

# HILLSHIRE BRANDS CO

Filed by  
**TYSON FOODS INC**

## **FORM SC TO-T/A**

(Amended tender offer statement by Third Party)

Filed 08/28/14

Address	400 SOUTH JEFFERSON STREET CHICAGO, IL 60607
Telephone	3126146000
CIK	0000023666
Symbol	HSH
SIC Code	2015 - Poultry Slaughtering and Processing
Industry	Food Processing
Sector	Consumer/Non-Cyclical
Fiscal Year	06/30

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**SCHEDULE TO**

**TENDER OFFER STATEMENT UNDER SECTION 14(D)(1) OR 13(E)(1)  
OF THE SECURITIES EXCHANGE ACT OF 1934  
(Amendment No. 10)**

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**THE HILLSHIRE BRANDS COMPANY**

(Name of Subject Company (Issuer))

**HMB HOLDINGS, INC.  
TYSON FOODS, INC.**

(Names of Filing Persons (Offeror))

**COMMON STOCK, PAR VALUE \$0.01 PER SHARE**  
(Title of Class of Securities)

**432589109**

(Cusip Number of Class of Securities)

**David L. Van Bebber  
Executive Vice President and General Counsel  
Tyson Foods, Inc.  
2200 Don Tyson Parkway  
Springdale, Arkansas 72762-6999  
(479) 290-4000**

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications on Behalf of Filing Persons)

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*Copies to:*

**George R. Bason, Jr.  
Marc O. Williams  
Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017  
Telephone: (212) 450-4000**

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**CALCULATION OF FILING FEE**

<b>Transaction Valuation*</b>	<b>Amount of Filing Fee**</b>
\$8,080,786,746	\$1,040,805

\* Estimated solely for the purposes of calculating the filing fee. The transaction value was determined by adding (i) the product of (a) 124,491,419, the number of issued and outstanding shares of The Hillshire Brands Company ("Hillshire Brands") common stock, and (b) \$63.00, the tender offer price, (ii) the product of (a) 3,525,971, the number of shares of Hillshire Brands common stock subject to issuance pursuant to outstanding options to purchase shares of Hillshire Brands common stock with an exercise price less than the tender offer price and (b) \$37.22, the difference between the tender offer price and the average weighted exercise price of such options, (iii) the product of (a) 1,574,125, the number of shares of Hillshire Brands common stock subject to issuance upon settlement of outstanding restricted stock units granted under Hillshire Brands equity compensation plans (assuming continued employment or service, as applicable, through consummation of the transaction and achievement at specified target or, if calculable, actual performance levels immediately prior to consummation of the transaction, as applicable) and (b) \$63.00, the tender offer price and (iv) the product of

(a) 117,791, the number of shares of Hillshire Brands common stock subject to issuance upon settlement of deferred compensation equity awards under the Hillshire Brands deferred compensation plans and (b) \$63.00, the tender offer price. The foregoing figures have been provided by the issuer to the offerors and are as of July 9, 2014, the most recent practicable date.

\*\* The filing fee was calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory No. 1 for Fiscal Year 2014, issued August 30, 2013, by multiplying the transaction value by 0.00012880.

Check box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid:  
Form or Registration No.:

\$1,040,805.  
SC TO-T.

Filing Party:  
Date Filed:

HMB Holdings, Inc.  
July 16, 2014

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

third-party tender offer subject to Rule 14d-1.

issuer tender offer subject to Rule 13e-4.

going-private transaction subject to Rule 13e-3.

amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer.

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This Amendment No. 10 (this “**Amendment**”) amends and supplements the Tender Offer Statement on Schedule TO filed by Tyson Foods, Inc., a Delaware corporation (“**Tyson**”), and HMB Holdings, Inc., a Maryland corporation and a wholly owned subsidiary of Tyson (“**Purchaser**”), with the Securities and Exchange Commission on July 16, 2014 (as previously amended and together with any subsequent amendments and supplements thereto, the “**Schedule TO**”). The Schedule TO relates to the offer by Purchaser to purchase all outstanding shares of common stock, par value \$0.01 per share, of The Hillshire Brands Company, a Maryland corporation (“**Hillshire Brands**”), for \$63.00 per share, in cash, without interest, subject to any withholding of taxes required by applicable law and upon the terms and subject to the conditions set forth in the Offer to Purchase dated July 16, 2014 (the “**Offer to Purchase**”) and the related Letter of Transmittal, copies of which are attached as Exhibits (a)(1)(i) and (a)(1)(ii), respectively, to the Schedule TO.

Except as otherwise set forth in this Amendment, the information set forth in the Schedule TO remains unchanged and is incorporated herein by reference to the extent relevant to the items in this Amendment. Capitalized terms used but not defined herein have the meanings ascribed to them in the Schedule TO.

**Items 1 through 9, and Item 11 .**

Items 1 through 9 and Item 11 of the Schedule TO are hereby amended and supplemented by adding the following text thereto:

“At 12:00 midnight, New York City time, at the end of Wednesday, August 27, 2014, the Offer expired and was not extended. As of such time, approximately 86,987,201 Shares (not including 3,662,904 Shares tendered pursuant to notices of guaranteed delivery for which Shares have not yet been delivered in settlement or satisfaction of such guarantee) had been validly tendered and not validly withdrawn pursuant to the Offer, representing approximately 70% of the outstanding Shares.

The number of Shares tendered into the Offer satisfied the Minimum Condition as of the expiration of the Offer. All conditions to the Offer having been satisfied or waived, Tyson accepted for payment, and has paid or will promptly pay for, all Shares validly tendered into and not validly withdrawn from the Offer.

Following the consummation of the Offer, the remaining conditions to the Merger set forth in the Merger Agreement were satisfied or waived, and on Thursday, August 28, 2014, Purchaser completed the acquisition of Hillshire Brands by consummating the Merger pursuant to the terms of the Merger Agreement and in accordance with the “short form” procedures available under the Maryland General Corporation Law. Because Tyson and Purchaser did not collectively own more than 90% of the Shares upon completion of the Offer, in order to accomplish the Merger in accordance with such “short form” procedures, Purchaser was deemed to have exercised its “top-up” option and purchased from Hillshire Brands 250,754,549 newly-issued Shares at a price per Share equal to the Offer Price, which resulted in Purchaser owning more than 90% of the outstanding Shares immediately prior to the Merger. At the Effective Time, any Shares not purchased pursuant to the Offer (other than Shares held by Hillshire Brands, Tyson, any of Tyson’s subsidiaries (including Purchaser) or any subsidiary of Hillshire Brands) were automatically converted into the right to receive, in cash and without interest, an amount equal to the Offer Price.

The Shares will be delisted and cease to trade on the NYSE and the Chicago Stock Exchange before the opening of the market on August 29, 2014. Tyson intends to take steps to cause the termination of the registration of the Shares under the Exchange Act and suspend all of Hillshire Brands’ reporting obligations under the Exchange Act as promptly as practicable.”

On Thursday, August 28, 2014, Tyson and Hillshire Brands issued a joint press release announcing the expiration and results of the Offer. The full text of the press release is attached hereto as Exhibit (a)(5)(xxxiii), and is incorporated herein by reference.

In addition, the Hold Separate and the Proposed Final Judgment are attached hereto as Exhibits (a)(5)(xxxi) and (a)(5)(xxxii), respectively, and the full text of each is incorporated by herein by reference.

**Item 12. Exhibits .**

Item 12 of the Schedule TO is hereby amended and supplemented by adding the following exhibits:

- (a)(5)(xxxi) Hold Separate Stipulation and Order, dated as of August 27, 2014.
- (a)(5)(xxxii) Proposed Final Judgment, dated as of August 27, 2014.
- (a)(5)(xxxiii) Joint Press Release issued by Tyson Foods, Inc. and The Hillshire Brands Company dated August 28, 2014.

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**SIGNATURES**

After due inquiry and to the best knowledge and belief of the undersigned, each of the undersigned certify that the information set forth in this statement is true, complete and correct.

Date: August 28, 2014

HMB Holdings, Inc.

By: /s/ R. Read Hudson

Name: R. Read Hudson

Title: Vice President and Secretary

Tyson Foods, Inc.

By: /s/ R. Read Hudson

Name: R. Read Hudson

Title: Vice President, Associate General Counsel  
and Secretary

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## EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
(a)(1)(i)	Offer to Purchase dated July 16, 2014.*
(a)(1)(ii)	Letter of Transmittal (including IRS Form W-9).*
(a)(1)(iii)	Notice of Guaranteed Delivery.*
(a)(1)(iv)	Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*
(a)(1)(v)	Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*
(a)(1)(vi)	Summary Advertisement dated July 16, 2014.*
(a)(5)(i)	Press Release issued by Tyson Foods, Inc. dated June 9, 2014.*
(a)(5)(ii)	Investor Presentation of Tyson Foods, Inc. dated June 9, 2014.*
(a)(5)(iii)	Internal Announcement of Tyson Foods, Inc. dated June 9, 2014.*
(a)(5)(iv)	Transcript of Investor Conference Call of Tyson Foods, Inc. held on June 9, 2014.*
(a)(5)(v)	Press Release issued by Tyson Foods, Inc. dated June 16, 2014.*
(a)(5)(vi)	Internal Announcement of Tyson Foods, Inc. dated June 30, 2014.*
(a)(5)(vii)	Joint Press Release issued by Tyson Foods, Inc. and The Hillshire Brands Company dated July 2, 2014.*
(a)(5)(viii)	Internal Announcement of Tyson Foods, Inc. dated July 2, 2014.*
(a)(5)(ix)	Letter to Hillshire Brands Employees issued by Tyson Foods, Inc. dated July 2, 2014.*
(a)(5)(x)	Notice of Merger issued by HMB Holdings, Inc. on July 12, 2014.*
(a)(5)(xi)	Press Release issued by Tyson Foods, Inc. dated July 16, 2014.*
(a)(5)(xii)	Letter to Tyson employees from Donnie Smith, President and CEO of Tyson, dated July 16, 2014.*
(a)(5)(xiii)	The information set forth in Item 1.01 of Tyson's Current Report on Form 8-K filed on July 17, 2014.*
(a)(5)(xiv)	Preliminary Prospectus Supplement, dated July 28, 2014, offering Common Shares of the Class A Common Stock of Tyson Foods, Inc. (incorporated herein by reference to the Preliminary Prospectus Supplement filed by Tyson Foods, Inc. pursuant to Rule 424(b)(5) on July 28, 2014).*
(a)(5)(xv)	Preliminary Prospectus Supplement, dated July 28, 2014, offering Tangible Equity Units of Tyson Foods, Inc. (incorporated herein by reference to the Preliminary Prospectus Supplement filed by Tyson Foods, Inc. pursuant to Rule 424(b)(5) on July 28, 2014).*
(a)(5)(xvi)	Investor Presentation of Tyson Foods, Inc. dated July 28, 2014.*
(a)(5)(xvii)	Press Release issued by Tyson Foods, Inc. dated July 28, 2014.*
(a)(5)(xviii)	Prospectus Supplement, dated July 30, 2014, offering up to 23,381,500 Shares of the Class A Common Stock of Tyson Foods, Inc. (incorporated herein by reference to the Prospectus Supplement filed by Tyson Foods, Inc. pursuant to Rule 424(b)(5) on July 31, 2014).*
(a)(5)(xix)	Prospectus Supplement, dated July 30, 2014, offering 30,000,000 4.75% Tangible Equity Units of Tyson Foods, Inc. (incorporated herein by reference to the Prospectus Supplement filed by Tyson Foods, Inc. pursuant to Rule 424(b)(5) on July 31, 2014).*
(a)(5)(xx)	Press Release issued by Tyson Foods, Inc. dated July 30, 2014.*
(a)(5)(xxi)	Preliminary Prospectus Supplement, dated August 5, 2014, offering four series of Senior Notes of Tyson Foods, Inc. (incorporated herein by reference to the Preliminary Prospectus Supplement filed by Tyson Foods, Inc. pursuant to Rule 424(b)(5) on August 5, 2014).*
(a)(5)(xxii)	Investor Presentation of Tyson Foods, Inc. dated August 5, 2014.*
(a)(5)(xxiii)	Press Release issued by Tyson Foods, Inc. dated August 5, 2014.*
(a)(5)(xxiv)	Press Release issued by Tyson Foods, Inc. dated August 5, 2014.*
(a)(5)(xxv)	Prospectus Supplement, dated August 5, 2014, offering four series of Senior Notes of Tyson Foods, Inc. (incorporated herein by reference to the Prospectus Supplement filed by Tyson Foods, Inc. pursuant to Rule 424(b)(5) on August 6, 2014).*
(a)(5)(xxvi)	Joint Press Release issued by Tyson Foods, Inc. and The Hillshire Brands Company dated August 12, 2014.*
(a)(5)(xxvii)	Joint Press Release issued by Tyson Foods, Inc. and The Hillshire Brands Company dated August 19, 2014.*

- (a)(5)(xxviii) Joint Press Release issued by Tyson Foods, Inc. and The Hillshire Brands Company dated August 26, 2014.\*
- (a)(5)(xxix) Joint Press Release issued by Tyson Foods, Inc. and The Hillshire Brands Company dated August 27, 2014.\*
- (a)(5)(xxx) Joint Press Release issued by Tyson Foods, Inc. and The Hillshire Brands Company dated August 27, 2014.\*
- (a)(5)(xxxi) Hold Separate Stipulation and Order, dated as of August 27, 2014.
- (a)(5)(xxxii) Proposed Final Judgment, dated as of August 27, 2014.
- (a)(5)(xxxiii) Joint Press Release issued by Tyson Foods, Inc. and The Hillshire Brands Company dated August 28, 2014.
- (b)(1) Second amended and restated commitment letter entered into as of June 9, 2014, among Tyson Foods, Inc., Morgan Stanley Senior Funding, Inc. and JPMorgan Chase Bank, N.A.\*
- (b)(2) Amendment No. 1 to Credit Agreement, dated as of June 27, 2014, among Tyson Foods, Inc., the lenders thereto and JPMorgan Chase Bank, N.A.\*
- (b)(3) Commitment Letter entered into as of June 17, 2014 among Tyson Foods, Inc., Morgan Stanley Senior Funding, Inc., J.P. Morgan Securities LLC and JPMorgan Chase Bank, N.A.\*
- (b)(4) 364-Day Bridge Term Loan Agreement, dated as of July 15, 2014, among Tyson Foods, Inc., the lenders party thereto and Morgan Stanley Senior Funding, Inc., as administrative agent.\*
- (b)(5) Term Loan Agreement, dated as of July 15, 2014, among Tyson Foods, Inc., the lenders party thereto and Morgan Stanley Senior Funding, Inc., as administrative agent.\*
- (c) Not applicable.
- (d)(1) Agreement and Plan of Merger, dated as of July 1, 2014, among Tyson Foods, Inc., HMB Holdings, Inc. and The Hillshire Brands Company.\*
- (e) Not applicable.
- (f) Not applicable.
- (g) Not applicable.
- (h) Not applicable.

\* Previously filed.

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

STATE OF ILLINOIS,

STATE OF IOWA,

and

STATE OF MISSOURI,

*Plaintiffs,*

v.

TYSON FOODS, INC.,

and

THE HILLSHIRE BRANDS COMPANY,

*Defendants.*

**HOLD SEPARATE STIPULATION AND ORDER**

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

**I.**

**DEFINITIONS**

As used in this Hold Separate Stipulation and Order:

A. “Acquirer” means the entity to which Defendant Tyson divests the Divestiture Assets.

B. “Tyson” means Defendant Tyson Foods, Inc., a Delaware corporation with its headquarters in Springdale, Arkansas, its successors and assigns, and its subsidiaries, its divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Tyson Fresh Meats, Inc.” means Tyson Fresh Meats, Inc., a subsidiary of Tyson.

D. “Tyson Hog Markets, Inc.” means Tyson Hog Markets, Inc., a subsidiary of Tyson Fresh Markets, Inc.

E. “Hillshire” means Defendant The Hillshire Brands Company, a Maryland corporation with its headquarters in Chicago, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. “Divestiture assets” means the entire business of Heinold Hog Markets, including any and all of the tangible or intangible assets used primarily in connection with Heinold Hog Markets, including but not limited to, all leasehold and real property rights associated with the buying stations located at 700 East Henry, Atkinson, Illinois 61235; 3125 So St Rd 29, Burlington, Indiana 46915; 3069 380<sup>th</sup> St, Story City, Iowa 50248; 624 Cunningham Dr, Sioux City, Iowa 51106; 12760 M60 West, Jones, Michigan 49061; 401 Route W, Monroe City, Missouri 63456; 954 14<sup>th</sup> Ave, St. Paul, Nebraska 68873; and 2720 Hwy 60, Windom,

Minnesota 56101; any inventory, office furniture, materials, supplies, livestock pens, scales and other tangible property and assets used primarily in connection with operating the BOS purchasing business; all licenses, permits, and authorizations issued by any governmental organization relating to operating the BOS purchasing business, subject to licensor's approval or consent; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to operating the BOS purchasing business, including supply agreements and employee contracts; all customer and Producer lists, specifications, contracts, accounts, and credit records; all records relating to the business of operating BOS buying stations including repairs; all intangible assets used in the development, production, and operation of the BOS purchasing business, including, but not limited to, exclusive use of the Heinold Hog Markets name and trademark, all the licenses and sublicenses, technical information, computer software and related documentation, know-how, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, and safety procedures for the handling of materials, substances and BOS.

G. "Heinold Hog Markets" means Heinold Hog Markets, Tyson's BOS purchasing business that is part of Tyson Hog Markets, Inc., a subsidiary of Tyson Fresh Meats, Inc.

H. "BOS" means boars (un-castrated male hogs), outs (runts or deformed hogs), and sows (female hogs that have produced at least one litter and will no longer be used for breeding).

I. "Buying station" means those facilities identified in I. F. above at which BOS are purchased from Producers, sorted, weighed, and subsequently sold and shipped to processors or packers.

J. "Producers" means owners or operators of facilities at which hogs are bred or farrowed.

K. "Proposed Transaction" means Tyson's proposed acquisition of The Hillshire Brands Co. pursuant to the Agreement and Plan of Merger entered into by Tyson and Hillshire dated, July 1, 2014.

**II.**

**OBJECTIVES**

The Final Judgment filed in this case is meant to ensure Defendant Tyson's prompt divestiture of the Divestiture Assets for the purpose of establishing a viable competitor for the purchase of sows from Producers in order to remedy the effects that Plaintiffs allege would otherwise result from Tyson's acquisition of Hillshire. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that Tyson Hog Markets, Inc., the Tyson subsidiary of which the Divestiture Assets are a part, will remain independent of, and uninfluenced by, Hillshire, and that competition between Tyson and Hillshire for sow purchases from Producers is maintained during the pendency of the ordered divestiture.

**III.**

**JURISDICTION AND VENUE**

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

**IV.**

**COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT**

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16) ("APPA"), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court.

B. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA, which shall be drafted by the United States in its sole discretion. The publication shall be arranged no later than three (3) business days after Defendants' receipt from the United States of the text of the notice and the identity of the newspaper within which the publication shall be made. Defendants shall promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged, and (2) the certification of the publication prepared by the newspaper within which the notice was published.

C. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment. The United States shall have the full rights and enforcement powers in the proposed Final Judgment, including Section XI, as though the same were in full force and effect as the Final order of the Court.

D. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

E. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

F. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

G. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that Defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V.

**HOLD SEPARATE PROVISIONS**

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendant Tyson shall operate Tyson Hog Markets, Inc. as an independent, ongoing, economically viable competitive business, including for the purchase of sows from Producers, with management, purchases, sales and operations held entirely separate, distinct and apart from those of Hillshire. Hillshire shall not coordinate its marketing or terms of purchase of any livestock with those purchased by Tyson Hog Markets, Inc., and Tyson Hog Markets, Inc. shall not coordinate its marketing or terms of purchase of any livestock with those purchased by Hillshire. Within twenty (20) days after the entry of the Hold Separate Stipulation and Order, Defendants will inform the United States of the steps Defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) Tyson Hog Markets, Inc. will be maintained and operated as an independent, ongoing, economically viable and active competitor for the purchase of sows from Producers separate from Hillshire; (2) management of Tyson Hog Markets, Inc. will not be influenced by Hillshire for the purchase of sows from Producers, and management of Hillshire will not be influenced by Tyson Hog Markets, Inc. for the purchase of sows from Producers; and (3) the books, records, customer lists, competitively sensitive purchase, sales, marketing and pricing information, and decision-making concerning purchasing or sales of Tyson Hog Markets, Inc. will be kept separate and apart from Hillshire. Defendants shall ensure that Hillshire employees will not have access to any information specifically identifying sow suppliers of Tyson Hog Markets, Inc., including names and contact information, and that employees of Tyson Hog Markets, Inc. will not have access to any information specifically identifying sow suppliers of Hillshire, including names and contact information.

C. Defendant Tyson shall use all reasonable efforts to maintain and increase the purchases of sows by Tyson Hog Markets, Inc., and shall maintain at 2014 or previously approved levels for 2015, whichever are higher, all operational support for Tyson Hog Markets, Inc.

D. Defendant Tyson shall provide sufficient working capital and lines and sources of credit to continue to maintain Tyson Hog Markets, Inc., including Heindold Hog Markets, as economically viable and competitive, ongoing businesses, consistent with the requirements of Sections V(A) and (B).

E. Defendant Tyson shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than its current operations, and shall maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

F. Defendant Tyson shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Divestiture Assets.

G. Defendant Tyson shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of Tyson Hog Markets, Inc., including Heinold Hog Markets.

H. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

I. Heinold Hog Markets employees or employees to whom Heinold Hog Markets employees report within Tyson shall not be transferred or reassigned to other areas within Tyson except for transfer bids initiated by employees pursuant to Defendants' regular, established job posting policy. Defendant Tyson shall provide the United States with ten (10) calendar days notice of such transfer.

J. Steve Stouffer, President, Fresh Meats of Tyson Foods, Inc., shall be responsible for Defendant Tyson's compliance with this section. Defendant Tyson may, subject to the approval of the United States, designate another individual to have that responsibility. The designated person shall have complete managerial responsibility for Heinold Hog Markets, subject to the provisions of this Final Judgment. In the event such person is unable to perform his duties, Defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days.

Should Defendant Tyson fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

K. Defendants shall take no action that would interfere with the ability of any Divestiture Trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to an Acquirer acceptable to the United States.

**VI.**

**DURATION OF HOLD SEPARATE AND  
ASSET PRESERVATION OBLIGATIONS**

Defendants' obligations under Section V of this Hold Separate Stipulation and Order shall remain in effect until (1) consummation of the divestitures required by the proposed Final Judgment or (2) further order of the Court. If the United States voluntarily dismisses the Complaint in this matter, Defendants are released from all further obligations under this Hold Separate Stipulation and Order.

Dated: August 27, 2014

Respectfully submitted,

FOR PLAINTIFFS:

UNITED STATES OF AMERICA

A handwritten signature in black ink, appearing to read 'A. L. Hughes', written over a horizontal line.

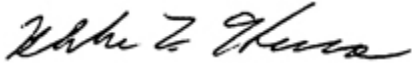
ANGELA L. HUGHES (D.C. Bar #303420)  
Trial Attorney, Antitrust Division  
U.S. Department of Justice  
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FOR PLAINTIFF STATE OF ILLINOIS

LISA MADIGAN  
Attorney General

CARA HENDRICKSON  
Chief, Public Interest Division

ROBERT PRATT  
Chief, Antitrust Bureau  
Public Interest Division



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BLAKE HARROP  
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Fax: 312-814-4209  
bharrop@atg.state.il.us

FOR PLAINTIFF STATE OF IOWA:

THOMAS J. MILLER  
Attorney General

A handwritten signature in cursive script, appearing to read "Layne M. Lindebak".

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Layne M. Lindebak (IA Bar AT0004755)  
Assistant Attorney General  
Special Litigation Division  
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Des Moines, IA 50319  
Tel: (515) 281-7054  
Fax: (515) 281-4902  
Layne.Lindebak@iowa.com

Dated: August 26, 2014

FOR PLAINTIFF STATE OF MISSOURI:

**CHRIS KOSTER**

Attorney General

A handwritten signature in blue ink that reads "Anne E. Schneider". The signature is written in a cursive style and is positioned above a horizontal line.

ANNE E. SCHNEIDER

Assistant Attorney General/Antitrust Counsel

KYLE A. POELKER

Assistant Attorney General

Office of the Missouri Attorney General

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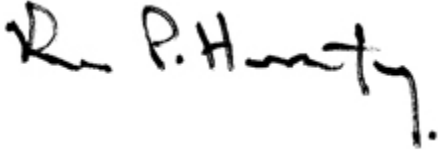
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Email: [Kyle.Poelker@ago.mo.gov](mailto:Kyle.Poelker@ago.mo.gov)

FOR DEFENDANTS:

TYSON FOODS, INC.



A handwritten signature in black ink that reads "R. P. Harty." The signature is written in a cursive style with a period at the end.

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RONAN P. HARTY  
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New York, NY 10017  
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THE HILL SHIRE BRANDS COMPANY

A handwritten signature in black ink, appearing to read "Clifford H. Aronson", written over a horizontal line.

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ORDER

IT IS SO ORDERED by the Court, this    day of    ,    .

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United States District Judge

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,  
  
STATE OF ILLINOIS,  
  
STATE OF IOWA,  
  
and  
  
STATE OF MISSOURI,  
  
*Plaintiffs,*  
  
v.  
  
TYSON FOODS, INC.,  
  
and  
  
THE HILLSHIRE BRANDS COMPANY,  
  
*Defendants .*

**PROPOSED FINAL JUDGMENT**

WHEREAS, Plaintiffs, United States of America and the States of Illinois, Iowa, and Missouri (collectively “Plaintiffs”), filed their Complaint on August 27, 2014, and Plaintiffs and Defendants Tyson Foods, Inc. (“Tyson”) and The Hillshire Brands Company (“Hillshire”) by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendants to assure that competition is not substantially lessened;

AND WHEREAS, Plaintiffs require Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to Plaintiffs that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

### **I. Jurisdiction**

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

### **II. Definitions**

As used in this Final Judgment:

A. "Acquirer" means the entity to which Defendant Tyson divests the Divestiture Assets.

B. "Tyson" means Defendant Tyson Foods, Inc., a Delaware corporation with its headquarters in Springdale, Arkansas, its successors and assigns, and its subsidiaries, including Tyson Fresh Meats, Inc., divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Tyson Fresh Meats, Inc." means Tyson Fresh Meats, Inc, a subsidiary of Tyson.

D. "Hillshire" means Defendant The Hillshire Brands Company, a Maryland corporation with its headquarters in Chicago, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. "Divestiture assets" means the entire business of Heinold Hog Markets, including any and all of the tangible or intangible assets used primarily in connection with Heinold Hog Markets, including but not limited to, all leasehold and real property rights associated with the buying stations located at 700 East Henry, Atkinson, Illinois 61235; 3125 So St Rd 29, Burlington, Indiana 46915; 3069 380th St, Story City, Iowa 50248; 624 Cunningham Dr, Sioux City, Iowa 51106; 12760 M60 West, Jones, Michigan 49061; 401 Route W, Monroe City, Missouri 63456; 954 14th Ave, St. Paul, Nebraska 68873; and 2720 Hwy 60, Windom, Minnesota 56101; any inventory, office furniture, materials, supplies, livestock pens, scales and other tangible property and assets used primarily in connection with operating the BOS purchasing business; all licenses, permits, and authorizations issued by any governmental organization relating to operating the BOS purchasing business, subject to licensor's approval or consent; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to operating the BOS purchasing business, including supply agreements and employee contracts; all customer and Producer lists, specifications, contracts, accounts, and credit records; all records relating to the business of operating BOS buying stations including repairs; all intangible assets used in the development, production, and operation of the BOS purchasing business, including, but not limited to, exclusive use of the Heinold Hog Markets name and trademark, all the licenses and sublicenses, technical information, computer software and related documentation, know-how, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, and safety procedures for the handling of materials, substances and BOS.

F. "Heinold Hog Markets" means Heinold Hog Markets, Tyson's BOS purchasing business that is part of Tyson Hog Markets, Inc., a subsidiary of Tyson Fresh Meats, Inc.

G. "BOS" means boars (un-castrated male hogs), outs (runts or deformed hogs), and sows (female hogs that have produced at least one litter).

H. "Buying station" means those facilities identified in II.E. above at which BOS are purchased from Producers, sorted, weighed, and subsequently sold and shipped to processors or packers.

I. "Plaintiff States" means the States of Illinois, Iowa, and Missouri.

J. "Producers" means owners or operators of facilities at which hogs are bred or farrowed.

K. "Proposed Transaction" means Tyson's proposed acquisition of Hillshire pursuant to the Agreement and Plan of Merger entered into by Tyson and Hillshire dated July 1, 2014.

### **III. Applicability**

A. This Final Judgment applies to Tyson and Hillshire, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and V of this Final Judgment, Defendant Tyson sells or otherwise disposes of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendant Tyson need not obtain such an agreement from the acquirer of the assets divested pursuant to this Final Judgment.

#### **IV. Divestitures**

A. Defendants are ordered and directed, within 90 calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion after consultation with the Plaintiff States. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed 60 calendar days in total, and shall notify the Court in such circumstances.

B. In accomplishing the divestiture ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privileges or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer and the United States information relating to the personnel involved in the operation and management of the Divestiture Assets to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any Defendant employee whose primary responsibility is the operation and management of the Divestiture Assets. For a period of twelve (12) months following entry of the Final Judgment, the Defendants shall not solicit to hire, or hire, any Tyson employee hired by the Acquirer unless (1) such individual is terminated or laid off by the Acquirer, or (2) the Acquirer agrees in writing that Defendants may solicit or hire that individual.

D. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer that each asset will be operational on the date of sale.

F. Defendants shall warrant to the Acquirer that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset.

G. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets. Following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by Divestiture Trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with the Plaintiff States, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business purchasing BOS. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

- (1) shall be made to an Acquirer that, in the United States's sole judgment after consultation with the Plaintiff States, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of purchasing of BOS;  
and
- (2) shall be accomplished so as to satisfy the United States, in its sole discretion, after consultation with the Plaintiff States, that none of the terms of any agreement between an Acquirer and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

**V. Appointment of Divestiture Trustee**

A. If Defendant Tyson has not divested the Divestiture Assets within the time period specified in Section IV(A), Defendants shall notify the United States and the Plaintiff States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, after consultation with the Plaintiff States, at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.

D. The Divestiture Trustee shall serve at the cost and expense of Defendant Tyson, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Defendant Tyson and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount. If the Divestiture Trustee and Defendant Tyson are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other professionals or agents, provide written notice of such hiring and the rate of compensation to the Defendants and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any consultants, accountants, attorneys, and other agents retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information, or any applicable privilege for any of the forgoing. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's

recommendations. To the extent such reports contains information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Divestiture Trustee.

#### **VI. Notice of Proposed Divestiture**

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendant Tyson or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States and the Plaintiff States of any proposed divestiture required by Section IV or V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States, after consultation with the Plaintiff States, may request from Defendants, the proposed Acquirer, any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested of them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

#### **VII. Financing**

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

#### **VIII. Hold Separate**

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

**IX. Affidavits**

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

**X. Appointment of Monitoring Trustee**

A. Upon application of the United States, the Court shall appoint a Monitoring Trustee selected by the United States and approved by the Court.

B. The Monitoring Trustee shall have the power and authority to monitor Defendants' compliance with the terms of this Final Judgment and the Hold Separate Stipulation and Order entered by this Court, and shall have such other powers as this Court deems appropriate. The Monitoring Trustee shall be required to investigate and report on the Defendants' compliance with this Final Judgment and the Hold Separate Stipulation and Order and the Defendants' progress toward effectuating the purposes of this Final Judgment, including but not limited to: keeping Tyson Fresh Meats, Inc. separate from the sow purchasing operations of Defendant Hillshire.

C. Subject to Section X(E) of this Final Judgment, the Monitoring Trustee may hire at the cost and expense of Defendants any consultants, accountants, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment. Any such consultants, accountants, attorneys, or other agents shall serve on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications.

D. Defendants shall not object to actions taken by the Monitoring Trustee in fulfillment of the Monitoring Trustee's responsibilities under any Order of this Court on any ground other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Monitoring Trustee within ten (10) calendar days after the action taken by the Monitoring Trustee giving rise to the Defendants' objection.

E. The Monitoring Trustee shall serve at the cost and expense of Defendants pursuant to a written agreement with Defendants and on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications. The compensation of the Monitoring Trustee and any consultants, accountants, attorneys, and other agents retained by the Monitoring Trustee shall be on reasonable and customary terms commensurate with the individuals' experience and responsibilities. If the Monitoring Trustee and Defendants are unable to reach agreement on the trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within 14 calendar days of appointment of the trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Monitoring Trustee shall, within three (3) business days of hiring any consultants, accountants, attorneys, or other agents, provide written notice of such hiring and the rate of compensation to Defendants and the United States.

F. The Monitoring Trustee shall have no responsibility or obligation for the operation of Defendants' businesses.

G. Defendants shall use their best efforts to assist the Monitoring Trustee in monitoring Defendants' compliance with their individual obligations under this Final Judgment and under the Hold Separate Stipulation and Order. The Monitoring Trustee and any

consultants, accountants, attorneys, and other agents retained by the Monitoring Trustee shall have full and complete access to the personnel, books, records, and facilities relating to compliance with this Final Judgment, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Monitoring Trustee's accomplishment of its responsibilities.

H. After its appointment, the Monitoring Trustee shall file reports monthly, or more frequently as needed, with the United States, and, as appropriate, the Court setting forth Defendants' efforts to comply with its obligations under this Final Judgment and under the Hold Separate Stipulation and Order. To the extent such reports contain information that the Monitoring Trustee deems confidential, such reports shall not be filed in the public docket of the Court.

I. The Monitoring Trustee shall serve until the divestiture of all the Divestiture Assets is finalized pursuant to either Section IV or Section V of this Final Judgment.

J. If the United States determines that the Monitoring Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Monitoring Trustee.

### **XI. Compliance Inspection**

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Hold Separate Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including

consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

- (1) access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and
- (2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their counsel present (individual and/or Defendant's counsel), regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of (i) the executive branch of the United States, or (ii) the Plaintiff States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

#### **XII. No Reacquisition**

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

#### **XIII. Retention of Jurisdiction**

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

#### **XIV. Expiration of Final Judgment**

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

#### **XV. Public Interest Determination**

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date:

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

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United States District Judge



## Tyson Foods Successfully Completes Tender Offer for The Hillshire Brands Company for \$63.00 per Share in Cash

**SPRINGDALE, Ark. and CHICAGO, Ill., August 28, 2014** – Tyson Foods, Inc. (NYSE: TSN) (“Tyson”) and The Hillshire Brands Company (NYSE: HSH) (“Hillshire Brands”) today announced the successful completion of Tyson’s tender offer (the “Offer”) to purchase all of the outstanding shares of common stock of Hillshire Brands for \$63.00 per share in cash, without interest. The tender offer expired at 12:00 midnight (New York City time) at the end of August 27, 2014.

Computershare Trust Company, N.A., the depository for the Offer, has advised Tyson and Hillshire Brands that, as of 12:00 midnight, New York City time, at the end of August 27, 2014, approximately 86,987,201 shares of common stock of Hillshire Brands (not including 3,662,904 shares tendered by notice of guaranteed delivery for which shares have not yet been delivered) had been validly tendered and not validly withdrawn pursuant to the Offer, representing approximately 70% of Hillshire Brands’ outstanding shares. All shares that were validly tendered and not validly withdrawn have been accepted for payment.

Later today, Tyson expects to complete the merger of Hillshire Brands with one of its subsidiaries, and, in connection with the merger, all remaining shares of common stock of Hillshire Brands will be converted into the right to receive \$63 per share in cash, without interest, the same price that was paid in the Offer. Following completion of the merger, Hillshire Brands will become a wholly owned subsidiary of Tyson and its shares will cease to be traded on the NYSE and the Chicago Stock Exchange.

### About Tyson Foods

Tyson Foods, Inc., with headquarters in Springdale, Arkansas, is one of the world’s largest processors and marketers of chicken, beef and pork, the second-largest food production company in the Fortune 500 and a member of the S&P 500. The company was founded in 1935 by John W. Tyson, whose family has continued to be involved with son Don Tyson leading the company for many years and grandson, John H. Tyson, serving as the current chairman of the board of directors. Tyson Foods, Inc. produces a wide variety of protein-based and prepared food products and is the recognized market leader in the retail and foodservice markets it serves. The company provides products and services to customers throughout the United States and approximately 130 countries. It has approximately 115,000 Team Members employed at more than 400 facilities and offices in the United States and around the world. Through its Core Values, Code of Conduct and Team Member Bill of Rights, the company strives to operate with integrity and trust and is committed to creating value for its shareholders, customers and Team Members. The company also strives to be faith-friendly, provide a safe work environment and serve as stewards of the animals, land and environment entrusted to it.

### About The Hillshire Brands Company

The Hillshire Brands Company (NYSE: HSH) is a leader in branded, convenient foods. The company generated approximately \$4 billion in annual sales in fiscal 2013, has more than 9,000 employees, and is based in Chicago. Hillshire Brands’ portfolio includes iconic brands such as Jimmy Dean, Ball Park, Hillshire Farm, State Fair, Van’s, Sara Lee frozen bakery and Chef Pierre pies as well as artisanal brands Aidells, Gallo Salame and Golden Island premium jerky. For more information on the company, please visit [www.hillshirebrands.com](http://www.hillshirebrands.com).

### Forward-Looking Statements

This communication contains certain forward-looking statements with respect to certain plans and objectives of Tyson Foods and Hillshire Brands, including the timing of the completion of the merger. These forward-looking statements can be identified by the fact that they do not relate only to historical or current facts. By their nature, forward-looking statements involve known and unknown risks and uncertainties because they relate to events and depend on circumstances that will occur in the future. Among the factors that may cause actual experiences to differ from anticipated expectations in forward-looking statements is the risk that the merger with Hillshire Brands may not be consummated in a timely manner. Neither Tyson Foods nor Hillshire Brands assumes any obligation to update the information contained in this communication (whether as a result of new information, future events or otherwise), except as required by applicable law.

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**Contacts****FOR TYSON FOODS:**

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