

Disclosure Games®

MiMedx Group: Parsing the Press Release Announcing an SEC Probe

Disclosure Insight® reports provide commentary and analysis on public company interactions with investors and with the SEC. They are heavily reliant on our expertise in using the Freedom of Information Act.

“Disclosure Games®” is a term we use to highlight those public companies engaging in disclosure practices that in our opinion may be misleading, confusing, evasive, or otherwise lacking the transparency needed for investors to make well-informed investment decisions regarding a potentially material exposure. **For reasons outlined in this report, we have identified MiMedx Group as a company playing Disclosure Games.**

Summary and Opinion: Yesterday MiMedx put out a press release with the headline, [“MiMedx provides Information on Its Interaction With The SEC.”](#) There’s a lot of Disclosure Games going on in this press release and I decided to break it down for you.

Below you will find a tweet thread originally written for posting under the @JohnPGavin twitter handle, to then be re-tweeted by @ProbesReporter.

There’s a lot to pick apart here, which made the tweet thread more detailed than expected. So, I decided to release it – in the original format written as a Twitter tweet thread – to our client subscribers first. Social media followers are nice, but you pay the bills.

Below you’ll see each entry in the original thread, each in the 140-character format you’d expect in a tweet. We may, or may not, publish it to Twitter later.

- John P. Gavin, CFA

The Tweet Thread as Originally Written but not Posted

1/ Going to parse the MiMedx Group press release from yesterday. I do this in real-time for @ProbesReporter clients all the time. \$MDXG

2/ Neither I nor @ProbesReporter has a position of any kind in securities of MDXG (unless it’s in a fund or ETF I own). Never have.

3/ I also don’t care who loves or hates the companies we cover. As always in our research process, we follow the facts where they lead us.

4/ My @ProbesReporter operation has researched MDXG, but only once. As of 24-Jan-2017, we received a response to indicate no records found.

5/ Apparently, that has changed, according to yesterday’s press release. Speaking of which, there is no 8-K as of this morning. [9/22/2017 1:07 PM]

6/ Did you also notice the headline to the press release does not have the words probe, inquiry, or investigation?

7/ An SEC probe disclosed solely via a press release with carefully crafted headlines helps keep it from showing up in EDGAR searches later.

8/ It also can keep the bad news from tripping alerts some people set to warn them of these sorts of developments. To the release now ...

9/ The talk of “a comment letter” resolved gives suggestion there was only one. There were many. But one single letter sounds less scary.

10/ The letters were part of protracted exchange from Oct-2016 to Apr-2017. They left that part out of the press release.

11/ Based on my long experience reviewing comment letters, the issues raised in the comment letter exchange were both serious & in-depth.

12/ Revenue recognition issues were raised, and the company says no restatement was needed. Ok ...

13/ But, in my opinion, revenue recognition questions in an SEC comment letter is always a red flag that calls for deeper analysis.

14/ Revenue recognition is the number one cause of restatement. Again, MDXG says no restatement. But you still need to go deeper on this.

15/ Other issues raised included non-GAAP accounting; changes in goodwill & intangible assets; the acquisition of Stability, Inc.

16/ In addition, with each round of company responses, the SEC kept coming back with even more questions. That's not ideal.

17/ The MDXG comment letters are analytically rich. If you have a position but have not studied them you need to step up your game.

18/ Side note: The company stamped "CONFIDENTIAL TREATMENT REQUESTED BY MIMEDX GROUP, INC. PURSUANT TO RULE 83" on its 18-Apr-2017 response.

19/ "Rule 83" is an arcane provision of the FOIA that allows companies to keep trade secrets and such confidential. It can be legitimate.

20/ From experience, we also know companies can easily abuse Rule 83 claims. The SEC knows this too. We push back, and often prevail.

21/ MDXG cited Rule 83 in an effort to keep you from seeing their response letter of 18-Apr-2017. They failed.

22/ BTW, 17 years ago it took a FOIA request to get SEC comment letters. They are online now for free, thanks to my efforts. You're welcome.

23/ Back to the press release ... ".. last December, we began to assemble summary documentation to supply to the SEC".

24/ Consider this: No one assembles documents for the SEC unless they were asked to; and that was usually part of a probe.

25/ We don't know when the SEC first contacted the company. That tells you how long they were sitting on it, thinking it 'not material'.

26/ It may have been 'last December' when that document assembly project got started. At that early stage, it was likely still informal.

27/ Most SEC probes start informally, with a voluntary request for records, etc. When MDXG says, "The company then received a subpoena",

28/ That means the SEC probe is now formal, but they don't say that. Many companies talk of subpoenas without saying probe is formal.

29/ I saw a huge YOY increase in the 30-Jun 10-Q SG&A expense, 3-mo and 6-mos. Could be the result of increased legal & related fees.

30/ Regarding, "no proceedings have been initiated against MiMedx by the SEC or any other governmental agency at this time."

31/ It's premature to stake out this ground regarding the SEC - the probe is ongoing. That could be the case with other agencies too.

32/ The way you find out is to ask if other agencies have been in touch with the company over the past year or so, and if so, why?

33/ Finally, "We are providing our fullest cooperation to the Commission, and we hope to clear up this inquiry relatively quickly."

34/ The very fact they told you about it means management judged the matter sufficiently material an exposure that it best be disclosed.

35/ A lot of Disclosure Games® found in this press release. They can hope all they want that this clears up quickly. Good luck with that. -End-



Independent Investment Research Focused on Public Company Interactions With the SEC.

Notes: Our **Disclosure Insight**® reports, like those coming from other financial news and data providers, provide the investing public with commentary and analysis on public company interactions between investors and/or with the SEC and other agencies. They are journalistically based in large part on our expertise with federal filings using the Freedom of Information Act.

“Disclosure Games”™ is a term we use to highlight those public companies engaging in disclosure practices that in our opinion may be misleading, confusing, evasive, or otherwise lacking the transparency needed for investors to make well-informed investment decisions regarding a potentially material exposure.

If we alert you to existence of an undisclosed SEC probe, that means we filed a Freedom of Information Act (FOIA) request with the SEC on the company in question and have a response, in black-and-white, on government letterhead that supports our statement. The only thing we know at this time is that the probe(s) somehow pertains to the conduct, transactions, and/or disclosures of the companies referenced.

New SEC investigative activity could theoretically begin or end after the date covered by the latest information in this report which would not be reflected here. The SEC did not disclose the details on investigations referenced herein. All we know is that they somehow pertain to the conduct, transactions, and/or disclosures of the companies referenced above. Companies with undisclosed SEC investigations are maintained on our Watch List of companies with undisclosed SEC probes.

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