

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 55996 / June 29, 2007

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2628 / June 29, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12674

In the Matter of

DWIGHT J. GOSLEE and
HARRY J. HILL,

Respondents.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Dwight J. Goslee and Harry J. Hill (“Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (“Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that:

RESPONDENTS

1. **Dwight J. Goslee** ("Goslee"), age 56, is a resident of Elkhorn, Nebraska. From 1992 to 1994, he was ConAgra Foods, Inc.'s ("ConAgra" or "Company") Corporate Controller. From 1994 to 2001, he was a Vice President at ConAgra and held other senior management positions, including serving as the head of mergers and acquisitions. In around February 2001, Goslee was promoted to Executive Vice President of Operations and Control. In that position, he assumed supervisory responsibilities over ConAgra's Corporate Controller's group and Internal Audit department. From May 2004 to October 2005, Goslee held the position of Executive Vice President for Strategic Development. On October 1, 2005, Goslee resigned from ConAgra, and since that time, he has served as a consultant to the Company. He was licensed as a Certified Public Accountant ("CPA") in Minnesota, however that license has lapsed.

2. **Harry J. Hill** ("Hill"), age 66, resides in Omaha, Nebraska. From 1983 until his retirement in 2004, Hill was employed as ConAgra's Director of Corporate Accounting. From 1994 to 2002, Hill reported directly to ConAgra's Controller, first to Kenneth W. DiFonzo, and then to Jay D. Bolding ("Bolding"). Hill was licensed as a CPA in Nebraska, but that license has expired.

OTHER RELEVANT ENTITY AND PERSONS

3. **ConAgra Foods, Inc.** ("ConAgra"), is a Delaware corporation with headquarters in Omaha, Nebraska. ConAgra's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act, and trades on the New York Stock Exchange. At all times relevant to this Order, ConAgra was a diversified international food company. ConAgra's fiscal year ("FY") ends on the last Sunday in May of each year.

4. **James P. O'Donnell** ("O'Donnell"), age 59, is a resident of Omaha, Nebraska. O'Donnell joined ConAgra in 1978. From 1995 until he retired on April 30, 2004, he served as ConAgra's Executive Vice President and Chief Financial Officer. Since his retirement, O'Donnell has acted as a consultant to the Company.

5. **Jay D. Bolding** ("Bolding"), age 47, is a resident of Omaha, Nebraska. From January 1997 to March 1999, he was the head of ConAgra's Internal Audit department. From March 1999 until approximately April 2004, he served as ConAgra's Corporate Controller. Until his resignation on June 1, 2006, he held the position of Senior Vice President for Capital and Market Investment Effectiveness. He was licensed as a CPA in Kansas and Tennessee; however, both licenses have lapsed.

¹ The findings herein are made pursuant to Respondents' Offers and are not binding on any other person or entity in this or any other proceeding.

6. **Kenneth W. DiFonzo** (“DiFonzo”), age 55, a resident of Newport Beach, California, was ConAgra’s Corporate Controller from May 1994 through February 1999. From February 1999 until May 2004, he held other senior positions with the Company. From May 2004 to September 2005, DiFonzo served in an advisory capacity at ConAgra regarding various operational/management issues. Since September 1, 2005, he has been a consultant to the Company. DiFonzo was a CPA licensed in Illinois; however, his license has become inactive.

ACCOUNTING AT CONAGRA DURING THE THIRD QUARTER OF FY 2001

A. Goslee Caused ConAgra to Improperly Account for the Reduction of At Least \$23.8 Million of Prior Period Excess Reserves

ConAgra Improperly Kept Prior Period Excess Reserves on Its Books

7. As outlined in Statement of Financial Accounting Standards (“SFAS”) No. 5, Accounting for Contingencies, at paragraph 8, Generally Accepted Accounting Principles (“GAAP”) requires that a reserve be created, and that a charge to income be taken, if it is both probable that a liability has been incurred and the amount of the liability can be reasonably estimated. Conversely, when a liability is no longer probable and reasonably estimable, a reserve should be removed from the books and income should be increased. In addition, paragraph 14 of SFAS No. 5 specifically prohibits the accrual of “reserves for general contingencies” or for “[g]eneral or unspecified business risks.”

8. In its year-end “Summary of Uncorrected Financial Statement Misstatements” for FY 2000, ConAgra’s outside auditor identified a potential overstatement of legal and environmental reserves in the range of about \$23.8 million to \$51.5 million.² The outside auditor informed O’Donnell and Bolding about this potential overstatement at the end of FY 2000 and provided them with the summary. Contrary to the requirements of SFAS No. 5, O’Donnell and Bolding declined to reduce any of the excess legal and environmental reserves at the end of FY 2000. These prior-period excess reserves remained on ConAgra’s books in the first and second quarters of FY 2001.

Goslee Reduces ConAgra’s Prior Period Excess Reserves

9. On February 13, 2001, as ConAgra was approaching the end of its third quarter of FY 2001, the Company issued a press release, which it filed with the Commission on Form 8-K, in which it lowered its near-term earnings outlook due to “sharply higher energy costs and a slowing economy.” In this press release, ConAgra disclosed that it expected its earnings per share for the third quarter of FY 2001 to be in the range of \$0.18 to \$0.20. ConAgra’s stock price dropped almost 20% on the day after it issued this press release.

² ConAgra’s attorneys and other Company personnel provided the outside auditor with the exposure estimates and reserve account balances used in making this calculation.

10. Also in the third quarter of FY 2001, after he assumed responsibility for accounting at ConAgra, Goslee learned that ConAgra's outside auditor had identified legal and environmental reserves that were potentially overstated in the range of \$23.8 million to \$51.5 million at least as early as the end of FY 2000 and in the first two quarters of FY 2001. Goslee made the decision to reverse \$35 million of ConAgra's excess legal and environmental reserves to income in the third quarter of FY 2001.³

11. Paragraph 13 of Accounting Principles Board ("APB") Opinion No. 20, Accounting Changes, states that "[e]rrors in financial statements result from mathematical mistakes, mistakes in the application of accounting principles, or oversight or misuse of facts that existed at the time the financial statements were prepared." Paragraphs 36 through 38 of APB Opinion No. 20 require the correction of an error to be reported as a prior period adjustment where the correction has a material effect on current period income before the effect of the change or on the trend of earnings. In addition, paragraph 18 of APB Opinion No. 9, Reporting the Results of Operations, requires a prior period adjustment to be reflected by adjusting the opening balance of retained earnings in the current period, and accordingly, to be excluded from current period income.

12. At a minimum, \$23.8 million of the \$35 million of ConAgra's legal and environmental reserves that Goslee directed be reduced had been in excess since at least the end of FY 2000. Goslee knew, or should have known, that the accounting for this portion of the excess reserves reduction was not in accordance with SFAS No. 5 and improperly increased ConAgra's reported income before income taxes for the third quarter of FY 2001 by nearly 15%. The earnings estimates from the analysts covering ConAgra ranged from \$0.18 to \$0.21 earnings per share during that period. ConAgra's reported earnings of \$0.19 in earnings per share for the third quarter of FY 2001, met the consensus estimate of \$0.19 per share. Without the \$23.8 million reversal to income of the prior period excess reserves, ConAgra would have earned only \$0.16 per share.

13. Goslee knew, or should have known, that ConAgra should have treated the removal of at least \$23.8 million of prior period excess reserves from its books as a correction of an error and reported the correction as a prior period adjustment because the \$23.8 million excess should have been reduced by no later than the end of FY 2000. Also, the \$23.8 million reduction was material to the Company's reported income before income taxes, net income, earnings per share and trend of earnings at least by the third quarter of FY 2001, if not earlier. As a result, the \$23.8 million prior period excess reserves reduction should have been excluded from ConAgra's reported income before income taxes, net income and earnings per share for the third quarter of FY 2001.

14. Goslee's decision to reverse the \$23.8 million of prior period excess reserves caused ConAgra to fail to make and keep books, records, and accounts which accurately and fairly reflected its transactions; circumvented any system of internal accounting controls that ConAgra had to provide reasonable assurances that, among other things, its transactions were recorded as

³ O'Donnell and Bolding were aware of Goslee's decision to reduce the excess legal and environmental reserves by \$35 million.

necessary to permit preparation of financial statements in conformity with GAAP; and caused ConAgra's books, records or accounts to be falsified.

15. The Company's Form 10-Q for the third quarter of FY 2001, which was filed on April 11, 2001, disclosed that the Company's financial results were positively impacted by the \$35 million reserve reduction and negatively impacted, in part, by a significantly higher bad debt expense at its Agricultural Products subsidiary (which included UAP). The disclosure regarding the reserve reduction was misleading because ConAgra failed to disclose that at least \$23.8 million of these reserves were in excess in prior periods.

16. As a result of ConAgra's inaccurate accounting for, and improper disclosure about, the excess legal and environmental reserves reduction, ConAgra's Form 10-Q for the third quarter of FY 2001 was materially inaccurate. Goslee reviewed ConAgra's Form 10-Q for the third quarter of FY 2001, including the disclosure related to the excess reserves reduction.⁴ As a result of the conduct described above, Goslee caused ConAgra to file a materially inaccurate Form 10-Q for the third quarter of FY 2001.

B. Hill Caused ConAgra to Improperly Account for Its Reductions of Various Reserves in FY 1999, FY 2000 and FY 2001

17. ConAgra acquired Beatrice Company ("Beatrice") in FY 1991. Prior to the acquisition, Beatrice estimated that it had hundreds of millions of dollars of liabilities arising from tax disputes with federal and state authorities. Beatrice recorded these tax liabilities as tax reserves on its books and ConAgra inherited these reserves as part of the acquisition. After the Beatrice acquisition, ConAgra increased the tax reserves it had inherited from Beatrice by adding tens of millions of dollars of post-acquisition interest.

18. Although ConAgra reduced the Beatrice reserves in years at various times prior to 1998, by no later than the end of FY 1998, ConAgra no longer had any probable and reasonably estimable tax liabilities that justified maintaining the remaining Beatrice acquisition-related tax and interest reserves on the Company's books. At that time, these reserves exceeded \$181 million. At various times during FY 1999, FY 2000 and FY 2001, at the request of either DiFonzo or Bolding, Hill completed and signed journal entries that improperly reversed to income or reallocated certain of the excess Beatrice acquisition-related tax and interest reserves. For example, during the first and second quarters of FY 1999, DiFonzo and Hill signed accounting journal entries improperly reducing the excess Beatrice-related post-acquisition interest reserves to offset, dollar-for-dollar, additional unrelated, unplanned-for and unreserved-for inventory losses arising from ConAgra's attempted sale of meat and poultry into Russia by over \$33 million.

19. In addition, from at least as early as the end of FY 1998 through the third quarter of FY 2001, ConAgra fraudulently and improperly used the Company's Estimated Liabilities account as a general, or "cookie jar," reserve which was not in conformity with GAAP. During this time period, ConAgra increased this reserve by millions of dollars by transferring into it miscellaneous

⁴ O'Donnell, Bolding and others reviewed, and they both signed, the Form 10-Q.

excess reserves and accruals, and gains from the sale of certain ConAgra assets. In addition, at the same time, ConAgra improperly used this reserve to offset current period operating expenses.

20. By no later than the end of FY 1998, ConAgra no longer had any probable and reasonably estimable liabilities that justified maintaining the balance in the Estimated Liabilities account on its books. On several occasions in FY 1999, FY 2000 and FY 2001, at the request of either DiFonzo or Bolding, Hill completed journal entries that improperly reduced the balance in this account to income or to offset current period operating expenses. For example, in the first quarter of FY 1999, DiFonzo directed Hill to use the Estimated Liabilities account for claims arising out of a legal settlement for which no reserve had previously been created. DiFonzo and Hill signed a journal entry reducing the account by over \$9.6 million for the bulk of these expenses. Also, after the end of the third quarter of FY 2000, Bolding and Hill signed a journal entry offsetting \$6 million of unplanned-for and unreserved-for losses arising from a joint venture in South Africa in that quarter with a dollar-for-dollar reduction of the Estimated Liabilities account.

21. Finally, ConAgra recorded certain reserves in connection with a restructuring charge in FY 1996. In FY 1999, ConAgra transferred more than \$24.4 million of unused FY 1996 restructuring reserves from the books of certain of its subsidiaries to the ConAgra Corporate ledger. ConAgra, however, failed to remove these excess reserves from its books by the end of FY 1999 as required by SFAS No. 5. By no later than the end of FY 1999, at least \$24.4 million of the remaining FY 1996 restructuring reserves were no longer needed and should have been reversed. In the fourth quarter of FY 2000, at Bolding's request, Hill drafted and signed the journal entry that improperly reduced over \$24.4 million of the excess FY 1996 restructuring reserves by lowering the Company's FY 2000 restructuring charge by an identical amount, and thus increased income by that amount.

22. Hill knew or should have known that ConAgra no longer had any probable and reasonably estimable liabilities that justified maintaining the remaining Beatrice acquisition related tax and interest reserves, the balance of the Estimated Liabilities account, and the at least \$24.4 million of the FY 1996 restructuring reserves on its books and that each of these journal entries was not in conformity with GAAP. For example, many of the journal entries reversing prior period excess reserves to increase current period income or decrease current period operating expenses were not in accordance with SFAS No. 5, APB Opinion No. 9 and APB Opinion No. 20. Also, many of these journal entries had the effect of improperly increasing ConAgra's income before income taxes, net income and earnings per share.

23. Accordingly, as a result of the journal entries he made, Hill caused ConAgra to include financial statements that were materially false and misleading in the Company's Quarterly Reports filed on Forms 10-Q for the first, second and third quarters of FY 1999, in its Form 10-K for FY 1999, in its Quarterly Report filed on Form 10-Q for the third quarter of FY 2000, in its Annual Report filed on Form 10-K for FY 2000, and in its Form 10-Q for the third quarter of FY 2001. Also, by signing the improper journal entries, Hill caused ConAgra to fail to make and keep books, records, and accounts which accurately and fairly reflected its transactions; circumvented any system of internal accounting controls that ConAgra had to provide reasonable

assurances that, among other things, its transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP; and caused ConAgra's books, records or accounts to be falsified.

FEDERAL SECURITIES LAW VIOLATIONS

C. Goslee and Hill Caused ConAgra to Violate the Reporting Provisions of the Exchange Act

24. Section 13(a) of the Exchange Act, and Rules 13a-1 and 13a-13 thereunder, require issuers whose securities are registered with the Commission pursuant to Section 12 of the Exchange Act to file annual and quarterly reports with the Commission containing such information as the Commission's rules prescribe. These reports must be complete and accurate. United States v. Bilzerian, 926 F.2d 1285, 1298 (2d Cir. 1991); SEC v. Savoy Indus., 587 F.2d 1149, 1165 (D.C. Cir. 1978), cert. denied, 440 U.S. 913 (1979). Rule 12b-20 of the Exchange Act requires that an issuer's periodic reports include any additional information "as necessary to make the required statements, in the light of the circumstances under which they are made, not misleading." No showing of scienter is required to establish an issuer's violation of the corporate reporting provisions. SEC v. McNulty, 137 F.2d 732, 740-41 (2d Cir. 1998). Information is material where there is a substantial likelihood that a reasonable investor would consider the information important in making an investment decision. Basic, Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

25. Section 21C of the Exchange Act provides that the Commission may issue a cease-and-desist order against a person who is "a cause of [another person's] violation, due to an act or omission the person knew or should have known would contribute to such violation." Where the primary violations underlying a finding that a person is "a cause of" violations do not themselves require a finding of scienter, the standard of liability for being "a cause of" such violations under Section 21C of the Exchange Act is negligence. *See KPMG LLP v. SEC*, 289 F.3d 109, 112 (DC Cir. 2002).

26. As a result of the conduct described above, Goslee caused ConAgra to violate Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20 and 13a-13. Goslee's improper accounting for, and disclosure of, the reversal of at least \$23.8 million of prior period excess reserves caused ConAgra's financial statements in its Quarterly Report for the third quarter of FY 2001, filed on Form 10-Q with the Commission on April 11, 2001, to be materially false and misleading.

27. As a result of the conduct described above, Hill caused ConAgra to violate Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1 and 13a-13. Hill's signing of journal entries reversing various excess reserves caused ConAgra to include financial statements that were materially false and misleading in the Company's Forms 10-Q for the first, second and third quarters of FY 1999, in its Form 10-K for FY 1999, in its Form 10-Q for the third quarter of FY 2000, in its Form 10-K for FY 2000 and in its Form 10-Q for the third quarter of FY 2001.

D. Goslee and Hill Violated, and Caused ConAgra to Violate, the Books and Records Provisions of the Exchange Act

28. Section 13(b)(2)(A) of the Exchange Act requires reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets. Rule 13b2-1 of the Exchange Act prohibits any person from, directly or indirectly, falsifying or causing to be falsified, any book, record or account subject to Exchange Act Section 13(b)(2)(A). No showing of scienter is required to support a violation of these provisions. See SEC v. WorldWide Coin Investments, Ltd., 567 F. Supp. 724, 749 (N.D. Ga. 1983); McNulty, 137 F.3d at 740-41.

29. As a result of the conduct described above, Goslee caused ConAgra to violate Section 13(b)(2)(A) of the Exchange Act, and he violated Exchange Act Rule 13b2-1. Goslee caused ConAgra's violation of Section 13(b)(2)(A) of the Exchange Act, and violated Exchange Act Rule 13b2-1, when he directed the reduction of at least \$23.8 million of ConAgra's excess legal and environmental reserves in a manner not in conformity with GAAP. The resulting adjustments to ConAgra's reserve accounts and related books and records were false because they did not accurately reflect changes in the Company's probable and reasonably estimable liabilities, or the Company's current period income before income taxes, net income, and earnings per share.

30. As a result of the conduct described above, Hill caused ConAgra to violate Section 13(b)(2)(A) of the Exchange Act, and he violated Exchange Act Rule 13b2-1. Hill caused ConAgra's violation of Section 13(b)(2)(A) of the Exchange Act, and violated Exchange Act Rule 13b2-1, when he completed journal entries reducing various ConAgra excess reserves in the first and second quarters of FY 1999, the third and fourth quarters of FY 2000, and the third quarter of FY 2001 in a manner not in conformity with GAAP. These journal entries, and the resulting adjustments to related accounts, books and records, were false because they did not accurately reflect changes in the Company's probable and reasonably estimable liabilities, or the Company's current period income before income taxes, net income and earnings per share.

E. Goslee and Hill Caused ConAgra to Violate the Internal Controls Provisions of the Exchange Act

31. Section 13(b)(2)(B) of the Exchange Act requires reporting companies to devise and maintain a system of internal accounting controls sufficient to reasonably assure that transactions are recorded and financial statements are prepared in conformity with GAAP. No showing of scienter is required to support a violation of these provisions. See WorldWide Coin Investments, Ltd., 567 F. Supp. at 749.

32. As a result of the conduct described above, Goslee and Hill caused ConAgra to violate Section 13(b)(2)(B) of the Exchange Act.

UNDERTAKINGS

In connection with this action and any judicial or administrative proceeding or investigation related to or arising out of any of the facts, events or transactions alleged in the Order, which is commenced by the Commission or to which the Commission is a party, each of the Respondents undertakes to cooperate with the Commission staff and: (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints his or her attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses his or her travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over him or her in any United States District Court for purposes of enforcing any such subpoena.

In determining whether to accept the Offers, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Respondent Goslee cease and desist from committing or causing any violation and any future violations of Rule 13b2-1 of the Exchange Act, and cease and desist from causing any violation and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Exchange Act Rules 12b-20 and 13a-13.

B. Respondent Hill cease and desist from committing or causing any violation and any future violations of Rule 13b2-1 of the Exchange Act, and cease and desist from causing any violation and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1 and 13a-13.

By the Commission.

Nancy M. Morris
Secretary