

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8923 / May 30, 2008

SECURITIES EXCHANGE ACT OF 1934
Release No. 57892 / May 30, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13050

<hr/>)	ORDER INSTITUTING CEASE-AND-DESIST
In the Matter of)	PROCEEDINGS, MAKING FINDINGS, AND
ANALOG DEVICES, INC. and)	IMPOSING A CEASE-AND-DESIST ORDER
JERALD G. FISHMAN,)	PURSUANT TO SECTION 8A OF THE
Respondents.)	SECURITIES ACT OF 1933 AND SECTION 21C
<hr/>)	OF THE SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted against Analog Devices, Inc. and Jerald G. Fishman (collectively “Respondents”) pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”).

II.

In anticipation of the institution of these proceedings, each of the Respondents has submitted an Offer of Settlement (“Offer”) that the Commission has determined to accept. Solely for the purposes of these proceedings and any other proceeding 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 them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.¹

¹ In a separate civil action filed simultaneously with this proceeding, Analog Devices, Inc. and Jerald G. Fishman each separately consented to the entry of a final judgment by the U.S. District Court for the District of Columbia pursuant to Section 20(d) of the Securities Act and Section 21(d) of the Exchange Act that orders Analog and Fishman to pay civil penalties of \$3 million and \$1 million, respectively; and orders Fishman to pay disgorgement of \$450,000 plus prejudgment interest thereon of \$42,110. *SEC v. Analog Devices, Inc. and Jerald Fishman*, Civ.

III.

On the basis of this Order and Respondents' Offers, the Commission finds² that:

A. RESPONDENTS

1. **Analog Devices, Inc.** is a Massachusetts corporation with its principal offices in Norwood, Massachusetts. Founded in 1965, the company designs, manufactures and markets high-performance integrated circuits that are used in signal processing for industrial, communication, computer, and consumer applications. During the relevant period, the company's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange under the symbol ADI.

2. **Jerald G. Fishman**, age 60, resides in Weston, Massachusetts. Fishman has been the President of Analog since 1991 and its Chief Executive Officer since November 1996. He is also a member of the company's Board of Directors. Fishman began his career with Analog in 1971, holding a series of positions in marketing, operations and strategic planning. He holds undergraduate and graduate degrees in engineering, as well as an MBA from Boston University and a law degree from Suffolk Law School.

B. SUMMARY

3. During at least 1998 through 2002, Analog Devices, Inc. ("Analog" or "the company") and its CEO Jerald G. Fishman ("Fishman") engaged in an improper course of conduct involving backdating stock option grants that operated as a fraud on Analog's shareholders and resulted in Fishman and other executives, directors and employees of Analog receiving undisclosed compensation. In 1998, 1999 and 2001, Fishman caused the company to backdate stock option grants to price them below the market price of the stock on the date they were actually approved, resulting in in-the-money option grants that the company failed to properly expense as compensation costs in its financial statements. The company and Fishman failed to disclose this practice in Analog's 1999-2002 proxy statements and related annual reports, and instead made false and misleading statements and omissions concerning the option grants and the benefits they provided to Analog's top officers, directors and employees. In addition, in 1999 and again in 2000, Fishman caused the company to grant favorably-priced options to himself and others by accelerating those grants to occur before the announcement of material nonpublic information about the company. This practice, which was undisclosed, but which does not form the basis of the charges in this Order, enhanced the company's and

Action No. 1:08-cv-00920 (RBW) (D.D.C. filed May 30, 2008).

² 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.

Fishman's ability to provide stock option grant benefits to Analog's top officers, directors and employees.³

C. FACTS

4. In the competitive high tech industry of the late 1990s and early 2000s, Analog, like other high tech companies, used stock options as an important means to attract and retain employees, including executives.⁴ Analog's option grants gave the recipients the right to purchase from the company (by "exercising" the options) a fixed number of shares of its common stock at a fixed price (the "exercise" price) prior to expiration of the options, which was generally 10 years from the grant date. Options granted to employees, including executives, typically vested in equal amounts on the third, fourth and fifth anniversaries of the grant date; options granted to non-employee directors typically vested on the first, second and third anniversaries of the grants. The company's ability to grant options at favorable (lower) exercise prices, which would be perceived by employees as having significant value, was a substantial part of its strategy to retain its highly skilled, professional employees.

5. Analog awarded options to executives and other employees during this period under a shareholder-approved stock option plan that allowed the Board of Directors to establish the exercise price at the time the options were granted, and required the Board to determine when to grant the options.⁵ The plan required the exercise price to be "not less than 100% of the fair market value" of the company's common stock at the time of the option grant.

6. Analog's Compensation Committee, pursuant to authority delegated by the Board, granted the options under the plan. The Compensation Committee relied on Fishman to recommend when to make the option grants. The Committee ordinarily approved one grant date a year based on a recommendation by Fishman.⁶ For each of the

³ The conduct that forms the basis of the violations found in this Order are solely the instances of backdating described at paragraphs 9 through 13, 16, 18 and 23 through 25. On July 26, 2006, the Commission adopted changes to the rules requiring disclosure of executive and director compensation which, among other requirements, address disclosure concerning an issuer's practice of timing option grants in coordination with the public release of material nonpublic information.

⁴ The options discussed in this Order are non-statutory stock options.

⁵ This plan is referred to in Analog's proxy statements and annual reports as the 1998 Stock Option Plan. Analog shareholders approved this plan on March 10, 1998.

⁶ After the Compensation Committee approved the grant, Fishman orally informed the company's Chief Financial Officer ("CFO") of the grant date and exercise price for the options. The CFO then initiated the process of generating confirmatory documents to be given to the stock option recipients.

four grants discussed in this Order, Fishman recommended grants on dates corresponding to low points in Analog's stock price.

7. During 1998 to 2001, Analog made three option grants to officers and employees (and one grant to directors in 2001) at lower exercise prices than were allowed by the company's option plan. On three occasions (1998, 1999 and 2001), Fishman caused Analog to backdate grants, resulting in options with exercise prices that were below the market price of Analog's stock on the date the Compensation Committee actually approved the grants. In addition, although not a basis for the charges in this Order, on two occasions (1999 and 2000), Fishman accelerated or "timed" the grants to occur in advance of Analog's public announcement of record financial results that Fishman believed was likely to result in a material increase in Analog's stock price and make the options immediately in-the-money and, thus, more valuable to the recipients.⁷ Although the options awarded from these practices were not immediately exercisable and vested over a period of up to five years, the options provided Fishman and other recipients with the benefit of lower exercise prices than they would have received had the options been granted at-the-money or after the public announcement of favorable financial results.⁸

8. Analog filed proxy statements and annual reports with the Commission that contained disclosures related to these option grants. Each of the company's proxy statements described the stock option compensation of Fishman and Analog's four other most highly paid executives (collectively, the "top five" officers or executives), including the grant date and exercise price of the options. The proxy statements also contained reports of Analog's Compensation Committee, which described the purpose and pricing policy of the company's stock option grants. Analog's annual reports, which incorporated the proxy statements by reference, also described the pricing policy of the company's stock option plan and the impact of that policy on the company's accounting. These proxy statements and annual reports did not disclose the benefits to option

⁷ The company had engaged in the practice of timing grants prior to the release of favorable nonpublic financial information for years prior to the 1999 and 2000 grants that are the subject of this Order. At some point during these earlier years, certain management and non-management Directors had obtained advice from Analog's outside counsel that it was not inappropriate in the context of the company's insider trading policies for the company to grant options on the basis of and prior to the release of favorable nonpublic financial information. Analog's outside counsel was present at the Board meetings in 1999 and 2000 when the Board reviewed the timed grants made by the Compensation Committee. Analog never sought advice from its counsel about whether this practice and the benefit it provided to the option recipients should be disclosed to the company's shareholders. Outside counsel participated in the drafting of the relevant proxy statements but did not make recommendations concerning any such disclosure. As noted above, this non-disclosure predated the rule changes that expressly required disclosure concerning an issuer's practice of timing option grants in coordination with the public release of material nonpublic information. *See supra* note 3.

⁸ Other than options granted to Fishman in 1998, which have been fully exercised, neither Fishman nor any other Director has exercised any of the options that are the subject of this Order.

recipients and the costs to Analog from the option grant practices identified above. In each year between at least 1999 and 2002, Fishman received drafts of the company's proxy statements and annual reports, and signed the annual reports as CEO.⁹

1. The 1998 Option Grant

9. In September 1998, following a substantial downturn in the price of Analog's stock during 1998, Fishman recommended that the Compensation Committee grant stock options to employees, including senior executives.

10. In its 1999 proxy statement, Analog disclosed to its shareholders the date on which it granted options to its senior officers and employees: "[t]he Company granted options to employees on . . . September 4, 1998." The options purported to have been granted on September 4, 1998 – the Friday before the Labor Day weekend – were given an exercise price of \$13.25 per share, the closing price of the company's stock on that day – and the lowest closing price of Analog stock during the entire year of 1998.

11. However, Analog's Compensation Committee actually approved the stock option grant at a meeting on September 8, 1998, after the 4 p.m. close of trading of the company's stock on the New York Stock Exchange. The company's stock option plan thus required the exercise price of the options to be set at the closing price of the company's stock on September 8, 1998, which was \$14.75 per share. This price was \$1.50 per share higher than the closing price on the date reported in the company's 1999 proxy statement. Indeed, the minutes of a meeting of the full Board the next day (September 9th), where the grants made by the Compensation Committee were reviewed, provided that the "exercise price of such stock option grants shall be the share closing price of the common stock of the Corporation on the New York Stock Exchange on September 8, 1998."

12. Although the Compensation Committee approved the options on September 8 at that day's closing price, Fishman caused the company to record the options as having been granted at the lower price on September 4.

13. As a result of the misrepresentation of the grant date, the top five officers for whom Analog disclosed stock option compensation in its proxy filings (including Fishman who received 300,000 shares) received options priced \$1.50 per share *lower* than the closing price of Analog's stock on the date that the options were actually granted. In total, the 6.4 million options granted to employees and senior executives were in-the-money on the grant date by a total of \$9.7 million. Fishman's options alone

⁹ The disclosures made in the annual reports of the company for the reporting periods between 1998 and 2002 are incorporated by reference in registration statements that Analog filed with the Commission on Forms S-8, which registered the securities underlying the stock option grants under the company's stock option plan. These registration statements were filed on March 11, 1998, June 27, 2000, and December 14, 2001, and incorporated by reference each of the above-described annual reports and proxy statements. Analog's outside Directors and Fishman signed each of these registration statements.

were in-the-money by \$450,000. Fishman realized the full amount of this benefit when he exercised his options and sold the underlying stock between June 2003 and January 2004. The options granted to the four other top officers were in-the-money by a combined total of \$307,500. These amounts were not disclosed by Analog in its executive compensation disclosures. Instead, the proxy filing stated that the options granted to the top five officers were granted at the fair market value of the company's stock on the grant date. In addition, the company failed to report in its financial statements the compensation expense associated with the in-the-money portion of these grants, as required by generally accepted accounting principles ("GAAP"), because the Company treated the options as having been granted at fair market value on September 4. Instead, the company's annual report stated that the company granted options at not less than the fair market value at the time of grant and that it therefore did not recognize stock option expense under GAAP.¹⁰

2. The 1999 Option Grant

14. Analog and Fishman's goal of finding low points for the price of the stock in fixing stock option exercise prices led Fishman, in 1999 and 2000 – one of the most profitable periods in the company's history – to recommend that Analog grant stock options to employees and officers, including Fishman himself, prior to the company's release of favorable nonpublic financial information that was known to him and the Board.

15. At Fishman's request, the Compensation Committee met on November 29, 1999, a week earlier than the normal December Board meeting, in order to award options prior to an expected positive earnings release. The Committee awarded a total of 7,361,550 million options to executives and employees, including 550,000 options to the company's top five officers. Fishman alone received 300,000 options. The full Board met the next day to review the grants made by the Compensation Committee.

16. In addition, despite the fact that the options were approved on November 29, 1999, after the close of the market, when the closing price of the company's stock was \$57.94 per share, Fishman caused Analog to misrepresent that the options were granted on November 30, 1999, with an exercise price corresponding to the closing price of the stock on that day, \$57.50 per share.

¹⁰ Under Accounting Principle Board Opinion No. 25, issuers are required to expense the intrinsic value of an option grant, generally ratably, over the vesting period of the option. An option's intrinsic value is generally defined as the amount by which the stock's market price exceeds the exercise price of the option on its grant date or "measurement date" (i.e., the date on which both the number of shares an individual employee is entitled to receive and the price of the options are known). Analog's annual reports stated that it accounted for stock option grants in accordance with APB No. 25: "The Company grants stock options for a fixed number of shares to employees with an exercise price equal to the fair value of the shares at the date of grant. The Company accounts for stock option grants in accordance with APB Opinion No. 25 . . . and, accordingly, recognizes no compensation expense for the stock option grants."

17. On December 1, 1999, the company released record year-end earnings results, which exceeded Wall Street earnings per share estimates by 5 cents per share. The next day, analysts revised upward their price targets for the company as a result of the earnings news. The stock price increased, climbing to above \$65.00 per share in the afternoon of December 2, 1999, a 13% increase over the grant price. In the aggregate, the over 7 million options granted to employees and executives were in-the-money by \$55 million soon after the news was released.

18. The company disclosed in its 1999 annual report on Form 10-K that “[t]he Company grants stock options for a fixed number of shares to employees with an exercise price equal to the fair value of the shares at the date of grant,” while incorporating by reference the disclosure from the 2000 proxy statement that executives were granted options on November 30, 1999 at the “fair market value” on the grant date.¹¹ These statements misrepresent the date of the actual grant.

3. The 2000 Option Grant

19. The next year, on November 10, 2000, Fishman again convened meetings of the Compensation Committee and Board in advance of the regularly scheduled December meetings to approve a grant of approximately 12.54 million stock options to 3,500 employees (including executives), and this time also a grant of 25,000 options to each of the five non-employee Directors.¹² The grant included 1.39 million options granted to the top five executives (including 600,000 options to Fishman). The meetings again were called to grant options ahead of the release of material, favorable nonpublic year-end earnings news (ahead of consensus estimates by 4 cents per share) that was known to the Board at the time of the grant. The options were granted with an exercise price of \$44.50 per share, equal to the closing price of the stock on November 10, 2000.

20. As had occurred a year earlier, the company’s stock price increased following the company’s public release of record earnings, resulting in all of the options being substantially in-the-money. The company announced its year-end earnings on November 14, 2000. By November 15, 2000, the closing price of the stock was \$63.25, an increase of \$18.75 (42%) over the November 10, 2000 closing price. In the aggregate,

¹¹ Because this grant occurred during the company’s 2000 fiscal year (October 31, 1999 – October 28, 2000), the company also made similar disclosures concerning this grant in its 2000 annual report and its 2001 proxy statement.

¹² In years prior to this grant, options to non-employee directors were awarded under a plan that required non-employee directors to receive options granted on a fixed date each year (the anniversary of the date the director joined the Board). In early December 1999, shortly after certain directors had received option grants with a significantly higher exercise price than executives and employees had received prior to the company’s December 1, 1999 earnings release, the Board decided to cancel its own option plan and grant options to directors under the employee plan (the 1998 Stock Option Plan). The Board cancelled the directors’ plan in part to enable the Directors to benefit in the future from the undisclosed practice the company followed under the employee stock option plan of selecting grant dates to occur shortly before the announcement of favorable financial results.

the 12.54 million shares granted to employees, officers and directors were in-the-money by \$235 million after the news was released.

4. The 2001 “Salary Reduction” Option Grant

21. During an industry-wide business slump through parts of 2001, the company undertook an across-the-board salary reduction for its employees in lieu of implementing layoffs or other cost-cutting measures. The company used a formula to determine the percentage of salary that would be surrendered by each employee, and then set out to replace that salary with a special, mid-year stock option grant. This special stock option program was authorized by a written consent of the Compensation Committee, dated as of May 17, 2001, which gave Mr. Fishman the authority to set the date of the option grant.

22. On July 20, 2001, Analog’s outside counsel spoke with members of the Compensation Committee and, by a written memorandum of that date, sent them a revised version of the May 17 written consent, requesting that they sign the new version and advising them that it replaced the earlier signed consent. As counsel’s memorandum advised the Committee, “the previous consent authorized Jerry Fishman to designate the grant date of the stock options. The new (attached) Consent provides that the Compensation Committee will determine the grant date.”

23. On July 26, 2001, Analog’s counsel sent the Committee members the written consent to authorize the grant, which they signed in the following days. This consent stated that the grant date was “fixed at July 18, 2001.” Although the grant date included in the consent was July 18, 2001, the Committee members had not agreed on that date to grant the options. The July 18, 2001 grant date reflected on the consent was selected by Fishman. The closing price of Analog’s stock on that date was one of the lowest closing prices of the company’s stock during the month in which the options were granted.

24. Because the Compensation Committee did not grant the options until July 26, 2001, at the earliest, the options were substantially in-the-money on the date they were actually granted. The closing price of Analog’s stock on July 26, 2001, was \$48.27 per share, \$9.21 per share higher than the \$39.06 exercise price of the 1,932,766 stock options granted to Analog executives, directors and employees. By that measure, the options were in-the-money by a total of \$17.8 million. Fishman’s options were in-the-money by \$128,608. The options granted to the four other top officers were in-the-money by a total of \$210,089.

25. The company disclosed in its 2002 annual report that “[t]he Company grants stock options for a fixed number of shares to employees with an exercise price equal to the fair value of the shares at the date of grant,” while incorporating by reference the disclosures from the 2002 proxy statement that executives and directors were granted options on July 18, 2001 at the “fair market value” on the grant date. In fact, these options were not granted until July 26, 2001, at the earliest, at a price that was then *below*

the fair value of the stock. In addition, the company failed to report in its financial statements the compensation expense associated with the in-the-money portion of these grants, as required by GAAP, because the company treated the options as having been granted at fair market value on July 18, 2001.

D. VIOLATIONS

26. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, among other things, make it unlawful for any person, directly or indirectly, in connection with the purchase or sale of any security: to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person. Sections 17(a)(2) and 17(a)(3) of the Securities Act prohibit similar conduct in the offer or sale of securities.

27. Establishing a violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder requires a showing of scienter. Aaron v. SEC, 446 U.S. 680 (1980). However, actions under Sections 17(a)(2) and 17(a)(3) of the Securities Act require no such showing. Id. Scienter is the "mental state embracing intent to deceive, manipulate or defraud." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 (1976). Scienter is established by showing that a person acted intentionally or with severe recklessness. See SEC v. Fife, 311 F.3d 1, 9 (1st Cir.2002).

28. Analog violated Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, by filing false and misleading annual reports and proxy statements from 1999 to 2002 that failed to disclose the compensation and benefits provided to senior executives, directors and employees through the grant of stock options with favorable exercise prices resulting from the backdating of option grants. Fishman, who received the proxy statements before they were filed and who signed the annual reports, violated Sections 17(a)(2) and 17(a)(3) of the Securities Act by causing the company to engage in this stock option practice and to make these false and misleading stock option disclosures.

29. In disclosing the option grants made to the company's top five officers in 1998, 1999 and 2001, Analog's 1999, 2000, and 2002 proxy statements falsely disclosed the grant dates and exercise prices of the options by representing that the grants occurred on different dates with lower exercise prices than the date and price of the stock when the options were actually granted. The company also disclosed that the options were granted at prices "equal to the fair market value" of the company's stock on the grant date, when in fact the options were granted at prices *below* the stock's market price on the date of grant (i.e., that were in-the-money when granted). The company made similarly misleading disclosures in its annual reports, which stated that it was Analog's practice, and the pricing policy of its shareholder-approved stock option plan, to grant options at a price "equal to" (or "not less than 100% of") the "fair value" or "fair market value" of its stock on the date of grant.

30. By misrepresenting the date and price of the options, the company also failed to disclose information required by Commission rules for in-the-money option grants. Specifically, Analog's proxy statements failed to identify the market price of stock on the date the options were granted to the top five officers, as required by Item 402(c)(2)(iv) of Regulation S-K. Analog also failed to disclose the value of the grant-date market price in its disclosure of the potential realizable value of the options, as required by Item 402(c)(2)(vi)(A)(3) of Regulation S-K. These disclosures, had they been made, would have revealed both the extent to which the options were in-the-money on the date that they were granted, as well as the value of the potential gain associated with this undisclosed benefit. As a result, the company failed to disclose \$1.3 million of additional potential gain to the top five officers, of which Fishman received approximately \$710,000. Fishman caused the company to backdate these option grants and, thus, to misrepresent the grant dates and exercise prices of the options in the company's annual reports and proxy statements.

31. In addition, the company failed to record the in-the-money portion of all of the backdated options granted in 1998, 1999 and 2001, including the grants to all employees (and directors in 2001), which in the aggregate totaled \$30.7 million (\$21.8 million net of tax). Analog failed to record this amount as compensation expense in its financial statements filed with the Commission for the fiscal periods from 1998 to 2005, as required by GAAP.

32. Based on the foregoing, Analog violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Fishman violated Sections 17(a)(2) and 17(a)(3) of the Securities Act.

E. UNDERTAKINGS

33. As detailed in the following paragraph, Analog undertakes to re-price the unexercised options that were granted to Fishman in order to eliminate the benefit of the lower exercise prices that resulted from backdating the options. The re-pricing shall occur within 30 days of entry of this Order and, promptly thereafter, Analog agrees to provide to the Commission staff documents or information acceptable to the staff to reflect that the re-pricing has been completed.

34. Analog undertakes to re-price two of the three option grants discussed in this Order that were awarded to Fishman but that he has not yet exercised. Specifically, the options granted on November 29, 1999, shall be re-priced from \$28.75 to \$28.97 per share, the split-adjusted trading price of the company's common stock on November 30, 1999. The options represented to have been granted on July 18, 2001, shall be re-priced from \$39.06 to \$48.27 per share, the closing price of the company's common stock on July 26, 2001, the date the Compensation Committee granted the options.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Respondent Analog cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent Analog shall comply with its undertakings as enumerated in Section III.E., above.

C. Respondent Jerald G. Fishman cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act.

By the Commission.

Florence E. Harmon
Acting Secretary