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July 30, 2018

*Via Electronic Mail and Federal Express*

Ms. Adena Friedman  
President and CEO  
NASDAQ

Mr. Edward Knight  
EVP & General Counsel & Chief Regulatory Officer  
NASDAQ

Listing Qualifications Panel  
NASDAQ  
One Liberty Plaza  
New York, NY 10006  
[las@nasdaq.com](mailto:las@nasdaq.com)

Mr. Ty Cottrill  
U.S. Securities and Exchange Commission  
[CottrillT@SEC.gov](mailto:CottrillT@SEC.gov)

Re: MiMedx Group, Inc.

Ladies and Gentlemen:

NASDAQ requires that companies comply with the SEC's rules and filing requirements. MiMedx has failed to do so and there is no estimate when its delinquencies will be remedied. Investors deserve protection; the Listing Qualifications Panel should review MiMedx's business and accounting quickly and carefully and order delisting.

### **Background**

On February 20, 2018, MiMedx announced it was unable to file its annual report on Form 10-K on time.

On March 2, 2018, NASDAQ notified the company that it was out of compliance with NASDAQ filing regulations. The company announced that it would submit a plan to regain compliance within 60 days (on or about May 1, 2018).

Despite the company's inability to comply with SEC and NASDAQ filing rules, on March 15, 2018, the company issued a press release in which it boasted as follows: "Parker H.

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“Pete” Petit, Chairman and CEO, commented, “This year started off strong, and we have continued to see momentum build through the quarter. With our current revenue pace and more than two-thirds of the first quarter completed, we are confident in our expectation that we will exceed \$92 million in revenue for the first quarter of 2018.”

On March 30, 2018, MiMedx announced that its lenders had modified the company’s credit agreement to prohibit any borrowing until MiMedx filed its 2017 Report on Form 10-K. MiMedx also said that it hadn’t used the credit facility in the past and did not believe it would need to in the future.

On April 26, 2018, Petit reiterated the company’s very positive prospects: “The first quarter revenue growth is a clear demonstration of the strength of our product lines, our sales management system and the talent we have assembled in our sales and other key functions within our organization. Based upon our strong first quarter performance, we have raised our full year revenue guidance from a previous range of \$383 million to \$387 million to a revised range of \$389 million to \$394 million.”

Petit even touted the stock price as “undervalued,” claiming that “your company is very undervalued in my opinion,” and comparing MiMedx to another company that traded at 22 times earnings – suggesting that MiMedx share value (then trading at 2.3 times revenue) was grossly underpriced.

In that same press release on April 26, MiMedx announced that it would submit a plan to NASDAQ to regain compliance by May 1, 2018.

On May 14, NASDAQ notified the company that it was now out of compliance because it failed to file its quarterly report on Form 10-Q for the first quarter of 2018. MiMedx told investors it had submitted a plan to regain compliance some time before May 14, the company failed to disclose that plan to investors.

On June 6, 2018, MiMedx announced that its financial statements for 2012, 2013, 2014, 2015, and 2016 “should be restated” and it withdrew its financial statements for each of those five years. It also disclosed – for the first time – that its independent investigation determined that its “implicit arrangements” with two distributors “modified the explicit terms of the contracts, impacting revenue recognition.” It disclosed that revenues were improperly recorded in the wrong time periods.

*In other words, the company’s own investigation confirmed what critics have been saying for over a year – namely, that MiMedx has stuffed the channel, operated through side deal letters that allowed distributors to return unsold product, and recorded shipments to distributors as sales in violation of GAAP.*

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All the while that was going on, MiMedx was suing its critics and its ex-employee whistleblowers and harassing people who criticized the company's business. In addition, CEO Petit repeatedly painted a rosy picture of MiMedx's future earnings and prospects.

On July 2, Petit resigned, while remaining on the Board of Directors, one month after the CFO and the Corporate Controller were both terminated. The Petit resignation was based on "information the Audit Committee has identified through its ... independent investigation." The company did not disclose Petit's separation agreement, nor did it disclose the "information" that caused the Board to fire him.

On July 26, MiMedx announced that ten days earlier – on July 10 – the company notified NASDAQ that MiMedx was "unable to bring its SEC filings up to date by the initial August 28, 2018 deadline." Despite admitting that its audited and unaudited financial statements were materially misleading for five years and it could not file audited financials for 2017, MiMedx nevertheless has delayed its delisting by asking for a hearing before the NASDAQ Listing Qualifications Panel.

Notwithstanding the negative information surrounding MiMedx, its stock price has miraculously rallied to climb about 69% between July 10, 2018 and July 26, 2018. I and others suspect that false rumors, proffered by people working with or at the behest of MiMedx officials, are the cause. Thomas Pauly, Yancy Jimmy Bass, LeBigChicken, and Henry Mellon have all posted comments on Twitter downplaying the company's own reported poor situation. Pauly advised people that an Indian company was considering buying the outstanding shares of MiMedx.

The company has not disclosed to investors what news it can possibly impart to the Panel that would justify the continued trading of its stock. *The company already said in its February 20, 2018 press release that it cannot even begin the restatement process until the internal investigation is completed* – and there is no end in sight to that investigation. In its July 2 release, the company stated that it has only "started the planning process" to prepare restated financials. Moreover, it will cost the company between \$10 million and \$20 million to complete a restatement – and MiMedx has not explained where it will get the cash to pay for that work.

According to Audit Analytics (report included), MiMedx is planning to restate far more than what an average restatement covers – in this case, three times more time will be included in the planned restatement. And, Audit Analytics methodically demonstrates in its report that the problems at MiMedx have been repeatedly downplayed by Petit and other officers of the company. (MiMedx continues "to utilize moderated language surrounding the scope and extend of the investigation.")

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The delay in starting the restatement process, coupled with ongoing lawsuits that may uncover other evidence of company misconduct and the fact that it ordinarily takes years for a company to restate five years of financial statements, means that MiMedx cannot file restated financials by December 31, 2018, the date of mandatory delisting.

Nor has the company addressed the rumors and touting by people like Pauly and Mellon. Instead, investors are left to wait and guess at what excuses the company will make. New investors who rely on Petit's recent public statements, and who do not have the level of sophistication needed to understand that investing in a company without any public financial statements for six years means, will undoubtedly rely on NASDAQ's internal listing rules and procedures to protect them – the delays sought and obtained by MiMedx exposes that confidence as utterly misplaced unless NASDAQ acts quickly.

### **Reasons for Delisting**

I urge NASDAQ to delist MiMedx as soon as possible to prevent more damage to investors.

In addition to the hubris reflected in the company's last few press releases, which sought to downplay its noncompliance with NASDAQ's rules while touting the value of the company's shares, I note the following serious problems with allowing MiMedx shares to trade on a major exchange:

1. Channel stuffing to inflate revenues. A copy of my attorney's letter to the Board of Directors is enclosed. It explains how MiMedx used a distributor (AvKare) to falsify revenue. The company has apparently conceded that it engaged in illegal channel stuffing, despite its former CEO's attacks on me and other critics.

2. Bribery. On May 8, 2018, three employees of the Veteran's Administration were indicted by a federal grand jury in South Carolina for accepting bribes from MiMedx employees. The indictment is enclosed. **MiMedx has never disclosed any information about the company's practice of bribing government officials or explained the specifics underlying this indictment.**

3. Selling Unapproved Drugs. On March 28, 2018, Petit announced at a health care conference that Forms 483 issued to MiMedx by the FDA in 2016 were "rather routine" and the company "cleared all those up." But the Forms 483 that were issued to MiMedx identified 13 separate deficiencies ranging from sterility and purity issues tied to the company's own manufacturing process to a lack of validated procedures and patient safety issues. MiMedx never told the public about the FDA inspection or its results. Instead, it responded to a short

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seller expose of the problem on its trash-talking, anti-short seller website and referred to a 2012 interaction with the FDA.

Significantly, MiMedx has operated as though one of its primary products – Amniofix – is not a drug and need not approved by the FDA. But the FDA investigator told management that the company was required to obtain a “biologics license” to manufacture and sell Amniofix – that is, that Amniofix is a drug.

None of this has been adequately disclosed by MiMedx. Instead, short seller analysts obtained the information through FOIA requests and other legal investigative techniques. And that means that MiMedx has been selling unapproved drugs for years and neither the patients nor the investing public truly understand that fact.

4. Imminent Bankruptcy? The Board of Directors retained Alvarez Marsal – a well known firm engaged in restructuring companies, often through bankruptcies. Alvarez Marsal assigned David Coles to act as CEO after Petit was terminated. MiMedx described the retention as one for the “execution of the Company’s current business strategy and in the development of a long range plan.” But Mr. Coles identifies his area of practice as “25 years of financial restructuring experience” on the Alvarez Marsal website. The company’s explanation of Mr. Coles’s role is likely too mild and likely has already misled investors.

### **Conclusion**

There is more to be told about MiMedx, Parker Petit and his cohort of salesmen, and the lack of honesty surrounding the public trading of the company’s shares. If MiMedx is allowed to continue trading, investors who rely on market prices and little else to make decisions will undoubtedly be fooled into thinking MiMedx has just hit a bump in the road and nothing more.

**Please advise me of the date, time, and place of any hearing regarding MiMedx, so that I may attend.**

Thank you for your careful consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marc Cohodes', with a large, stylized flourish at the end.

Marc Cohodes

Enclosures