



January 3, 2018

Mr. Jay Clayton
Commissioner
Securities and Exchanges Commission
100 F Street NE,
Washington, DC 20459

Dear Mr. Clayton,

At the recommendation of Mr. Rick Dearborn and Mr. Andrew Olmstead of the President's office of his Chief of Staff, I am writing to highlight a number of significant issues that have developed around the illegal short selling of MiMedx Group (NASDAQ: MDXG) as well as numerous other companies by a group of hedge funds and individuals that are led by Marc Cohodes. After reviewing with the President's staff the facts that we have developed, the recommendation was that I contact you directly with a request for a meeting between our staffs to discuss these issues in more detail.

First, allow me to present some background. I happen to be a 78 year old serial healthcare entrepreneur who started my first company in 1970. That Company, Healthdyne, went public in 1981. It was split into several different public companies, and they were all eventually sold to larger organizations in very attractive transactions for our shareholders. The current company, where I am functioning as Chairman and CEO, was founded by a friend of mine. I stepped in to MiMedx in February of 2009 after the last of the Healthdyne companies were sold the prior year. Obviously, I flunked retirement!

MiMedx is an exceptional company because of its technology and the ability we have to bring very experienced managers and executives from my previous companies in Atlanta to a growth opportunity. *Fortune Magazine* just named MiMedx as the 5th fastest growing public Company in America. My business and philanthropic track record is a matter of public record. Details can be found at www.petepetit.com. I have always run my organizations with honesty and integrity as a cornerstone.

MiMedx, as well as others, have put a substantial amount of work into highlighting the concerns we have about "Illegal Short Selling Being Out of Control". There is no point in trying to make all those points in this letter. However, we are going to provide that information to you in the attached notebook under Appendix "A". This document outlines a broader set of concerns and some broader potential solutions to the problem. Incidentally, we are well aware of "Pushback" that will come from hedge funds relative to added costs. However, the rest of the industry has absorbed these costs over the decades, and in order to even out the playing field and provide fairness to all shareholders, it is our opinion that timely actions must be taken.

Over my 36 years of managing public companies, I have had numerous encounters with short sellers. My last company, Matria Healthcare, had a "wolf pack" of short sellers initiate an attack in 2007. Fortunately, one of the managers at one of the constituent hedge funds got so disgusted with the dishonesty and corruption he was seeing, that he called me directly to explain what was transpiring. That was extremely helpful in allowing us to find the "publication shill" that this group was using. This was a Company called "Off Wall Street" that was publishing false information and absolute lies about Matria Healthcare. My friend faxed copies of the "Off Wall Street" reports to me. That allowed me to develop a legal approach and call the principal of "Off Wall Street" and demand he stop these publications. He officially did that

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the next day when he realized that there was a major lawsuit coming if he did not. Several months later, Matria was sold to Inverness Medical for approximately \$1 billion, plus the assumption of another \$200 million of debt. This was a very successful transaction for our shareholders.

Now, relative to MiMedx Group, we have had issues develop on a different basis. As the Company began to grow rapidly in 2012, we encountered two Deerfield Management partners, namely Ted Huber and Rob Olan. They would attend most financial meetings where we presented. They always had a "short sell thesis" by stating that it was too unusual for a company to perform as well as we were doing and our clinical studies were weak. Of course, both of these concepts were incorrect.

These two Deerfield partners are now under investigation by the SEC because they extracted in 2013 inside information from a federal CMS employee relative to reimbursement changes that were forthcoming in the dialysis and cancer fields. Their employer, Deerfield Management, just entered into a settlement of \$4.5 million with the Commission due to its lack of oversight of these two individuals. Around the same time that Huber and Olan were obtaining inside information on dialysis and cancer drug companies, MiMedx's product category was also undergoing a similar reimbursement review by CMS. We saw the number of shares short in MiMedx stock increase dramatically about three weeks prior to the public announcement of the CMS decision that affected our reimbursements. It is our suspicion that these two Deerfield Partners were using similar inside information to short our stock and passing it around to others.

Our General Counsel, Lexi Haden, and our outside counsel, Marlon Paz, brought this information to your staff on August 9, 2017 which was before the Deerfield-SEC settlement. They presented our Deerfield information and trading data at the request of your staff. Apparently, your staff was in the final process of determining its actions against Deerfield. We have heard nothing from your staff since that meeting.

MiMedx has performed exceptionally well having met or exceeded our revenue estimates given to our shareholders for the last 26 out of 27 quarters. Our stock increased from about \$8.00 per share in January of 2017 to an all-time high of \$17.47 a share in August of 2017. It is my opinion that Deerfield and/or a few other hedge funds had reached the point that their losses from short selling MiMedx were so substantial that they started reaching out to others to help promote their "short thesis" on our stock and drive our share price down. This included a number of entities and individuals, some of which we have civilly sued. Marc Cohodes was brought into this "wolf pack" to assist with their efforts during the late summer.

Mr. Cohodes should be known to your agency from his activities in Canada. His efforts in regards to MiMedx seem to be focused on a "Short and Distort" campaign. His activities are laced with fraudulent, false and misleading information coupled with the wolf pack entering the market in concert with what we believe are illegal market manipulations of our stock. We have watched this campaign develop since last summer.

Cohodes started targeting Canadian companies with a "Short and Distort" campaign over two years ago. Cohodes is now moving his focus to U.S. companies. This "Short and Distort" activity is so blatantly obvious relative to what is transpiring that I am going to respectfully request you to have your staff thoroughly review the issues with MiMedx and take some quick and decisive actions.

Now, for full disclosure, I will mention that I believe our situation is being manipulated partially by Mr. Cohodes through some of our ex-employees whom we terminated for cause in December of 2016. We

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found a small group of individuals under the leadership of one sales manager who had set up their own corporate entities and were selling other products and competitive products while still being employed full time by our Company. Two of them hired an aggressive attorney in Minneapolis who tried to extort a huge amount of money from the Company to settle numerous new and contrived allegations of corporate malfeasance which were not factual. The attorney did not appear to be aware of the breaches of contract and duty of loyalty his clients had committed when we filed our lawsuits. This attorney went public with the allegations from two of our terminated sales employees.

We believe that as a result of those allegations, the SEC opened an investigation. We are cooperating fully with the investigation, and we look forward to having our testimony in front of those SEC staff members. We have nothing to fear from this investigation. However, having employees who are dishonest and disgruntled who found their way to these short sellers has been especially frustrating because of their propensity for misrepresenting facts and frankly, lying. However, that is just a special situation with MiMedx. What Cohodes and his associates do is illegal regardless of where they are getting their misinformation.

MiMedx has become the "Poster Child" for Cohodes' recent activities here in the U.S. All of these illegal "Short and Distort" activities are taking place every week. It is so evident how they plan their catalytic publication and their follow-up market entry and manipulation on days when they know we will be releasing positive news and results. We have many of those situations well documented with the trading activities on those days also documented. These documents are in the attached notebook in Appendix B. Also, see Appendix C for further discussion on this topic.

As an example, we believe Cohodes and his group fabricated a fraudulent email supposedly from one of our current employees. This lengthy email had all types of allegations about corporate malfeasance. For a number of reasons, our Board of Directors and Management have concluded this is a fraudulent document. This document was sent to numerous publications including the Wall Street Journal, the New York Times and others, to many of our competitors, and to numerous law firms. Notably, the email was never sent to anyone at MiMedx.

In addition, we believe this group opened an email account with my name on it, so that it would appear to recipients that I was sending emails when in fact I was not. They started communicating with one of our Wall Street Analysts. He became suspicious and contacted the Company to bring this to our attention.

It is my understanding, based on social media posts from Cohodes, that law enforcement representatives, possibly the FBI, recently called on Cohodes presumably because of his threats against my life. While he has never admitted specifically who they were, he is calling them MiMedx "Goons". See Appendix D.

Collaborating with the intent to manipulate, impersonating corporate executives and front running¹ are all illegal activities "fraudsters" use to manipulate a stock's price during a "short and distort" campaign. Despite the Commission's numerous Educational Bulletins on how social media and the Internet, in general, can be used to manipulate investor sentiment and stock prices, these illegal activities are

¹ While illegal front running is a concept that applies to registered broker dealers, we use the term here to refer more generally to any individual knowingly trading on the basis of information in a report or article in advance of it becoming public.

increasing at an alarming rate given the growing acceptance of social media as a “reliable” source of information and its increasing “influence” on decision making.

The SEC has rules and oversight in place that govern and police Regulated Individuals and Broker Dealers use of social media, Equity Analyst conduct, the content of research reports and trading ahead of the release of research reports. However, social media and the internet provides influential “individual investors” and “research organizations” not regulated by FINRA, a powerful and almost unregulated platform from which to conduct their business.

Hiding behind the First Amendment, IP addresses, computers and pseudonyms, some of these “individual investors and funds” and “research organizations” are banding together to form “wolf packs of fraudsters” to manipulate the price of stocks they have a direct or indirect financial interest in. These “wolf packs” have become increasingly reliant on social media as the platform of choice from which they conduct their fraud. It not only provides the ability to influence public opinion and investment, but can also be used as a signal to initiate and control wolf pack daily trading attacks.

Before the advent of social media and program trading, the success of a “pump and dump” or “short and distort” campaign relied heavily on individual and professional investors buying or selling the stock as well as organized and coordinated illegal trading activity. Today, all that these fraudsters need to move a stock is for individuals to re-tweet their tweets or “like” their posts. This manipulates sentiment which computers are programmed to monitor and trade on. Modern use of social media is causing and implicating honest individuals to unknowingly become participants in the fraud that is hurting their financial wellbeing.

Unfortunately, in the time it will take for appropriate controls to be put in place, many good companies may be damaged by these “wolf packs” and their fraud. Therefore, we request that the Commission quickly bring an emergency action or, at the very least, make a public statement to put these fraudsters and the public on notice that it is investigating or intends to investigate the use of social media as a fraudulent tool that enables market manipulation.

We certainly understand the value of legal short selling. However, I have witnessed the transition over the years to a situation today that is driven by social media rather than real research and reliance on fundamentals. We are also aware of several publications issued by the Commission warning shareholders of the detrimental effects of “Internet and Social Media Fraud” via its investor.gov webpage. However, it is our opinion and those of numerous others that the only way this process will begin to correct itself is for the Commission to take a strong and publically visible action against some of these conspirators who are perpetuating these daily illegal acts.

I apologize for the lengthy history and issues that I have had to delineate. However, we have backup information in terms of trading activity, social media and related tweets, publications from free speech “shills” and other backup data that would help expedite the review process by your staff. Some of these are contained in the Appendices in the note book.

MiMedx submitted to the SEC information about securities law violations by Mr. Cohodes via the SEC’s Tip, Complaint and Referral system, on Form TCR on November 22, 2017. MiMedx submitted information that Mr. Cohodes was acting in concert with other persons known and unknown, and has engaged in an illegal “short and distort” campaign to manipulate MiMedx stock for his own personal benefit. MiMedx alleged that in so doing, he has violated the laws that prohibit market manipulation, including but not

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limited to, Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 17(b) of the Securities Act, Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, and Section 9(a) of the Exchange Act. In addition to market manipulation, MiMedx alleged that Mr. Cohodes, in concert with other persons known and unknown, has disseminated false or misleading statements via social media and other media in regard to MiMedx stock, a publicly traded security, without properly disclosing his extensive short sale positions in those securities. MiMedx contends these activities violate the federal securities laws' anti-touting provision, Section 17(b) of the Securities Act. MiMedx also noted that Mr. Cohodes' conduct further suggests evidence of securities fraud, including, but not limited to, violations of Section 10(b), Rule 10b-5, Wire Fraud, Mail Fraud, and Securities Act Section 17(a).

See Appendix E for further discussion on this subject.

Also, MiMedx has petitioned the SEC on November 1st to promulgate rulemaking pursuant to its authority under Sections 10 and 13(f) of the Exchange Act to set up a pilot program to require the periodic public disclosure of short-sale positions in securities of biotech and life science companies by investment advisers. In MiMedx's view, the appropriate disclosure of short positions would:

- Require the regular reporting by investment advisers of the name of biopharmaceutical company and the title, class, CUSIP number, aggregate amount of the number of short sales of each NMS Security,² and any additional information determined by the Commission;
- Require public disclosure of the reported information, including the investment adviser's identity and the short-sale transaction and position information for each NMS security of a biopharmaceutical company, on no more than a two-week delayed basis.
- Address the disparity between long-position and short-position reporting requirements included in 13F filings. Filing should include equities as well as derivatives.

As I think you are well aware, it is the small shareholders of companies like MiMedx who are damaged the most by these fraudulent and illegal activities. I try to answer all those phone calls from our small investors, and they are very frustrated and confused by the market. This is what drives them away from buying stocks and mutual funds and into ETFs and Indices. That in itself is causing our capital markets liquidity issues.

We would like to ask the Commission to consider the following:

1. The SEC places a priority review on our Form TCR Submission.
2. Hold influential individuals currently using social media and the internet, in general, in an unregulated manner to the same standards as registered broker dealers and regulated analysts.

The SEC and FINRA have had rules of conduct in place for years governing analysts and advisor conduct on the internet and social media.

² Rule 600(b)(46) of Regulation NMS defines an "NMS security" as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." 17 CFR 242.600(b)(46).

We applaud the SEC and FINRA for issuing regulations, code of conduct and disclosure requirements governing registered analysts and advisor conduct and for ensuring these remain current and relevant³. We request the SEC expand these same rules and codes of conduct to cover unregistered "individuals and groups of influence" using the internet and social media in a professional capacity.

3. We respectfully request the SEC investigate "influential individuals" for front running (trading with knowledge in a target company stock ahead of a report being released) reports, articles, and presentations released on financial blogs and social media platforms.
4. The SEC issue "alerts" on the dangers of illegal short sale manipulation:
 - a. One way to do it is to have the SEC's Office of Investor Education and Advocacy issue an "Investor Alerts and Bulletins" focused on this topic (it can use a long line of cases as examples, including *Rhino Advisors, Inc. and Thomas Badian*, Lit. Rel. No. 18003 (Feb. 27, 2003), *Paul S. Berliner*, Exch. Act Release No. 34-57774, 93 SEC Docket 545 (May 5, 2008), or the recent *Deerfield* case.)
 - b. Another way is for the Chairman the Director of the Division of Trading & Markets, or a Commissioner to make these points in a speeches.
 - c. Also, the SEC staff could issue press releases on these subjects.
5. Ask that FINRA pay particular attention to short-sales in the bio-pharma industry and report back to the Chairman as to their findings.
6. Request more attention to enforcement initiatives combatting abusive short sale practices. The Market Abuse Unit and/or the Asset Management Unit of the SEC's Enforcement Division can prioritize these investigations.
7. Request that compliance with "short sale" regulation be selected as one of the 2018 examination priorities of the Office of Compliance Inspections and Examination (OCIE). Here are the priorities for 2017, which did not include short sale: <https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2017.pdf>
8. Request that the SEC act on the MiMedx petition for rulemaking previously filed.
9. Request that the SEC revisit the "Uptick Rule" with a view to making Rule 201 of Reg. SHO more effective.

I understand most of the major factors that have driven some of the Commission's regulatory decisions or lack of decisions. However, I and numerous others are at the point that we consider this illegal short selling activity as "out of control," and we must continue to campaign to see a regulatory and legal process

³ SEC New Form ADV issued on October 1, 2017.

begin to stop these activities. Hopefully, then we may go on to develop some reasonable changes in our current regulations that will prevent this from disrupting and destroying our markets.

We offer MiMedx as a "Poster Child" of what this out of control activity can do to damage quality business enterprises in America and unnecessarily damage shareholders.

We sincerely appreciate your focus on these matters.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Pete" followed by a stylized surname.

Parker H. "Pete" Petit
Chairman and CEO

PHP/pm

Cc: Rick Dearborn, Assistant to the President
Andrew Olmem, Special Assistant to the President

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