Floyd Advisory

Summary of Accounting and Auditing Enforcement Releases for the Quarter Ended June 30, 2016

Q2 REPORT 2016

CONTENTS

Introduction and Our Objective

We are pleased to present you with our summary of the U.S. Securities and Exchange Commission, Division of Enforcement's Accounting and Auditing Enforcement Releases ("AAERs") for the quarter ended June 30, 2016.

As an independent consulting firm with financial and accounting expertise, we are committed to contributing thought leadership and relevant research regarding financial reporting matters that will assist our clients in today's fast-paced and demanding market. This report is just one example of how we intend to fulfill this commitment.

The Division of Enforcement at the U.S. Securities and Exchange Commission ("SEC") is a law enforcement agency established to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. As such, the actions they take and releases they issue provide very useful interpretations and applications of the securities laws.

For those involved in financial reporting, SEC releases concerning civil litigation and administrative actions that are identified as related to "accounting and auditing" are of particular importance. Our objective is to summarize and report on the major items disclosed in the AAERs, while also providing useful insights that the readers of our report will find valuable.

We welcome your comments and feedback, especially requests for any additional analysis you would find helpful.

Floyd Advisory
JULY 2016

The Q2 2016 AAERs: Highlights

- Rule 102(e) violations accounted for the largest group of releases this quarter. Auditors are named in 71% of such releases and involve 15 auditors in 9 cases. 102(e) enforcement actions included charges against seven public accounting firms.

- The Foreign Corrupt Practices Act ("FCPA") continues to lead in terms of penalties, with one case resulting in approximately $15 million in disgorgement, prejudgment interest, and criminal penalties.

- The SEC provided an excellent discussion regarding the importance of scrutinizing transactions involving related party entities in a release adverse to a major accounting firm audit partner. We discuss the release in our Recommended Reading section.

Our Process and Methodology

The SEC identifies and discloses accounting- and auditing-related enforcement actions from within its population of civil lawsuits brought in federal court, and its notices and orders concerning the institution and/or settlement of administrative proceedings as Accounting and Auditing Enforcement Releases ("AAERs"). The disclosed AAERs are intended to highlight certain actions and are not meant to be a complete and exhaustive compilation of all of the actions that may fit into the definition above.

To meet our objective of summarizing the major items reported in the AAERs, we reviewed those releases identified and disclosed by the SEC on its website, www.sec.gov.

As part of our review, we gathered information and key facts, identified common attributes, noted trends, and observed material events. Applying our professional judgment to the information provided by the SEC, we sorted the releases into major categories (e.g., Rule 102(e) Actions, Financial Reporting Frauds, Foreign Corrupt Practices Act violations ("FCPA"), Reinstatements to Appear and Practice before the SEC, Violations of Books and Records, and Other), and classifications of the financial reporting issues involved (e.g., Improper Revenue Recognition, Manipulation of Reserves, Intentional Misstatement of Expenses, Balance Sheet Manipulation and Errors, Options Backdating, and Defalcations). Do note, when a release included more than one allegation, admission, or violation, we placed the release into the category which represented the most significant issue. For our summary of financial reporting issues, we recorded each accounting problem identified as a separate item. Based on this process and methodology, we prepared a database of the key facts in each release.

The Q2 2016 AAERs: Summary by Category and Insights from the Releases

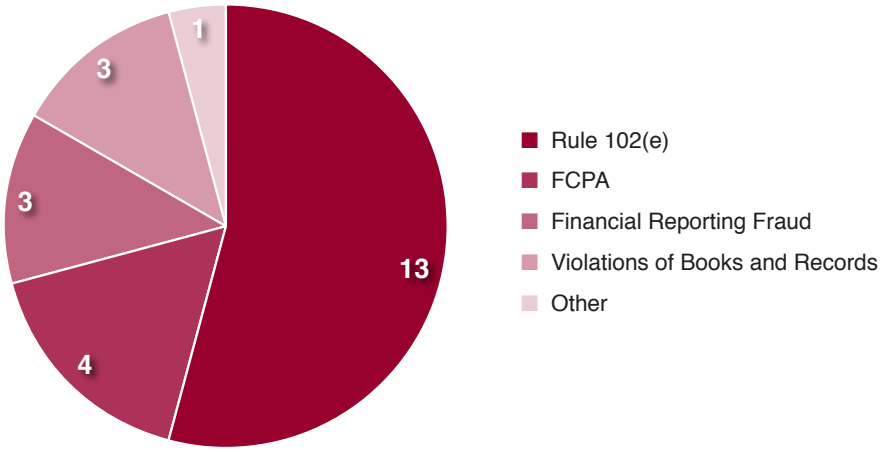
"Our capital markets expect that companies present reliable and complete financial data for investment and policy decision making. Central to this expectation is that public companies maintain reliable and trustworthy accounting records that are supported by appropriate internal controls. Being able to represent that an effective system of ICFR is in place and, where appropriate, has been audited by an independent accountant, strengthens public confidence, promotes reliable financial reporting, and encourages investment in our nation's capital markets."

Wesley R. Bricker
SEC Deputy Chief Accountant
Los Angeles, California
June 9, 2016

Remarks before the
35th Annual SEC and Financial
Reporting Institute Conference

The SEC disclosed 24 AAERs during Q2 2016, with Rule 102(e) actions representing just over 54% of the total releases. Nine of the 13 cases included actions against 15 individual auditors and seven CPA firms involved in company audits.

Q2 2016 AAERs by Category



While our categorical breakdown is analytically useful, a closer look at specific cases for each category provides a clearer understanding of the SEC's areas of focus as an enforcement agency.

Rule 102(e) Actions

Rule 102(e) actions involve the temporary or permanent censure and denial of the privilege of appearing or practicing before the SEC. For accountants, the standards under which one may be penalized with a Rule 102(e) action include reckless, as well as negligent conduct, defined as a single instance of highly unreasonable conduct that violates professional standards or repeated instances of unreasonable conduct resulting in a violation of professional standards and indicating a lack of competence.

The SEC accepted respondents' offers of settlement in 12 of the 13 AAERs involving Rule 102(e) violations. In all 12 enforcement actions, the 24 respondents involved settled without admitting or denying the SEC's findings. The SEC entered 102(e) orders against four respondents in an additional release wherein they were instructed to file an answer to the allegations. Among all the releases involving Rule 102(e) violations, one respondent consented to the entry of a final judgment without admitting or denying the SEC's findings.

Examples of the actions reported in this quarter's Rule 102(e) releases are as follows:

- ***The SEC settled an action with a public accountancy firm and three CPAs in a case arising out of their alleged issuance of 15 public company audit reports and conduct of 30 reviews of interim financial information included in issuers' periodic SEC filings while the firm was not registered with the Public Company Accounting Oversight Board ("PCAOB").*** Per the release, the firm's audit reports misrepresented that the firm was properly licensed and registered with the PCAOB and falsely stated that it conducted audits in accordance with PCAOB standards. Under Commission rules and applicable state and federal law, the firm was found unqualified to issue the reports because it was not registered with the PCAOB and was not licensed by the state where it is incorporated to practice public accountancy. Independence concerns are also raised in the AAER. Additionally, per the release, the firm did not conduct its audits in accordance with professional standards.

- ***The SEC charged a certified public accountant with participating in a fraudulent billing scheme.*** The CPA was licensed to practice in the State of Washington and served as the Chief Accounting Officer and Vice President of Finance and Accounting of a commercial mobile-fueling and lubricant company from approximately 2007 until at least March 2012. In the scheme, respondents allegedly misled investors by materially overstating the company's financial performance and falsely attributing purportedly improved financial results to legitimate business factors. Per the release, company financial statements released to the investing public were not in compliance with GAAP, and the respondent and others allegedly provided false information to independent auditors. Interestingly, the release also finds fault with the CPA's conduct for "not disclosing that in reality the purported improvement in its financial results was due to the fraudulent billing scheme".

"The strength of our enforcement program is most visible through the quality and breadth of the cases we brought—cases that span the entire securities industry, including "first of their kind" actions and heightened attention on gatekeepers, financial reporting and issuer disclosure, asset management, and market structure issues. As a testament to the staff's dogged efforts, approximately two-thirds of our substantive actions in the last fiscal year included charges against individuals."

Andrew J. Donohue
SEC Chief of Staff
London, England
June 28, 2016

InvestoRegulation Conference
Keynote Address: SEC Regulation Outside the United States
"The SEC at Home and Abroad"

- ***The former chief accounting officer for a bankrupt mortgage company, who was also formerly a certified public accountant in California, entered into a settlement with the SEC related to alleged material misstatements concerning other-than-temporary impairment ("OTTI").*** According to the complaint, in the weeks leading up to the filing of the mortgage company's 2007 Form 10-K, it allegedly received more than $300 million in margin calls and was late in meeting margin calls from at least three lenders, and was therefore subject to being declared in default of its lending agreements. The complaint also alleged that given the company's severe liquidity crisis, it improperly failed to recognize on its income statement over $400 million in alleged losses associated with its impaired assets that served as collateral for the company's loans, and therefore allegedly erroneously reported that it had returned to profitability.

- ***The SEC settled with a CPA firm and four of its professionals who allegedly failed to comply with some or all of the following requirements in PCAOB standards:*** (1) obtain sufficient appropriate evidence to provide a reasonable basis for the audit opinion; (2) evaluate the reasonableness of accounting estimates made by management in the context of the financial statements taken as a whole and adequately document the corresponding audit procedures performed; (3) properly document procedures relating to the evaluation of the adequacy of disclosure in financial statements; (4) obtain appropriate engagement quality reviews; (5) properly examine journal entries for evidence of possible misstatement due to fraud and document the performance of journal entry testing; (6) document how the firm overcame the presumption to send accounts receivable confirmations; (7) perform analytical procedures related to revenue; (8) properly supervise the audit; and (9) exercise due professional care and professional skepticism.

- ***The SEC accepted offers of settlement from the former CFO, CEO, and an outside auditor in an action involving allegations of financial accounting and reporting fraud, as well as audit failures, related to the valuation of certain oil and gas assets.*** According to the complaint, the oil and gas company purchased these assets for $2.25 million in cash – along with the assumption of certain liabilities it valued at approximately $2 million – during a competitive bid in a bankruptcy proceeding in December 2009. The SEC states that the company subsequently reported those assets at an overstated value of $480 million and allegedly recognized a one-time "bargain purchase" gain of $277 million for its fiscal third quarter ended January 2010 and fiscal year ended April 2010, along with other alleged financial reporting problems. The former CFO and outside auditor both accepted the SEC's Rule 102(e) sanctions.

- ***The SEC accepted offers of settlement from an electronic contract manufacturing services company, former controller and another officer of a subsidiary manufacturer related to allegations of filing false financial statements.*** The alleged misconduct related to overstating work-in-process inventory ("WIP"). Per the SEC, the former controller made false accounting entries into a WIP spreadsheet. It is alleged the former controller also kept material in WIP that had already been used and allegedly added inventory to WIP that was missing. The two respondents allegedly engaged in this misconduct in order to meet the subsidiary manufacturer's budgeted gross profit margins.

"Investors and regulators everywhere share a common interest in effective disclosures, robust corporate governance practices and strong corporate cultures, which are fundamental for fair and efficient markets and to achieve sustainable value."

Chair Mary Jo White
U.S. Securities and Exchange Commission
San Francisco, California
June 27, 2016

International Corporate Governance Network Annual Conference: Focusing the Lens of Disclosure to Set the Path Forward on Board Diversity, Non-GAAP, and Sustainability
Keynote Address via videoconference

FCPA Violations

There was one FCPA-related release in Q2 2016, resulting in almost $15 million in disgorgement, interest, and penalties that included as part of its settlement with the SEC a $3,402,000 criminal fine with the United States Department of Justice.

- ***According to the SEC, a Massachusetts-headquartered medical device manufacturer and former Chief Financial Officer of the company's wholly-owned Danish subsidiary violated the books and records and internal accounting controls provisions of the Foreign Corrupt Practices Act ("FCPA").*** For ten years, the Danish subsidiary allegedly participated in hundreds of highly suspicious transactions at its distributors' direction which posed a significant risk of bribery or other improper conduct. The suspicious transactions involved the subsidiary's distributor in Russia, as well as its distributors in Ghana, Israel, Kazakhstan, Ukraine, and Vietnam. The AAER alleges that transactions routinely involved fictitious invoices issued by the subsidiary at inflated prices, overpayments to the subsidiary from the distributors against the inflated invoices, and subsequent payments by the subsidiary out of the distributors' excess funds to unknown third parties all over the world for unknown reasons. According to the complaint, for at least nine years the subsidiary acted as a conduit for its distributors to funnel approximately $20 million to parties for reasons unknown to the subsidiary and over $16 million allegedly from the subsidiary's Russian distributor. It is alleged that the subsidiary and, by extension, the medical device manufacturer, derived millions in profits from its sales to the distributors that directed these suspicious transactions. Per the release, the subsidiary's participation in the transactions resulted in the medical device manufacturer failing to maintain accurate books and records. In addition, per the release, the manufacturer also failed to devise and maintain an adequate system of internal accounting controls sufficient to prevent and detect this improper conduct that occurred over nearly a decade.

Financial Reporting Frauds

There were three AAERs that we categorized as financial reporting frauds during the quarter, including the Swisher Hygiene, Inc. release discussed in our Recommended Reading section, as well as the following:

- ***The SEC ordered proceedings against a Switzerland-based computer and electronic peripherals manufacturing company with allegations of recurring instances of improper accounting in three separate reporting areas.*** The first area concerns the company's alleged actions and omissions in fraudulently accounting for the write-down of a failed product in its fiscal year 2011 financial statements. The second area relates to actions and omissions by the company concerning the accounting for the Company's warranty liabilities in its 2012 and 2013 financial statements, and the alleged failure to correct, in its 2013 financial statements, a known error in not amortizing intangibles from a prior acquisition. The third area concerns books and records, reporting, and control violations in the company's revenue recognition in its Americas region in 2009. The company and two respondents have submitted settlement offers with the SEC without admitting or denying the findings.

"Through our international cooperation, we have been able to leverage the information and resources of our counterparts to strengthen our own enforcement efforts. Over the past few years, we have worked with our international partners to establish meaningful channels for sharing information. … It should thus come as no surprise that more and more of our investigations each year have an international component. Our efforts to foster greater cooperation continue to produce tangible results."

Andrew J. Donohue
SEC Chief of Staff
London, England
June 28, 2016

InvestoRegulation Conference
Keynote Address, SEC Regulation
Outside the United States
"The SEC at Home and Abroad"

- ***The SEC charged the CEO of an Alaskan subsidiary of a Texas-based oil and gas exploration and production company with alleged financial accounting and reporting fraud related to the valuation of assets.*** The company allegedly reported their Alaskan assets at an overstated value and recognized a one-time "bargain purchase" gain. The company allegedly failed to account for the acquisition of assets in accordance with GAAP. Contrary to authoritative accounting guidance, the complaint states that the company used as fair value an amount in a reserve report that was prepared by a petroleum engineering firm. According to the SEC, the reserve report materially overstated the value of the oil and gas reserves in part because it contained expense projections that were materially understated by the respondent. In addition, the claim states that respondent caused the company to misstate the fair value of certain fixed assets by allegedly altering an insurance report to make it appear as if it were a third party report on the replacement value of those assets.

Violations of Books and Records

This quarter we categorized four AAERs under Violations of Books and Records, a category that includes alleged improper accounting treatments and internal control problems deemed worthy of an enforcement action but not meriting financial reporting fraud allegations. Two examples of this quarter's releases are as follows:

- ***The SEC charged a specialty retailer and direct marketer of outdoor merchandise and a certified public accountant with violations of books and records, and lack of internal controls.*** A according to the AAER, the retailer, a Nebraska-based company, entered into a new intercompany agreement ("ICA") with its wholly-owned bank subsidiary that increased the amount the bank paid to the retailer each quarter for the bank's use of the company's intellectual property and trademarks and for the cost of bank promotions relating to the Visa credit card that the bank issued (the "promotions fee"). Contrary to GAAP and statements in the retailer's periodic filings, for each quarter and fiscal year-end for 2012, the retailer allegedly failed to eliminate the intercompany promotions fee in preparing its consolidated financial statements. The retailer's alleged failure to comply with this GAAP requirement resulted in an understatement of merchandise costs and a corresponding understatement of financial services revenue on the company's consolidated income statement. According to the SEC, this in turn increased the retailer's merchandise gross margin percentage, a key company-specific financial metric that signaled the profitability of the company and was referenced by the company in earnings releases and analysts calls. Per the release, this resulted in materially misleading financial disclosures in the company's 2012 MD&A and earnings releases that were reinforced by the retailer's incorrect statements in its periodic filings that "[a]ll intercompany accounts and transactions have been eliminated in consolidation."

"...management has the responsibility to carefully evaluate the severity of identified control deficiencies and to report, on a timely basis, all identified material weaknesses in ICFR. Any required disclosure should allow investors to understand the cause of the control deficiency and to assess the potential impact of each for disclosure as a material weakness. "

Wesley R. Bricker
U.S. Securities and
SEC Deputy Chief Accountant
Los Angeles, California
June 9, 2016

Remarks before the
35th Annual SEC and Financial
Reporting Institute Conference

- ***A New York-based Company that provides execution and advisory services in commodities, currencies and international securities allegedly violated the reporting, books and records, and internal control provisions of the Exchange Act.*** According to the SEC, between calendar years 2010 and 2013, the company allegedly overstated its operating revenues by $10 million and its net income by $6 million as a result of alleged accounting errors in recording and reporting over-the-counter ("OTC") derivative trading gains at a subsidiary. The SEC also claims that the company's internal accounting controls failed to prevent or detect accounting errors in a timely manner. In 2014, the company restated its financial statements, and determined that some of its controls were not designed or operating effectively, and reported the existence of a material weakness in internal control over financial reporting ("ICFR") in 2013. The company has submitted settlement offers with the SEC without admitting or denying the findings.

- ***The SEC settled with a New York-based finance company related to financial reporting problems.*** According to the SEC, over a number of years, the company made accounting errors that resulted in material inaccuracies in periodic reports filed by four leasing funds under their management. Due to alleged inadequate internal accounting controls and the alleged misapplication of GAAP in certain instances, the SEC claims the company did not accurately report financial results and had inaccuracies in its books and records for the four leasing funds from 2009 through 2012. Among other claims by the SEC, the company's accounting errors allegedly resulted in one or more of the relevant leasing funds not recognizing certain required asset value impairments, overstating post-impairment values, or overstating residual values in multiple reporting periods resulting in overstatements of net income (or understatements of net loss) and overstated asset and equity values as recorded in the company's financial statements for the four funds.

"...an effective system of ICFR must include a process to identify and assess those internal and external factors that can significantly affect a company's ability to achieve the objective of reliable financial reporting. Such factors include the major changes in GAAP that will become effective over the next several years."

Wesley R. Bricker
SEC Deputy Chief Accountant
Los Angeles, California
June 9, 2016

Remarks before the
35th Annual SEC and Financial
Reporting Institute Conference

The Q2 2016 AAERs: Summary of Financial Reporting Issues

To report on the frequency of financial reporting issues involved in Q2 2016 AAERs, we identified the accounting problem(s) in each AAER based on the classification definitions below:

Classification	Definition
Balance Sheet Manipulation and Errors	Misstatement or misrepresentation of asset balances and the recording of transactions inconsistent with their substance
Intentional Misstatement of Expenses	Deceptive misclassifications and understatements of expenses
Improper Revenue Recognition	Overstated, premature, and fabricated revenue transactions reported in public filings
Manipulation of Reserves	Improperly created, maintained, and released restructuring reserves, general reserves, and other falsified accruals

The chart below illustrates the frequency of financial reporting issues by category among all AAERs during Q2 2016. Balance Sheet Manipulation and Errors remains the top category for the sixth straight quarter. Notably, many enforcement actions with incidents of wrongdoing related to revenue recognition, reserve accounting, and recording expenses itemized in our analysis of each release also impact company balance sheets.

Financial Reporting Issues Identified in Q2 2016 AAERs

"The SEC has an impact on corporate governance through its disclosure powers—requiring public companies to provide investors with the information they need to make informed investment and voting decisions. The SEC thus does not decide who may sit on a corporate board, but our rules do require disclosure about those who serve or are nominated to serve as directors and, importantly, why they were selected to serve."

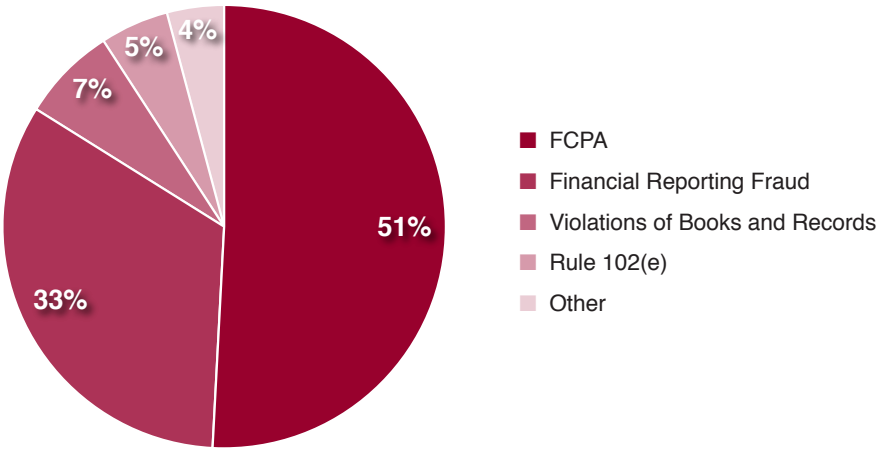
Chair Mary Jo White
U.S. Securities and Exchange Commission
San Francisco, California
June 27, 2016

International Corporate Governance Network Annual Conference: Focusing the Lens of Disclosure to Set the Path Forward on Board Diversity, Non-GAAP, and Sustainability
Keynote Address via videoconference

The Q2 2016 AAERs: Comparison of Fines Ordered against Respondents by Category

The Foreign Corrupt Practices Act "FCPA" category accounts for the majority of all monetary penalties in Q2, with one case resulting in almost $15 million in disgorgement, prejudgment interest and criminal penalties. Unlike enforcement actions in our other categories, the single FCPA case in this category includes a criminal fine to be paid to the United States Department of Justice. Below is a percentage breakdown of the penalties and interest payments ordered to be paid by the respondent's in this quarter's AAERs.

Q2 2016 Penalties and Interest by Category



Notable Q2 2016 AAERs for "Recommended Reading"

While reviewing all of the SEC's AAERs would prove insightful, certain releases present information that is especially worthy of further review and analysis by those involved with financial reporting matters. We deem these particular releases as earning the distinction of Recommended Reading for our clients.

For this quarter, we selected two AAERs to highlight. The first release involves alleged improper professional conduct by the engagement partner responsible for the audit of an automobile battery manufacturer's 2010 financial statements. The second AAER summarized below provides details regarding an alleged financial statement fraud scheme complete with email descriptions regarding the manipulation of results during the quarterly closing process.

Accounting and Auditing Enforcement Release No. 3767 / April 19, 2016, Administrative Proceeding File No. 3-17214, In the Matter of Robert D. Hesselgesser, CPA, Respondent.

Per the AAER, an audit partner violated Public Company Accounting Oversight Board ("PCAOB") Standards by not performing sufficient procedures to support his audit conclusions that management of his audit client had appropriately accounted for investments in one of its customers and met the revenue recognition criteria for sales to the same customer.

Certain types of transactions should always raise warning signals to users of financial statements, as well as auditors. The combination of an investment in a business and sales to the same business are excellent examples of transactions that raise warning signals and that should make one pause and scrutinize the substance of the transactions. This becomes even more critical when there are clear signs that the customer is in financial distress, which is the case in the situation discussed in this release.

The audit client designed, manufactured and developed car batteries, which it sold to, among others, a Norwegian-based electric car manufacturer. The audit client also held an equity interest in the Norwegian company, and lent it money to fund its operations. The connectivity and overlap of the entities also involved the audit client's CEO and Board Chair serving as the Norwegian company's Board Chair. Adding to the complexity of the situation, the Norwegian company was experiencing operational difficulties and its financial condition was deteriorating. These facts raise concerns about the fair value of the client's investment in the Norwegian company, as well as the collectability of outstanding loans and accounts receivable.

Not surprisingly, the Norwegian company failed, and the client's support for the financial statement assertions related to the fair value of the investments, the accounts receivables, and the timing of the revenue recognition for sales to the Norwegian customer all became subject to scrutiny, as did the audit of the same accounts.

"For example, under the Sarbanes-Oxley Act, directors who are members of an audit committee of public companies listed on national exchanges must be independent and, if at least one member is not a "financial expert," companies must disclose that fact and say why."

Chair Mary Jo White
U.S. Securities and Exchange Commission
San Francisco, California
June 27, 2016

International Corporate Governance Network Annual Conference: Focusing the Lens of Disclosure to Set the Path Forward on Board Diversity, Non-GAAP, and Sustainability
Keynote Address via videoconference

Several noteworthy matters are discussed in the release, but the SEC's findings of fault by the auditor are particularly interesting. Importantly, the SEC recognized that the audit client did not provide material information regarding the financial condition of the related party entity, a situation that generally benefits the defense of the auditor. However, despite this alleged improper conduct by the audit client, the SEC held the auditor accountable based on the failure to exercise due professional care and professional skepticism during the audit when inappropriately relying on management's impairment analysis and associated conclusion not to impair assets, even though the auditor was aware of certain impairment indicators during the audit. Among other things, the auditor allegedly knew that:

- In the third quarter of 2010, the Norwegian company ceased to pay its accounts receivables and received funding from the client; and
- In the fourth quarter of 2010, the Norwegian company continued to require funding, and payment terms on the amounts loaned to the client had been extended multiple times.

In addition, the auditor failed to properly perform procedures to determine whether revenue from the Norwegian company could be recorded by the audit client, given that the audit client did not have a formal written revenue recognition policy, had not conducted a collectability analysis, and collectability was not reasonably assured based on the facts described above, all of which were allegedly known by the auditor.

The release describes in detail the following aspects of Generally Accepted Auditing Standards when describing the failures attributable to the audit partner.

- Failure to Exercise Due Professional Care and Skepticism. PCAOB Standard AU § 230.07.
- Failure to Obtain Sufficient Competent Evidential Matter with Respect to Transactions with a Related Party. PCAOB Standard AU § 326.01.
- Failure to Properly Utilize Management Representations. PCAOB Standard AU § 333.01.
- Failure to Maintain Adequate Work Paper Documentation PCAOB Auditing Standard No. 3, paragraphs 1 and 6.
- Failure to Adequately Plan and Supervise the Audit. PCAOB Standard AU § 311.01

Accounting and Auditing Enforcement Release No. 3775 / May 24, 2016, Administrative Proceeding File No. 3-17257, In the Matter of Swisher Hygiene, Inc., Respondent.

The Swisher Hygiene Inc. ("Swisher") release describes an alleged financial statement fraud scheme complete with email discussions regarding the manipulation of results during the quarterly closing process.

Swisher offered hygiene and sanitizing solutions that included cleaning and sanitizing chemicals, restroom hygiene programs, and a range of related products and services throughout North America and internationally. During 2011, Swisher acquired 63 franchises and independent businesses and financed some of these acquisitions and its operations, in part, with a bank line of credit secured on March 30, 2011.

"The ICFR auditing issues identified by the PCAOB may not be just a problem of audit execution but rather, at least in part, be indicative of deficiencies in management's controls and assessments. … Notwithstanding the need for continued improvement in the assessments and reporting of ICFR by both management and auditors, both the PCAOB and the SEC staff are keenly aware of the ongoing discussions regarding the impact of some of the changes made by audit firms to their audit methodologies, policies, and procedures in response to the PCAOB inspection findings in this area."

Wesley R. Bricker
SEC Deputy Chief Accountant
Los Angeles, California
June 9, 2016

Remarks before the
35th Annual SEC and Financial
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Swisher's loan covenants required it to periodically reach certain consolidated EBITDA targets. Swisher reported adjusted EBITDA, which is a non-GAAP financial measure, in its public filings and to its Board of Directors. Among the apparent misstatements, during the financial statement closing process for the second, third and fourth quarters of 2011, a Swisher senior officer exerted pressure on the accounting staff to record improper accounting entries to achieve the adjusted EBITDA targets required by the loan covenants.

Swisher's earnings management scheme involved (i) the determination and communication of an adjusted EBITDA target by a Swisher senior officer; (ii) the recording of inappropriate accounting entries to achieve the target; and (iii) the immediate cessation of the closing process once the target was achieved. After achieving the adjusted EBITDA target, the Swisher senior officer would advise the team that additional entries would not be recorded.

Senior officers contacted divisional CFOs and instructed them how much adjusted EBITDA was required by their division beyond their figures initially reported to the corporate accounting department. In some instances, the divisional CFOs were given specific accounts to examine. With respect to the second and third quarters of 2011, after several days of additional analysis, Swisher achieved its adjusted EBITDA target. At that point, the financial statement closing process concluded, and the finance team was advised of the result and the fact that additional entries would not be recorded.

As an example of the emails detailing this process, on July 26, 2011, a Swisher senior officer sent an email to accounting personnel, stating:

"We currently are at $2.370 million of adjusted EBITDA. I would like to get the final entries booked and believe based on what I see right now we can close at slightly above $3.0 million."

The email then listed a number of open items that would result in an adjusted EBITDA number of $3,046,684.

In another example of an email during the financial statement closing process, a Swisher senior officer sent an email to a divisional CFO stating, under the subject line: "URGENT-Call me asap"

"Please call me as soon as possible. I need to talk to you about your Q3 numbers. I need you to go back and squeeze them for an additional $220K of EBITDA. I suspect that you should have room in some of your reserves. You should have $300K of Workers comp accruals we set up on the operating balance sheet that should still be there."

The divisional CFO responded, with regard to the Workers Comp reserve, that "we just had the audit and haven't got the results ...so we didn't want to touch it yet...but if we are at the "rainy day" then maybe we take it now. Besides those 2 items...we scrubbed the hell out of our #s this month hoping to get closer to budget. Overall I think I can take the $225 out of reserves...but I will leave me naked on reserves after this."

"In too many cases, the non-GAAP information, which is meant to supplement the GAAP information, has become the key message to investors, crowding out and effectively supplanting the GAAP presentation. ... I strongly urge companies to … revisit their approach to non-GAAP disclosures. I also urge again … that appropriate controls be considered and that audit committees carefully oversee their company's use of non-GAAP measures and disclosures."

Chair Mary Jo White
U.S. Securities and Exchange Commission
San Francisco, California
June 27, 2016

International Corporate Governance Network Annual Conference: Focusing the Lens of Disclosure to Set the Path Forward on Board Diversity, Non-GAAP, and Sustainability Keynote Address via videoconference

The Swisher senior officer responded: "Do your best to get $200K. We need to stretch a bit to get to the numbers in Q3. I think we all will be a bit bare. At the end of the day if we get to the number I will let some come back your way."

The $225,000 subtracted from the insurance reserves included $175,000 taken out of the worker's compensation reserve to meet the adjusted EBITDA target.

The senior officer then sent an email to another member of the accounting staff indicating that Swisher would "refill the cookie jar" using items to be found in a monthly operating review. Later in the second quarter close process, a senior accounting officer, in an email exchange with accounting personnel discussing another accounting issue, stated:

"Do we have anything left we can capitalize in installs or FSA? It seems like we didn't pick up everything we could have. I need about $250K in income to get to 3MM."

"Let's work up the number. If we are short. (sic) We will get it in bad debt. Good work. Can we get it today?"

During the third quarter closing process, a senior accounting officer sent an email detailing the September adjusting entries which would take EBITDA from $2.5 million to $3.445 million. One of the entries is "Lower bad debt to calculated requirement."

Interestingly, the Swisher scheme became public after a terminated member of the accounting department decided to disclose the wrongdoing to the general counsel and auditors.

The release presents an accounting tutorial, filled with GAAP citations, for each of the financial reporting matters discussed. However, equally as significant to the reader of the release is how the "tone at the top", in this case including senior officers and divisional CFOs, can affect the actions of an accounting organization and impact the integrity of the financial statement closing process.

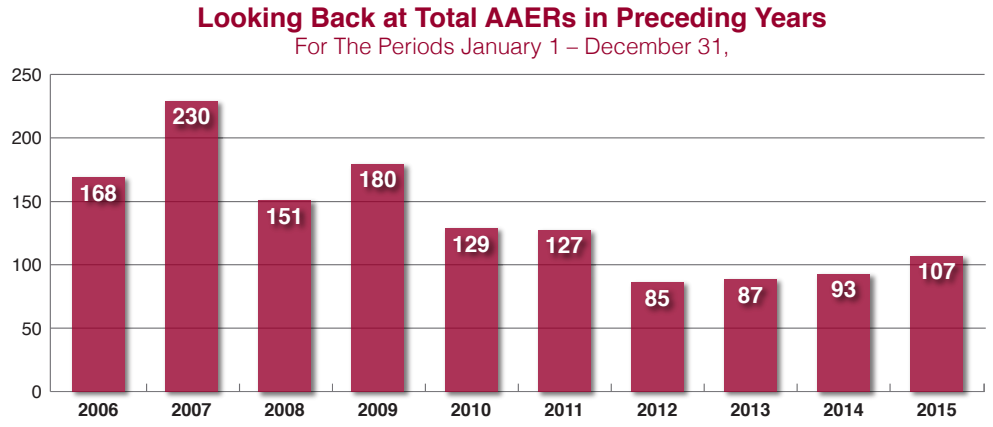
"...a key consideration for all issuers should be setting the right "tone at the top" by creating an environment in which management and employees from all relevant levels and areas in the organization can combine their respective expertise in performing the analysis and evaluating alternatives to arrive at well-reasoned professional judgments."

Wesley R. Bricker
SEC Deputy Chief Accountant
Los Angeles, California
June 9, 2016

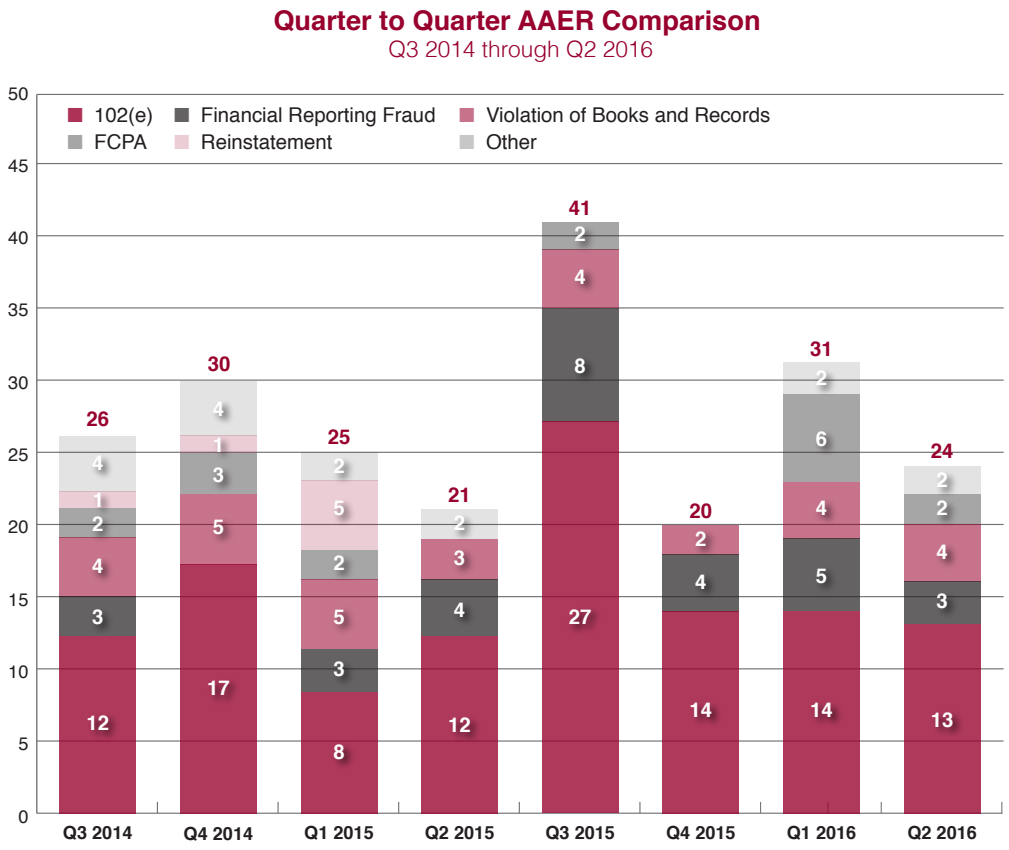
Remarks before the
35th Annual SEC and Financial
Reporting Institute Conference

Prior Period Comparisons: Year over Year and Quarterly Statistics

As described in the section titled "Our Process and Methodology," AAERs are intended to highlight certain actions and are not meant to be a complete and exhaustive compilation of all of the actions that may fit into the definition the SEC provides for the classification. That said, comparisons of the number of AAERs between periods may be a useful gauge of the SEC's activities.



The following chart maps quarterly totals for each category over the past 8 quarters.



"And the relationship between companies and investors has thrived —mainly as a result of our disclosure system. Disclosure is what spurs the formation, and the continuing reassessment, of these matches or relationships—it is how companies present themselves to investors, and how investors, who need to grow their capital, find just the right match for them. It is how workers saving for retirement find the right mutual fund or investment adviser, how institutional investors identify long term investments, and how analysts begin their research."

Kara M. Stein
SEC Commissioner
Denver, Colorado
May 6, 2016

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ACKNOWLEDGEMENT
We wish to acknowledge the valuable contribution to this analysis by Daniel J. Terceiro and George R. Ives.

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ABOUT Floyd Advisory
Floyd Advisory is a consulting firm providing financial and accounting expertise in areas of Business Strategy, Valuation, SEC Reporting, and Transaction Analysis.

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