

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 66268 / January 30, 2012

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3358 / January 30, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14723

In the Matter of

**SYMMETRY MEDICAL,
INC. and FRED L. HITE,**

Respondents.

**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 AND A CIVIL
PENALTY**

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 Symmetry Medical, Inc. (“Symmetry” or “the Company”) and Fred L. Hite (“Hite”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, each of the Respondents has submitted an Offer 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 each and over the subject matter of these proceedings, which are admitted, Respondents consent 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 and a Civil Penalty (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that:

A. SUMMARY

1. In April 2008, Symmetry restated its financial statements for its 2005 and 2006 fiscal years and its first and second quarters of fiscal 2007, along with selected financial data for its 2003-2006 fiscal years. The restatement was required because of a financial fraud orchestrated by senior management at one of Symmetry's wholly owned subsidiaries, the Sheffield, England-based Symmetry Medical Sheffield LTD, f/k/a Thornton Precision Components, Limited ("TPC"), whose financial data was at all relevant times consolidated into Symmetry's financial statements filed with the Commission. Among other things, TPC's senior officers—one of whom was also an officer of Symmetry—materially overstated TPC's revenues and assets, materially understated its expenses, and falsified corporate books and records. This misconduct went undetected and uncorrected in part because Symmetry failed to devise and maintain adequate internal accounting controls and because TPC personnel circumvented the controls that did exist. The fraud at TPC caused Symmetry to file with the Commission eight quarterly reports on Form 10-Q and three annual reports on Form 10-K that materially misstated the Company's consolidated financial results throughout the relevant period. It also caused Symmetry's books and records to be materially inaccurate throughout the relevant period.

2. Moreover, in July 2006, Symmetry's CFO (Respondent Hite), did not provide Symmetry's Audit Committee with a copy of a status report concerning TPC by Symmetry's former Director of Internal Audit (the "IA"). In the report, the IA identified exceptions at TPC, citing among other things bill-and-hold transactions, and failures by TPC (i) to provide requested evidence; (ii) to provide complete evidence; and (iii) to perform proper account reconciliations. In the report the IA also sought permission to solicit outsourcing proposals from other "Big Four" firms to provide, for the balance of 2006 and for 2007, internal audit services at TPC that would include "internal controls testing and financial audits" there. The IA resigned from Symmetry shortly after preparing this report, and accordingly, was not present at the next Audit Committee meeting (held on July 26, 2006) to present the foregoing findings and request concerning TPC. Hite—the conduit for materials to be included in board packets for directors' consideration—provided the status report to the Company's independent auditor, but did not include it in the Board Packet for the July 2006 Audit Committee meeting, and the Committee did not otherwise learn of the report until after the fraud at TPC was discovered in September 2007.

3. Finally, Hite received bonuses and incentive-based and equity-based compensation from Symmetry, and also realized Symmetry stock-sale profits, during periods covered by the Company's April 2008 restatement, for which he has not, to date, reimbursed Symmetry.

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.

B. RESPONDENTS

4. **Symmetry Medical, Inc.** (“Symmetry” or “the Company”) is a Delaware corporation headquartered in Warsaw, Indiana. Through its operating subsidiaries, Symmetry is a manufacturer of medical implants and instruments and also manufactures specialized products for the aerospace industry. Since its December 2004 initial public offering, Symmetry’s common stock has been registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange. At all relevant times, TPC was one of Symmetry’s operating subsidiaries, and accounted for a substantial portion of Symmetry’s consolidated revenues and net income.

5. **Fred L. Hite** (“Hite”), age 44, has served as Symmetry’s Chief Financial Officer and Senior Vice President since March 2004.

C. FACTS

The Fraud at TPC

6. Beginning prior to Symmetry’s December 2004 initial public offering, and continuing until late September 2007, personnel at the Company’s TPC subsidiary—led by certain members of TPC’s senior management—engaged in a financial fraud through which TPC’s consolidated assets and earnings were materially overstated. As a result, the financial statements included in Symmetry’s annual reports on Form 10-K for its 2004, 2005 and 2006 fiscal years, as well as its quarterly reports on Form 10-Q for (among other quarters) the first and second quarters of its 2007 fiscal year, were materially false and misleading and did not comply with generally accepted accounting principles (“GAAP”). The financial fraud at TPC involved the systematic understatement of expenses and overstatement of assets and revenues, and was achieved primarily by improperly and prematurely recognizing revenue, improperly capitalizing expenses, overvaluing inventory, and understating costs of goods sold. The scheme stopped only when, on September 24, 2007, a manager at TPC disclosed the scheme to Symmetry’s CEO.

Symmetry’s 2008 Restatement

7. Several months later, as a direct result of the fraud at TPC, Symmetry restated its financial statements for its 2005 and 2006 fiscal years and for the first two quarters of its 2007 fiscal year. Symmetry also restated selected financial data for its 2003-2006 fiscal years. The cumulative impact of the restatement—as the table below reflects—was, among other things, to reduce Symmetry’s net income for its 2004 fiscal year from \$11.7 million (as originally reported) to \$8.4 million (as restated), its net income for its 2005 fiscal year from \$31.8 million (as originally reported) to a net *loss* of \$9.9 million (as restated), and its net income for its 2006 fiscal year from \$24.1 million (as originally reported) to \$18.5 million (as restated):

Fiscal Period	Reported Income	Restated Income	Difference	Overstatement
FY 2004	\$11.7 million	\$8.4 million	-\$3.3 million	39%
FY 2005	\$31.8 million	-\$9.9 million	-\$41.7 million	421%²
FY 2006	\$24.1 million	\$18.5 million	-\$5.6 million	30%
Q1 2007	\$3.7 million	\$1.6 million	-\$2.1 million	131%
Q2 2007	\$4.4 million	\$4.7 million	+ 0.3 million	-6.4%³

8 The restatement also caused the following percentage reductions to Symmetry's financial statement line items for accounts receivable, inventories, and total assets:

Balance Sheet Item	FY 2005	FY 2006	Q1 2007	Q2 2007
A/R (Net)	-18%	-31%	-30%	-28%
Inventories	-28%	-30%	-34%	-30%
Total Assets	-13%	-14%	-15%	-14%

9. In the seven months between the close of trading on October 4, 2007, after which Symmetry made its first disclosure concerning accounting irregularities at TPC, and the close of trading on April 25, 2008, the day after Symmetry filed its restatement, Symmetry's stock price fell more than 26%, from \$17.74 per share to \$13.05 per share.

Symmetry's Deficient Internal Controls

10. Between 2004 and September 2007, Symmetry failed to implement and maintain adequate internal controls over financial reporting that were sufficient to provide reasonable assurance that Symmetry's financial statements were accurately stated in accordance with GAAP. As a result, Symmetry's accounting controls failed to prevent or detect the above-described fraud at TPC that led to the Company's April 2008 restatement.

11. Symmetry did not maintain an effective control environment at its TPC subsidiary. This control deficiency included inadequate operation of corporate entity-level controls, including monitoring controls that were not sufficiently sensitive in scope and therefore failed to detect and prevent on a timely basis management override of controls at TPC and collusion of TPC's management team to achieve desired financial accounting results. In certain instances, information

² \$33.6 million—or more than 80%—of the reduction in earnings for FY 2005 resulted from the write down of goodwill associated with the acquisition of TPC, since the fraud at TPC had pre-dated the acquisition.

³ Symmetry's gross profits for Q2 2007 were, however, materially reduced as a result of the restatement, from \$15.5 million (as originally reported) to \$14.7 million (as restated).

critical to an effective review of transactions and accounting entries was not disclosed to corporate management and internal and external auditors.

12. TPC did not maintain effective controls over the period-end financial reporting process, including controls with respect to journal entries, account reconciliations and proper segregation of duties. Journal entries, both recurring and nonrecurring, were not uniformly accompanied by sufficient supporting documentation and were not adequately reviewed and approved for validity, completeness and accuracy. Account reconciliations over balance sheet accounts were not uniformly properly performed and approved for validity and accuracy of supporting documentation. TPC did not uniformly uphold proper segregation of duties within their accounting department with respect to financial reporting.

13. TPC did not maintain effective controls over the inventory management process including controls with respect to inventory existence. TPC did not utilize a comprehensive enterprise resources planning (ERP) system to control its inventories, but rather relied upon physical inventory counts. The process for compiling and reconciling these physical counts to the general ledger was subject to management override of controls and a lack of proper segregation of duties resulting in inaccurate reporting of inventory quantities on hand.

14. TPC did not maintain effective controls over the sales and accounts receivable process, including controls with respect to the existence of receivables, sales cutoff, the application of cash receipts, and segregation of duties. Accordingly, certain sales transactions were fictitiously recorded while certain other transactions were recorded prior to the completion of the revenue process.

15. TPC did not maintain effective controls over the preparation of the income tax provisions and related deferred and current tax calculations. Account analyses and reconciliations were not prepared for various tax accounts resulting in erroneous entries which were posted to the tax accounts not being detected or corrected in a timely manner.

Hite's Conduct

A. The Internal Audit Status Report

16. In the Fall of 2005, Symmetry created an internal audit unit, headed by the IA, who was to report to the Chairman of Symmetry's Audit Committee. On July 17, 2006, the IA provided Hite and the Company's independent auditor with a status report for submission to Symmetry's Audit Committee for consideration at its next meeting, which was scheduled to be held at TPC on July 26, 2006. Hite was the conduit for materials to be included in the board packets provided to Symmetry's directors in connection with their board and committee meetings. In that report, the IA claimed to have identified problematic bill-and-hold transactions at TPC and further asserted that TPC personnel had not provided requested evidence pertaining to the IA's Q1 2006 sales cut-off, cash cutoff and monthly controls testing. By July 2006, TPC was misstating its revenues and net income primarily by booking top-side journal entries of fictitious sales revenue and overvaluing inventory to conceal its understatement of costs of goods sold. These misstatements had not been

detected by the IA and were not included in the report. Rather the IA's report only implied the *potential* presence of deeper problems at TPC, since the report sought permission to solicit outsourcing proposals from "Big Four" accounting firms to provide, for the remainder of 2006 and 2007, internal audit services at TPC to include "internal controls testing and financial audits" there, saying, "The extent and severity of issues identified at [TPC] exceed the size and ability of IA's current staff and consultants from other firms."

17. Hite forwarded the status report to the Company's independent auditor as well as Symmetry's controller and they discussed it with the IA. After the IA resigned on or about July 19, 2006, Hite did not, however, include the report in the board packet for the July 26 Audit Committee meeting. According to the minutes of that meeting, Hite told the Committee that the IA had "tested all facilities and all were acceptable with a few exceptions found at [TPC]." The Audit Committee discussed the IA's resignation and thereafter the chair of the Audit Committee conducted an exit interview with the IA. However, Hite did not provide the IA's report to the Audit Committee, and the Committee did not otherwise learn of the report until after the fraud at TPC was discovered. Hite did immediately hire a new IA whose initial work included internal controls testing at TPC.

B. The Receipt of Bonuses, Equity-Based Compensation and Stock-Sale Proceeds

18. As a result of the misconduct at TPC described in paragraph 6 above, Symmetry issued materially inaccurate and non-compliant accounting statements in its (i) December 2004 initial public offering and July 2005 secondary offering registration statements; (ii) annual public filings with the Commission for fiscal years 2004, 2005 and 2006; and (iii) quarterly public filings for the first and second quarters of 2007. Specifically, Symmetry filed Forms 10-K for fiscal years 2004 through 2006 and Forms 10-Q for the first and second quarters of 2007 that were in material non-compliance with its financial reporting requirements under the federal securities laws, and Symmetry was required to restate its financial statements for fiscal years 2005 and 2006 and for the first two quarters of its 2007 fiscal year, along with selected financial data for its 2003-2006 fiscal years.

19. During the 12-month periods following Symmetry's filing of inaccurate financial statements in: (i) its December 2004 IPO and July 2005 registration statements; (ii) its 2004-6 annual public filings; and (iii) its quarterly filings for the first and second quarters of 2007, Respondent Hite received, from Symmetry, bonuses and incentive and equity based compensation, and also realized profits from the sale of Symmetry stock.

20. Respondent Hite has not reimbursed Symmetry for the bonuses, incentive and equity-based compensation or profits from sales of Symmetry stock that he received or obtained during the statutory time periods established by Section 304(a) of the Sarbanes-Oxley Act of 2002.

21. The Commission has not exempted Respondent Hite, pursuant to Section 304(b) of the Sarbanes-Oxley Act of 2004 [15 U.S.C. § 7243(b)], from the application of Section 304(a) [15 U.S.C. § 7243(a)] of that Act.

Symmetry's Remedial Efforts

22. In determining to accept the Offers, the Commission considered remedial acts promptly undertaken by Symmetry and cooperation afforded the Commission staff by Respondents.

D. LEGAL ANALYSIS

Symmetry

23. Exchange Act Section 13(a) and Exchange Act Rules 13a-1 and 13a-13 require issuers of registered securities to file annual and quarterly reports with the Commission. Exchange Act Rule 12b-20 requires that these periodic reports contain all material information necessary to make the required statements not misleading. The filing of a periodic report containing materially false or misleading information constitutes a violation of these provisions. *SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978). Exchange Act Section 13(b)(2)(A) requires issuers of registered securities to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect transactions and dispositions of assets. Exchange Act Section 13(b)(2)(B) requires such issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that its transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles. Exchange Act Section 13(b)(5) provides that no person shall, among other things, knowingly circumvent a company's system of internal accounting controls.

24. As described above, Symmetry failed to devise and maintain effective internal accounting controls in violation of Exchange Act Section 13(b)(2)(B). This failure allowed officers and employees of Symmetry's TPC subsidiary to perpetrate a financial fraud that caused Symmetry to maintain materially inaccurate books, records, and accounts in violation of Exchange Act Section 13(b)(2)(A), and to file periodic reports with the Commission that included materially false and misleading financial statements in violation of Exchange Act Section 13(a) and Exchange Act Rules 12b-20, 13a-1, and 13a-13. In particular, the assets and earnings Symmetry reported in its annual reports on Form 10-K for its 2004 through 2006 fiscal years, and its quarterly reports on Form 10-Q for the first two quarters of its 2007 fiscal year, were materially overstated.

Hite

25. Symmetry's internal audit function, and the reports prepared by Symmetry's IA for Symmetry's Audit Committee in connection with the IA's internal audit testing, were, as Hite knew, a part of Symmetry's system of internal accounting controls as defined in Exchange Act Section 13(b)(2)(B). Hite knowingly circumvented this facet of Symmetry's system of internal accounting controls

by failing to furnish the IA's report to Symmetry's Audit Committee. Accordingly, Hite violated Exchange Act Section 13(b)(5) and was a cause of Symmetry's violation of Exchange Act Section 13(b)(2)(B).

26. As a result of Hite's failure to reimburse Symmetry for the bonuses, incentive and equity-based compensation or profits from sales of Symmetry stock that he received or obtained during the statutory time periods established by Section 304(a) of the Sarbanes-Oxley Act of 2002, Hite violated that provision.

IV.

FINDINGS

Based on the foregoing, the Commission finds that:

- (a) Symmetry violated Exchange Act Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) and Rules 12b-20, 13a-1 and 13a-13 thereunder; and
- (b) Hite violated Exchange Act Section 13(b)(5) and Sarbanes-Oxley Act Section 304(a), and was a cause of Symmetry's violation of Exchange Act Section 13(b)(2)(B).

V.

ORDER

Accordingly, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers, and it is hereby ORDERED, pursuant to Section 21C of the Exchange Act that:

A. Respondent Symmetry cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder;

B. Respondent Hite cease and desist from committing or causing any violations and any future violations of Section 13(b)(5) of the Exchange Act and Section 304(a) of the Sarbanes-Oxley Act, and from causing any violations and any future violations of Section 13(b)(2)(B) of the Exchange Act; and

C. Respondent Hite shall, within ten days of the entry of this Order, pay a civil money penalty in the amount of \$25,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-

delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Hite as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Stephen L. Cohen, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5553.

D. Respondent Hite shall, within thirty (30) days of the entry of this Order, reimburse Symmetry for a total of \$185,000 in Symmetry bonuses, other incentive-based or equity-based Symmetry compensation, and Symmetry stock sale profits pursuant to Section 304 of the Sarbanes-Oxley Act, 15 U.S.C. § 7243. Defendant shall satisfy this reimbursement obligation to Symmetry by paying over to Symmetry a combination of cash and vested Symmetry stock that, collectively, totals \$185,000 in value, with the stock portion thereof not to exceed \$85,000, and with the value of said stock being based on Symmetry's closing share price on the date the shares are transferred to Symmetry. Defendant shall simultaneously deliver proof of satisfying this reimbursement obligation to Stephen L. Cohen, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5553.

By the Commission.

Elizabeth M. Murphy
Secretary