

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84781 / December 11, 2018

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3997 / December 11, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18921

In the Matter of

The Hain Celestial Group, Inc.

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 The Hain Celestial Group, Inc. (“Respondent” or “Hain”).

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 (“Order”), as set forth below.

III.

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

Summary

From at least 2014 until May 2016, Hain U.S. sales personnel gave sales incentives to certain distributors to promote sales at the end of quarters. These incentives had potential accounting implications. In August 2016, Hain self-reported the incentives practice to the SEC and announced it was delaying its financial reporting for fiscal year 2016. Hain ultimately determined that no financial restatements were required, but it took the company approximately 10 months to do so, given the existence of an internal review on a number of issues, and Hain's inadequate documentation of the incentives and lack of sufficient internal accounting controls to provide reasonable assurances that the incentives were accounted for correctly. Hain disclosed in its Annual Report for fiscal year 2016, filed in June 2017, that it had material weaknesses in its internal controls over financial reporting.

Respondent

1. Hain is a Delaware corporation headquartered in Lake Success, New York. Hain's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the NASDAQ (under the ticker symbol HAIN). Hain files periodic reports, including Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder.

Background

2. Hain is a leading marketer, manufacturer, and seller of organic and natural food and personal care products. In its fiscal year ending June 30, 2016 (FY 2016), Hain reported \$2.885 billion in worldwide net sales, including \$1.321 billion relating to the United States reporting segment (the "U.S. Business Segment"). Over the past five years, net sales for the U.S. Business Segment have constituted an increasingly smaller portion of Hain's worldwide sales: While U.S. net sales accounted for 63% of Hain's worldwide sales in FY 2013, by FY 2016, U.S. net sales constituted only 46% of worldwide sales. While U.S. Business Segment sales were increasing, due to a variety of factors, the rate of year-to-date net sales growth for the U.S. Business Segment declined over these years, from a high of 17% sales growth (FY 2014), to 6.6% sales growth (FY 2015), to declining year-to-date sales growth in the first two quarters of FY 2016 (-1.7% and -3.3%, respectively).¹

¹ All sales figures as originally reported.

3. Hain's customer base consists principally of specialty and natural food distributors, supermarkets, natural food stores, mass-market and e-commerce retailers, food service channels and club, drug and convenience stores. A portion of the products marketed by Hain in the U.S. are sold through independent food distributors, who have access to key retailers and which purchase products from Hain for resale to these retailers. Sales to these distributors provide Hain access to these key retailers.

Hain's U.S. Business Segment: EOQ Agreements with its Largest Distributors.

4. During Hain's FY 2014-2016 (the "Relevant Time Period"), approximately 30% of Hain's net sales for its U.S. Business Segment were derived from two distributors: (1) "Distributor 1," accounting for approximately \$325-350 million in net sales annually (over 20% of Hain's net sales for its U.S. Business Segment), and (2) "Distributor 2," accounting for over \$115 million in net sales annually (approximately 8% of Hain's net sales for its U.S. Business Segment). During this time period, Hain's U.S. Business Segment sales teams responsible for Distributors 1 and 2 engaged in varying degrees of "end of quarter" ("EOQ") sales.

5. These EOQ sales included asking Distributors 1 and 2 to purchase specific dollar values of inventory by quarter-end, in exchange for additional incentives. These incentives varied by distributor (and by quarter), but could include: (1) cash incentives (up to \$500,000), (2) extended payment terms (up to 90 days), (3) discounts off list price (up to 20% off), and (4) spoils coverage, whereby Hain agreed to reimburse the distributor for products that spoiled or expired before the distributor could sell through to retailers. None of these types of incentives are improper; however, they could have financial reporting implications.

Distributor #1

6. During the Relevant Time Period, Distributor 1 and Hain executed annual sales contracts, stipulating to quarterly inventory sales growth targets. Distributor 1 earned financial incentives based on meeting these growth targets. This translated in practice to Hain and Distributor 1 agreeing, on a quarterly basis, to inventory purchasing targets. During the Relevant Time Period, Hain's quarterly inventory purchasing targets for Distributor 1 ranged up to \$90 million. In many quarters, however, as the quarter-end grew near, Distributor 1 communicated to Hain's sales personnel that it might not purchase sufficient inventory to meet its quarterly purchasing target. Distributor 1 would predict missing its inventory purchasing target by \$10, \$20, or as much as \$30 million, and requested additional sales incentives to meet its target. During the Relevant Time Period, Hain's overall net sales for its U.S. Business Segment were approximately \$300 million per quarter.

7. As a way to incentivize Distributor 1 to purchase sufficient inventory to meet or exceed its agreed-upon sales growth targets, a practice developed whereby Distributor 1 and Hain would renegotiate their quarterly terms. These renegotiations varied by quarter, but Distributor 1 would obtain extra-contractual incentives—such as (1) cash financial incentives

(ranging from \$75,000 to \$500,000 per quarter, in those quarters in which cash incentives were provided), (2) spoils coverage, and/or (3) occasionally extended payment terms up to 60 days—in exchange for meeting a renegotiated inventory purchasing target. These inventory purchasing targets were renegotiated up or down by as much as \$10 million. In at least four quarters, Distributor 1 agreed to increase its quarterly inventory purchase at Hain’s request. In a number of quarters, Hain and Distributor 1’s renegotiation would also adjust inventory purchasing targets for subsequent quarters.

8. Pursuant to its annual sales contract, Distributor 1 received a 1% off-invoice discount intended as compensation for spoils, i.e., products that expired or spoiled in Distributor 1’s warehouses before Distributor 1 sold the products to retailers. However, pursuant to its EOQ sales, Distributor 1 requested and received—in addition to its 1% contractual off-invoice discount rate—reimbursement for any products purchased in an EOQ sale that ultimately expired or spoiled before selling to retailers (“EOQ spoils”). During the Relevant Time Period, Hain paid out increasing amounts to Distributor 1 in EOQ spoils, from \$0.5 million in FY 2013, to \$0.8 million in FY 2014, \$1.1 million in FY 2015, and \$1.6 million in FY 2016. During this period, Hain’s annual net sales to Distributor 1 varied from \$325 to \$350 million. The vast majority of the products purchased in connection with EOQ sales to Distributor 1 ultimately sold through to retailers.

9. Hain’s EOQ sales with Distributor 1 were not appropriately documented. While Hain and Distributor 1 signed an annual contract, in no instance was the contract amended to incorporate these EOQ agreements. Rather, these agreements were typically memorialized only in email correspondence with the distributor. In some quarters, particular incentives, such as spoils coverage, were agreed to orally.

10. The inventory purchases that constituted EOQ sales—and thus were eligible for EOQ spoils coverage—were largely based on oral understandings. Hain and Distributor 1 would therefore frequently dispute whether specific spoiled or expired products were entitled to EOQ spoils coverage. Generally, inventory purchased in the final month of the quarter would be considered an EOQ sale. During the Relevant Time Period, Distributor 1 purchased 52-64% of its inventory in or around the last month of the quarter, making approximately half of Distributor 1’s quarterly inventory purchase eligible for this extra-contractual EOQ spoils protection.

11. Hain lacked sufficient policies and procedures to provide reasonable assurances that EOQ sales were accounted for properly. Hain’s sales personnel were not appropriately trained or knowledgeable about the accounting implications of their sales practices. Further, there were insufficient policies and procedures to monitor incentives made in sales transactions, which could have potential revenue recognition implications.

12. In addition, the EOQ sales with Distributor 1 were not fully communicated outside of the sales department, to the appropriate personnel in Hain’s accounting and finance departments, to take into consideration any relevant accounting implications. Hain lacked clear policies and

procedures regarding when distributor incentives required approval and/or notification beyond the sales team (whether based on the concession's size or character). For example, the extended payment terms granted to Distributor 1 had not been previously disclosed to the appropriate personnel in Hain's accounting and finance departments, or to corporate management.

Distributor #2

13. Distributor 2 was Hain's second-largest distributor for its U.S. Business Segment, with annual net sales of up to \$117 million during the Relevant Time Period. Unlike Distributor 1, Distributor 2 was never subject to any contractual provisions related to quarterly sales growth targets. During the Relevant Time Period, however, a similar practice developed whereby Hain would request Distributor 2 to purchase a specific amount of inventory by quarter-end, in exchange for additional incentives. In a number of quarters, Distributor 2 countered Hain's requested volume target with a lower figure, noting its pre-existing inventory levels and communicating concerns that inventory would expire.

14. In addition to a volume target, Hain's EOQ sales with Distributor 2 consisted of incentives including: (1) a discount off invoice; (2) extended payment terms (typically 90 days); and (3) spoils coverage. Regarding the discounts off invoice, the dollar value of these quarterly discounts increased upward over the Relevant Time Period, from around \$200,000 to nearly \$1.5 million in the final quarter of fiscal year 2016. Hain's spoils coverage amounts to Distributor 2 increased over the Relevant Time Period as well, reaching as high as \$430,000 in the final quarter of fiscal year 2016. As with Distributor 1, these spoils were in addition to a 1% off invoice discount that Distributor 2 was already receiving. The vast majority of the products purchased in connection with EOQ sales to Distributor 2 ultimately sold through to retailers.

15. As with Distributor 1, Hain's EOQ sales with Distributor 2 were not adequately documented. Such arrangements were typically memorialized only in email correspondence with the distributor.

16. Hain had insufficient policies and procedures in place to provide reasonable assurances that incentives offered by sales personnel were properly accounted for. Hain's sales personnel working with Distributor 2 were not appropriately trained or knowledgeable about the accounting implications of their sales practices, which could have potential revenue recognition implications.

17. In addition, the EOQ sales with Distributor 2 were not fully communicated outside the sales department, to the appropriate personnel in Hain's accounting and finance departments, to take into consideration any relevant accounting implications. For example, Hain repeatedly provided Distributor 2 with 90-day extended payment terms, yet these terms had not been previously disclosed to the appropriate personnel in Hain's accounting and finance departments, or to corporate management.

Hain's Finance Department Discovered EOQ Sales Practices and Self-Reported to SEC.

18. In May 2016, Hain's Corporate Finance Department learned that Hain had granted extended payment terms on Distributor 1's March 2016 EOQ sales. Hain's Corporate Finance Department reviewed the matter further and discovered heretofore unknown EOQ sales and incentives. The Audit Committee of the Company's Board of Directors conducted an internal investigation and retained independent counsel to assist in that review.

19. On August 15, 2016, Hain self-reported to the SEC that the Company was investigating EOQ sales incentives granted to certain distributors for its U.S. Business Segment, including whether the revenue associated with those incentives was accounted for in the correct period, as well as its internal control over financial reporting. After market close on the same day, Hain filed a Form 8-K, disclosing these facts, as well as that its fiscal year 2016 results (fiscal year ending June 30, 2016) would be delayed.

20. On June 22, 2017—approximately 10 months after announcing its delayed financial reporting—Hain filed its Annual Report on Form 10-K for its fiscal year 2016. Hain determined that no financial restatements were required, but corrected immaterial errors to prior period financial statements. Hain also disclosed material weaknesses in its internal control over financial reporting—including an ineffective control environment and ineffective controls related to U.S. revenue recognition.

Hain's Largest Distributors for its U.S. Business Segment Reduce Inventories as EOQ Sales Practices End.

21. In fiscal year 2016, Hain engaged outside consultants to, among other things, undertake an evaluation of its trade and marketing spend in its U.S. Business Segment, including a review of incentives provided in connection with EOQ sales. Based on this evaluation, Hain determined to focus its trade and marketing spend on the customer-facing (retail) level, rather than distributor-level (which had encompassed EOQ incentives).

22. Concurrently, near the end of Hain's fiscal year 2016, Distributors 1 and 2 independently communicated to Hain that going forward, they planned to reduce their inventory levels. Over fiscal year 2017, Distributor 1 went from holding approximately \$74 million in Hain inventory (June 2016), to \$47 million (June 2017). Similarly, Distributor 2 went from holding approximately \$24 million in Hain inventory (June 2016), to \$14 million (June 2017). A sizeable portion of these declines can be attributed to factors other than the distributors' desire to realign their inventories to lower levels, including lowered demand at the retail level, and Hain's stock-keeping-unit ("SKU") rationalization efforts.

23. As a result of the foregoing, Hain violated Section 13(b)(2)(A) of the Exchange Act, which requires Hain to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect Hain's transactions and disposition of assets.

24. As a result of the foregoing, Hain also violated Section 13(b)(2)(B) of the Exchange Act, which requires Hain to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that: transactions were or are executed in accordance with management's general and specific authorization; transactions were or are recorded as necessary to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles or any other criteria applicable to such statements, and to maintain accountability for assets; access to assets was or is permitted only in accordance with management's general or specific authorization; and the recorded accountability for assets was or is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any differences.

Hain's Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission Staff.

25. Hain promptly self-reported to the Commission and assisted with the Commission's investigation, including by providing regular updates and analyses related to its internal investigation. Hain's actions in this regard were important in the determination not to impose a penalty.

26. Hain has also undertaken remedial measures. In particular, Hain made a number of organizational changes, such as hiring staff in compliance positions and establishing an internal audit function.

27. Hain also implemented changes to its revenue recognition practices, including (1) revisions to its revenue recognition policies and procedures; (2) standardization of its contract documentation and revenue analyses; (3) revisions to its review process and monitoring controls over contracts with customers, customer payments, and incentives; and (4) changes in its communication function related to contractual modifications, between those involved in the sales process and those in Corporate Finance. Hain also developed a revenue recognition and contract review training program.

IV.

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

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Hain cease and desist from committing or causing any violations and any future violations of Section 13(b) (2) (A) and 13(b) (2) (B) of the Exchange Act.

B. Respondent acknowledges that the Commission is not imposing a civil penalty based upon its cooperation in a Commission investigation and related enforcement action. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay a civil money penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Brent J. Fields
Secretary