

ILLEGAL SHORT SELLING AGAINST MIMEDX October 22, 2019

From about 2013 into 2017, a hedge fund by the name of Deerfield Management had been continually selling MiMedx stock short assuming the Company would be a “flash in the pan,” and their revenue growth would drop significantly. When that did not take place, it is estimated that Deerfield lost a very substantial amount of money (over \$50 million) with their short positions. Consequently, in the summer of 2017, some reliable sources indicated that Deerfield was going around the country encouraging other hedge funds to join them in a concerted short sell attack against MiMedx. They managed to assemble such a group, and it is believed they aligned with Marc Cohodes in mid-2017 to orchestrate the attacks.

Also in 2017, the SEC fined Deerfield \$4.5 million for not supervising two of their healthcare analysts who had bribed a CMS official in mid 2013 into giving them confidential information on forthcoming pricing/reimbursement changes for some dialysis companies. These two analysts were the same individuals who covered MiMedx for Deerfield. These two individuals were subsequently indicted for this bribery activity. They could have conducted the same malfeasance against MiMedx because there were CMS pricing changes for MiMedx products being considered in the summer of 2013. MiMedx shares that were sold short escalated from approximately two million to over 20 million during the summer of 2013.

The major illegal short selling began in the fall of 2017 with coordinated trading attacks on the Company that matched up with social media and journalistic articles being published. These groups engaged in “front running” or positioning themselves prior to the information releases coming public, which they actually developed, which is illegal. On the day of the attack, they would engage in “layering” and “spoofing” to push the share price down, which is illegal. In addition, they would extol the virtues of the accuracy of their fraudulent publications by pointing to the fact that the share price declined substantially! Also, often they participated in naked short selling of their contracts, which is illegal.

The SEC calls this type of action out in a Bulletin entitled “Social Media and Investing – Stock Rumors,” which was modified on February 6th, 2017. There are a number of illegal issues about this type of activity. These illegal short sellers were very adept at taking sales personnel who MiMedx fired for cause (selling competitive products on the side) and turning them into whistle blowers and individuals who would create and make up allegations for them. The propensity for lying by these sales personnel was very evident in their depositions taken for the civil lawsuits the Company filed.

Two of the terminated group of sales employees made allegations in late 2016 of channel stuffing and other accounting irregularities through their Minneapolis attorney, Clayton Halunen. They were trying to break their non-compete contracts

with the Company. Halunen went public with that information when MiMedx would not agree to his extortion request for his clients.

This group and other sales persons who became involved with accusations did not understand the Company's accounting processes and procedures relative to the AvKare federal contract. Actually, neither did their attorney! Their attorney did no due diligence on his clients' allegations before he went public with them. Incidentally, only in the U.S. judicial system is this type of disclosure by an attorney allowed without proper due diligence and proof. In the other judicial systems of developed countries, this type of unverified disclosure is unlawful! Also, executives were told that Mr. Halunen called Mr. Ty Cotrell of the Denver SEC office to make his client's allegations as had Marc Cohodes done with the other terminated employees.

This was a very aggressive short selling campaign because Cohodes sent accusatory letters to senators, congressmen, the new auditors, Ernst & Young (E&Y), and hospitals where MiMedx was doing their research programs. Cohodes has made false allegation after false allegation in trying to disrupt MiMedx business in every way possible.

In early 2018, Petit along with Bill Taylor, President, and Lexi Haden, General Counsel, were called to the DOJ offices in New York to meet with investigators. At that meeting, they were told that the DOJ knew more about Marc Cohodes than they were being given credit for knowing. They said that they were investigating him for international money laundering and other fraudulent activities, and they had been in contact with Canadian and European authorities. Petit, Taylor and Haden told the agents about Cohodes' short-and-distort campaign against MiMedx, and the agents asked to be provided with the evidence that Cohodes was engaged in fraud-based illegal activity relative to MiMedx. The evidence was collected and reviewed by the Sidley Austin law firm. However, it was never sent because David Rody, a Sidley attorney, told the Board that AUSA Quigley at the DOJ, who he had previously known, did not want the fraudulent information sent. That was a lie told by Rody, which was later verified by Quigley in writing. The reason that Rody did this probably relates to the Company being advised to not discuss illegal short sellers by the regulators.

After the first two terminated employees made allegations of channel stuffing at VA hospitals and other accounting irregularities in late 2016, the Audit Committee of the MiMedx Board of Directors engaged their outside counsel, Troutman Sanders, to investigate. The Investigation included extensive document review and witness interviews. Both Troutman Sanders and the Audit Committee concluded that there had been no channel stuffing or other accounting irregularities. The Company published a press release announcing the Audit Committee's findings and conclusions in early March 2017.

Those conclusions did not serve the purposes of Cohodes and his fellow short sellers, who needed someone to make findings of misconduct at MiMedx in order to

continue to drive the stock price down. So, in February 2018, Cohodes sent a letter to the Company's new big four auditor, Ernst & Young, threatening that if E&Y did not conclude that there had been channel stuffing and accounting fraud at MiMedx, E&Y itself could be sanctioned or held liable.

Months earlier, in November 2017, Petit had warned the E&Y engagement partner, Andy Brock, that such a corrupt letter could be coming, and urged him to notify his partners in New York. Brock brushed off the warning, saying E&Y was used to such "stuff." However, when the letter arrived, E&Y could not manage the threats because it feared blowback from its own oversight organizations, the SEC and the PCAOB. So it told the Company in February of 2018 that it would not finish the 2017 audit until the Company thoroughly investigated all of the Cohodes allegations, including the ones that the Audit Committee and Troutman Sanders had already investigated.

After E&Y delivered this ultimatum to the Board, Petit told the Board that he did not expect E&Y to ever finish the audit. Petit stated that as soon as they had investigated one set of Cohodes' allegations, Cohodes would make more, and that E&Y was so fearful of SEC and PCAOB oversight that it would insist that each new allegation be investigated before it could complete the audit. Petit predicted that E&Y would resign from the account rather than finish the audit under these circumstances (which is exactly what happened on November 7, 2018, and many millions of dollars in E&Y costs later). Petit suggested that the Company bring back Cherry Bekaert to complete the 2017 audit, which Petit felt could take place within 60 to 90 days, and then consider switching to a new big four auditing firm. But, the majority of the Board decided to stick with E&Y and meet all of their demands -- and the lengthy, costly and destructive saga that has been MiMedx's recent history began.

This "opinion" by certain members of the Ernst & Young staff resulted in the Company basically terminating their 24-year relationship with the Troutman Sanders law firm in Atlanta. When making those particular allegations, E&Y faulted the Chairman of the Audit Committee, Terry Dewberry, and the Audit Committee itself with conducting an inadequate investigation of these charges made by the two individuals who were first caught selling competitive products on the side while being full-time MiMedx employees. They insinuated that the investigation should have included a very expensive "forensic audit." Petit advised that the Board should push back on these E&Y "opinions!"

From that point forward, the Audit Committee was in total charge and had full responsibility for the investigation and ensuing audits. However, they never prepared a schedule, a budget or scope for this expensive project. The Audit Committee selected King and Spalding (the Sally Yates law firm; see information on the Sally Yates Doctrine) to conduct the investigation and KPMG to conduct a forensic audit. The Audit Committee and Board then effectively turned over most of the Company's key audit decisions and many of its business decisions to E&Y, King

and Spalding, and KPMG. In addition, the Company was being “encouraged” to select a new law firm by E&Y.

King and Spalding and KPMG began their investigation in March of 2018, and in less than three months they formed an opinion that the Company had improperly accounted for revenue from their federal distributor, AvKare, for the preceding five years, necessitating a five-year restatement of the company’s financials. They formed this opinion even though it was the exact opposite of what Troutman Sanders and Cherry Bekaert had concluded just a year earlier. They also formed it without giving executive management a meaningful opportunity to provide input about the non-accounting data they used to make this GAAP related decision. As a result, they got it wrong.

So why did the Audit Committee recommend to MiMedx’s Board that it adopt this new opinion of how revenues with its federal distributor should have been accounted for? Because it matched the Audit Committee’s CYA goals and finding fault with management that would result in dismissals. Like E&Y, the Audit Committee and Board were intimidated by all of the short seller allegations and decided that it was safer for them to “scapegoat” top management for those imaginary wrongdoings than defend against them. Also, King & Spalding was pushing the Sally Yates Doctrine since she just returned from the DOJ in DC after the President had fired her.

MiMedx executive management used a very sophisticated, orderly, bottom-up method of predicting quarterly demand for its products that yielded extremely accurate sales forecasts so the quarterly revenue forecasts were from sales management and not numbers desired by Petit or Taylor. That did not mean, of course, that there was no need to incentivize sales people or inquire about the reasons particular sales people or regions were falling short of their own sales predictions. However, top management never encouraged sales people to do anything unethical, let alone illegal.

The termination of Petit and other top executives at MiMedx is an indirect result of illegal short selling that went unchecked by U.S. regulatory agencies such as the SEC and the Department of Justice. MiMedx provided information and evidence about the illegal short selling to those agencies, but to Petit’s knowledge, they did nothing about it. That made it possible for Marc Cohodes to intimidate Ernst & Young, the MiMedx Board of Directors, and the MiMedx Audit Committee, with disastrous results for the Company, its shareholders, its employees and its executives.

