# ANALOGIC TO IMPROVE OVERSIGHT AFTER SETTLING BRIBERY CHARGES WITH SEC

(June 22, 2016) - Analogic Corp. says it will better vet deals arising from a foreign subsidiary and enhance its governance under a settlement with the Securities and Exchange Commission over “sham” transactions with overseas distributors.

The medical device company will avoid prosecution because it self-reported the findings of an internal investigation to the agency and made remedial efforts to stop the bogus transactions, although it will pay a fine. As part of the deal, the company agreed to hire a corporate compliance controller and add compliance training for foreign and domestic employees.

The SEC said Analogic’s Danish subsidiary, BK Medical ApS, engaged in hundreds of transactions with distributors that funneled about $20 million to third parties in Russia and apparent shell companies in Belize, the British Virgin Islands, Cyprus and Seychelles. The SEC order says the conduct lasted at least nine years. The company is accused of violating Foreign Corrupt Practices Act violations (PL 95-213), which forbids these types of payments in return for obtaining business.

This latest settlement shows the agency and the Department of Justice are cracking down on foreign bribery, according to governance experts who say directors in their roles within the audit process should examine these cases closely. In April, the DOJ launched a new FCPA pilot program designed to motivate companies to voluntarily self-disclose misconduct that can trigger lighter penalties.

”From a governance perspective in general, directors play a key role in emphasizing the need for FCPA compliance, especially in a global company with subsidiaries conducting business in high-risk jurisdictions,” said Lauren R. Randell, a partner at law firm BuckleySandler LLP. “The directors set the tone at the top that compliance should not take a back seat to business generation, and then provide the oversight that management is also following that philosophy. Direct reporting to the board by compliance and audit personnel is key.”

Jay A. Dubow, a partner at law firm Pepper Hamilton LLP and member of the firm’s white collar litigation group, said the proper tone encourages employees to come forward, the equivalent of “see something, say something” in a business environment. He doesn’t fault directors for not preventing wrongdoing.

”By definition the people who were doing this were hiding it and were hiding it pretty well,” he said.

But Solomon L. Wisenberg, a partner at law firm Nelson Mullins Riley & Scarborough LLP and co-chairman of the white collar practice, said directors better trained in FCPA compliance can more effectively root out problems. Auditors should get more vigorous training in the “indicia of fraud,” he said.

”This is 10 years they’re getting inflated invoices from distributors and sending the overage to other people that direct them. You’re talking about an area that companies have been told to be compliant in for a long time,” said Wisenberg. “Payments to third party distributors, if you go to any FCPA compliance book or course, is one of the first things that needs to be looked at carefully.”

The SEC order said that, after realizing the payment arrangements at its foreign subsidiary, Analogic stopped them.

In the non-prosecution agreement with BK Medical, Analogic agreed to pay $7.7 million in disgorgement, $3.8 million in prejudgement interest and a $3.4 million criminal penalty. Lars Frost, BK Medical’s former chief financial officer, also agreed to pay a $20,000 penalty to the SEC to settle charges he knowingly circumvented internal controls and falsified BK Medical’s books and records.

Analogic neither admits nor denies the SEC’s findings.

By Amy Lee Rosen, CQ Roll Call