UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75958 / September 22, 2015

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3704 / September 22, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16826

In the Matter of **STEIN MART, INC.,** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Stein Mart, Inc. ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

SUMMARY

From at least 2010 to November 2012, Stein Mart, Inc. ("Stein Mart") materially misstated its pre-tax income in certain quarterly periods as a result of improperly valuing inventory that was subject to price discounts, or markdowns. During the relevant period, Stein Mart used three types of markdowns: a temporary markdown, which was a temporary price reduction for certain promotional sales; a permanent markdown, which was a permanent price reduction; and a "Perm POS" markdown, which also was a permanent price reduction but the merchandise subject to Perm POS markdowns was marketed in a manner similar to merchandise subject to temporary markdowns.

Stein Mart did not value the inventory associated with Perm POS markdowns in accordance with Generally Accepted Accounting Principles ("GAAP"). In particular – despite the fact that merchandise subject to Perm POS markdowns had a permanent price reduction – Stein Mart improperly valued the inventory associated with Perm POS markdowns by writing down the inventory values at the time the product was sold as opposed to immediately when the markdown was taken. Moreover, during the relevant period, Stein Mart had a number of other internal control deficiencies and accounting errors surrounding, among other things, software assets, credit card liabilities, and other inventory-related issues.

Ultimately, in May 2013, Stein Mart restated its financial results for the first quarter of 2012, all reporting periods in fiscal year 2011, and its annual reporting period in fiscal year 2010 primarily because of its accounting error involving Perm POS markdowns. As a result, of this error, in the first quarter of 2012, Stein Mart materially overstated its pre-tax income by almost 30%. Moreover, in connection with the restatement, the company acknowledged material weaknesses in internal control over financial reporting. By engaging in the foregoing conduct, Stein Mart violated the reporting, books and records, and internal controls provisions of the federal securities laws, namely Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

RESPONDENT

Stein Mart, Inc. ("Stein Mart"), a Delaware corporation headquartered in Jacksonville, Florida, is a national apparel retailer with 270 stores operating in 30 states. Stein Mart's

[1] The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the NASDAQ. Stein Mart's fiscal year ends at the end of business on the Saturday closest to January 31.

FACTS

A. Introduction

1. Stein Mart, as a retail company, carries inventory as one of its most significant assets. Under GAAP, companies value their inventory pursuant to FASB Accounting Standards Codification Topic 330 ("ASC 330") which requires valuing inventory at the lower of cost or market. To arrive at the lower of cost or market, Stein Mart utilized the Retail Inventory Method ("RIM"), an averaging method commonly used within the retail industry that is consistent with GAAP.

2. Stein Mart, a national retailer, often offers its merchandise to customers at retail price reductions referred to as "markdowns." As described in greater detail below, proper analysis of these markdowns is critical in properly determining the value of ending inventories.

3. Stein Mart has historically used three categories of markdowns for tracking merchandise: (i) temporary or point of sale ("POS") markdowns, (ii) permanent markdowns, and (iii) "Perm POS" markdowns.

4. Temporary Markdowns are a temporary reduction in the selling price of an item to stimulate demand or reduce the inventory. Stein Mart used these types of markdowns for certain promotional sales, like a Fourth of July weekend sale. Once the sale period ended, the merchandise subject to a temporary markdown returned to its original retail price.

5. Permanent Markdowns are a permanent reduction in the selling price of an item to stimulate demand and clear out seasonal inventory. Stein Mart referred to these markdowns as "hardmarks," because the original price on the price tag for merchandise subject to a permanent markdown was crossed out and replaced with the marked down price. Unlike temporary markdowns, merchandise subject to a permanent markdown never returned to its original retail price.

6. Stein Mart used a third type of markdown known as "Perm POS" markdowns. Like permanent markdowns, merchandise subject to a Perm POS markdown never reverted back its original retail price. Unlike merchandise subject to permanent markdowns, however, this permanent price change was reflected by store signage as opposed to a change in the price tag; and the merchandise subject to Perm POS markdowns was placed in the stores with merchandise subject to temporary markdowns while merchandise subject to permanent markdowns was placed separately in stores .

7. Prior to 2009, Stein Mart generally used three percentage discounts associated with merchandise subject to Perm POS markdowns – 30%, 50%, and 75%. After 2009, however, Stein Mart removed the 50% and 75% Perm POS markdowns, but maintained the 30% Perm POS markdown.

8. By 2009, Stein Mart changed its markdown strategy by increasing the number of permanent markdowns taken throughout the year and particularly by year-end, compared to other types of markdowns including Perm POS. As a result of the fact that merchandise subject to perm POS markdowns was permanently marked down and then marked out of stock by year-end, Perm POS markdowns did not significantly impact Stein Mart's full-year financial results. The manner in which Stein Mart accounted for Perm POS markdowns, however, could have still significantly impacted Stein Mart's quarterly inventory values and related financial results.

B. <u>Stein Mart's Accounting for Perm POS Markdowns and Absence of Internal Controls</u>

9. Despite the fact that the price associated with merchandise subject to Perm POS markdowns never reverted back to its original retail price, Stein Mart accounted for this merchandise in the same manner as it did merchandise subject to temporary markdowns.

10. The difference between temporary/Perm POS markdowns and permanent markdowns was significant from an accounting perspective, and more specifically, from an inventory valuation perspective. In particular, Stein Mart reduced the value of inventory subject to a temporary/Perm POS markdown at the time the item was **sold**, while Stein Mart reduced the value of inventory subject to a permanent markdown **immediately at the time the markdown was applied** (emphasis added).

11. Despite this significant difference in accounting treatment, Stein Mart did not – until at least the middle of 2011 – have adequate internal accounting controls concerning Perm POS markdowns.

12. For example, the decision to categorize a markdown as permanent, temporary, or Perm POS resided solely with Stein Mart's merchandising department, which had no knowledge of the impact that these markdowns had on the inventory valuation accounting.

13. Moreover, prior to at least the middle of 2011, Stein Mart had insufficient internal accounting controls that provided for its accounting department to review (i) how the merchants categorized markdowns as permanent, temporary, or Perm POS or (ii) whether the merchandise associated with Perm POS markdowns was accounted for properly.

C. Stein Mart's CFO Discovers Perm POS Markdowns and Consults With Others

14. In the summer of 2011, Stein Mart's Chief Financial Officer ("CFO") – who had been hired as CFO in August of 2009 – learned for the first time that Stein Mart used "Perm POS" markdowns. Prior to this time, and as a reflection of the insufficient internal accounting controls surrounding Perm POS markdowns, Stein Mart's CFO believed the company used only permanent and temporary markdowns.

15. Upon learning of these markdowns, Stein Mart's CFO gathered additional information by consulting with Stein Mart's merchandising department and others. Stein Mart's CFO understood after these consultations that – like permanent markdowns – the price associated with Perm POS markdowns did not revert to its original retail price.

16. Stein Mart's CFO subsequently had internal and external consultations concerning Stein Mart's accounting for Perm POS markdowns. Some, including Stein Mart's Audit Committee Chair, believed that Stein Mart's practice was an acceptable method while others provided information indicating that certain other retailers utilized different methods for valuing Perm POS-like merchandise. Following these consultations, Stein Mart's CFO ultimately concluded that Stein Mart's practice of writing down Perm POS inventory at the time the product was sold was an acceptable method under GAAP.

D. Discussion with Stein Mart's External Auditor

17. Despite the extensive internal and external discussions and additional steps noted above, Stein Mart did not consult with its external auditor concerning Perm POS markdowns until the fall of 2012.

18. In the fall of 2012, Stein Mart's Audit Committee Chair concluded that the company should account for Perm POS markdowns on the same basis as Permanent Markdowns, meaning that the company should write down the inventory associated with Perm POS markdowns at the time the markdown was taken instead of when the product was sold.

19. Stein Mart's CFO subsequently contacted the engagement partner for the company's external auditor to discuss this issue. Stein Mart's CFO informed the audit engagement partner that the company's proposed change in accounting treatment for Perm POS markdowns was a change from one acceptable GAAP method to another, as opposed to a change in method to correct for an accounting error under GAAP.

20. Stein Mart's external auditor disagreed with the company's view, and more specifically, believed that Stein Mart's current accounting for Perm POS Markdowns was not in accordance with GAAP, and in turn, represented an accounting error.

E. Stein Mart Restates and Discloses Accounting Error for Perm POS Markdowns

21. Subsequently, in May 2013, Stein Mart restated its financial statements for the first quarter of 2012, all quarterly and annual periods in fiscal year 2011, and the annual period for fiscal year 2010. In its restatement, Stein Mart stated that its original accounting for Perm POS markdowns was an accounting error and not in accordance with GAAP.

22. As a result of Stein Mart's accounting error for Perm POS markdowns and as reflected by the chart below (in 000s), Stein Mart materially overstated or understated pre-tax income in certain quarterly reporting periods. Most notably, Stein Mart reported an approximate 30% overstatement in its pre-tax income for its first quarter 2012 results because of its improper accounting for Perm POS markdowns.

	FY 2010	**Q1 '11**	**Q2 '11**	**Q3 '11**	**Q4 '11**	**FY 2011**	**Q1 '12**
Pre-Tax Income/(Loss) – Originally Reported	53,192	26,215	2,250	(5,417)	8,923	31,971	20,372
Pre-Tax Income/(Loss) – Restated	52,426	23,164	4,154	(6,392)	11,740	32,667	15,685
Pre-Tax Income/(Loss) – Over/(Under) Statement	766	3,051	(1,904)	975	(2,817)	(696)	4,687
Percentage Over/(Under) Statement	**1.5%**	**13.2%**	**-45.8%**	**-15.3%**	**-24.0%**	**-2.1%**	**29.9%**

23. Moreover, in the restatement, Stein Mart acknowledged that it not only had a material weakness in its internal control over financial reporting surrounding Perm POS markdowns but also that it had a material weakness in "its control environment related to the level of information and communication between the finance department and other departmental functions."

F. Other Stein Mart Accounting and Internal Control Issues

24. In addition to the issues surrounding Perm POS markdowns, Stein Mart had a number of other accounting and internal controls related issues during the relevant period.

25. First, in the first quarter of 2011, Stein Mart identified an error related to its liability for credit card rewards earned under Stein Mart's co-brand credit program with a bank. This error was caused by two issues: (i) an operational error in the information technology systems used to calculate these liabilities and (ii) the reconciliation performed by Stein Mart's accounting department to detect these types of errors was done improperly. This error resulted in an approximate $2 million total understatement of Stein Mart's other income across certain periods, which the company corrected as an out-of-period adjustment in the first quarter of 2011.

26. Second, in the third quarter of 2011, Stein Mart identified an error in connection with the operation of its inventory retail stock ledger system. This error was also caused by two issues: (i) an operational error in the applicable informational technology systems and (ii) a failure to perform timely reconciliations in the accounting department. This error caused Stein Mart to overstate its gross margin and inventory by $2.2 million in its earnings release for the third quarter of 2011. The company disclosed the error and accounted for these items correctly in the financial statements filed with the company's third quarter 2011 Form 10-Q. The company subsequently disclosed in the fourth quarter of 2011 that this error resulted from a material weakness in its internal control over financial reporting.

27. Third, in the fourth quarter of 2011, the company identified during the reconciliation process an unsupported credit card variance for its outstanding credit card settlements. The company found that it was improperly relating these credit card variances to prior periods. This error resulted in a slight overstatement of pre-tax income across certain periods, which the company recorded as a cumulative adjustment in the fourth quarter of 2011. In its fiscal year-end 2011 annual report, Stein Mart acknowledged that this error reflected a material weakness in its internal control over financial reporting.

28. Fourth, in the middle of 2012, the company identified an error relating to incorrect capitalization and amortization of software in prior periods and software assets that should have been retired prior to 2012. This error resulted from both information technology and accounting personnel improperly interpreting certain software invoices received from a Stein Mart software service provider. This error resulted in Stein Mart understating its Selling, General and Administrative expenses by approximately $2 million over a certain period – an error that Stein Mart disclosed in its earnings release for the second quarter of 2012. In the May 2013 restatement, Stein Mart stated that this error reflected a material weakness in its internal control over financial reporting.

VIOLATIONS

29. Under Section 21C of the Exchange Act, the Commission may impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Act and upon any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation.

30. Section 13(a) of the Exchange Act requires issuers to file such periodic and other reports as the Commission may prescribe and in conformity with such rules as the Commission may promulgate. Exchange Act Rules 13a-1, 13a-11, and 13a-13 require the filing of annual, current, and quarterly reports, respectively. In addition to the information expressly required to be included in such reports, Rule 12b-20 of the Exchange Act requires issuers to add such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are

made not misleading. "The reporting provisions of the Exchange Act are clear and unequivocal, and they are satisfied only by the filing of complete, accurate, and timely reports." *SEC v. Savoy Industries*, 587 F.2d 1149, 1165 (D.C. Cir. 1978) (citing *SEC v. IMC Int'1, Inc.*, 384 F. Supp. 889, 893 (N.D. Tex. 1974)). A violation of the reporting provisions is established if a report is shown to contain materially false or misleading information. *SEC v. Kalvex, Inc.*, 425 F. Supp. 310, 316 (S.D.N.Y. 1975).

31. Section 13(b)(2)(A) of the Exchange Act requires issuers to "make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer." Section 13(b)(2)(B) of the Exchange Act requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit the preparation of financial statements in conformity with generally accepted accounting principles.

32. By engaging in the conduct above, Stein Mart violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, and Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

COOPERATION AND REMEDIAL ACTION

33. In determining to accept Respondent's Offer, the Commission considered remedial acts undertaken by Stein Mart, including its enhancement of internal controls, retention of additional accounting personnel, and Stein Mart's cooperation with the staff's investigation.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Section 13(a), 13(b)(2)(A), an 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

B. Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of $800,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following three ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request[2];

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofin.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Stein Mart as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Antonia Chion, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5720.

---

[2] The minimum threshold for transmission of payment electronically is $1,000,000. For amounts below the threshold, respondents must make payments pursuant to option (2) or (3) above.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields
Secretary