders is uncertain under the tax laws; and

"(c) the effect of distributions by Christiana of General Motors and Hercules Powder Company stock . . . is uncertain."

[32] Christiana's brief states that its "stockholders would in effect be voting tax litigation for themselves were they to sanction a liquidation."

[33] Implicit in this statement is the somewhat unrealistic assumption of a market for Du Pont common that is entirely income-oriented.

[34] Some Du Pont stockholders are also Christiana stockholders. Objectors do not weep for them. Their concern is with the people whose interest in Du Pont stems entirely from their ownership of its stock. Since there are over 225,000 Du Pont holders as against a mere 8,000 Christiana holders, it is obvious that most Du Pont stockholders belong to the class whose interests the objectors champion.

any of its Du Pont. Nor, so long as it remains in being, is Christiana ever likely to do so.

The enormous capital gains taxes that would have to be paid are enough in themselves to inhibit Christiana from selling any of its Du Pont holdings. Those taxes would arise at two levels. First, at the corporate level there would be a very heavy tax on Christiana itself. The basis of its Du Pont shares is but a tiny fraction of those shares' present value. And should Christiana follow its past practice of distributing all of its income to its stockholders, a second onerous tax would fall on the individuals who own Christiana.

Most of Christiana's stock has a very low basis in the hands of those who now hold it. That is so because:

(A) The holders either paid much less for it than it is now worth or acquired it from donors who bought it for far less than the present value; and

(B) The basis of their Christiana shares has already been materially reduced by reason of their receipt of substantial quantities of General Motors stock, pursuant to the Du Pont divestiture distribution.[35]

The objectors say that the merger will work a radical change in this state of affairs. They note that the corporate capital gains tax inhibition will vanish. After Christiana is dead and gone, no one will worry about the capital gains taxes that it would have had to pay had it remained alive. True, the holders of about 70% of Christiana's stock state that they have no present intention of selling the Du Pont shares to be received in exchange for their Christiana holdings. But the objectors point out that:

(A) No binding commitments to refrain from selling have been given.[36]

(B) The plan's carefully crafted provisions for Securities Act registration statements at the selling stockholders' expense (twice a year on a non-firm commitment basis and once a year on the basis of a firm commitment underwriting for at least $25 million) show that some important holders have given some thought to some selling at some time.

(C) Public investors unrelated to Christiana's control group own about 25% of the company's stock. Hence the merger will give them about 3¼ million shares of Du Pont common. They will be as free as other noncontrolling Du Pont stockholders to sell those shares whenever and wherever they choose without registering them under the Securities Act.

Objectors argue that the merger will have an adverse impact on them even if nobody actually sells. They ask us to focus on potential available supply. Such supply will, they say, be increased by over 13 million shares. The market's knowledge of this is bound to depress the price. Ergo, Christiana should be required to compensate the Du Pont stockholders for the "vast and virtually uncontrolled increase in the supply of marketable stock" flowing from the merger.

As for Du Pont, objectors argue that it has been doing well all these years and will continue to do well with or without Christiana; that applicants have failed to show that Christiana is an incubus to Du Pont; and that though the proposal does a great deal for the du Pont family, it does nothing of consequence for Du Pont. True, after the merger's consummation Du Pont will have about 188,500 fewer common shares outstanding than it now does. But presently outstanding shares of that issue number 47,445,810. So the number of shares outstanding will be diminished by a mere four-tenths of one percent.

One objector argues for a substantial increase in the contemplated 2.5% or 1.8% (depending on whether one looks at gross or at net impact) discount from Christiana's net asset value.[37] The other two also urge an increase in the discount. But they go on to attack the whole affair root and branch. They consider it an outrageous assault on the rights of the Du Pont stockholders and on the law of supply and demand. What they deem essential are conditions to "protect the price of Du Pont shares." They therefore implore us to impose restraints on the alienability of the new Du Pont comon shares to be issued pursuant to the merger.

IX

Applicants consider the objectors' contentions frivolous and absurd. So does our Division of Investment Management Regulation.[38] We

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[35] See n. 31 on p. 657, *supra*. Some 3 million Christiana shares (roughly 25% of the issue) have a zero basis.

[36] Indeed, the Wilmington Trust Company, record owner of more than half of Christiana's outstanding shares (see n. 12 on p. 652, *supra*) states that its fiduciary responsibilities may require it to do some selling from time to time.

[37] See p. 657, *supra*.

[38] Though in accord with the applicants on every substantive point presented, the Division has certain qualms about the performance of the financial experts who testified on their behalf with respect to the value of Christiana's Du Pont holdings. It asks us to say some harsh words about those experts and to make a pronouncement about the role of an independent expert in a proceeding of this character. We agree with the Division that financial experts should be diligent, conscientious, and painstaking. On the record before us, we think it inappropriate to go beyond that truism. The importance of expert testimony varies from case to case. In some situations such testimony is crucial. When a closely held firm or a business of an esoteric character must be appraised, much turns on what the experts say. *LaSalle Street Capital Corporation*, 44 S.E.C. 655 (1971) is illustrative. That case presented a question about the value of a major league baseball franchise. Such questions are, as was said at page 662 of the *LaSalle Street* opinion, "not susceptible to precise determination." The instant case, on the other hand, involves marketable securities. The questions presented are in our view essentially legal. Hence they cannot be resolved by reference to the opinions of financial experts, however conscientious and