

[Securities Regulation Daily Wrap Up, ENFORCEMENT—W.D.N.C.: Hygiene company faces criminal fraud charges, \(Oct. 9, 2015\)](#)

Securities Regulation Daily Wrap Up

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By Kevin Kulling, J.D.

The U.S. Attorney's Office in North Carolina filed criminal securities fraud charges against Swisher Hygiene, Inc. and a senior executive for participating in a scheme to materially misrepresent Swisher's financial position ([U.S. v. Swisher Hygiene, Inc.](#), October 7, 2015).

The U.S. Attorney's office also [announced](#) that Swisher had entered into a deferred prosecution agreement in which it accepted responsibility for the accounting fraud scheme and agreed to pay a \$2 million penalty. The senior executive, John Pierrard, the former Director of Financial Planning and Analysis, also agreed to plead guilty for his role in manipulating the firm's books and records to fraudulently inflate reported earnings. He has not been sentenced.

The fraud scheme. Swisher Hygiene is a Charlotte, North Carolina-based corporation and a leading provider of hygiene and sanitation solutions throughout North America and internationally. According to the bill of information, the purpose of the accounting fraud was to ensure that Swisher consistently reported that its adjusted earnings had met or exceeded executive management's forecasts and to conceal the existence of the fraud from its auditors, the financial institution with which it had an ongoing credit agreement, and the investing public.

From about 2011 through about early 2012, Swisher and certain employees devised and carried out a scheme to defraud the investing public by materially misrepresenting Swisher's financial position as reported in its Forms 10-Q and 10-K, according to the information.

The information indicates that the accounting fraud scheme involved the creation of fraudulent accounting entries in multiple accounts of Swisher's books and records, including those related to acquisition expenses, "bad debt" or allowances for doubtful accounts receivable, workers compensation reserves, and marketing expenses.

As a result of the scheme, Swisher filed fraudulent and misleading forms for the second and third quarters of 2011. Swisher attempted to do the same with regard to its 2011 Form 10-K, prior to the accounting fraud conspiracy being uncovered.

Fraud uncovered. The scheme was uncovered after an employee was directed by senior management to make a fraudulent accounting entry in hopes of hitting earnings forecasts. The employee repeatedly refused and was fired. The employee reported his findings to the company's audit committee, which launched an investigation that ultimately uncovered the fraud. The information noted that upper level executives who were responsible for the scheme provided false and/or misleading information to the audit committee investigators.

The case is No. [3:15-cr-237](#).

Attorneys: Maria Kathleen Vento, U.S. Attorney's Office, for the United States of America.

Companies: Swisher Hygiene Inc.

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