

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 78884 / September 20, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17556**

**In the Matter of**

**NU SKIN ENTERPRISES,  
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 Nu Skin Enterprises, Inc. (“Nu Skin US” 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<sup>1</sup> that:

---

<sup>1</sup> 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.

## **Respondent**

1. **Nu Skin Enterprises, Inc.** is a Delaware corporation headquartered in Provo, Utah. Nu Skin US is in the business of manufacturing and marketing cosmetic and nutritional products primarily through direct selling, or multi-level marketing, channels. Its common stock is registered with the Commission under Section 12(b) of the Exchange Act and trades on the New York Stock Exchange under the symbol “NUS.”

## **Other Relevant Entity**

2. **Nu Skin (China) Daily Use & Health Products Co. Ltd. (“Nu Skin China”)** is a wholly-owned subsidiary of Nu Skin US that was incorporated in China and is headquartered in Shanghai, China.

## **Summary**

3. This matter concerns the failure of Nu Skin US to devise and maintain a reasonable system of internal accounting controls over its subsidiary’s operations in the People’s Republic of China in 2013. As a result, One Million RMB (approximately \$154,000) was transferred to a charity to obtain the influence of a high-ranking Chinese Communist party official (the “Party Official”) to impact an on-going provincial agency investigation. Nu Skin China inaccurately and/or unfairly described the purpose of the payment to the charity in its books and records as a donation rather than an improper payment to obtain the Party Official’s influence. As a result of this conduct, Nu Skin US violated the internal controls and books and records provisions of the Foreign Corrupt Practices Act (“FCPA”).

## **Nu Skin China and the Provincial Agency Investigation**

4. The laws and regulations applicable to direct selling in China (the “Direct Selling Laws”) prohibit the multi-level commission structure employed by Nu Skin US domestically. Instead, Nu Skin China has to consummate its sales primarily through retail stores, where its sales transactions are processed even if the products in question were promoted through offsite meetings. In addition, while Nu Skin China’s sales representatives receive performance-based salaries that are recalibrated periodically, they do not receive direct commissions based on the sales of other representatives they referred to the company.

5. Moreover, the Direct Selling Laws provide that before a direct selling business such as Nu Skin China can operate within a particular geographic area in China, the company must receive direct selling licenses at the national, provincial, and city levels. These direct selling licenses are conditioned on a number of factors, which typically include the business reputation of the applicant.

6. In 2013, sales representatives of Nu Skin China held an unauthorized promotional meeting in a city in which, at the time, Nu Skin China neither possessed a direct selling license nor had a physical store. Representatives of the province’s Administration of Industry and Commerce (“AIC”) discovered the meeting and initiated an investigation of Nu Skin China. Following the initial investigation, the AIC informed Nu Skin China that it had gathered enough information to

support violations of the Direct Selling Laws against the company for the unauthorized activities of its sales representatives.

7. Certain Nu Skin China personnel were concerned that a direct action against the company by the AIC would impact its long term business development, including not being able to obtain a direct selling license in the province in the near future.

### **The Charity Payment**

8. Concerned about the AIC investigation, certain Nu Skin China personnel decided to initiate a charity project in the province in order to affect the outcome of the investigation. A Nu Skin China employee contacted the Party Official, who was his acquaintance, to suggest a charity located in the province. The Party Official had a pending request to Nu Skin China to facilitate obtaining college recommendation letters to U.S. universities from an influential U.S. person for his child. The Party Official proposed a charity, although at the time a branch of the charity had not yet been established in the province and it had no operations there. The Party Official, however, was associated with the entity that was responsible for establishing the charity in the province. Further, the provincial head of the AIC had previously reported to the Party Official.

9. A week later, the AIC informed Nu Skin China that the AIC intended to charge Nu Skin China and certain of its sales staff with Direct Selling Law violations and to impose a fine against the company in the amount of 2.8 Million RMB (approximately \$431,088). In response, as reflected in an internal email, Nu Skin China informed the AIC of Nu Skin China's desire to reach an outcome in which the company was not charged and to "donate some money instead of a fine."

10. Senior personnel of Nu Skin China then made a decision to request that the Party Official personally intervene in the AIC matter in return for Nu Skin China making a One Million RMB donation to the charity identified by the Party Official.

11. As further indicia of the improper purpose for the payment to the charity to obtain the Party Official's influence with the AIC investigation, Nu Skin China also requested that Nu Skin US expedite getting college recommendation letters for the Party Official's child. While the Party Official's original request for the letters had been made prior to the AIC investigation, the request had not yet yielded results. But following the decision to seek the Party Official's assistance, as reflected in internal emails, the request for the recommendation letters was elevated to "top priority" as it was "becoming increasingly important" for Nu Skin China. Nu Skin US subsequently reported to Nu Skin China that it had secured an agreement from an influential U.S. person to write the college recommendation letters for the Party Official's child.

12. Around the same time, the AIC reiterated its intention to charge Nu Skin China with violations of the Direct Selling Laws. Following this status update, Nu Skin China determined that a public donation signing ceremony for the charitable donation should be held in a matter of days.

13. Nu Skin China personnel had alerted Nu Skin US of the proposed donation, but failed to disclose the relationship between the donation and the AIC investigation, or the relationship between the request for recommendation letters and the AIC investigation. Nu Skin

US, however, identified that a large donation in China could pose FCPA risks, so it advised Nu Skin China to consult with outside U.S. legal counsel based in China to ensure that the donation complied with the FCPA. Outside counsel, in turn, recommended that Nu Skin China include anti-corruption language, which included language regarding the illegality of influencing government officials, in the written donation agreement with the charity. That language was inserted into a draft of the donation agreement between Nu Skin China and the charity. The anti-corruption language, however, was removed from the final version of the donation agreement that Nu Skin China executed. Nu Skin US was not aware that the language had been removed.

14. Approximately one week later, the donation ceremony was held in the province. A top official of the AIC, the Party Official, and representatives of Nu Skin China all attended the donation ceremony. At the ceremony, the Party Official gave a speech praising Nu Skin China. Furthermore, the day after the donation ceremony, a Nu Skin China employee suggested contacting the Party Official to request that Nu Skin China not be named or fined by the AIC. Internal emails reflect that Nu Skin China believed that such action was “crucial for us to settle this issue [the AIC investigation] peacefully.”

15. Two days later, Nu Skin China received notice of the AIC’s final decision in which the company was neither charged nor fined.

16. In Nu Skin China’s expenditure authorization form, the “[d]etailed [p]urpose” for the payment to the charity was inaccurately and/or unfairly described as a donation rather than a payment to influence the Party Official to favorably impact the outcome of the AIC investigation. Nu Skin US also did not devise and maintain a reasonable system of internal accounting controls over its subsidiary’s operations in China to ensure that transactions were recorded as necessary to maintain accountability for assets, particularly with regard to illicit payments through the guise of charitable donations. Specifically, given the well-known corruption risks in China, Nu Skin US did not ensure that adequate due diligence was conducted by Nu Skin China with respect to charitable donations to identify links to government or political party officials and to prevent payments intended to improperly influence such persons in violation of the company’s anti-corruption policy and the FCPA.

### **Legal Standards and FCPA Violations**

17. Under Section 21C(a) 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 Exchange Act or any rule or regulation thereunder, 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.

18. Under Section 13(b)(2)(A) of the Exchange Act, issuers are required to make and keep books, records, and accounts, which in reasonable detail, accurately and fairly reflect the transactions and disposition of the assets of the issuer. 15 U.S.C. § 78m(b)(2)(A).

19. Under Section 13(b)(2)(B) of the Exchange Act, issuers are required to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that

(i) transactions are executed in accordance with the management's general or specific authorization; (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. 15 U.S.C. § 78m(b)(2)(B).

20. Nu Skin US violated Section 13(b)(2)(A) because, in its wholly-owned subsidiary's expenditure authorization form, the purpose of the payment to the charity was inaccurately and/or unfairly described as a donation rather than an improper payment to obtain the Party Official's influence. Nu Skin US also violated Section 13(b)(2)(B) because it did not devise and maintain a reasonable system of internal accounting controls over operations in China to ensure that transactions were recorded as necessary to maintain accountability for assets and/or access to assets is permitted only in accordance with management's general or specific authorization, particularly with regard to due diligence and controls surrounding foreign charitable donations.

#### **Nu Skin's Remedial Efforts**

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

#### **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 Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

B. Respondent shall, within 10 days of the entry of this Order, pay disgorgement of \$431,088, prejudgment interest of \$34,600, and a civil money penalty in the amount of \$300,000 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 of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment of the civil money penalty 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 Nu Skin US 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 Julie K. Lutz, Division of Enforcement, Securities and Exchange Commission, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, CO 80294-1961.

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.

Brent J. Fields  
Secretary