

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11251 / September 29, 2023

SECURITIES EXCHANGE ACT OF 1934
Release No. 98629 / September 29, 2023

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4469 / September 29, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21766

In the Matter of

NEWELL BRANDS INC.
and MICHAEL B. POLK,

Respondents.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND 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 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Newell Brands Inc. (“Newell”) and Michael B. Polk (“Polk”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V with respect to Polk, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and 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 Respondents' Offers, the Commission finds¹ that:

SUMMARY

1. This matter involves Newell's misleading statements regarding non-GAAP financial measures that it called "core sales growth" and "core sales," which Newell described in its earnings releases as giving investors "a more complete understanding of underlying sales trends." Newell explained that the core sales measure would allow investors to understand "sales on a consistent basis" by removing from its "net sales" measure the effects of acquisitions, divestitures, and foreign currency fluctuations. Newell disclosed its year-over-year core sales growth rate as part of the headline of its quarterly earnings releases. Newell also provided investors guidance about its expected core sales growth rate, and analysts followed Newell's publicly announced core sales growth.

2. From Q3 2016 through Q2 2017 (the "Relevant Period"), Newell announced core sales growth rates that were misleading because Newell did not also disclose that its publicly disclosed core sales growth rate was higher as the result of actions taken by Newell that were unrelated to its actual underlying sales trends. Internal communications during this period recognized that Newell's sales were disappointing and had fallen short of management's goals. In response, Newell's then-CEO, Polk, approved plans to pull forward sales from future quarters, asked employees to examine accruals established for customer promotions in order to determine if they could be reduced, and agreed with decisions to reclassify consideration payable to customers that resulted in the value of that consideration not being deducted as required by generally accepted accounting principles (GAAP). These actions, which Newell did not disclose, increased Newell's publicly disclosed core sales growth rates during the Relevant Period, and, as a result, Newell's and Polk's descriptions of Newell's growth to investors as "strong" and "solid" were misleading.

RESPONDENTS

3. **Newell Brands Inc.** is a Delaware corporation with its principal place of business in Atlanta, Georgia. Newell's common stock is registered pursuant to Section 12(b) of the Exchange Act and trades on the Nasdaq under the symbol "NWL." Newell is required to file periodic reports, including annual reports on Form 10-K and quarterly reports on Form 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder.

4. **Michael B. Polk**, age 62, resides in Bergen County, New Jersey. Polk was the CEO of Newell (previously known as Newell Rubbermaid Inc.) from July 2011 through June 2019.

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

FACTS

5. Newell is a consumer goods company that sells products under brands such as Rubbermaid, Sharpie, Elmer's, Graco, and Calphalon. Newell Brands Inc. was known as Newell Rubbermaid Inc. until April 2016, when the company acquired Jarden Corporation ("Jarden").

A. Newell's "Core Sales" and "Core Sales Growth" Measures

6. Core sales and core sales growth were important non-GAAP financial measures to Newell.² Newell stated in its earnings releases that its "management believes that these non-GAAP financial measures and the information they provide are useful to investors since these measures . . . permit investors to view the company's performance using the same tools that management uses to evaluate the company's past performance . . . and prospects for future performance."

7. Newell also stated in its earnings releases that its "management believes that core sales provides a more complete understanding of underlying sales trends." The core sales measure purportedly presented "sales on a consistent basis" by adjusting net sales to exclude the impacts of acquisitions, planned and completed divestitures, and foreign currency changes. Newell then determined and disclosed its year-over-year core sales growth in terms of dollars and percent growth.

8. Newell and Polk understood core sales growth to be material, relevant information to investors and emphasized Newell's core sales growth rate in its earnings releases. Newell typically announced its year-over-year core sales growth rate as part of the headline at the top of its quarterly earnings releases. Newell also issued guidance to investors providing its expectations for annual core sales growth, and analysts reported and estimated Newell's core sales growth rates using the information disclosed by Newell.

B. Newell's Use of Pull Forwards, Accrual Reductions, and Reclassifications

9. During the last month of each quarter in the Relevant Period, Newell employees determined that its sales were inadequate to achieve management goals, including internal targets, guidance to investors, or analyst estimates. As part of an effort to achieve those goals, Polk was made aware of and approved plans to pull forward sales scheduled for subsequent quarters. To do so, Newell employees identified orders scheduled for delivery early the following quarter and

² A non-GAAP financial measure is a numerical measure of a registrant's historical or future financial performance, financial position, or cash flows that (i) excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the most directly comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet, or statement of cash flows (or equivalent statements) of the issuer; or (ii) includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the most directly comparable measure so calculated and presented. 17 C.F.R. § 244.101(a)(1). A non-GAAP financial measure does not include financial measures required to be disclosed by GAAP. § 244.101(a)(3).

obtained customer permission to deliver those orders in the current quarter. Newell employees then informed Polk of the volume of orders that had been pulled forward.

10. Newell's divisions were responsible for calculating whether accruals established for the cost of customer promotional incentives, discounts, and rebates should be adjusted to account for Newell's historical sales and payments to customers for those incentives. In response to shortfalls in sales during the Relevant Period, Polk instructed employees during the quarterly closing process to scrutinize these accruals to determine whether funds could be released from those accruals, which would have the effect of increasing the quarter's core sales announced by Newell.

11. During the Relevant Period, Newell reclassified certain forms of consideration payable to customers as costs of goods sold or as selling, general, and administrative expenses rather than deductions from revenue. Although deductions from revenue reduced net sales and therefore core sales, amounts classified as costs of goods sold or selling, general, and administrative expenses did not affect core sales. These reclassifications therefore created the appearance of higher sales and sales growth. In addition, because Newell did not make a corresponding adjustment to the classifications in the prior year's net sales and core sales calculations, an additional portion of the publicly disclosed sales "growth" was attributable only to the reclassification of this consideration, rather than actual growth in Newell's underlying sales. These reclassifications were significant components of revenue growth necessary to understanding Newell's operations during the Relevant Period. Polk was aware of these decisions and their effect on publicly disclosed sales growth.

12. Together, the effect of these actions on core sales growth resulted in Newell announcing misleading core sales growth figures in each quarter during the Relevant Period because they did not provide an accurate or complete disclosure of "underlying sales trends," despite Newell's statements that investors should look to core sales growth to obtain this information.

13. Newell's quarterly sales were less than management's goals each quarter during the Relevant Period. In internal communications, Polk expressed his disappointment that Newell's sales had fallen short of management's goals. However, Newell and Polk publicly announced Newell's core sales growth and characterized its growth as "strong" or "solid" without disclosing the impact of the actions described above. During the Relevant Period, Newell lacked disclosure controls and procedures that were reasonably designed to ensure that its disclosures regarding core sales growth were accurate and complete.

14. For Q3 2017, Newell announced year-over-year core sales growth of 0.4%, and for Q4 2017, Newell announced a year-over-year decline in core sales of -1.9%.

Third Quarter of 2016

15. Toward the end of Q3 2016, Polk understood that Newell was facing order shortfalls in two regions, which were "driving the miss" in Newell's results. Polk encouraged Newell employees to "leave no stone unturned," including by seeking customer permission to get

“October dated orders to ship in September.” However, even with the addition of orders pulled forward from the next quarter, Newell’s sales in Q3 2016 were inadequate to meet management’s goals.

16. During the quarterly closing process that quarter, Newell management discussed other adjustments that would have the effect of increasing Newell’s publicly disclosed core sales growth. One adjustment that increased Newell’s publicly disclosed core sales growth was the reclassification of a type of consideration payable to customers that Newell called “freight allowances,” which were provided to customers to cover shipping costs. Newell’s legacy Jarden divisions, unlike its legacy Newell Rubbermaid divisions, had previously classified freight allowances as deductions from revenue. Newell decided in Q3 2016 to reclassify that consideration on its income statement as costs of goods sold as part of an effort to harmonize the practice of the Jarden divisions with that of the Newell Rubbermaid divisions. Because the core sales measure was not affected by costs of goods sold, this change created the appearance of increasing Newell’s core sales.

17. In addition, Newell only made this adjustment in 2016, without making a corresponding adjustment for the prior-year base number for 2015 against which Newell had calculated its year-over-year core sales growth. Polk was told that this reclassification created the appearance of a benefit to core sales growth because Newell was not making a corresponding adjustment to the prior-year base number, and that Newell therefore “need[ed] to think about disclosure.” However, Newell did not disclose that a significant portion of its publicly disclosed core sales growth had resulted from the reclassification of freight allowances on its income statement, not the underlying sales trends that core sales growth ostensibly represented.

18. In its quarterly earnings release, included as an exhibit to a Form 8-K on October 28, 2016, Newell stated that its core sales growth in Q3 2016 was 3.0%, meeting analyst expectations. In the earnings release, Newell and Polk referred to Newell’s “competitive levels of quarterly core sales growth and leading levels year to date,” as well as Newell’s “very good performance in the third quarter.” Polk attributed that growth to the strong growth of certain divisions. During an investor conference in November, Polk spoke about Newell’s “strong” growth, characterizing Newell’s core sales growth as “a measure of the underlying growth in the business.” When making these statements, neither Newell nor Polk disclosed that the publicly announced core sales growth rate was higher as a result of the actions described above, and therefore did not fully reflect Newell’s underlying sales trends.

Fourth Quarter of 2016

19. In the earnings release included as an exhibit to a Form 8-K on October 28, 2016, Newell issued “Updated 2016 Full Year Guidance.” Newell stated that it had raised the lower end of its 2016 full year guidance range for core sales growth from 3% to 3.5%. During an investor conference on November 15, 2016, Newell explained that this outlook implied that year-over-year core sales growth for the last quarter of the full year (Q4 2016) would be at least 2.5%.

20. At the end of Q4 2016, it became apparent to Newell and Polk that Newell’s sales were again falling short. Polk noted internally that “[w]e are short because of the lack of orders.”

He received an email stating that, although Newell had shipped some orders in December that had previously been expected to ship in January, Newell had nonetheless missed its target because of “a lack of orders,” because there was “extraordinary [sic] light shipment activity” in certain regions, and because “incoming January orders didn’t actually materialize to support” the targets.

21. Summarizing the quarter’s results internally, Polk described them as “a massive miss” and “disappointing.” Polk told his leadership team not to book new accruals and told financial personnel that they should “scrub” existing accruals established for the cost of customer promotional incentives, discounts, and rebates, in order to identify accruals that should be reduced. During the quarterly closing process in January 2017, Polk told financial and business unit management that they should “turn over every rock looking for gross to net opportunities,” “not additional accruals,” and he outlined the negative consequences for Newell and its employees if the company did not achieve its core sales targets.

22. In Newell’s Q4 2016 earnings release, which was included as an exhibit to a Form 8-K on February 6, 2017, Newell stated that its quarterly core sales growth was 2.5%, which appeared to meet its guidance and resulted in annual core sales growth of 3.7%. Polk characterized these results in the earnings release as “competitive” and “very strong.” In the Q4 2016 earnings call, Polk similarly said that Newell had achieved solid fourth-quarter and strong full-year results. He communicated the same message in a February investor conference, stating that Newell had “delivered solid outcomes in Q4.” When making these statements, neither Newell nor Polk disclosed that the publicly announced core sales growth rate was higher as a result of the actions described above, and therefore did not fully reflect Newell’s underlying sales trends.

First Quarter of 2017

23. Newell again faced disappointing sales in Q1 2017 that Polk understood would cause a “big miss on core.” Polk was informed that employees were “looking aggressively at orders to pull in” from the next quarter. He encouraged employees to pursue reductions of accruals from prior years as a means of achieving Newell’s core sales targets, and offered them an incentive for doing so.

24. Although preliminary internal reports immediately after the end of the quarter indicated that Newell’s Q1 2017 core sales growth was about 1%, Newell ultimately announced 2.5% core sales growth to investors, beating analyst expectations. Internal reporting after the quarter ended demonstrated that Newell was able to achieve target core sales growth and exceed investor expectations due to accrual reductions and accounting changes that had nothing to do with underlying sales trends.

25. Despite the internal assessments indicating that Newell’s performance had fallen short of management’s goals, the headline of Newell’s earnings release, which was included as an exhibit to a Form 8-K on May 8, 2017, stated that Newell had achieved “strong first quarter results,” including 2.5% core sales growth. Newell and Polk stated in the earnings release that Newell’s “first quarter results provide strong evidence of our team’s capacity to perform while we transform,” that Newell had “delivered competitive core sales growth of 2.5 percent,” and that the “core sales results were broad based.” In the earnings call held that day, Polk similarly described

Newell's core sales growth as a "competitive outcome." When making these statements, neither Newell nor Polk disclosed that the publicly announced core sales growth rate was higher as a result of the actions described above, and therefore did not fully reflect Newell's underlying sales trends.

Second Quarter of 2017

26. Newell's performance fell short of management's goals again in Q2 2017, in part as a result of reduced orders and a warehouse fire that affected its second-largest business segment. Preliminary reporting sent to Polk showed that, without the effect of various adjustments, Newell's year-over-year core sales growth for Q2 2017 would have been only 0.2%. During the quarterly closing process, Newell management discussed that accrual reductions and the reclassification of consideration payable to customers on Newell's income statement would increase the core sales figures that Newell would communicate to investors.

27. Newell adopted accounting changes that were inconsistent with GAAP and resulted in Newell reporting inflated growth in its net sales and core sales. Newell reclassified certain consideration payable to customers, including penalties paid to customers for failing to adhere to shipping requirements, and credits to compensate customers for distributing goods to individual stores. Rather than deducting from revenue the amount of that consideration in a manner consistent with GAAP, Newell reclassified the consideration as costs of goods sold, which increased Newell's reported net sales and core sales. In addition, because Newell made these adjustments in Q2 2017 without making a corresponding adjustment to the sales that it had recorded for Q2 2016, these adjustments had the effect of appearing to further increase Newell's year-over-year growth in net sales and core sales. The benefit of these accounting adjustments was large enough to offset the negative impact on Newell's performance from the warehouse fire and other issues.

28. Management received input from a member of the Audit Committee that not adjusting the prior year's base could be judged after the fact to be overly aggressive. Newell's auditor also raised concerns about these changes in its communications to management and Newell's Audit Committee, identifying as a misstatement Newell's classification of consideration payable to customers as costs of goods sold, and its failure to reclassify the prior period amounts. Newell proceeded with the reclassification despite these warnings.

29. In its earnings release, which was included as an exhibit to a Form 8-K on August 4, 2017, Newell reported core sales growth of 2.5%, which Newell and Polk described as "a solid set of results" and "competitive growth." During Newell's quarterly earnings call, Polk told investors that Newell had "delivered a solid set of second quarter results," including "consistent, competitive top line growth" and "standout core sales growth" in "many" of its businesses. When making these statements, neither Newell nor Polk disclosed that the publicly announced core sales growth rate was higher as a result of the actions described above, included adjustments that were inconsistent with the determination of core sales growth in prior periods, and did not fully reflect Newell's underlying sales trends.

30. In its Form 10-Q filed on August 9, 2017, Newell reported net sales and cost of products sold amounts in its financial statements that reflected the misclassification of

consideration payable to customers in a manner inconsistent with GAAP. This misclassification was material because it resulted in Newell significantly overstating year-over-year growth in net sales and failing to disclose that its actual year-over-year core sales growth was nearly flat. In addition, Newell did not disclose that the benefit from the reclassification constituted a material change to its core sales growth calculation.

C. Premature Revenue Recognition as a Result of “Pick and Holds”

31. Newell also recognized revenue prematurely during the Relevant Period, as a result of employees involved in shipping and transportation in certain divisions sending shipments early to customers without their approval in a practice referred to as “pick and holds.” So that these shipments would not arrive to customers earlier than scheduled, Newell employees arranged for third parties to pick up shipments from Newell and then store them for days or weeks until they could be delivered on the dates in the next quarter that had been requested by the customers. Newell prematurely recognized revenue for those shipments during the quarters in which they were picked up by carriers, before the revenue recognition criteria of ASC 605 (Revenue Recognition) were satisfied. These criteria required, among other things, that a shipment be made pursuant to an arrangement with the customer, and that the customer take title and assume the risks and rewards of ownership for delivery to occur. In its Forms 10-Q and 10-K for these periods, Newell reported in its financial statements net sales and income that reflected this revenue, which had been recognized earlier than permitted by GAAP but in amounts that were less than 0.1% of net sales in each quarter during the Relevant Period.

D. Polk’s Representations, and Newell’s Offer and Sale of Securities

32. As CEO of Newell during the Relevant Period, Polk was involved in the preparation and review of Newell’s Commission filings, signed Newell’s Forms 10-K and 10-Q, and participated in Newell’s earnings calls. Polk signed management representation letters to Newell’s auditor, letters which stated that Newell’s financial statements had been prepared and presented in accordance with GAAP and that the effects of any uncorrected misstatements were immaterial. Polk also signed certifications attached to Newell’s Forms 10-K and 10-Q during the Relevant Period that the information contained in those filings “fairly present[ed], in all material respects, the financial condition and results of operations of the Company.”

33. Newell offered and sold securities during the Relevant Period.

VIOLATIONS

34. Section 17(a)(2) of the Securities Act proscribes, in the offer or sale of a security, the receipt of “money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.” Section 17(a)(3) of the Securities Act proscribes, in the offer or sale of a security, engaging “in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.” A violation of these provisions does not require scienter and may rest on a finding of negligence. *See Aaron v. SEC*, 446 U.S. 680, 702 (1980).

35. 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. The obligation to file such reports embodies the requirement that they be true and correct. *See, e.g., SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978). 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. A violation of these reporting provisions does not require scienter and may rest on a finding of negligence. *See SEC v. Wills*, 472 F. Supp. 1250, 1268 (D.D.C. 1978).

36. In addition, Section 13(a) of the Exchange Act requires issuers such as Newell to file periodic reports with the Commission containing such information as the Commission prescribes by rule. Quarterly and annual reports for issuers such as Newell must comply with Regulation S-K Item 303, which during the Relevant Period required, among other things, a discussion of “any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations.” It also required that reports describe “any other significant components of revenues or expenses that, in the registrant’s judgment, should be described in order to understand the registrant’s results of operations.” Instruction 3 to Item 303(a) of Regulation S-K required that the discussion and analysis in Forms 10-K “shall focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition.” Item 303(b) of Regulation S-K required that the discussion and analysis in Forms 10-Q shall discuss material changes in such known trends, uncertainties, or results of operations, including an identification of any significant elements of the registrant’s income from continuing operations which are not necessarily representative of the registrant’s ongoing business.

37. Newell did not disclose that the reclassification of consideration payable to customers was a change that caused Newell’s reported net sales and financial information not to be indicative of its future operating results, and was a significant component of revenue growth necessary to understand Newell’s results of operations during the Relevant Period; that its use of pull forwards created an uncertainty that was reasonably expected to have a material effect on its future revenue and cause reported financial information not to be necessarily indicative of future operating results; or that the actions described above materially increased Newell’s publicly stated core sales and core sales growth. During the Relevant Period, Newell lacked disclosure controls and procedures that were reasonably designed to ensure that its disclosures regarding core sales growth were accurate and complete.

38. Section 13(b)(2)(A) of the Exchange Act requires, among other things, Exchange Act Section 12 registrants to make and keep books, records, and accounts that accurately and fairly reflect the transactions and dispositions of their assets. Section 13(b)(2)(B) of the Exchange Act requires, among other things, Exchange Act Section 12 registrants 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.

Scienter is not an element of a violation of the books-and-records and internal controls provisions. *See Ponce v. SEC*, 345 F.3d 722, 737 n.10 (9th Cir. 2003).

39. Exchange Act Rule 13b2-1 prohibits any person from directly or indirectly falsifying or causing to be falsified any book, record, or account subject to Section 13(b)(2)(A). Exchange Act Rule 13b2-2 prohibits an officer or director of an issuer from, among other things, making or causing to be made a materially false or misleading statement to an accountant in connection with any required audit of the issuer's financial statements or the preparation of a report required to be filed with the Commission. Scienter is not required to establish a violation of either of these rules. *See SEC v. McNulty*, 137 F.3d 732, 740-41 (2d Cir. 1998).

40. Section 13(b)(5) of the Exchange Act prohibits any person from knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record, or account subject to Section 13(b)(2)(A).

41. Rule 100(b) of Regulation G of the Exchange Act prohibits registrants, and persons acting on their behalf, from making public a non-GAAP financial measure that contains an untrue statement of material fact or omits to state a material fact necessary in order to make the presentation of the non-GAAP financial measure, in light of the circumstances under which it is presented, not misleading.

42. Exchange Act Rule 13a-14 requires that the principal executive officer of an issuer sign a certification stating that, based on their knowledge, the issuer's Forms 10-K and 10-Q fairly present, in all material respects, the financial condition and results of operations of the issuer.

43. Exchange Act Rule 13a-15(a) requires every issuer of a security registered pursuant to Section 12 of the Exchange Act to maintain disclosure controls and procedures designed to ensure that information required to be disclosed by an issuer in reports it files or submits under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the Commission's rules and forms.

44. Based on the foregoing, the Commission finds that Newell violated Securities Act Sections 17(a)(2) and 17(a)(3); Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B); Exchange Act Rules 12b-20, 13a-1, 13a-11, 13a-13, and 13a-15(a); and Rule 100(b) of Regulation G.

45. Based on the foregoing, the Commission finds that Polk violated Exchange Act Section 13(b)(5), Exchange Act Rules 13a-14, 13b2-1, and 13b2-2, and Rule 100(b) of Regulation G, and was a cause of Newell's violations of Securities Act Sections 17(a)(2) and 17(a)(3); Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B); Exchange Act Rules 12b-20, 13a-1, 13a-11, 13a-13, and 13a-15(a); and Rule 100(b) of Regulation G.

NEWELL'S COOPERATION AND REMEDIATION

46. In determining to accept Newell's Offer, the Commission considered the cooperation it provided during the Commission's investigation, including by disclosing information about conduct that the Staff had not yet uncovered through its own investigation,

conducting an internal investigation regarding this conduct, and identifying key documents found in that investigation. This cooperation substantially advanced the quality and efficiency of the Staff's investigation and conserved Commission resources. The Commission also considered remedial acts undertaken by Newell subsequent to the period of misconduct, including changes to senior management; improvements in Newell's control environment and quarterly close process; and its investigation, training, and discipline of employees involved in "pick and holds."

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Newell cease and desist from committing or causing any violations and any future violations of Securities Act Sections 17(a)(2) and 17(a)(3); Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B); Exchange Act Rules 12b-20, 13a-1, 13a-11, 13a-13, and 13a-15(a); and Rule 100(b) of Regulation G.

B. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Polk cease and desist from committing or causing any violations and any future violations of Securities Act Sections 17(a)(2) and 17(a)(3); Exchange Act Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5); Exchange Act Rules 12b-20, 13a-1, 13a-11, 13a-13, 13a-14, 13a-15(a), 13b2-1, and 13b2-2; and Rule 100(b) of Regulation G.

C. Newell shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$12,500,000 to the Securities and Exchange Commission. Polk shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$110,000 to the Securities and Exchange Commission. 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) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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 the Respondents 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 D. Mark Cave, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

D. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the penalties referenced in paragraph C above. 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payments of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 any 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.

E. Newell acknowledges that the Commission is not imposing a civil penalty in excess of \$12,500,000 based upon its cooperation in a Commission investigation. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Newell 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 Newell, petition the Commission to reopen this matter and seek an order directing that Newell pay an additional civil penalty. Newell 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.

V.

It is further Ordered, in accordance with Polk's Offer, that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true, and that such findings shall be accepted and deemed true, without further proof by any party, in any nondischargeability proceeding involving the Commission, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Polk under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Polk of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary