

[Securities Regulation Daily Wrap Up, ACCOUNTING AND AUDITING— Medical manufacturer to pay \\$13M for accounting fraud, improper foreign payments, \(Sept. 28, 2017\)](#)

Securities Regulation Daily Wrap Up

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By [Amanda Maine, J.D.](#)

A Massachusetts-based manufacturer of medical diagnostic testing equipment has agreed to pay nearly \$13 million to settle accounting fraud charges with the SEC. The company allegedly engaged in the premature recognition of revenue from foreign subsidiaries in its financial statements and had to revise or restate its financial statements three times as a result. In addition, two foreign subsidiaries allegedly made improper payments to foreign government officials for the purpose of selling its products (*In the Matter of Alere Inc.*, [Release No. 33-10417](#), September 28, 2017).

Revenue recognition. According to the SEC, Alere Inc.'s South Korean subsidiary, Standard Diagnostics (SD), began to inflate SD's revenue numbers in 2011 in a scheme devised by the head of SD's sales and marketing departments. The scheme, which became known among employees as "early sales," involved recognizing revenue before the delivery of the product had occurred. The size of the improperly recognized revenue ranged from \$25,000 to more than \$2 million.

Other Alere subsidiaries in China and Africa engaged in similar revenue recognition schemes, the SEC alleged. A subsidiary located in China entered into nearly 4,000 "postponement of delivery" transactions, resulting in more than \$28 million in revenue that should not have been recognized in that quarter under GAAP. In addition, Alere's Africa commercial team entered into contingent arrangements, bill-and-hold transactions, and revenue cut-offs that led to the early recognition of revenue. Certain African distributor sales agreements resulted in the recognition of revenue upon delivery in violation of a retention of title clause, allowing more than \$86 million in revenue to be recognized in an earlier quarter than permitted by GAAP.

Due to these issues and other revenue recognition issues, Alere had to revise and restate its financial statements to correct the inaccurate revenue reporting by its subsidiaries. Alere also concluded it had several weaknesses in its internal control over financial reporting related to revenue recognition. Alere's financial statements also contained tax accounting errors relating to certain divestitures of its health management business, which led to required restatements and assessments of the company's internal controls.

Improper payments. Alere subsidiaries also allegedly made improper payments to government officials in Colombia and India to obtain and retain business in those countries. The Colombia payments were recorded as legitimate consulting expenses, and commissions paid to an India-based distributor of malaria testing kits were not recorded in Alere India's books and records. These inaccurate recordings of payments and the failure to devise and maintain internal controls violated Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(A), the SEC charged.

Charges and settlement. In addition to the books and records and internal controls violations, Alere was also charged with accounting fraud under both the Securities Act and the Exchange Act. To settle the charges, Alere agreed to pay a \$9.2 million civil penalty and \$3.8 million in disgorgement and interest. The company also agreed to cease and desist from further violations. In settling the matter, Alere did not admit or deny the SEC's findings.

The release is [No. 33-10417](#).

Attorneys: Michael Kendall (White & Case) for Alere Inc.

Companies: Alere Inc.

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