

This document is subject to the provisions of the Privacy Act of 1974, and may require redaction before disclosure to third parties. No redaction has been performed by the Office of Inspector General. Recipients of this report should not disseminate or copy it without the Inspector General's approval.

REPORT OF INVESTIGATION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION OFFICE OF INSPECTOR GENERAL

Case No. OIG-521

Allegations of Failure by the SEC to Investigate

Introduction and Summary of Results of Investigation

On August 6, 2009, the office of the Honorable Charles E. Grassley, U.S. Senate, forwarded to the Securities and Exchange Commission ("SEC") Office of Inspector General ("OIG") a complaint dated July 27, 2009 from (b)(7)(C) shareholder of Dendreon Corporation ("Dendreon").¹ In this complaint, (b)(7)(C) alleged that a bear raid (to which he referred as a "bear attack") against Dendreon took place on April 28, 2009, causing a 65 percent drop in Dendreon's stock price within 75 seconds. According to (b)(7)(C) a message board posting warned of the bear raid in advance. (b)(7)(C) complained that the SEC "ha[d] yet to investigate the egregious 'bear attack' on Dendreon's stock."²

Scope of Investigation

In its investigation of (b)(7)(C) complaints, the OIG reviewed numerous pages of correspondence and supporting materials sent by (b)(7)(C) including approximately 200 e-mails received from (b)(7)(C) and many attachments thereto. These documents included: (1) several articles and press releases regarding Dendreon and the U.S. Food and Drug Administration's ("FDA") review of Dendreon's drug Provenge; (2) letters from (b)(7)(C) to various federal government agencies and members of Congress alleging conflicts of interest and other misconduct in the FDA's review of Provenge; (3) documentation that (b)(7)(C) obtained under the Freedom of Information Act concerning the FDA's review of Provenge; (4) lists of individuals who, according to (b)(7)(C) were involved in the FDA's

¹ The office of the Honorable Charles E. Grassley, U.S. Senate, also forwarded (b)(7)(C) July 27, 2009 complaint to the U.S. Department of Health and Human Services Office of Inspector General.

² Approximately three months before the alleged bear raid on Dendreon's stock, the OIG received a February 9, 2009 letter from (b)(7)(C) alleging improprieties in the U.S. Food and Drug Administration's approval process for the drug Provenge, developed by Dendreon for the treatment of end stage prostate cancer. While (b)(7)(C) February 9, 2009 letter generally asserted there had been market manipulation in connection with that process, the supporting documentation related to the merits of Provenge and delays in the FDA approval process for Provenge. On March 31, 2009, the OIG responded to (b)(7)(C) and explained that his allegations of misconduct by FDA employees in connection with the approval process for Provenge were not within the OIG's jurisdiction.

This document is subject to the provisions of the Privacy Act of 1974, and may require redaction before disclosure to third parties. No redaction has been performed by the Office of Inspector General. Recipients of this report should not disseminate or copy it without the Inspector General's approval.

review of Provenge; and (5) the April 28, 2009 *Yahoo!* message board posting warning of an impending bear raid against Dendreon. (b)(7)(C)

(b)(7)(C)

The OIG also interviewed (b)(7)(C) on October 2, 2009. Finally, the OIG

(b)(7)(C)

The Results of the OIG Investigation

I. (b)(7)(C) Allegations of Improprieties in the FDA Review Process

(b)(7)(C) alleges serious improprieties in the FDA's approval process for the drug Provenge, developed by Dendreon for the treatment of end stage prostate cancer. Specifically, (b)(7)(C) alleges that certain FDA employees that were involved in the review process for Provenge and argued against its approval had conflicts of interest.⁴

Approximately one year before he contacted the OIG, (b)(7)(C) raised similar allegations in a February 25, 2008 letter to the Honorable Charles E. Grassley, U.S. Senate; the Honorable Henry A. Waxman, U.S. House of Representatives; the Honorable Robert P. Casey, Jr., U.S. Senate; the Honorable Patrick J. Murphy, U.S. House of Representatives; the Honorable Michael H. Michaud, U.S. House of Representatives; the Honorable Dan Burton, U.S. House of Representatives; the Honorable Tim Ryan, U.S. House of Representatives; the U.S. Attorney General; the Government Accountability Office ("GAO") and the SEC's New York Regional Office. See February 25, 2008 letter from (b)(7)(C) attached hereto as Exhibit 1. In his February 25, 2008 letter, (b)(7)(C) requested a full investigation of an FDA "special government employee, whose actions during and following [a March 2007 advisory committee meeting] raised serious questions of an ethical and legal nature pertaining to conflicts of interest . . . and specifically [conflicts of interest] related to [competitors of Dendreon]." *Id.* at p. 2.

(b)(7)(C) serious allegations regarding conflicts of interest tainting the FDA approval process are not within the OIG's jurisdiction to investigate. Accordingly, the office of the Honorable Charles E. Grassley, U.S. Senate, also forwarded (b)(7)(C) July

(b)(7)(C)

⁴ (b)(7)(C) alleges that one of the participants in the FDA's review of Provenge who wrote a letter critical of Provenge that "appears to be a campaign to discredit proponents of Provenge within the FDA . . . is believed to have been an officer and a member of the board of directors of ProQuest Investments." ProQuest Investments is a venture capital fund founded by Michael Milken for the purpose of investing in companies that develop treatments for prostate cancer. According to (b)(7)(C) ProQuest Investments has a substantial investment in Novacea, a competitor of Dendreon.

This document is subject to the provisions of the Privacy Act of 1974, and may require redaction before disclosure to third parties. No redaction has been performed by the Office of Inspector General. Recipients of this report should not disseminate or copy it without the Inspector General's approval.

27, 2009 letter to the U.S. Department of Health and Human Services ("HHS")⁵ Office of Inspector General.

II. (b)(7)(C) Allegations Regarding Possible Market Manipulation

The OIG investigation focused on (b)(7)(C) allegation that the SEC has failed to investigate possible manipulation of Dendreon's stock. (b)(7)(C) February 9, 2009 letter to the OIG generally asserted that the common stock of Dendreon had been manipulated at unspecified times, that he had complained to the SEC staff about that manipulation, and that "other than [the SEC's] pro forma e-mail responses, there was no indication that [the SEC] took my complaints seriously."⁶ See February 9, 2009 letter from (b)(7)(C) to the OIG attached hereto as Exhibit 2. In his July 27, 2009 letter, (b)(7)(C) stated that he has made these allegations to the President of the United States, several members of Congress, the U.S. Department of Justice, the Federal Bureau of Investigation ("FBI"), the U.S. Attorney for the Southern District of New York, and HHS. See July 27, 2009 letter from (b)(7)(C) to the Honorable Charles E. Grassley, U.S. Senate and the Honorable Barney Frank, U.S. House of Representatives, attached hereto as Exhibit 3, at p. 3.

In his July 27, 2009 letter, (b)(7)(C) provided information regarding a specific instance of alleged manipulation. *Id.* at pgs. 1-2. (b)(7)(C) described what he believed was a bear raid on Dendreon's common stock that occurred on April 28, 2009. *Id.* According to (b)(7)(C) a bear raid on that day caused a 65 percent drop in the price of Dendreon's common stock within 75 seconds. *Id.* at p. 1. (b)(7)(C) noted that the alleged bear raid took place "after a warning that the attack was going to happen was posted earlier that day on a Yahoo! Message board." *Id.* (b)(7)(C) theorized that:

[The bear raid] was most likely the work of naked short selling criminals. At any rate, it is likely that short sellers, recognizing that it was now going to be more difficult to prevent Dendreon from getting FDA approval, used the opportunity of that sharp price drop to cover their short positions. Some short sellers might also have used the opportunity to buy shares, hoping to cash in on the bonanza that was to follow. After the "BEAR RAID," Dendreon's stock price quickly rose above \$27 [from \$7].

Id. at pgs. 1-2.

⁵ The FDA is one of eleven agencies within HHS.

⁶ In the various materials (b)(7)(C) provided to the OIG, (b)(7)(C) has stated that Dendreon's stock has been manipulated by numerous persons including individuals within the FDA; the Genovese Mafia family; Michael Milken; Bernard Madoff; Marc Rich, the fugitive financier who received a well-publicized pardon from President Bill Clinton in 2001; and other "persons unknown."

This document is subject to the provisions of the Privacy Act of 1974, and may require redaction before disclosure to third parties. No redaction has been performed by the Office of Inspector General. Recipients of this report should not disseminate or copy it without the Inspector General's approval.

In his interview with the OIG, (b)(7)(C) elaborated on the events of April 28, 2009, as follows:

[On] April 28, 2009, Dendreon announced that it was going to announce the results of the last trial, and at 11:01 Eastern Time on the Yahoo! message board for Dendreon, a poster, posting under the name, and I'm going to have to spell this, Monthaphumchareon, M-o-n-t-h-a-p-h-u-m-c-h-a-r-e-o-n, whose profile, by the way, has been taken off the Yahoo! board for Dendreon Corporation, at 11:01 April 28th posted "Urgent alert, Bear Raid, 12:30 p.m. Central today. Expect massive bear raid this afternoon, 12:30 p.m. Central." At 11:07 there was another alert, "Suggest you sell short, last trade \$24.09. Continue to sell short on any additional strength ahead of 12:20 p.m. Presentation by 12:30 today. You will witness a massive bear raid, DNDN. 11:07 urgent alert, bear raid 12:30 p.m. Central today. 11:10 a.m., high probability stock trades down to \$17 today." Now, the stock was at \$24 at that time. A half-hour later the stock dropped from roughly \$24 to \$7 in 75 seconds. The NASDAQ looked at it, shrugged its shoulders, and said, "We're going to let everything stand," and that was the end of it. Now what the hell kind of regulation and enforcement and oversight is that?

October 2, 2009 (b)(7)(C) Interview Transcript, attached hereto as Exhibit 4, at pgs. 29-30.

In his July 27, 2009 letter, (b)(7)(C) asserted that the SEC "has yet to investigate the egregious 'bear attack' on Dendreon's stock," and that his efforts "**[have] resulted in NO formal governmental action whatsoever** (at least none that anyone can see!)." Exhibit 3 at pgs. 1, 3 (emphasis in original). In his interview with the OIG, (b)(7)(C) expanded on his frustration with various government officials as follows:

And I have been sending letters to Washington for the last two-and-a-half years, David -- and by the way, when I told you how Patrick Murphy called for hearings in early 2007, that was the last time he ever acknowledged my existence. He never again responded to me -- and I met with him twice personally and handed him letters. Neither he nor his office ever responded to my e-mails, my letters, my faxes, or my phone calls, not to this day.

...

This document is subject to the provisions of the Privacy Act of 1974, and may require redaction before disclosure to third parties. No redaction has been performed by the Office of Inspector General. Recipients of this report should not disseminate or copy it without the Inspector General's approval.

And I met with him twice at town hall meetings and personally handed him letters. I have for the last two years, by mail, by phone, and by fax, sent material to the U.S. Attorney General, the FBI in Philadelphia, the U.S. Congress, including the House Committee on Energy and Commerce and now the Senate Finance Committee, which by the way has contacted me, my two Pennsylvania Senators, FraudNet at the GAO, and the FDA's Office of Ethics, which by the way, no longer can be reached by e-mail.

...

I have sent everything, EVERYTHING to Mr. Dan Levinson, who is the HHS Inspector General. And finally, I got a hold of the e-mail address of (b)(7)(C) his (b)(7)(C) and I e-mailed him. And out of the blue, (b)(7)(C) sent me an e-mail saying, "Would you please send me everything you have? And by the way, would you also send it to (b)(7)(C) (b)(7)(C) So I dumped about a hundred e-mails on both of them, at which time (b)(7)(C) said, "After this, would you just send it to our general post office address, you know, on e-mail." And I ignored that, and I continue to send (b)(7)(C) and (b)(7)(C) every e-mail that I send to the SEC.

...

As far as I can see, they've done nothing, and as a matter of fact, I filed an official complaint against Dan Levinson with the GAO, because I don't think he's doing his job. I've also sent everything to the U.S. Attorney for the Southern District [of] New York. I don't think any of them are doing anything.

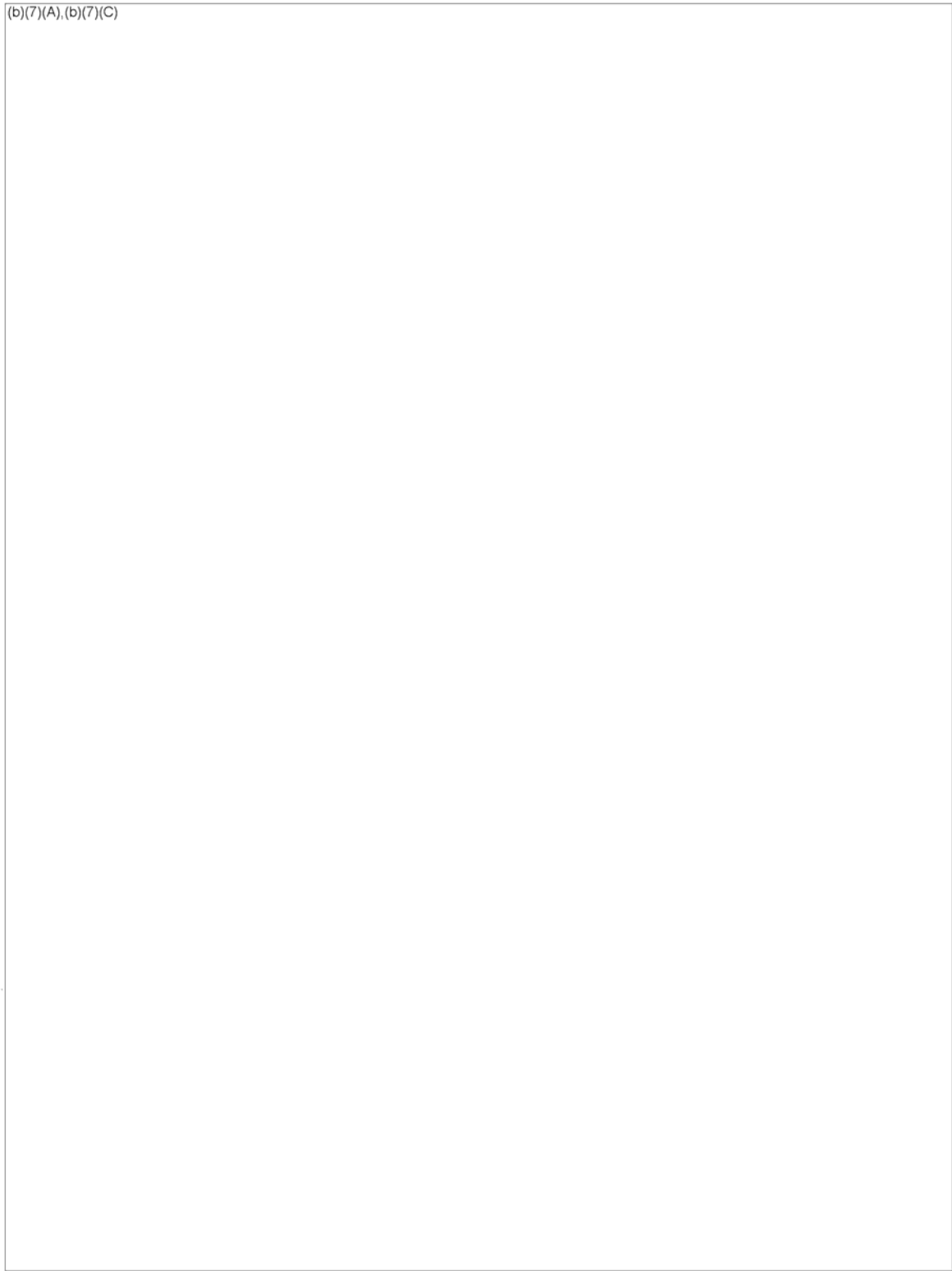
Exhibit 4 at pgs. 30-32 (emphasis in original).

The OIG began its investigation of (b)(7)(C) allegations (b)(7)(A)

(b)(7)(A),(b)(7)(C)

This document is subject to the provisions of the Privacy Act of 1974, and may require redaction before disclosure to third parties. No redaction has been performed by the Office of Inspector General. Recipients of this report should not disseminate or copy it without the Inspector General's approval.

(b)(7)(A),(b)(7)(C)



Id. at pgs. 4-5.

This document is subject to the provisions of the Privacy Act of 1974, and may require redaction before disclosure to third parties. No redaction has been performed by the Office of Inspector General. Recipients of this report should not disseminate or copy it without the Inspector General's approval.

(b)(7)(A), (b)(7)(C)

Conclusion

(b)(7)(A), (b)(7)(C)

(b)(7)(A)

the OIG is closing this matter at present.

A copy of this report is being provided for informational purposes to the Deputy Chief of Staff to the Chairman and the Director of Enforcement. The OIG has forwarded

(b)(7)(C) materials to Enforcement, (b)(7)(A)

(b)(7)(A)

Submitted:

(b)(7)(C)

Date:

12/9/2009

Concur:

Date:

12/9/2009

Approved:


H. David Kotz

Date:

12/9/2009

(b)(7)(A), (b)(7)(C)