

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95943 / September 29, 2022

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4343 / September 29, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21180

In the Matter of

**Tupperware Brands
Corporation,**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND
IMPOSING 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 Tupperware Brands Corporation (“Tupperware” or “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 a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds that:

Summary

1. These proceedings arise out of failures by Respondent to devise and maintain a sufficient system of internal accounting controls and to maintain accurate books and records from at least 2016 through 2020 (the “Relevant Period”).

2. Specifically, Tupperware’s failures relate to its House of Fuller Mexico reporting unit (“Fuller Mexico”), which Tupperware acquired as part of the Fuller Cosmetics beauty products business. Instead of fully integrating Fuller Mexico post-acquisition, and implementing appropriate policies and procedures, Tupperware retained certain legacy policies and practices, failing to recognize the risk that these policies and practices may not adequately address that unit’s direct sales model and, over time, lagging financial performance. As a result, Fuller Mexico’s management was able to override controls and inaccurately record financial results from at least 2016 through 2020 by: improperly increasing sales via the shipment of unordered products, without purchase orders (“Non-PO Sales”); and improperly reserving for various other expenses at Fuller Mexico.

3. During the Relevant Period, Fuller Mexico increasingly shipped Non-PO Sales to its independent sales representatives (known as “Fullerettes”). At certain points, Fuller Mexico sent more product via Non-PO Sales than the Fullerettes could reasonably sell, and a number of Fuller Mexico’s Non-PO Sales were made at the end of financial reporting periods.

4. As Non-PO Sales from Fuller Mexico increased over time, so did product returns. Tupperware failed to adequately reserve for the increased returns, as Fuller Mexico continued to apply a more lenient legacy practice for determining reserves arising from Fuller Mexico sales. Furthermore, Tupperware continued to rely on Fuller Mexico’s legacy information technology system and failed to respond to red flags indicating that Fuller Mexico was improperly using Non-PO Sales to attempt to meet its financial targets. Fuller Mexico’s management also overrode existing internal accounting controls by failing to book various required reserves in an attempt to show better results for the unit.

5. In August 2021, as a result of the activities at Fuller Mexico, Tupperware disclosed in its amended annual report on Form 10-K/A that, from 2016 through the first quarter of 2020, it had misstated its net sales, accounts receivable, inventories, and accrued liabilities in its annual and interim financial statements. Tupperware disclosed that approximately \$5.2 million of reserves, including those related to Non-PO Sales, were erroneously recorded and should have been reflected in prior periods. Additionally, Tupperware also disclosed that approximately \$2.4 million of other accruals were erroneously excluded from prior periods.

6. As a result of the conduct described herein, the Commission finds that Tupperware violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

Respondent

7. **Tupperware Brands Corporation**, incorporated in Delaware with its principal place of business in Orlando, Florida, is a consumer products company. Tupperware’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 under the symbol “TUP.”

Facts

8. In 2005, Tupperware acquired the Fuller Cosmetics beauty products and other direct selling businesses from Sara Lee Corporation. Following the acquisition, Tupperware did not fully integrate these businesses into its existing policies and procedures. Instead, Tupperware allowed Fuller Mexico to retain certain legacy policies and procedures, as well as legacy sales practices.

9. In particular, Tupperware continued to utilize Non-PO Sales at Fuller Mexico. Historically, Fuller Mexico’s Non-PO Sales were automatic shipments several times a year of new or promotional items, like a new lipstick shade. Fuller Mexico added the items to Fullerettes’ orders, typically at a discount or a special price, with the option to be returned. As a result, Fuller Mexico calculated reserves for returns for Non-PO Sales as part of its sales returns allowance.

10. Until the fourth quarter of 2019, Tupperware used a legacy practice from Fuller Mexico to estimate the returns reserve based on the average returns that occurred over the prior *twelve-month* period. By contrast, Tupperware’s general practice at the time for other units would have estimated this reserve based on the average returns that occurred over the prior *six-month* period, resulting in a higher, more conservative return reserve than Fuller Mexico’s legacy practice.

11. Fuller Mexico’s business performance waned in the years following its acquisition. As Fuller Mexico’s sales failed to meet targets between 2017 and 2019, Tupperware management at the Worldwide and Latin America regional levels heightened pressure on Fuller Mexico to meet unrealistic sales expectations.

12. In response, Fuller Mexico increased its use of, and reliance upon, Non-PO Sales, through escalation of the frequency, type, and number of products shipped. This included the initiation of certain Non-PO Sales at the end of financial reporting periods. At least as early as 2018, the number of Non-PO Sales began to increase and shifted towards products with a higher profit margin, such as perfume, and away from the intended purpose of providing new or promotional products at a discount. Additionally, beginning in at least mid-2018, red flags should have made Tupperware aware of Fuller Mexico’s misuse of, and failure to properly account for, Non-PO Sales.

13. As part of its increasing use of Non-PO Sales, Fuller Mexico employed several other strategies in an attempt to meet targets. One example of these aggressive strategies was referred to as a “reactivation order,” or “suggested order,” whereby Fullerette supervisors identified Fullerettes who were close to becoming inactive in Fuller Mexico’s system, and used unsolicited “reactivation orders” to try to reengage those Fullerettes in the business and prevent the Fullerettes from becoming inactive in Fuller Mexico’s system. Once a Fullerette was inactive, Fuller Mexico’s policy required bad debt for that Fullerette’s sales to be reserved at a higher rate.

14. Another strategy was known as “director sampling” or the “red button,” in which Fuller Mexico divisional directors who were at risk of not meeting sales targets could add Non-PO

Sales to Fullernettes' orders. The Non-PO Sales here included products that were not offered at a discount. Fuller Mexico formalized this practice in 2018 as part of an IT update, with a software tool that made it more efficient for divisional directors to add unordered products to existing Fullernette orders in their division, once approved at higher levels within Fuller Mexico.

15. Following an inquiry into Fuller Mexico's trial balances for the first quarter of 2019, Tupperware's internal audit team, as part of a regularly scheduled financial audit of Fuller Mexico in the third quarter of 2019, conducted a review of certain Non-PO Sales practices at Fuller Mexico in response to elevated returns. This review led to the commencement in October 2019 of an internal investigation into Fuller Mexico's sales order and returns process. Ultimately, Tupperware management concluded an adjustment was required for calculating Fuller Mexico's returns reserve, but incorrectly concluded the adjustment was a change in accounting estimate, instead of a correction of an accounting error.

16. Under Generally Accepted Accounting Principles ("GAAP"), a change in accounting estimate results from new information and should be accounted for prospectively; by contrast, an accounting error may result from mistakes in the application of GAAP or oversight or misuse of facts that existed at the time the financial statements were prepared and may require restatement of previously-issued financial statements.

17. In the third quarter of 2019, Tupperware adjusted its reserves by \$10 million, as reflected in Tupperware's quarterly report, filed with the Commission in November 2019. Tupperware initially attributed the change in accounting estimate determination for calculating Fuller Mexico's returns reserve and other related reserves, including accounts receivable and inventory, to current trends and external factors, such as slower consumer spending. Tupperware maintained that it was a change based on new information, and therefore did not represent an accounting error.

18. A subsequent investigation uncovered, however, (i) unrealistic sales expectations from Tupperware's Latin America regional leadership, (ii) sales strategies designed by Fuller management to help meet sales targets, along with promotions or incentives to make the product more attractive to the Fullernettes, and (iii) Fullernettes received more product than they could realistically sell.

19. As a result of this investigation, Tupperware terminated several members of Fuller Mexico and regional management for "loss of confidence." In late 2019, Tupperware stopped the use of "director sampling" and directed the phase-out of Non-PO Sales at Fuller Mexico, which was completed in early 2020.

20. After further concerns were raised internally about Fuller Mexico, Tupperware conducted an additional internal investigation, and determined that Fuller Mexico failed to book various other expenses in order to show better performance. To address these expenses, Tupperware then recorded an adjustment in the fourth quarter of 2019 of approximately \$9 million, of which approximately \$2.4 million related to prior periods.

21. In February 2020, Tupperware disclosed it would delay the filing of its 2019 annual report on Form 10-K as it probed "the accounting for accounts payable and accrued liabilities at its Fuller Mexico beauty business." Tupperware made a number of other announcements, including

that it estimated total 2019 impairments related to Fuller Mexico of approximately \$31 million.

22. Ultimately, Tupperware filed its 2019 annual report with the Commission on March 12, 2020 and represented that the investigation into Fuller Mexico was completed, that the impact of out of period adjustments was immaterial, that the system of internal control over financial reporting (“ICFR”) was effective, and that there were no material weaknesses in ICFR.

23. In 2021, Tupperware conducted an additional investigation and determined that it had not accounted for all forms of Non-PO Sales at Fuller Mexico, and that certain amounts related to Non-PO Sales were accounting errors, rather than merely changes in estimates. Tupperware again concluded again in 2021 that the conduct was not material to the financial statements.

24. Of the original \$10 million in adjustments to reserves booked in the third quarter of 2019, Tupperware ultimately determined in 2021 that \$5.2 million was an out-of-period error, comprised of understated reserves and overstated inventory. Tupperware simultaneously concluded that revenue associated with the Non-PO Sales had not been recorded in accordance with GAAP.

25. In August 2021, Tupperware filed an amended annual report for 2020, disclosing the existence of a Commission investigation and restating its report on ICFR to identify a new material weakness relating to the override of internal accounting controls by Fuller Mexico management. The errors identified for Non-PO Sales and other expenses in Tupperware’s 2020 amended annual report include adjustments for 2016 through 2020, as follows:

	Adjustment Amount Recorded	Amount of Adjustment Deemed an Error
Reserves Including Non-PO Sales (Change in Estimate recorded Q3 2019)	\$10M	\$5.2M
Various Accruals (Recorded Q4 2019)	\$2.4M	\$2.4M
Total	\$12.4M	\$7.6M

26. Tupperware acknowledged that historically, it was unable to track the volume of Fuller Mexico’s Non-PO Sales in a sufficient level of detail and, as a result, was unable to monitor the use of this type of sale, which should have been limited in nature. Information systems in place at Fuller Mexico were not configured to sufficiently identify, summarize, and report Non-PO Sales.

27. As a result of the conduct described above, Respondent violated Section 13(b)(2)(A) of the Exchange Act, which 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.

28. Lastly, as a result of the conduct described above, Respondent violated Section 13(b)(2)(B) of the Exchange Act, which requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Tupperware cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

B. Respondent Tupperware shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$900,000.00 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 ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.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 Tupperware Brands Corporation 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 Stacy Bogert, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5012.

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 and 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.

Vanessa A. Countryman
Secretary