UNITED STATES DISTRICT COURT

DISTRICT OF NEBRASKA

DAVID P. BERLIEN, On Behalf of Himself and All Others Similarly Situated, Plaintiff, vs. CONAGRA FOODS, INC. and BRUCE C. ROHDE, Defendants.	)	No. CLASS ACTION COMPLAINT FOR VIOLATION OF THE FEDERAL SECURITIES LAWS DEMAND FOR JURY TRIAL

BACKGROUND AND CASE OVERVIEW

1. This is a securities class action on behalf of all persons who purchased the common stock of ConAgra Foods, Inc. ("ConAgra" or the "Company") between September 18, 2003 and June 7, 2005 (the "Class Period"), against ConAgra and its President, Chairman and Chief Executive Officer, Bruce C. Rohde ("Rohde"), for violations of the Securities Exchange Act of 1934 (the "1934 Act").

2. ConAgra is a packaged food company serving a wide variety of food customers. The Company's operations are classified into three segments: Retail Products, Foodservice Products and Food Ingredients.

3. Despite a fairly mundane business product – food – out of the past eight years the Company has been unable to report even one full year of accurate financial results. The Company announced in June 2001 the restatement of earnings in connection with United Agri Products, Inc. ("UAP") for fiscal years 1997-2001. In 2001, the Company was and since has been the subject of a Securities and Exchange Commission ("SEC") probe. The probe targeted the Company's accounting at its UAP unit. The SEC had concluded that the Company's accounting in that unit was false and ultimately fined the Company $46.5 million.

4. After this scandal, and in light of other notable corporate scandals at the time, ConAgra instituted certain corporate reforms, including preventing senior officers from selling their ConAgra stock until six months after they left the Company. To continue to be highly compensated, defendant Rohde was much more reliant on bonuses, restricted stock awards and long-term incentive program ("LTIP") payouts. These payments were based in large part on ConAgra's reported financial performance. By using rather germane accounting tricks to inflate the Company's income and his bonuses, defendant Rohde could enhance his wealth without selling a single share of Company stock.

5. The Company implied that it had enhanced its controls over its accounting department, and as it reported favorable results from 2003 to the first half of fiscal 2005, the perception was that the financials were accurate.

6. In fact, the financials were false. In recent years ConAgra had sold assets for approximately $3.8 billion – well exceeding the assets' book value of $3.1 billion, thereby creating a net profit of $700 million. The Company then minimized income taxes paid, which maximized the personal bonuses paid to Rohde. The scheme to reduce income taxes paid was based on faulty book values and false entries made in determining proper foreign tax credits, all of which was related to the assets at issue.

7. Since Rohde and fellow executives were prohibited by the Company's internal corporate governance rules from selling their own ConAgra shares, Rohde manufactured a scheme to reap ill-gotten monies absent his ability to sell his shares. The plan would involve manufacturing earnings to create bonuses for himself.

8. For his role in the tax scheme, defendant Rohde rewarded himself handsomely. In all, Rohde cashed in on the tax scheme to the tune of $17.5 million. For fiscal 2002, Rohde received $3 million plus restricted stock and options valued near $3 million. In 2003, he received a bonus of nearly $5 million and in 2004 he received $6.5 million. However, though Rohde was paid bonuses based on the appearance of growing net income, ConAgra had subsequently admitted that net income was materially overstated due to the understatement of tax payments in fiscal 2004 and 2003 that initially were estimated at between $150 million to $200 million – the equivalent of $0.20 per share annually or between 10% and 15% of earnings. While ConAgra was in the process of restating earnings for both years, Rohde announced he would step down as CEO. There were calls made for the Company to restate Rohde's bonus given the circumstances under which he was paid. The Company's bonus for Rohde was tied to "***growing trend line margins and GAAP earnings***."

Defendant Rohde, as CEO and President, was responsible for the financial results and press releases issued by the Company and for orchestrating the tax scheme which assisted his efforts to line his pockets with $17.5 million in ill-gotten bonuses. ConAgra's CFO was responsible for financial reporting and communications with the market. Rohde was responsible for the content of the press releases and the very statements which triggered his multi-million dollar bonuses. Moreover, the tax group did not report to the CFO at ConAgra but directly to Rohde. Furthermore, Rohde kept shareholders happy and less focused on his bonuses with his Class Period statements including:

- "[G]rowing trend line margins and GAAP earnings."
- "We continue to make important changes to our portfolio of businesses so that all of our resources are strategically aligned with our goals to profitably and efficiently serve customers. We look forward to reporting on our progress."
- "Our overall EPS results in the second quarter and first half were solid and on target. Overall operating trends for the second half of 2004 are expected to show strength, driven by a strong fourth-quarter performance, due to operations improvements within our supply chain and administrative functions, and also favorably impacted by marketing initiatives we have underway."
- "The company has operating efficiency initiatives underway that are intended to improve the company's cost structure, margins, and competitive position. Implementing these initiatives resulted in approximately $0.01 per diluted share charge in the current quarter, and is expected to result in $0.05- $0.10 per diluted share of charges in the second half of 2004. The company will identify those expenses as such in its future earnings releases."
- "We are confident that our efficiency-enhancing and top-line growth initiatives will result in a solid operating performance in the second half of fiscal 2004, driven by a strong fourth-quarter performance. I look forward to reporting on our progress as we pursue our goal of becoming America's Favorite Food Company in a way that expands operating profit margins, strengthens returns on invested capital, and posts profitable sales growth."
- "Our fiscal third quarter showed encouraging results."
- "We look forward to reporting on our progress."
- "Fiscal year 2004 was a year of significant momentum for ConAgra Foods; we accomplished the strategic reshaping of our portfolio that we set out to do by completing the divesture of non-core businesses, and we made measurable progress with key initiatives designed to drive profitable future growth. We are expanding

profit margins through sales, marketing, and operational platform initiatives, as we build our business base into a richer, and more consumer-focused enterprise."

- "The company believes fiscal 2005 will show a solid EPS performance and growth in sales and operating profits from its current business segments. In addition to paying a strong dividend, the company expects to continue allocating capital toward repurchasing its shares during fiscal 2005 as well as toward acquisition opportunities that fit with the company's strategic and financial goals."

- "Our first quarter sales were very strong, reflecting excellent volumes for many of our brands. Our sales and marketing initiatives are gaining significant momentum, and we are pleased with the progress."

- "And because we have taken some price increases and reduced operating expenses in several areas, our overall operating profit this quarter was solid, but it was not as strong as we wanted; this was mainly due to significantly increased input costs across the industry. As we plan for the balance of this fiscal year, we expect to continue making price adjustments to offset increased input costs, as well as to continue growing volumes and capitalizing on cost savings opportunities so that we strengthen margins throughout the year."

- "The company believes that the marketing and operating initiatives currently being implemented, along with appropriate price increases, and the share repurchase program, will drive a solid EPS performance this fiscal year; the company expects the benefit of its profit-enhancing initiatives and pricing actions to be more apparent in the company's profit margins (profit as a percentage of sales) during the second half of the fiscal year than in the first half."

- "The company expects this segment to post profitability gains in the second half of the year, due to operational improvements and the fact that prior-year results included costs associated with implementing efficiency initiatives."

9. To ensure that Rohde's tax scheme would not be detected by the accounting department, Rohde structured the tax and accounting departments in a way that he could fully control the flow of information relating to the $100 million-plus foreign tax scheme which boosted – if not created – Rohde's bonuses totaling $17.5 million. Instead of allowing the tax department to report to the CFO and the accounting department where the foreign tax scheme would be red flagged – if not halted altogether – the tax department did not report to the CFO.

10. Analysts were stunned by alarming news when the Company admitted to an analyst the "tax accounting department" did not report to the CFO. Rather, it seemed that Rohde was "acting as CFO" over the tax department. The tax accounting department was the very department

that created this $150 to $200 million overstatement – nearly the equivalent of 12% of the $1.65 billion the Company reported over this two-year period. When the restatement was ultimately announced, it was reported that fiscal 2003[1] earnings had been overstated by $11 million, or $0.03 per share, fiscal 2004 earnings were overstated by $68.6 million or $0.13 per share and first half fiscal 2005 earnings were overstated by $3 million or $0.01 per share. The Company's 2002 results were also misstated due to this tax issue. Thus, ***during the past eight years***, the Company's accounting was false and it issued false financial statements. With this news, the Company's shares were slammed with sell orders as investors sought to recover whatever was left of their investment in ConAgra. The Company's shares dropped to the $26 range on news of the accounting misstatement from the $27-$28 range prior to this news, causing shareholders to lose tens of millions of dollars, as well as calling into question the veracity of the defendants' prior statements as well as defendants' motive to overstate the Company's financial statements. The stock continued to trade at artificially inflated levels as analysts were led to believe that fourth quarter results would exceed third quarter results.

11. Then, on June 7, 2005, the Company issued a press release entitled "ConAgra Foods Comments on Fiscal 2005 Fourth Quarter and Cost-Savings Initiatives." The press release stated in part:

> Today ConAgra Foods commented on earnings for the fiscal 2005 fourth quarter, which ended May 29, 2005, as well as recent developments in its cost-savings initiatives.
>
> **Fourth Quarter**
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> Earnings for the company's fiscal 2005 fourth quarter will be lower than expected primarily due to continued weak profitability in the packaged meats operations. Those operations continue to be negatively impacted by high protein input costs coupled with inadequate pricing management.

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1 ConAgra's fiscal year ended on the last Sunday in May.

- In its preliminary third quarter earnings release on March 24, 2005, the company indicated that it expected fourth-quarter EPS to modestly exceed third-quarter EPS, excluding items that impact comparability.

- Third-quarter diluted EPS of $0.32 included net $0.02 per share of expense from items that impact comparability.

- Because the expected improvement in the packaged meats business did not materialize, contribution from the packaged meats operations in the fourth quarter will be in the range of $0.10 per share lower than the company expected when it made previous comments regarding the fourth quarter. The company is not providing a specific fourth-quarter performance number at this time because the results are not yet final; however, the company suggests third parties with estimates of fourth quarter performance, which exclude items that impact comparability, should lower their estimates by an amount similar to the earnings shortfall in the packaged meats operations. Items that impact comparability will include severance charges associated with cost-savings initiatives as discussed later in this document.

The company previously expected aggressive pricing management to improve packaged meats results in the fourth quarter. The pricing actions that were taken were inadequate and were not executed to expectations. The company has recently made several significant personnel changes in its packaged meats operations and expects those changes, along with better pricing management, aggressive cost-savings initiatives, and SKU rationalization, to improve the packaged meat operations over time.

Bruce Rohde, chairman and chief executive officer, commented, "Our fiscal 2005 showed a solid first-half performance, followed by a weak second-half performance largely due to the challenges in our packaged meats business across retail, foodservice, and deli channels. Weak pricing execution negatively impacted our third quarter and continued in the fourth quarter. Our focus is on improving the packaged meat operations with new leadership team members, appropriate pricing, SKU reductions, and more efficient operations."

12. On this news, ConAgra's stock collapsed to $24.32 per share.

13. The true facts, which were known by the defendants but concealed from the investing public during the Class Period, were as follows:

(a) the Company lacked requisite internal controls, and, as a result, the Company's projections and reported results were based upon defective assumptions and/or manipulated facts;

(b) contrary to defendants' claims of fourth quarter 2005 and/or fiscal year 2005 profitability, the Company was actually on track to report losses;

(c) the Company lacked the necessary personnel to issue accurate financial reports and projections;

(d) the Company's information technology systems were materially compromised, which ***also*** materially impacted the Company's ability to issue accurate financial statements and projections;

(e) the Company's initiative to control costs and increase prices was a complete failure as it was unable to push the price increases on its customers in a manner that would not decrease sales such that future results would be much worse than expectations;

(f) defendants concealed these deficiencies for multiple quarters in order to: (i) delay the cost of implementing the proper system controls and thereby temporarily inflate the Company's net income; and (ii) provide defendants with a pliable system that would allow them to cause the Company to report financial results irrespective of their accuracy; and

(g) as a result of (a)-(f) above, the Company's projections for fiscal year 2005 were grossly inflated.

14. As a result of defendants' false statements, ConAgra's stock price traded at inflated levels as high as $30 per share during the Class Period, which allowed its top officers to reap tens of millions in ill-gotten bonuses. However, after the above revelations seeped into the market, the Company's shares were hammered by massive sales of the Company's shares sending them down 19% from their high. In all, defendants' scheme caused hundreds of millions of dollars in lost market capitalization in order for the CEO to line his pockets with millions in "bonuses" he would not have otherwise received. This dramatic decline in share price was followed by an immediate

outcry from Wall Street analysts questioning Rohde's entitlement to keep his ill-gotten bonuses and downgrading the Company's shares.

JURISDICTION AND VENUE

15. Jurisdiction is conferred by §27 of the 1934 Act. The claims asserted herein arise under §§10(b) and 20(a) of the 1934 Act and SEC Rule 10b-5.

16. (a) Venue is proper in this District pursuant to §27 of the 1934 Act. Many of the false and misleading statements were made in or issued from this District.

(b) The Company's principal executive offices are located at One ConAgra Drive, Omaha, Nebraska.

THE PARTIES

17. Plaintiff David P. Berlien purchased ConAgra common stock as described in the attached certification and was damaged thereby.

18. Defendant ConAgra is a packaged food company serving a wide variety of food customers. During the fiscal year ended May 30, 2004 (fiscal 2004), the Company's operations were classified into three segments: Retail Products, Foodservice Products and Food Ingredients. The Retail Products segment includes branded foods in the shelf-stable, frozen and refrigerated temperature classes that are sold in various retail channels; the Foodservice Products segment includes branded and customized food products, including meals, entrees, prepared potatoes, meats, seafood, sauces and a variety of custom-manufactured culinary products packaged for sale to restaurants and other foodservice establishments; and the Food Ingredients segment includes certain branded and commodity food ingredients, including milled grain ingredients, seasonings, blends and flavorings, which are sold to food processors, as well as certain commodity sourcing and merchandising operations.

19. Defendant Bruce C. Rohde ("Rohde") is, and at all relevant times was, the President, CEO and Chairman of ConAgra. During the Class Period, Rohde assisted in the Company's false financial statements and reaped $17.5 million in bonuses as a result.

20. Defendant Rohde, because of his position with the Company, possessed the power and authority to control the contents of ConAgra's quarterly reports, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, *i.e.*, the market. He was provided with copies of the Company's reports and press releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of his position as President, CEO and Chairman and access to material non-public information available to him but not to the public, Rohde knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public and that the positive representations being made were then materially false and misleading. Rohde is liable for the false statements pleaded herein at ¶¶31-35, 37-38, 42 and 49.

SCHEME TO DEFRAUD

21. In addition to the above-described involvement, Rohde had knowledge of ConAgra's problems and was motivated to conceal such problems. The Company's bonuses for defendant Rohde were tied to ***"growing trend line margins and GAAP earnings."*** As CEO, Chairman and President, and "acting CFO over the tax department," Rohde was responsible for tax, financial reporting and communications with the market, including press releases issued by the Company. Defendant Rohde sought to demonstrate that he could lead the Company successfully and generate the growth expected by the market. To ensure that Rohde's tax scheme would not be detected by the accounting department, Rohde structured the tax and accounting departments in a way that he could fully control the flow of information relating to the $200 million foreign tax scheme which boosted – if not created – Rohde's bonuses totaling $17.5 million, instead of allowing the tax

department to report to the CFO and the accounting department where the foreign tax scheme would be red flagged – if not halted altogether.

22. Defendant Rohde was motivated to engage in the fraudulent practices alleged herein in order to obtain multi-million dollar bonuses which he would not have otherwise received.

FRAUDULENT SCHEME AND COURSE OF BUSINESS

23. Defendants are liable for: (i) making false statements; ***or*** (ii) failing to disclose adverse facts known to them about ConAgra. Defendants' fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of ConAgra common stock was a success, as it: (i) deceived the investing public regarding ConAgra's prospects and business; (ii) artificially inflated the price of ConAgra's common stock; (iii) allowed defendant Rohde to obtain larger bonuses which were directly tied to the performance of ConAgra, including "growing trend line margins and GAAP earnings"; and (iv) caused plaintiff and other members of the Class to purchase ConAgra common stock at inflated prices.

BACKGROUND

24. During 2001, the Company drew SEC attention and was forced to restate earnings for the previous three years due to accounting improprieties in its UAP division. In 2002, the USDA forced ConAgra to recall 19 million pounds of ground beef because of possible "e. coli" contamination, making it the second-largest food recall in U.S. history.

25. Anxious to convince the market that these problems were behind it, ConAgra instituted certain corporate governance policies in 2002. For example, on the September 19, 2002 conference call, Rohde stated:

> And we talk about how we see some of the issues being discussed now, like options and pensions and also our culture and governance practices. We did this because governance items are top of mind for a lot of folks today and they should be.
>
> If you look at our governance principles, they are also posted on our Web site. I encourage you to read them there or in the annual report. We want everyone to know about the main items that set us apart from other companies. Not giving

> loans to directors or executive directors, not repricing options, restricting executives and officers to not selling stock until six months after leaving the company.
>
> Those are the kinds of things that align management with shareholders and it is the antithesis with the many practices that are under debate in the business world today. These don't pertain to this quarter, they pertain to how we run this company. We can't impact how other companies operate, but we can impact how we run this one.
>
> With that in mind I look forward to strong EPS this year. You heard me say this before. We are on the journey to become America's favorite food company, focused on and interested in the branded and value added side of the business. Doing that through portfolio changes and operating improvements. You saw this start to take shape over the last several quarters. You will like the steady progress that should unfold as we move forward.

26. The Company's corporate governance policies created the appearance that with the restrictions on share sales, there would be no incentive to manipulate the Company's financials. In fact, the policies established actually created a motive and opportunity to inflate the Company's earnings:

> Sound corporate governance practices are an important part of our foundation and tradition. We have many longstanding policies and practices, and we have also added measures to further strengthen our foundation. Our corporate governance practices include the following:
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> - Other than our Chief Executive Officer, none of our directors are, or ever have been, employed by the Company.
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> - ***Directors and executive officers are committed to owning stock in ConAgra Foods, and as part of that commitment they will not sell any of their ConAgra Foods stock until at least six months after they cease to be a director or an executive officer except for extraordinary corporate transactions approved by the board and for emergency or extraordinary situations with 2/3 board approval.***

27. Although the Audit Committee was responsible for reviewing the integrity of the financial statements of the Company, eight out of the past eight years they were false. Rohde had hand picked most of the Audit Committee members and since they had a long track record of allowing him – if not assisting him – in his misdeeds, his scheme to reap ill-gotten bonuses would be, like his earlier ones, free of barriers from the Company's Audit Committee. During the Class Period, the Audit Committee was responsible for reviewing the Company's annual audited financial

statements, quarterly financial statements and filings with the SEC, together with critical accounting policies of the Company, significant changes in the Company's selection or application of accounting principles and the Company's internal control processes. The members of the Audit Committee received extra compensation for serving on this committee. Each and every member claimed they were capable of performing the required tasks.

28. Notwithstanding these changes to the Company's insider selling policy, Rohde continued to receive lucrative benefits based on the short-term illusion of favorable earnings growth. His salary increased from the $950,000 range to the $1.2 million range and his bonus was increased from the $2.4 million range to the $3.5 million range. Rohde also began, in 2002, receiving restricted stock awards of $1.9 million. By 2004, these awards grew to $2.9 million per year.

29. Thus, despite restrictions on selling his stock, Rohde was still highly compensated and able to benefit from the misstatements alleged herein.

30. Prior to the Class Period, ConAgra reported its fiscal 2003 results, which were overstated by $11 million, or $0.02 per share due to the Company's improper accounting for taxes. The Company's misstated financials were alive and uncorrected at the beginning of the Class Period.

DEFENDANTS' FALSE AND MISLEADING STATEMENTS ISSUED DURING THE CLASS PERIOD

31. On September 18, 2003, the Company issued a press release entitled "ConAgra Foods Reports First-Quarter Results, Expects Solid Earnings Performance for Fiscal 2004." The press release stated in part:

> Today ConAgra Foods, Inc., one of America's leading packaged food companies, reported first quarter diluted EPS of $0.37 for the quarter ended Aug. 24, 2003, compared with $0.43 last fiscal year. As expected, the company's first-quarter sales and EPS were below last year, reflecting strategic divestitures completed during fiscal 2003. Sales were $4.4 billion compared with $6.6 billion last year, following the divestiture of the fresh beef, pork, canned seafood, and cheese businesses. Net income was $195 million compared with $228 million last fiscal year.
>
> Bruce Rohde, chairman and chief executive officer, commented, "We've made a significant and deliberate transformation of our portfolio to have a higher-

quality mix of businesses. Our first quarter is typically one of the lightest of our fiscal year, and, because of that and divestitures, we planned for this fiscal year's first-quarter sales and earnings to be below last year's. However, with our improved business mix, we expect a solid earnings performance for the full fiscal year. We have focused our resources on profit-enhancing initiatives in the areas of brand building, sales and marketing execution, customer service capabilities, and cost-savings programs. Our businesses have identified and are aggressively pursuing cost-saving opportunities to reduce complexity, improve efficiency, and drive solid earnings performance. The target is improved overall margins, better returns on invested capital, and a solid earnings performance this fiscal year and next."

Packaged Foods

Packaged Foods segment sales were $2.7 billion, compared with $2.9 billion last year. The year-over-year sales decrease reflects the divestiture of the canned seafood and cheese processing operations. During the quarter, sales grew for many key categories and brands, including frozen meals (Banquet, Healthy Choice, and Kid Cuisine), canned pasta (Chef Boyardee), tomato products (Hunt's), whipped toppings (Reddi-wip), cooking spray (PAM), dinner kits (Banquet Homestyle Bakes), liquid eggs (Egg Beaters), meat snacks (Slim Jim and Pemmican), chili (Wolf), oil (Wesson), sausages (Eckrich and Brown 'N Serve), and others. Some brands that did not post sales gains for the quarter include Armour, Blue Bonnet, Butterball, Marie Callender's, Orville Redenbacher's, and Van Camp's. The company is particularly encouraged by favorable results for some of its large frozen brands. During the quarter, the company invested in new branded retail products in frozen meals, shelf-stable meals, snacks, and dessert categories as part of a plan to fuel profitable future growth. Overall sales for the company's foodservice operations declined slightly for the quarter, primarily in processed and specialty meats, but some key product lines showed sales growth and the industry is showing positive signs in certain segments. Volumes for deli customers grew while volumes for retail and foodservice customers declined. Marketing mix improved during the quarter as part of an ongoing program to target a greater percentage of marketing resources toward consumer connections and usage.

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Interest, Corporate Expense, Depreciation & Capital Expenditures From Continuing Operations

Net interest expense for the quarter was $66 million compared with $84 million the prior year. Capital expenditures totaled $78 million compared with $91 million last year. Depreciation and amortization expense was approximately $91 million for the quarter versus $108 million a year ago. Dividends paid were $131 million compared with $124 million. Corporate expense was $92 million compared with $67 million last year – the increase largely reflects the resolution of litigation described below.

Rohde concluded, "We have been progressively reshaping the company toward a richer business mix and building customer-focused resources. Our goal is to become America's Favorite Food Company with a portfolio of favorite products for grocery, restaurant, and ingredient customers, supported by superior customer service capabilities. ***We continue to make important changes to our portfolio of businesses so that all of our resources are strategically aligned with our goals to profitably and efficiently serve customers. We look forward to reporting on our progress.***"

32. On December 22, 2003, the Company issued a press release entitled "ConAgra Foods Reports Strong Second-Quarter and First-Half EPS; Strategic Portfolio Changes Complete, Share Repurchase Program Authorized." The press release stated in part:

> Today ConAgra Foods, Inc., home of many of America's favorite food brands, reported diluted EPS of $0.51 for the second quarter ended Nov. 23, 2003, compared with $0.44 last fiscal year. Current quarter earnings of $0.51 per diluted share include a charge of approximately $0.04 per share related to the discontinued operations of UAP. Diluted EPS from continuing operations increased 18% for the quarter.
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> Sales for the company's fiscal second quarter were $3.9 billion, $578 million less than last year; operating profit was $501 million for the second quarter, $5 million less than last year. The sales and operating profit comparisons reflect the strategic divestiture of non-core businesses during the prior fiscal year. Sales and operating results for current and prior year reflect the reclassification of chicken processing and UAP as discontinued operations.
>
> Bruce Rohde, chairman and chief executive officer commented, "Our team's accomplishments this fiscal year have been significant. As planned, we completed the strategic reshaping of the company by divesting our last two significant non-core businesses–chicken processing and UAP. ConAgra Foods is well positioned for the future, and our focus is on creating shareholder value through improved profit margins and returns on capital with branded and value-added food products as we build America's Favorite Food Company. As part of our plan to re-deploy capital, we recently announced a $1 billion share repurchase program, to complete an efficient reallocation of resources."
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> He continued, ***"Our overall EPS results in the second quarter and first half were solid and on target. Overall operating trends for the second half of 2004 are expected to show strength, driven by a strong fourth-quarter performance, due to operations improvements within our supply chain and administrative functions, and also favorably impacted by marketing initiatives we have underway."***
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> * * *
>
> **Operating Efficiency Initiatives**
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> ***The company has operating efficiency initiatives underway that are intended to improve the company's cost structure, margins, and competitive position. Implementing these initiatives resulted in approximately $0.01 per diluted***

share charge in the current quarter, and is expected to result in $0.05- $0.10 per diluted share of charges in the second half of 2004. The company will identify those expenses as such in its future earnings releases.

Packaged Foods

Packaged Foods sales and operating profit for the quarter increased year-over-year, excluding $154 million of sales and $15 million of operating profit from divested businesses in prior year amounts . . . .

*   *   *

The company has undertaken specific top-line growth initiatives which include product quality and packaging improvements, new product introductions, marketing mix and marketing efficiency improvements, as well as a unified sales force and product bundling programs. As noted earlier, the company also has significant cost-saving and efficiency initiatives underway which involve procurement, manufacturing, transportation, warehousing, administrative, and other functions. The company plans for those cost-savings initiatives to favorably impact future Packaged Foods operating profit.

*   *   *

Portfolio Reshaping Completion & Share Repurchase Program

On Nov. 23, the company completed a multi-year portfolio reshaping program to focus on branded, value-added foods. On that day, the company sold its last two significant non-core businesses – chicken processing and UAP – and subsequently received more than $800 million of cash from those transactions.

Shortly after the close of those transactions, the company announced a $1 billion share repurchase program as part of its strong capital allocation discipline. The $1 billion share repurchase program begins on or after Dec. 22, 2003, and equates to approximately 40 million shares at recent market prices, which represents close to 7% of the company's existing common stock.

Outlook

Bruce Rohde continued, "We are confident that our efficiency-enhancing and top-line growth initiatives will result in a solid operating performance in the second half of fiscal 2004, driven by a strong fourth-quarter performance. I look forward to reporting on our progress as we pursue our goal of becoming America's Favorite Food Company in a way that expands operating profit margins, strengthens returns on invested capital, and posts profitable sales growth."

Regarding the second half of fiscal 2004:

- Based on past experience, the company generally expects its fourth quarter to be a more significant contributor than the third quarter to the company's yearly earnings. In addition, the company expects the fourth quarter to show a higher year-over-year EPS growth rate than the third quarter, reflecting the fact that charges were incurred in the fourth quarter of last fiscal year related to divesting the chicken processing operations.

33. On March 25, 2004, the Company issued a press release entitled "ConAgra Foods Reports Solid Third-Quarter Earnings with Strong Sales and Operating Profits." The press release stated in part:

> ConAgra Foods, Inc., one of America's leading packaged food companies, today reported earnings of $203 million, or $0.38 per diluted share, for the third quarter ended Feb. 22, 2004; this represents an $0.08 per share increase over last year's earnings of $161 million, or $0.30 per diluted share. Sales were $3.6 billion, essentially equal with last year; on a comparable basis, sales were 4% ahead of last year after adjusting for $155 million of sales from divested businesses in last year's results.
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> Bruce Rohde, chairman and chief executive officer, commented, "This was a very solid quarter. We are particularly encouraged by sales and category share trends for several key brands and products, as well as progress with many customers. We are continuing our focus on top-line growth, mix improvement, and operations initiatives as part of our plan to improve profit margins and returns on capital."
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> Current quarter operating profit was $451 million, above $446 million last year. On a comparable basis, after adjusting for $24 million of expense in the current quarter related to implementing cost-saving initiatives and $15 million of contribution in last year's results from businesses since divested, operating profit increased 10% over last year.
>
> For the first nine months of fiscal 2004, earnings were $668 million, or $1.26 per diluted share, ahead of $624 million, or $1.18 per diluted share last year. Sales were $10.8 billion, below last year's sales of $13.5 billion due to divestitures. Sales were up 2% on a comparable basis after adjusting for $2.9 billion of sales from divested businesses in prior year results. Year-to-date operating profit totaled $1.3 billion, below $1.4 billion last year. On a comparable basis, operating profit was essentially equal with last year after adjusting for $90 million of profits from divested businesses in prior year results and $38 million of costs in the current year related to implementing cost-saving initiatives.
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> **Operating Efficiency Initiatives - Costs Reflected In Segment Results**
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> The company has several operating efficiency initiatives underway that are intended to improve the company's cost structure, margins, and competitive position. Implementing these initiatives resulted in approximately $38 million, or $0.04 per diluted share of expense year-to-date, which includes $24 million, or $0.03 per diluted share, in the third quarter. Most of those expenses are reflected in the operating profit for the Packaged Foods segment. The company currently plans for

approximately $0.04 per diluted share of similar charges in the fourth quarter, and will report on those expenses in its fourth-quarter earnings release.

Packaged Foods

Sales were $3 billion for the quarter, down slightly from last year due to divestitures. Sales were up 4% year-over-year on a comparable basis, adjusting for $155 million of sales from divested businesses in prior year results. Sales to all customer channels - retail, foodservice, and deli - posted year-over-year increases for the quarter.

- The company's top 30 consumer brands, which represent close to two-thirds of the segment revenues, grew greater than 6% as a group. Category shares for several brands have improved in recent periods.
- Several major consumer brands posted sales gains, including Armour, Banquet, Chef Boyardee, Cook's, Egg Beaters, Hebrew National, Hunt's, Marie Callender's, PAM, Peter Pan, Reddi-wip, Rosarita, Slim Jim, Snack Pack, Swiss Miss, and Wesson, with many of these achieving double-digit sales increases.
- Sales to foodservice customers grew due to increased business with key customers and growth in certain product lines.

Sales growth for the quarter was primarily attributable to marketing strategy and distribution gains for various items, as well as improved sales execution by dedicated sales teams assigned to serving specific customers and higher selling prices for some products necessitated by rising input costs. Other factors also contributed to sales growth, including the fact that the company's product line includes items that are on trend with a variety of consumer preferences and product platforms such as health and wellness, convenience, carbohydrate-conscious, and snacks.

Segment operating profit for the quarter was $396 million, below the $416 million posted last year. On a comparable basis, operating profit was 5% higher than last year after adjusting for $24 million of expense relating to cost-saving initiatives in the current quarter, as well as $15 million of contribution last year from businesses since divested. Increasing input costs, which were not yet fully offset by higher selling prices for certain of the company's products, affected the rate of profit growth.

As previously announced, the company is implementing customer service and operating efficiency improvement initiatives that result in absorbing incremental expense in the short term but which are being undertaken to provide cost savings and customer service benefits in the future. As a result of progress with these initiatives, the segment incurred $24 million, or $0.03 per diluted share, of expense during the third quarter. The purpose of these cost-saving and customer service improvement initiatives, along with top-line growth programs, is to drive market share, future profit growth, and margin expansion opportunities within this segment.

Year-to-date sales for the Packaged Foods reporting segment reached $8.9 billion, below $9.2 billion last year due to divestitures. Sales were 2% ahead of last year on a comparable basis, adjusting for $461 million of sales from divested businesses in the fiscal 2003 year-to-date amounts. Operating profit was $1.1 billion, below $1.2 billion last year. On a comparable basis, operating profit was 3% below last year, adjusting for $41 million of contribution from divested businesses in the fiscal 2003 year-to-date amounts as well as $31 million of expense this fiscal year related to implementing cost-saving initiatives.

* * *

Capital Resource Management

- The company repurchased approximately 8.3 million shares of common stock during the fiscal third quarter at a total cost of approximately $218 million.

- During the quarter, the company received approximately $25 million for the partial redemption of preferred securities issued by the buyer of UAP as part of that divestiture; as a result, preferred securities of the buyer of UAP owned by ConAgra Foods now total $35 million.

- **Continuing operations–fiscal third quarter**: For the quarter, capital expenditures for property, plant, and equipment totaled $91 million compared with $87 million last year. Depreciation and amortization expense was approximately $89 million for the quarter versus $89 million a year ago. Dividends paid totaled $138 million. Net interest expense for the quarter was $62 million compared with $64 million last year.

- **Continuing operations–year-to-date**: For the first nine months of fiscal year 2003, capital expenditures for property, plant, and equipment were $247 million, compared with $259 million last year. Depreciation and amortization expense amounted to $263 million versus $286 million last year. Dividends paid totaled $400 million. Net interest expense was $196 million, compared with $217 million last fiscal year.

Change in Accounting

During the quarter, the company adopted Financial Accounting Standards Board Interpretation Number 46 (FIN 46), which addresses the accounting for certain entities including those that lease property to the company. Adopting FIN 46 had no significant impact on the company's income statement. As a result of adopting FIN 46 and thus consolidating certain entities and de-consolidating others, the following balance sheet changes were made:

- Total assets increased by $267 million.

- Total liabilities increased by $269 million, reflecting an increase in interest-bearing debt and other noncurrent liabilities of approximately $444 million, partially offset by a reduction of $175 million in subsidiary preferred securities.

New Product News

During the quarter, the company introduced its new line of convenient, prepared, carbohydrate-controlled frozen meals, Life Choice, which was designed for consumers who prefer tasty and filling products that have fewer carbohydrates. ConAgra Foods is the first major food manufacturer to market a new and complete line of great-tasting frozen meals designed specifically for carbohydrate-conscious consumers. As of today, Life Choice has achieved national availability after being introduced as recently as January 19. Based on favorable customer reaction to the product, the company is optimistic about the products' prospects.

Outlook

Rohde commented, "***Our fiscal third quarter showed encouraging results***, particularly with regard to overall sales growth and how quickly our Life Choice products were introduced and accepted into the market. Although our industry is facing increasing input costs, as well as cycles in the economy, we expect a solid finish for our fiscal year, which ends in May. ***We look forward to reporting on our progress***."

34. On July 1, 2004, the Company issued a press release entitled "ConAgra Foods Reports Solid Fourth Quarter Sales and Earnings; Expects Solid Fiscal 2005 EPS; Seven Million Shares Repurchased During the Quarter." The press release stated in part:

ConAgra Foods, Inc., one of America's leading packaged food companies, today reported earnings for the fourth quarter ended May 30, 2004. Net income for the quarter rose 41% to $212 million, or $0.40 per diluted share, compared with earnings a year ago of $150 million, or $0.28 per diluted share. For all of fiscal year 2004, net income rose to $880 million, or $1.66 per diluted share. In fiscal 2003, the company earned $775 million, or $1.46 per diluted share.

Bruce Rohde, chairman and chief executive officer, commented, "Fiscal year 2004 was a year of significant momentum for ConAgra Foods; we accomplished the strategic reshaping of our portfolio that we set out to do by completing the divesture of non-core businesses, and we made measurable progress with key initiatives designed to drive profitable future growth. We are expanding profit margins through sales, marketing, and operational platform initiatives, as we build our business base into a richer, and more consumer-focused enterprise."

For the quarter: Sales were up 9% to $4.0 billion vs. $3.6 billion last year. Current quarter operating profit was $465 million, 4% below the $486 million reported last year. On a comparable basis, sales were 4% ahead of last year and operating profit increased 2% over last year, after considering the impact of prior year contributions from businesses the company no longer owns, fiscal year 2004 costs associated with implementing efficiency initiatives, the estimated benefit from the inclusion of one additional week in the fourth quarter, and changing the fiscal year-end for an operation within the Food Ingredients segment to match ConAgra Foods fiscal year-end, all of which are detailed in tables at the end of this release. Current quarter income from continuing operations before income tax and the cumulative effect of changes in accounting was $305 million, equal to last fiscal year.

For fiscal 2004: Sales were $14.5 billion, 14% below last year's sales of $16.9 billion. Fiscal year 2004 operating profit totaled $1.7 billion, 8% below $1.9 billion reported last year. Sales increased 3% and operating profit increased 2% on a comparable basis, after considering the impact of prior year contributions from businesses the company no longer owns, fiscal year 2004 costs associated with implementing efficiency initiatives, and the estimated benefit from the inclusion of one additional week in the full fiscal year 2004, all of which are detailed in tables at the end of this release. For the fiscal year 2004, income from continuing operations before income tax and cumulative effect of changes in accounting was $1.2 billion, down 6% compared to last year.

Segment Comments & Operating Efficiency Initiatives

Reflecting strategic portfolio changes and management realignment in 2004, the company began reporting its operations in three segments: Retail Products, Foodservice Products, and Food Ingredients. Historical segment results have been adjusted to reflect the segment changes.

The company has several operating efficiency initiatives underway that are designed to improve the company's cost structure, margins, and competitive position. Implementing these initiatives resulted in approximately $62 million of charges, or $0.07 per diluted share of expense for the fiscal year 2004; this includes $24 million, or $0.03 per diluted share, in the fourth quarter. Most of the expenses were incurred in the Foodservice Products and Retail Products segments. The company currently plans for these initiatives to continue in fiscal year 2005 and result in approximately $0.03 per diluted share of similar charges in that year.

Retail Products

Sales for the Retail Products segment (58% of total annual sales) were $2.2 billion for the fourth quarter, up 3%. Sales were essentially equal to last year on a comparable basis, after considering the impact of prior year contribution from businesses the company no longer owns and the estimated benefit from the inclusion of one additional week in the fourth quarter, which are detailed in tables at the end of this release.

- Several major consumer brands posted sales gains on a comparable 13-week basis including: Banquet, Blue Bonnet, Chef Boyardee, DAVID, Egg Beaters, Hebrew National, Hunt's, Kid Cuisine, La Choy, Manwich, Marie Callender's, PAM, Peter Pan, Reddi-wip, Slim Jim, Snack Pack, Wesson, and others. Many have posted several successive quarters of solid sales growth and strong category performance.

The sales performance reflects distribution gains for many products. Efforts to expand distribution have been made more effective by the unification of the retail sales team; earlier in fiscal 2004, the retail sales force consolidated and now serves customers as a consolidated ConAgra Foods team representing the ConAgra Foods Retail Products portfolio. This consolidation is expected to improve customer contact, service, and expand product promotion and bundling opportunities that benefit customers and the company.

Improved marketing efforts for some brands are starting to favorably influence brand performance, as the company has formalized its approach to building brands to utilize best practices and to prioritize marketing investments. In addition, selling prices for many items are increasing, made necessary by rising input costs. Other factors contributing to the improved sales performance include a portfolio that has a variety of quality foods and product platforms which are on-trend with current consumer preferences. Life Choice, the company's new line of frozen meals targeting carb-conscious consumers, performed well. During the quarter, the company introduced Banquet® Crock-Pot® Classics, a new line of frozen meals specifically for Crock-Pot® slow cookers; the product is off to a strong start and the company is optimistic about its prospects. Weak popcorn volumes negatively impacted the segment's sales performance, due to category and competitive challenges.

The Retail Products segment operating profit for the quarter was $315 million, 7% below the $340 million posted last year. On a comparable basis, operating profit was 11% below last year after considering the impact of prior year contribution from businesses the company no longer owns, fiscal year 2004 costs associated with implementing efficiency initiatives, and the estimated benefit from the inclusion of one additional week in the fourth quarter, as detailed in tables at the end of this release. Increased input costs, which were not fully offset by higher selling prices during the year for several of the company's products, negatively affected segment profits as did a less favorable mix of products. The company noted that operating profits for its branded processed meats and popcorn products were weak compared to past trends, reflecting current category and competitive challenges.

Fiscal year 2004 sales for the Retail Products segment reached $8.4 billion, 3% below the $8.7 billion reported last fiscal year primarily due to divestitures. Operating profit for the segment was $1.2 billion, 7% below the $1.3 billion reported last fiscal year. Sales were 1% ahead of last year and operating profit was 4% below last year after considering the impact of the prior year contribution from businesses the company no longer owns, fiscal year 2004 costs associated with implementing efficiency initiatives, and the estimated benefit from the inclusion of one additional week in the full fiscal year 2004, all of which are detailed in tables at the end of this release.

* * *

Outlook

> ***The company believes fiscal 2005 will show a solid EPS performance and growth in sales and operating profits from its current business segments. In addition to paying a strong dividend, the company expects to continue allocating capital toward repurchasing its shares during fiscal 2005 as well as toward acquisition opportunities that fit with the company's strategic and financial goals.***

35. On September 22, 2004, the Company issued a press release entitled "ConAgra Foods Reports Strong First Quarter Sales with Solid Profits; Share Repurchases Continued During the Quarter." The press release stated in part:

> ConAgra Foods Inc., one of North America's leading packaged food companies, today reported earnings for the first quarter ended Aug. 29, 2004. Net income for the quarter was $135 million, or $0.26 per diluted share, and includes $0.02 per share of previously announced costs related to implementing efficiency initiatives. Earnings for the first quarter last year were $195 million, or $0.37 per diluted share, reflecting contribution from businesses the company no longer owns, as well as other items that impact year-over-year comparability.
>
> Sales for the company increased 8% to $3.5 billion from $3.2 billion last year. Current quarter operating profit was $341 million, 9% above the $312 million reported last year. Current quarter income from continuing operations before income tax and the cumulative effect of changes in accounting was $214 million, 29% ahead of $166 million last fiscal year.
>
> ***Bruce Rohde, chairman and chief executive officer, commented, "Our first quarter sales were very strong, reflecting excellent volumes for many of our brands. Our sales and marketing initiatives are gaining significant momentum, and we are pleased with the progress."***
>
> ***Rohde continued, "And because we have taken some price increases and reduced operating expenses in several areas, our overall operating profit this quarter was solid, but it was not as strong as we wanted; this was mainly due to significantly increased input costs across the industry. As we plan for the balance of this fiscal year, we expect to continue making price adjustments to offset increased input costs, as well as to continue growing volumes and capitalizing on cost savings opportunities so that we strengthen margins throughout the year."***
>
> **Retail Products (58% of total sales)**
>
> Sales for the Retail Products segment increased 9% to $2 billion, the result of 8% volume growth.
>
> - Brands posting sales gains include: ACT II, Armour, Banquet, Blue Bonnet, Butterball, Chef Boyardee, Cook's, DAVID, Eckrich, Egg Beaters, Hebrew National, Hunt's, Kid Cuisine, Manwich, Marie Callender's, PAM, Parkay,

Peter Pan, Reddi-wip, Swiss Miss, and Wesson; many of these increased at double-digit rates.

- Sales for the company's top 30 brands as a group, which represent almost 80% of total segment sales, grew 9%; category share trends for many of the company's most significant brands showed solid year-over-year improvement.

The strong volume performance reflects disciplined sales and marketing initiatives designed to continually strengthen brand equities, increase category shares, expand distribution, optimize return on marketing investment, and improve profit contribution from new items. The company notes that segment volume performance in the first quarter last fiscal year was soft, reflecting the consolidation of the Retail Products sales force underway at that time. This consolidation, now complete, reduced the role of brokers and resulted in a direct approach for serving customers. That transition has resulted in improved sales execution, which contributed to the strong volume performance this quarter. During the quarter, the segment's selling prices increased slightly, which only partly offset higher input costs; additional price increases continue to be implemented to address increased raw material costs.

The Retail Products segment operating profit for the quarter was $213 million, 3% above the $208 million posted last year, reflecting the strong volume performance and a focus on operating cost reduction in the face of increased input costs. Significantly increased input costs negatively impacted operating profit growth and profit margin, as did $8 million of costs associated with implementing efficiency initiatives. Profits for branded processed meats were significantly below prior year results, reflecting a combination of increased costs and competitive challenges. The company expects price increases as well as the marketing and operating initiatives underway to accelerate the rate of operating profit growth for this segment as the fiscal year progresses.

* * *

Outlook

The company believes that the marketing and operating initiatives currently being implemented, along with appropriate price increases, and the share repurchase program, will drive a solid EPS performance this fiscal year; the company expects the benefit of its profit-enhancing initiatives and pricing actions to be more apparent in the company's profit margins (profit as a percentage of sales) during the second half of the fiscal year than in the first half.

36. On September 22, 2004, the Company hosted a conference call for analysts, investors and media representatives, during which defendant Rohde stated the following:

> [ROHDE]: We're also working on better linking our information platforms and that's a project that we call "Nucleus." It's purpose is to tightly link manufacturing,

marketing, and sales, as well as all the other key areas of our business to attack service and cost improvement opportunities with better decision support tools.

> In a nutshell, I'd say that we're progressively seeking a new level of excellence for our company and a strong earnings potential to go with it. With all that in mind, I'll say that I'm optimistic that fiscal '05 will progress and will be a solid performer.
>
> I look for the overall profit margins to improve as the fiscal year moves forward. Some of that should come from the benefits we expect from the initiatives I've just mentioned, particularly the cost savings initiatives that we're aggressively implementing as we speak, but also our outlook shaped by the fact that we plan to keep adjusting our prices upward to offset the increased input costs that we've all been experiencing.
>
> We're not out of the woods on that yet, but another 90 days or so should make a marked difference as prices catch up with costs. Net-net, all those things should contribute to a more solid spring selling season.

37. On September 28, 2004, the Company issued a press release entitled "ConAgra Foods Receives $194 Million for Equity Interest, Expects to Receive $300 Million for Certain Assets." The press release stated in part:

> ConAgra Foods Inc., one of North America's leading packaged food companies, today announced that Hicks, Muse, Tate & Furst, Incorporated has exercised its option to acquire ConAgra Foods' minority interest in Swift Foods; Swift Foods is the company created when ConAgra Foods divested its fresh beef and pork operations approximately two years ago. For its minority interest, ConAgra Foods received $194 million, and will record no gain or loss on the transaction.

38. On December 22, 2004, the Company issued a press release entitled "ConAgra Foods Reports Strong Second-Quarter Sales, All Segments Post Operating Profit Growth." The press released stated in part:

> ConAgra Foods Inc., one of North America's leading packaged food companies, today reported results for the fiscal 2005 second quarter, which ended Nov. 28, 2004. Sales for the quarter increased 8% to $4.1 billion. Diluted EPS from continuing operations was $0.47 for the quarter, compared with $0.45 last year. Current quarter operating profit was $545 million, 10% above last year, as all segments posted operating profit growth in the current quarter. Current quarter income from continuing operations before income tax was $390 million, 6% above last year.
>
> Bruce Rohde, chairman and chief executive officer, commented, "The company is tracking with its plan for solid EPS performance this fiscal year. Our sales growth this quarter builds on last quarter's strong top-line performance and

reflects continued progress with marketing and operating initiatives being implemented to fuel profitable growth. As expected, we continued to experience increased input costs in several areas of our business, which we were able to largely offset through volume gains, price adjustments, better sales and marketing, and cost-saving initiatives. We look forward to this momentum continuing through May, which concludes the second half of our fiscal year."

For the first six months of fiscal 2005, total sales increased 8% to $7.6 billion. Operating profit was $886 million, 9% above last year. Income from continuing operations before income tax and cumulative effect of change in accounting was $605 million, 13% above last year. Diluted EPS for the first half of fiscal 2005 was $0.73, compared with $0.87 last year; several items impact the year-over-year EPS comparison. Those items are detailed later in this release and in the supplemental question-and-answer document relating to this release posted on the company's Web site at www.conagrafoods.com under the section for Investors.

Retail Products (60% of total sales)

For the quarter, sales for the Retail Products segment increased 9% to $2.5 billion, reflecting healthy volume growth of approximately 7% as well as increased pricing necessitated by higher input costs.

- Brands posting sales gains include: ACT II, Armour, Banquet, Blue Bonnet, Chef Boyardee, Cook's, DAVID, Eckrich, Egg Beaters, Hunt's, Kid Cuisine, La Choy, Marie Callender's, Orville Redenbacher's, PAM, Parkay, Peter Pan, Reddi-wip, Snack Pack, Swiss Miss, Van Camp's, and Wesson; more than half of these brands posted double-digit sales increases. The company notes that major brands including Banquet, Chef Boyardee, Egg Beaters, Marie Callender's, and PAM have posted double-digit sales growth for several successive quarters.

- Sales for the company's top 30 brands as a group, which represent almost 80% of total segment sales, grew 8%; many of the company's most significant brands posted year-over-year gains in category shares, reflecting improved execution of sales and marketing programs. The quarter's top-line performance reflects strong sales trends across a wide range of retail customer channels, including grocery stores, dollar stores, club stores, and mass merchandisers.

The strong top-line performance reflects the implementation of initiatives designed to continually strengthen brand equities, expand distribution for the company's most promising products, and improve returns on marketing investments. Price increases accounted for approximately 2% year-over-year sales growth. All operations within the Retail Products segment - deli, frozen, grocery, refrigerated, snacks, and international - showed sales growth. The company notes particular success with Banquet® Crock-Pot® Classics™, which is the first complete line of meals designed and created for slow cooking. After being introduced only last spring, the product now has national distribution, and is expected to generate revenue approaching $100 million for ConAgra Foods in the first year of production.

The Retail Products segment operating profit for the quarter was $375 million, 5% above the $358 million posted last year. This growth reflects strong volume performance, as well as price adjustments and cost-saving initiatives which together largely offset increased input costs. Segment operating profit grew at a slower rate than sales, reflecting increased input costs and a less favorable mix of products sold. Lower selling, general, and administrative expenses resulting from more efficient marketing investments and better expense management contributed to the operating profit growth. Profits for popcorn products and branded processed meats were below prior-year results, largely due to category and competitive pricing challenges.

Year-to-date sales for the Retail Products segment were $4.5 billion, up 9% over last year on volume growth of 8%. Operating profit was $589 million, 4% above the $566 million posted last year; year-to-date results include $12 million of costs related to implementing efficiency initiatives and prior-year amounts include $7 million of such costs.

The company continues to streamline its purchasing, manufacturing, logistics, and administrative functions to make operations more efficient and expects operational improvements to result in year-over-year profitability gains for this segment in the second half of the year.

Foodservice Products (23% of total sales)

Sales for the Foodservice Products segment were $940 million for the second-quarter, 2% below last year, reflecting decreased seafood product sales and the fact that prior-year amounts included $10 million of sales from businesses the company no longer owns. Sales for specialty potato products were strong, while seafood products sales declined due to tariff-related market dynamics. Segment operating profit for the quarter was $91 million, 6% above the $86 million posted last year, reflecting reduced operating expenses and, to a lesser extent, solid sales performance with specialty potato products. For the segment as a whole, improved mix and pricing actions offset rising input costs during the quarter. Operating profits from seafood products and culinary products were lower than comparable amounts a year ago. Operating profits for seafood products declined due to tariff-related market dynamics, and operating profits for culinary products declined mostly due to competitive challenges with prepared meat offerings. To a lesser extent, culinary products operating profits were also negatively impacted by unfavorable production costs resulting from a planned plant consolidation. ***The company expects this segment to post profitability gains in the second half of the year, due to operational improvements and the fact that prior-year results included costs associated with implementing efficiency initiatives.***

Year-to-date sales for the Foodservice Products segment were $1.8 billion, essentially equal to last year. Segment operating profit was $158 million, $4 million below the $162 million posted last year, reflecting approximately $17 million of unfavorable production costs associated with a planned plant consolidation. In addition, current year-to-date results include $4 million of costs related to implementing efficiency initiatives; prior-year amounts do not include any such costs.

*   *   *

Earnings from Equity Method Investments

Equity method investment earnings from various investments for the quarter were $15 million, compared with $16 million for the same quarter last year. Equity method investment earnings for the first half of fiscal 2005 were $29 million, compared with $28 million for the same period last year.

Corporate Expense

Corporate expense was $85 million for the quarter, compared with $79 million last year. For the first half of the fiscal year, corporate expense was $152 million, compared with $171 million last year; the year-over-year decline reflects approximately $25 million in the prior year for a litigation settlement.

Capital Resource Management

- During the quarter, ConAgra Foods sold its minority interest in Swift Foods to Hicks, Muse, Tate & Furst for $194 million, resulting in no significant gain or loss. ConAgra Foods no longer holds any equity position in fresh beef and pork processing.

- ConAgra Foods is in the process of recovering the financing it provided in connection with Swift Foods' cattle-feeding operations. The financing, which ConAgra Foods provided for two years, included a line of credit and a note receivable totaling approximately $300 million at maturity. During the quarter, the financing matured and ConAgra Foods assumed control of the cattle-feeding assets in order to liquidate them in an orderly manner. The feedlots have been sold, and the sale of the retained live cattle is in process and should be completed early in calendar 2005. The company has received $146 million from the liquidation as of the end of the second-quarter, and, in due course, expects to fully recover all of the cattle-feeding-related financing provided to Swift Foods.

- On Dec. 13, ConAgra Foods sold 10 million shares of Pilgrim's Pride Corporation (NYSE: PPC) common stock for more than $280 million, and the resulting pretax gain of approximately $185 million will be recorded in the third quarter of fiscal 2005. ConAgra Foods received these shares in the fall of 2003 in connection with the divestiture of its chicken processing operations to Pilgrim's Pride. ConAgra Foods still owns 15.4 million shares of Pilgrim's Pride common stock that are subject to resale restrictions; ConAgra Foods plans to sell these shares at the appropriate time in accordance with these restrictions.

- The company is committed to capital allocation in a way that appropriately utilizes excess cash:

  - The company has been using cash to opportunistically repurchase its common stock. The company has repurchased approximately $600 million of its stock over the past year.

  - The company has also been using cash to retire debt that has become due or that will soon be due:

    - During the quarter, the company retired $300 million of 7.4% subordinated debt that was due September 2004.

    - Subsequent to quarter-end, the company retired $600 million of 7.5% senior debt due September 2005.

- For the quarter, capital expenditures for property, plant, and equipment totaled $150 million compared with $82 million last year; the increase over last year is due principally to additional investment to update strategic information systems for the future. Depreciation and amortization expense was approximately $85 million for the quarter versus $86 million a year ago. Dividends paid totaled $134 million versus $131 million last year. Net interest expense for the quarter was $86 million compared with $68 million last year; current-year amounts include $14 million of additional interest expense associated with a previously terminated interest rate swap.

- For the first half of the fiscal year, capital expenditures for property, plant, and equipment totaled $255 million compared with $152 million last year; the increase over last year is due principally to additional investment to update strategic information systems for the future. Depreciation and amortization expense was approximately $174 million for the first six months versus $171 million a year ago. Dividends paid totaled $269 million for the fiscal-year-to-date versus $262 million last year. Net interest expense for the fiscal-year-to-date was $159 million compared with $134 million last year; the year-over-year increase is driven primarily by the impact of interest rate swaps.

Outlook

The company expects the second half of fiscal 2005 to show year-over-year profit growth, largely due to ongoing operational improvements.

Bruce Rohde commented, "Our team is focused on marketing, operating, and information systems initiatives that will help expand profit margins over the long term. These activities will help us grow our top-line while operating an increasingly efficient supply chain that reflects low-cost manufacturing, purchasing, and logistics operations. Our supply chain efficiency should be further enhanced by an ongoing program that drives an increased focus on our highest-margin, highest-opportunity items, and which phases out low-margin items. This program should enhance our sales and profit performance as we increase our focus on our most promising and profitable products. The potential for these activities to favorably impact profit margins over the long term makes this a great time to be a part of the ConAgra Foods team, and I look forward to updating you on our progress."

39. Subsequently, on December 22, 2004, the Company hosted a conference call for analysts, investors and media representatives, during which defendant Rohde stated the following:

> [ROHDE]: I'll start by saying that there are a lot of reasons to be pleased with our second quarter. We're reaping the benefits of the strategic shift we made in our sales mix and that shift is steadily improving our profits.
>
> Overall, sales were up at a healthy rate in the second quarter, and all segments posted operating profit growth. That makes for a solid first half of the fiscal year in terms of EPS from continuing operations, and with our top line again showing momentum this quarter, we expect this trend to contribute to a successful second half.
>
> Our solid first half is the result of a dedicated team effort which is focused on three strategic initiatives that you've heard us discuss before. Those are the marketing, operating, and information systems initiatives that we have underway.
>
> * * *
>
> The operating efficiency initiatives across our supply chain go hand in hand with our new information systems because we'll now be able to focus on our most promising and profitable products while we systematically identify and phase out those that are less profitable.
>
> This amounts to disciplined SKU prioritization, which simply means we'll be increasing our focus on our highest margin, highest moving, highest opportunity items, and we'll be aggressively phasing out our lower margin, lower moving items through a planned substitution process. It's all part of a strategic plan for continuous mix improvements to generate more gross profit per dollar of sales.
>
> This process is actually going to help our top line growth as we simplify and focus our sales and marketing efforts so that we can better utilize our manufacturing resources on the products that have the highest growth potential and which can most likely improve our total gross margin dollars. There's a lot of opportunity to become more efficient here and that translates into significant opportunity for margin expansion.
>
> So, I'll conclude my remarks today by saying that we think fiscal 2005 has been a year of progress so far and we think the second half, which stretches from now until Memorial Day weekend, shows a lot of promise for another fiscal year of solid performance because of the traction we're gaining with the three strategic initiatives we have underway.

40. On February 22, 2005, the *Associated Press* published an article entitled "ConAgra expects weaker third quarter due to weak results in branded meats." The article stated in part:

> Packaged foods giant ConAgra Foods Inc. said Tuesday its third quarter profits will include a $50 million after-tax charge because of food production problems, temporary inefficiencies in technology consolidation and weak results in refrigerated branded meats.
>
> Earnings will be reduced by about 10 cents per share, the company said. Company officials declined to estimate results beyond that statement.
>
> Analysts surveyed by Thomson First Call had expected earnings of about 42 cents per share in the quarter, which ends Sunday and will be reported March 24.
>
> ConAgra shares fell $1.03, or 3.6 percent, to close at $27.50 in Tuesday trading on the New York Stock Exchange. Shares have traded between $25.38 and $30.24 over the past 52 weeks.
>
> About half of the 10 cents a share impact is due to weak performance in branded processed meats and half is due to production and information consolidation problems, ConAgra officials said.
>
> Prices have not kept pace with rising costs in the refrigerated meats segment, including hot dogs and deli meats sold under Armour, Hebrew National, Eckrich and Butterball brands, company spokesman Chris Kircher said.
>
> Strong consumer demand combined with manufacturing consolidation and installation of new equipment has cut into production and the ability to fill orders, the company said.
>
> ***In addition, ConAgra Foods is having some difficulty consolidating order processing, logistics, invoicing and cash collection.***
>
> Company officials also said costs including operational changes, legal and tax matters will cut into its previously announced pretax gain of $185 million from its December sale of 10 million shares of stock in Pilgrim's Pride Corp. ConAgra gained the stock when it sold its chicken processing division to Pilgrim's Pride.

41. While this article indicated that there were some systems problems at ConAgra, the market was unaware that its fiscal 2002-2005 financial results were actually false, or that ConAgra's business was not performing nearly as well as represented.

42. Then, on March 24, 2005, the Company issued a press release entitled "ConAgra Foods Reports Preliminary Third-Quarter Results." The press release stated in part:

- Preliminary third-quarter fiscal 2005 diluted EPS is $0.31.

- The $0.31 includes $0.03 of net expense from items affecting comparability as detailed toward the end of this release.

- Third-quarter fiscal 2005 sales were $3.6 billion, slightly ahead of last year.

- Operating profit posted a year-over-year decline, largely reflecting increased input costs and challenges in the packaged meat operations. Manufacturing network changes, and to a lesser extent business process changes connected with *Project Nucleus*, resulted in transitional disruption which also negatively impacted quarterly profits; those changes are part of long-term profit-enhancing initiatives.

- ***During the quarter, the company discovered errors in previously reported amounts related to income tax matters. None of the errors relate to the operating performance of the company's segments. As soon as possible, the company will restate historical results to correct the errors; on a preliminary basis, the errors are estimated to reduce after tax profits principally in fiscal 2003 and fiscal 2004 in the range of $150 million to $200 million in aggregate, and there will be corresponding cash payments in connection with those errors. The company plans to provide revised comparative financial information at the time of its 10-Q filing. Because the company is still in the process of determining the amount of the errors, it considers the results in this release preliminary.***

ConAgra Foods Inc., one of North America's leading packaged food companies, today reported results for the fiscal 2005 third quarter, ended Feb. 27, 2005. Sales for the quarter were $3.6 billion, up 1%. Current quarter income from continuing operations before income tax was $314 million, equal to last year. Preliminary diluted EPS was $0.31 for the quarter.

Bruce Rohde, ConAgra Foods chairman and chief executive officer, commented, "Our company dealt with several changes and challenges during the quarter that negatively impacted performance. Two of these challenges – manufacturing network changes and the organization's transition to new business processes as part of *Project Nucleus* – are short-term in nature. These challenges occurred while implementing significant improvements and are part of our long-term profit-enhancing initiatives. Our most significant challenge – increased input costs in our retail packaged meats business – has impacted us for several consecutive quarters, and we are taking specific actions to address the problems. These actions include implementing more effective price increases and SKU rationalization efforts."

Rohde continued, "The short-term challenges connected to manufacturing and the organization's transition to *Project Nucleus* are mostly resolved, and are not expected to impact the fourth quarter as they did in the third quarter. While we consider the short-term challenges to be a natural outcome of implementing significant changes, we still need to improve our overall execution and more effectively anticipate and deal with our operational issues. The momentum we built in the last half of fiscal 2004 and the first half of fiscal 2005 was interrupted this quarter, but we expect to get back on track over the next few quarters as we work through the current challenges and as we continue to focus on our fundamentals to improve margins and returns over time. This includes generating consumer preference for our products, operating more efficiently, strengthening customer service, and prudent capital deployment."

Project Nucleus is the company's information-based business process initiative that is systematically linking sales, marketing, logistics, manufacturing functions, and customer interfaces across ConAgra Foods.

43. On March 24, 2005, the Company hosted a conference call for analysts, investors and media representatives, during which defendant Rohde stated the following:

[ROHDE]: My last comment is about leadership and a culture that does the right things. Frank just addressed historical errors related to accounting for income taxes. It is important to underscore that he and his team uncovered those problems, surfaced them and are correcting them with all due speed.

While I don't like the news any better than you do, I'm proud of these people. It is unpleasant business to deal with errors, or in the case or this quarter, to come out early to investors and detail operational challenges. But in each case it was the right thing to do and in each case it makes the Company stronger in the long run.

At the same time, as we deal with the day-to-day challenges of running this business, we still need to keep our eyes on the ball for all of the major initiatives we have underway to better serve our customers, to operate more efficiently and to deliver brands and quality products that consumers prefer. As you heard from Dennis, Allan, Greg and Frank, all eyes are very much on the ball.

There are brands that are growing. There are businesses that are improving their operations. Capital is being repositioned. Debt being paid down. Operating improvements are the order of the day.

This team is focused on regaining the momentum that it has been building. We made a lot of progress in transforming the structure of this Company, so we're not about to let up now as we're in the midst of transforming and integrating the various core activities that support the transformation. And over time, we look for progress as a result of these efforts to be readily apparent and positive, spurring not only efficiency but growth.

44. On March 24, 2005, *Dow Jones Newswire* reported "ConAgra To Restate Results; Costs Hurt Q3." The article stated in part:

ConAgra Foods, Inc. said Thursday it will restate results for the last two fiscal years after discovering income tax errors as the packaged-food company's third-quarter earnings came up short due partly to higher raw-material costs.

In a statement, "CEO Bruce Rohde vowed Omaha, Neb. company will take "specific actions" to address the higher materials costs, including "more effective price increases."

ConAgra, which makes such food brands as Wesson, Chef Boyardee, Slim Jim and others, the results for fiscal 2003 and 2004 will be restated to reflect an estimated reduction in after tax profits of $150 million to $200 million in total.

The company discovered the errors during its review of financial controls under new regulatory requirements. Cash payments will be made to rectify the mistakes.

Because the size of the errors is still being determined, ConAgra reported third-quarter results on a preliminary basis. For the three months ended Feb. 27, the company said net income was $160.2 million, or 31 cents a share.

*　　*　　*

A series of charges and gains resulted in quarterly net expense of three cents a share in the latest quarter, the company said. Analysts polled by Thomson First Call had been looking for earnings, on average, of 32 cents a share.

45. Analysts were furious about being misled. On March 24, 2005, Prudential Equity Group wrote:

CAG is not admitting errors in tax payments in fiscal 2004 and 2003 that may total between $150 million to $200 million. That works out to nearly $0.20 per share annually or between 10% and 15% of earnings. CAG is in the process of restating earnings for both years and we ask why not restate the bonus for the CEO given these circumstances?

*　　*　　*

For a company as big as CAG, $200 million cash is not the end of the world. The bigger issue is obviously operations and not accounting and we will get to those matter shortly. But as we indicated in our CAGNY write-up and reiterate now, a CEO has to stand up, answer questions and be accountable for actions of his company. By not answering questions on this massive tax accounting error, Mr. Rohde is again not fulfilling a major need of a CEO, in our opinion. The CFO (Frank Sklarsky) called us and explained how the VP taxes left in late November and how past structure separated the controller and the tax department functions.

46. The same day, Deutsche Bank-North America wrote that:

ConAgra offered up another surprise to investors by indicating that improper tax accounting will hurt, on a preliminary basis, F2003 and F2004 to the tune of \$150-200 million in aggregate or roughly 11% of past reported earnings over the two year period. Management noted that efforts were being made to lower the ongoing corporate tax rate (currently 38-39%) as it is well above the peer group, when it was discovered that past accounting errors required review and a restatement. The issues involve booking of capital loss carry forwards and foreign tax credits, most of which we believe are tied to the former beef and pork processing assets that have since been sole. Inexplicably ***the tax group formerly did not report to the former CFO, an obvious control issue and something, in our view, the Board should reprimand CEO Rohde for allowing.*** We would remind the Board this follows on accounting problems at UAP several years ago, and thus one would have thought a full review would have been implemented at that time!

47. On this news of deficient controls and accounting problems, among other things, the Company's shares plummeted to the \$26 per share range from the \$27-\$28 range prior to the announcement. The concealment of these problems had allowed defendant Rohde to reap millions in ill-gotten bonuses, and once disclosed, erased over \$3 billion in market capitalization. However, defendants' false statements that the projected fourth quarter 2005 results would exceed the third quarter results minimized the impact of the negative news and ConAgra's stock continued to be artificially inflated.

48. On April 8, 2005, *Bloomberg* published an article entitled "ConAgra Delays Quarter Filing to Review Tax Errors." The article stated in part:

ConAgra Foods, Inc., the third-largest U.S. food company, delayed the filing of its quarterly earnings report to allow for more time to review accounting errors the company disclosed last month.

Because the "company is still in the process of determining the effect of the errors on the three-month and nine-month periods ended Feb. 22, 2004, it has not finalized the correction of the errors for those periods at this time," Omaha, Nebraska-based ConAgra said today in a statement with the U.S. Securities and Exchange Commission.

The delay affects the earnings report for the quarter ended Feb. 27, which was due to be filed today, the company said.

ConAgra said March 24 it found errors in accounting for tax expenses that will reduce net income by a total of \$150 million to \$200 million in fiscal 2003 and 2004. That's as much as 12 percent of the \$1.65 billion of net income ConAgra reported for the two-year period.

A new president for tax matters and more accounting staff were to be hired to fix "a material weakness in internal controls," the company said.

49. On April 13, 2005, the Company issued a press release entitled "ConAgra Foods Third Quarter 10-Q." The press release stated in part:

> ConAgra Foods Inc., one of North America's leading packaged food companies, today filed its third-quarter 10-Q, and in it restated historical results to correct errors in previously reported amounts relating to income tax matters.
>
> The quarterly filing shows diluted earnings per share (EPS) for the quarter ended Feb. 27, 2005, of $0.32. The company previously announced preliminary third-quarter diluted earnings per share of $0.31. The change reflects the impact of final adjustments to the company's tax expense for the third quarter.
>
> In its news release of March 24, the company estimated the increased income tax expense to be in the range of $150 million – $200 million in aggregate, principally in fiscal years 2003-2004. However, the 10-Q filed today quantifies the net increased expense related to tax matters from ***fiscal 2002 through the first half of fiscal 2005*** at approximately $105 million. The most significant errors that led to the restatement were in the areas of capital loss carry-forwards and foreign tax credits. ***Details including adjustments related to periods prior to fiscal 2002 are contained in the third-quarter 10-Q filed with the Securities and Exchange Commission today.***
>
> The company expects to file restated 10-Qs for the first and second quarters of fiscal 2005 as soon as possible – those 10-Qs will provide comparable prior-year information. The company also expects to file a restated fiscal 2004 10-K as soon as possible, which will contain quarterly EPS amounts for fiscal 2004 as well as fiscal 2003.

50. Then, on June 7, 2005, the Company issued a press release entitled "ConAgra Foods Comments on Fiscal 2005 Fourth Quarter and Cost-Savings Initiatives." The press release stated in part:

> Today ConAgra Foods commented on earnings for the fiscal 2005 fourth quarter, which ended May 29, 2005, as well as recent developments in its cost-savings initiatives.
>
> **Fourth Quarter**
>
> Earnings for the company's fiscal 2005 fourth quarter will be lower than expected primarily due to continued weak profitability in the packaged meats operations. Those operations continue to be negatively impacted by high protein input costs coupled with inadequate pricing management.

- In its preliminary third quarter earnings release on March 24, 2005, the company indicated that it expected fourth-quarter EPS to modestly exceed third-quarter EPS, excluding items that impact comparability.

- Third-quarter diluted EPS of $0.32 included net $0.02 per share of expense from items that impact comparability.

- Because the expected improvement in the packaged meats business did not materialize, contribution from the packaged meats operations in the fourth quarter will be in the range of $0.10 per share lower than the company expected when it made previous comments regarding the fourth quarter. The company is not providing a specific fourth-quarter performance number at this time because the results are not yet final; however, the company suggests third parties with estimates of fourth quarter performance, which exclude items that impact comparability, should lower their estimates by an amount similar to the earnings shortfall in the packaged meats operations. Items that impact comparability will include severance charges associated with cost-savings initiatives as discussed later in this document.

The company previously expected aggressive pricing management to improve packaged meats results in the fourth quarter. The pricing actions that were taken were inadequate and were not executed to expectations. The company has recently made several significant personnel changes in its packaged meats operations and expects those changes, along with better pricing management, aggressive cost-savings initiatives, and SKU rationalization, to improve the packaged meat operations over time.

Bruce Rohde, chairman and chief executive officer, commented, "Our fiscal 2005 showed a solid first-half performance, followed by a weak second-half performance largely due to the challenges in our packaged meats business across retail, foodservice, and deli channels. Weak pricing execution negatively impacted our third quarter and continued in the fourth quarter. Our focus is on improving the packaged meat operations with new leadership team members, appropriate pricing, SKU reductions, and more efficient operations."

He continued, "ConAgra Foods has some great packaged meat brands, such as Butterball, Armour, Eckrich, Healthy Choice, Hebrew National, and Brown 'N Serve, and we will take the necessary actions to help these fine brands return to normal profitability."

The company will provide details on its fourth-quarter performance in its regularly scheduled earnings release on June 30, 2005.

Recent Developments in Cost-Savings Initiatives

As previously communicated, the company is actively pursuing SKU and manufacturing rationalization opportunities over the next several quarters as part of business process improvement and efficiency initiatives. The company continues to identify ways to be more efficient and improve customer service across its sales,

> marketing, manufacturing, logistics, R&D, and administrative functions throughout the organization.
>
> As part of these ongoing efficiency initiatives, the company is reducing general and administrative expense as well as salaried headcount. The company is in the process of eliminating several hundred salaried jobs across the organization; these headcount reductions will be largely complete by the end of the first quarter of fiscal 2006, which ends August 2005. Once completed, savings from the headcount and general and administrative cost reductions are expected to benefit the company's anticipated cost structure by more than $100 million on an annualized basis. The company will detail the accrued severance costs recorded in the fourth quarter of fiscal 2005, and any other items that impact comparability, in the June 30, 2005, fourth-quarter earnings release.
>
> Rohde commented, "Our company continues to be very focused on operating efficiencies to improve profit margins and returns on capital. Headcount reduction is very difficult because of the impact on employees and their families, but unfortunately it is a necessary part of creating efficient operations." He continued, "These headcount reductions are expected to provide significant future savings and reduce complexity in our business, which is necessary for profitable growth and shareholder value. We will continue to aggressively identify opportunities to be more efficient, and to take appropriate actions when necessary to achieve the efficiencies."

51. Also on June 7, 2005, the *Associated Press* published an article entitled "ConAgra to miss forecast, cut jobs." The article stated in part:

> ConAgra Foods Inc. said Tuesday that its earnings will miss forecasts for the fiscal fourth quarter by as much as 10 cents per share, citing a weak performance at its packaged meats business. ConAgra also said it is cutting several hundred jobs company-wide as part of a plan to reduce costs by about $100 million a year.
>
> The company's shares fell $1.19, or 4.6 percent, to $24.70 in midday trading on the New York Stock Exchange.
>
> ConAgra, one of the nation's largest providers of prepared foods, said an expected improvement in its packaged meats unit that did not materialize in the quarter, leading earnings at that business to come in about 10 cents below internal expectations. While ConAgra declined to give specific fourth-quarter guidance, it recommended that Wall Street analysts lower their outlooks for adjusted earnings by about 10 cents per share.
>
> The company had predicted in March that results for the fourth quarter ended May 29 would modestly exceed its third-quarter adjusted profit of 34 cents per share.
>
> Analysts surveyed by Thomson Financial currently expect the company post a fourth-quarter profit of 36 cents per share, excluding non-operating items.

ConAgra's packaged meat brands include Butterball, Armour, Eckrich, Healthy Choice, Hebrew National and Brown 'N Serve. The company also makes a host of other food brands such as Chef Boyardee soups, Slim Jim beef jerky, Orville Redenbacher's popcorn and Pam cooking spray.

The company said in a statement that the packaged meat business has been hurt by high "protein input costs coupled with inadequate pricing management," adding that pricing actions were not executed as planned. Poor performance carried across retail, foodservice and deli sales.

ConAgra said it has introduced new leadership at the packaged meat business and hopes that this, along with further pricing changes, inventory reductions and improved efficiency, will help these operations.

The company said the job cuts will take place through the first quarter of fiscal 2006, which ends in August, and result in charges from severance payments in that period. ConAgra did not provide a specific number for the layoffs in a news release.

ConAgra plans to report final fourth-quarter results on June 30 and provide further details about its cost-cutting program then.

52. A subsequent June 7, 2005 *Bloomberg* article noted:

"Clearly, nobody in the near term is going to confuse ConAgra with the notion of credibility," said Matthew Kaufler, a portfolio manager at Rochester, New York-based Clover Capital Management, which owns 500,000 ConAgra shares as part of a $2.4 billion portfolio.

* * *

"For the company to cut fourth-quarter guidance by almost a third and blame it all on a unit that contributes 15 percent of revenues, conditions must be pretty bleak in refrigerated meats," Pablo Zuanic, a analyst with J.P. Morgan wrote in an [sic] note to investors after today's release. He rates the shares "underweight."

53. On this news, the Company's shares fell $1.57, or 6.1%, to $24.32 per share.

54. The true facts, which were known by each of the defendants but concealed from the investing public during the Class Period, were as follows:

(a) the Company lacked requisite internal controls, and, as a result, the Company's projections and reported results were based upon defective assumptions and/or manipulated facts;

(b) contrary to defendants' claims of fourth quarter 2005 and/or fiscal year 2005 profitability, the Company was actually on track to report losses;

(c) the Company lacked the necessary personnel to issue accurate financial reports and projections;

(d) the Company's information technology systems were materially compromised, which ***also*** materially impacted the Company's ability to issue accurate financial statements and projections;

(e) the Company's initiative to control costs and increase prices was a complete failure as it was unable to push the price increases on its customers in a manner that would not decrease sales such that future results would be much worse than expectations;

(f) defendants concealed these deficiencies for multiple quarters in order to: (i) delay the cost of implementing the proper system controls and thereby temporarily inflate the Company's net income; and (ii) provide defendants with a pliable system that would allow them to cause the Company to report financial results irrespective of their accuracy; and

(g) as a result of (a)-(f) above, the Company's projections for fiscal year 2005 were grossly inflated.

CONAGRA'S FALSE FINANCIAL REPORTING DURING THE CLASS PERIOD

55. In order to inflate the price of ConAgra's stock and reap as much as $17.5 million in bonuses, defendants caused the Company to falsely report its results for fiscal year 2002 through the first half of 2005 through illegal accounting entries inflating the Company's net income. The Company subsequently has admitted that its net income for fiscal year 2002 through the first half of fiscal 2005 was overstated by as much as $105 million.

56. The fiscal year 2002 through first half fiscal 2005 results were included in Forms 10-Q and 10-K filed with the SEC. The results were also included in press releases disseminated to the public.

57. ConAgra has now admitted that it inappropriately recorded transactions included in its fiscal year 2002 through first half fiscal 2005 results, and will restate those results to remove some $100-plus million in improperly reported income, such that its fiscal 2002 through first half fiscal 2005 financial statements were not a fair presentation of ConAgra's results and were presented in violation of Generally Accepted Accounting Principles ("GAAP") and SEC rules.

58. GAAP are those principles recognized by the accounting profession as the conventions, rules and procedures necessary to define accepted accounting practice at a particular time. SEC Regulation S-X (17 C.F.R. §210.4-01(a)(1)) states that financial statements filed with the SEC which are not prepared in compliance with GAAP are presumed to be misleading and inaccurate, despite footnote or other disclosure. Regulation S-X requires that interim financial statements must also comply with GAAP, with the exception that interim financial statements need not include disclosure which would be duplicative of disclosures accompanying annual financial statements. 17 C.F.R. §210.10-01(a).

59. In ConAgra's Form 10-K, it represented that it recognized taxes as follows:

> The company accounts for income taxes in accordance with SFAS No. 109, Accounting for Income Taxes. The company recognizes current tax liabilities and assets based on an estimate of taxes payable or refundable in the current year for each of the jurisdictions in which the company transacts business. As part of the determination of its current tax liability, management exercises considerable judgment in evaluating positions taken by the company in its tax returns. The company has established reserves for probable tax exposures. These reserves, included in current tax liabilities, represent the company's estimate of amounts expected to be paid, which the company adjusts over time as more information regarding tax audits becomes available.

60. In fact, during the Class Period, ConAgra improperly recognized income in violation of GAAP, by failing to properly report taxes attributable to the income it reported. Ultimately, the

Company belatedly announced it would restate its financial statements due to the understatement of taxes. In a subsequently filed amended Form 10-Q, the Company reported:

> The correction of the errors results in an aggregate net increase in income tax expense of approximately $105 million (including approximately $2 million reflected in results from discontinued operations) for fiscal years 2004, 2003, and 2002 and the first two quarters of fiscal 2005 and an aggregate net decrease in income tax expense of approximately $46 million for years prior to fiscal 2002. The company estimates additional federal and state cash payments in the range of $70 million to $90 million will be made in the near term in connection with these matters. The restatement adjustments result in a $48 million reduction of ending stockholders' equity as of November 28, 2004.
>
> *   *   *
>
> - For fiscal 2002, increased income tax expense $11.3 million; decreased net income by $11.3 million; decreased diluted earnings per share $0.02.
> - For fiscal 2003, increased income tax expense $11.0 million; decreased net income by $11.0 million; decreased diluted earnings per share $0.02.
> - For fiscal 2004, decreased selling, general and administrative expenses $1.4 million; increased income tax expense $72.3 million; increased income from discontinued operations $2.4 million; decreased net income by $68.5 million; decreased diluted earnings per share $0.13.
> - For the first half of fiscal 2005, decreased selling, general and administrative expenses $10.1 million; increased income tax expense $9.0 million; decreased income from discontinued operations $4.1 million; decreased net income by $3.0 million; decreased diluted earnings per share $0.01.
>
> The company has also changed the presentation of cash flows from discontinued operations to separately present cash flows from discontinued operations for operating, investing and financing activities for all periods presented.

61. The fact that ConAgra has restated its financial statements for fiscal year 2002 to first half fiscal 2005 is an admission that the financial statements originally issued were false and that the overstatement of revenues and income was material. Pursuant to GAAP, as set forth in Accounting Principles Board Opinion ("APB") No. 20, the type of restatement announced by ConAgra was to correct for material errors in its previously issued financial statements. *See* APB No. 20, ¶¶7-13. The restatement of past financial statements is a disfavored method of recognizing an accounting change as it dilutes confidence by investors in the financial statements, it makes it difficult to

compare financial statements and it is often difficult, if not impossible, to generate the numbers when restatement occurs. *See* APB No. 20, ¶14. Thus, GAAP provides that financial statements should only be restated in limited circumstances, *i.e.*, when there is a change in the reporting entity, there is a change in accounting principles used or to correct an error in previously issued financial statements. ConAgra's restatement was not due to a change in reporting entity or a change in accounting principles, but rather to errors in previously issued financial statements. Thus, the restatement is an admission by ConAgra that its previously issued financial results and its public statements regarding those results were false.

62. ConAgra is no stranger to shareholder litigation for issuing false financial statements. In 2001, shareholders filed suit against the Company relating to accounting matters at a former ConAgra subsidiary, UAP, following the Company's June 2001 restatement of earnings in connection with UAP for fiscal years 1997-2001. Thus, of the past eight years, with the Company's most recent accounting revelations, the Company's accounting was false for every year.

63. Due to these accounting improprieties, the Company presented its financial results and statements in a manner which violated GAAP, including the following fundamental accounting principles:

(a) The principle that interim financial reporting should be based upon the same accounting principles and practices used to prepare annual financial statements was violated (APB No. 28, ¶10);

(b) The principle that financial reporting should provide information that is useful to present and potential investors and creditors and other users in making rational investment, credit and similar decisions was violated (FASB Statement of Concepts No. 1, ¶34);

(c) The principle that financial reporting should provide information about the economic resources of an enterprise, the claims to those resources, and effects of transactions, events and circumstances that change resources and claims to those resources was violated (FASB Statement of Concepts No. 1, ¶40);

(d) The principle that financial reporting should provide information about how management of an enterprise has discharged its stewardship responsibility to owners (stockholders) for the use of enterprise resources entrusted to it was violated. To the extent that management offers securities of the enterprise to the public, it voluntarily accepts wider responsibilities for accountability to prospective investors and to the public in general (FASB Statement of Concepts No. 1, ¶50);

(e) The principle that financial reporting should provide information about an enterprise's financial performance during a period was violated. Investors and creditors often use information about the past to help in assessing the prospects of an enterprise. Thus, although investment and credit decisions reflect investors' expectations about future enterprise performance, those expectations are commonly based at least partly on evaluations of past enterprise performance (FASB Statement of Concepts No. 1, ¶42);

(f) The principle that financial reporting should be reliable in that it represents what it purports to represent was violated. That information should be reliable as well as relevant is a notion that is central to accounting (FASB Statement of Concepts No. 2, ¶¶58-59);

(g) The principle of completeness, which means that nothing is left out of the information that may be necessary to insure that it validly represents underlying events and conditions was violated (FASB Statement of Concepts No. 2, ¶79); and

(h) The principle that conservatism be used as a prudent reaction to uncertainty to try to ensure that uncertainties and risks inherent in business situations are adequately considered was violated. The best way to avoid injury to investors is to try to ensure that what is reported represents what it purports to represent (FASB Statement of Concepts No. 2, ¶¶95, 97).

64. Further, the undisclosed adverse information concealed by defendants during the Class Period is the type of information which, because of SEC regulations, regulations of the

national stock exchanges and customary business practice, is expected by investors and securities analysts to be disclosed and is known by corporate officials and their legal and financial advisors to be the type of information which is expected to be and must be disclosed.

LOSS CAUSATION/ECONOMIC LOSS

65. During the Class Period, as detailed herein, defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated ConAgra's stock price and operated as a fraud or deceit on Class Period purchasers of ConAgra stock by misrepresenting the Company's financial results, business success and future business prospects. Defendants achieved this façade of success, growth and strong future business prospects by blatantly misrepresenting the Company's tax accounting and falsifying the Company's financial statements. Later, however, when defendants' prior misrepresentations and fraudulent conduct were disclosed and became apparent to the market, ConAgra stock fell precipitously as the prior artificial inflation came out of ConAgra's stock price. As a result of their purchases of ConAgra stock during the Class Period, plaintiff and other members of the Class suffered economic loss, *i.e.*, damages under the federal securities laws.

66. By misrepresenting its financial statements and the success of the Company's pricing and cost initiatives, the defendants presented a misleading picture of ConAgra's business and prospects. Thus, instead of truthfully disclosing during the Class Period that ConAgra's business was not as healthy as represented, ConAgra falsely overstated its net income.

67. These claims of profitability caused and maintained the artificial inflation in ConAgra's stock price throughout the Class Period and until the truth was revealed to the market.

68. Defendants' false and misleading statements had the intended effect and caused ConAgra stock to trade at artificially inflated levels throughout the Class Period, reaching as high as $30 per share.

69. On March 24, 2005, defendants were forced to publicly disclose that ConAgra had improperly reported taxes attributable to the income it had reported. Then, on June 7, 2005, ConAgra reported that fourth quarter 2005 results would be worse than expectations. As investors and the market became aware that ConAgra's prior financial statements had been falsified and that ConAgra's actual business prospects were, in fact, poor, the prior artificial inflation came out of ConAgra's stock price, damaging investors.

70. As a direct result of defendants' admissions and the public revelations regarding the truth about ConAgra's misstatements and understatements of taxes and its actual business prospects going forward, ConAgra's stock price plummeted 19%, falling from $30 in January 2005 to $24.32 per share on June 7, 2005, a drop of $5.68 per share. This drop removed the inflation from ConAgra's stock price, causing real economic loss to investors who had purchased the stock during the Class Period. In sum, as the truth about defendants' fraud and ConAgra's business performance was revealed, the Company's stock price plummeted, the artificial inflation came out of the stock and plaintiff and other members of the Class were damaged, suffering economic losses of up to $5.68 per share. On the very last day of the Class Period the stock dropped $1.41 per share.

71. The decline in ConAgra's stock price at the end of the Class Period was a direct result of the nature and extent of defendants' fraud finally being revealed to investors and the market. The timing and magnitude of ConAgra's stock price declines negate any inference that the loss suffered by plaintiff and other Class members was caused by changed market conditions, macroeconomic or industry factors or Company-specific facts unrelated to the defendants' fraudulent conduct. During the same period in which ConAgra's stock price fell 19% from $30 per share as a result of defendants' fraud being revealed, the Standard & Poor's 500 securities index was up slightly. The economic loss, *i.e.*, damages, suffered by plaintiff and other members of the Class was a direct result of defendants' fraudulent scheme to artificially inflate ConAgra's stock price and the

subsequent significant decline in the value of ConAgra's stock when defendants' prior misrepresentations and other fraudulent conduct was revealed.

COUNT I

For Violation of §10(b) of the 1934 Act and Rule 10b-5 Against All Defendants

72. Plaintiff incorporates ¶¶1-71 by reference.

73. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

74. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

(a) employed devices, schemes and artifices to defraud;

(b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of ConAgra common stock during the Class Period.

75. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for ConAgra common stock. Plaintiff and the Class would not have purchased ConAgra common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements.

76. As a direct and proximate result of these defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their purchases of ConAgra common stock during the Class Period.

COUNT II

For Violation of §20(a) of the 1934 Act
Against All Defendants

77. Plaintiff incorporates ¶¶1-76 by reference.

78. Rohde acted as a controlling person of ConAgra within the meaning of §20(a) of the 1934 Act. By reason of his position as CEO, President and Chairman of ConAgra, and his ownership of ConAgra stock, Rohde had the power and authority to cause ConAgra to engage in the wrongful conduct complained of herein. ConAgra controlled Rohde and all of its employees. By reason of such conduct, Rohde and ConAgra are liable pursuant to §20(a) of the 1934 Act.

CLASS ACTION ALLEGATIONS

79. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased ConAgra common stock (the "Class") on the open market during the Class Period. Excluded from the Class are defendants.

80. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. ConAgra has more than 517 million shares of stock outstanding, owned by hundreds if not thousands of persons.

81. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

(a) whether the 1934 Act was violated by defendants;

(b) whether defendants omitted and/or misrepresented material facts;

(c) whether defendants' statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

(d) whether defendants knew or deliberately disregarded that their statements were false and misleading;

(e) whether the prices of ConAgra's common stock were artificially inflated; and

(f) the extent of damage sustained by Class members and the appropriate measure of damages.

82. Plaintiff's claims are typical of those of the Class because plaintiff and the Class sustained damages from defendants' wrongful conduct.

83. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Plaintiff has no interests which conflict with those of the Class.

84. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

85. We request that this matter be heard before the Court in Omaha.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment as follows:

A. Declaring this action to be a proper class action pursuant to Fed. R. Civ. P. 23;

B. Awarding plaintiff and the members of the Class damages, interest and costs;

C. Awarding plaintiff reasonable costs and attorneys' fees; and

D. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DAVID P. BERLIEN, On Behalf of Himself and All Others Similarly Situated, Plaintiff

DATED: June 21, 2005

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