

Rev. Fr. Emmanuel Lemelson
Chief Investment Officer
Lemelson Capital Management, LLC
225 Cedar Hill Street Suite # 200
Marlborough, MA 01752

July 13, 2018

Honorable Trey Gowdy
Chairman
U.S. House of Representatives Committee on Oversight & Government Reform
2418 Rayburn HOB
Washington, D.C. 20515

Honorable Jeb Hensarling
Chairman
U.S. House of Representatives Financial Services Committee
2129 Rayburn HOB
Washington, D.C. 20510

Honorable Michael Crapo
Chairman
U.S. Senate Committee on Banking, Housing, & Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Susan M. Collins
Chairman
U.S. Senate Special Committee on Aging
G31 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Claire McCaskill
Ranking Member
U.S. Senate Special Committee on Aging
628 Hart Senate Office Building
Washington, D.C. 20510

Inspector General: Carl W. Hoecker
U.S. Securities and Exchange Commission
Office of Inspector General
100 F Street, NE
Washington, DC 20549-2977

Dear Congressmen, Gowdy and Hensarling, Senators Crapo, Collins, McCaskill and Inspector General Hoecker:

On December 21, 2016, I brought to the attention of the U.S. Senate accounting, regulatory and other abuses at Ligand Pharmaceuticals (NASDAQ: LGND) which has had negative consequences not only to shareholders but, because of the abuse of government programs that I documented, brought real suffering to the chronically ill and the elderly of our society who depend on regular supplies of quality, reasonably priced pharmaceuticals. In addition, Ligand's abuses have squandered taxpayer dollars and impacted our country's fiscal stability. (A copy of that letter is enclosed). I now write to you because the fraudulent and abusive practices at Ligand have not been sufficiently investigated by the Securities and Exchange Commission (SEC) which has ignored strong evidence of fraud presented to them over a multi-year period.

The system of public and private financial oversight has failed to protect patients, taxpayers, employees and investors in the case of Ligand Pharmaceuticals. I am now asking you to press for an investigation as to why the SEC, even when presented with clear evidence of misconduct, has refused to act.

Ligand is only one market correction away from collapse which will leave investors and employees defenseless. Regulatory watchdogs have been asleep at the gate— failing once again to detect and prosecute fraud and abuse, just as it happened at ENRON in the 1990s and with Bernie Madoff, R. Allen Stanford¹ and Pequot Capital Management in the 2000s. As you recall, these scandals led not only to major losses for shareholders and employees but shook the confidence of Americans in the integrity of our country's financial markets. The Ligand case will not only be a further shock to the financial system and the integrity, efficiency, and effectiveness of the SEC but also have negative consequences for the health of our fellow Americans.

The SEC has largely left the problem of fraud at Ligand to private auditors and its boards of directors - both of whom also failed to execute their duties properly either because they were inept or entangled in relationships with the company that has made oversight doubtful because of conflicts of interests. In turn, Wall Street analysts and investment banks are racked with their own conflicts of interest in their reporting on Ligand and its proxies. It is precisely because Franklin Roosevelt understood that Wall Street could not police itself that he pushed for the establishment of the SEC, to provide that outside oversight.

Unfortunately, the SEC is proving itself unable to fulfill its mandate on behalf of the American people to protect investors, maintain fair, orderly and efficient markets, and to facilitate the beneficial formation of capital which is indispensable for stimulating research and development that in turn leads to jobs and prosperity for communities across the United States. The Ligand case is part of a disturbing pattern at the SEC that has excused a culture of investigational incompetence and financial illiteracy at best and at worst is indicative of unethical and illegal collusion between the SEC and prominent figures on Wall Street and the media.

¹ This case mirrors the outrageous failure by the commission in handling of the Madoff, Stanford and other cases. For example, although the Commission examination staff found strong evidence that R. Allen Stanford was likely operating a Ponzi scheme as early as 1997, the Commission did not bring charges against Mr. Stanford until 2009, only months after Bernard Madoff's own Ponzi scheme was exposed; both cases revealed deeply troubling failures by the SEC.

Specifically, the SEC has failed to investigate an obvious fraud at Ligand despite being presented with clear and compelling evidence of wrongdoing.

I strongly encourage you to commence an investigation into the handling of Ligand by the SEC which harms patients, taxpayers and shareholders, many of whom are undoubtedly your constituents.

I realize that this matter cannot be easily summarized in a cover letter. Thus, I am attaching a detailed report and timeline on the SEC's investigative failures and misconduct in the Ligand matter which have enabled Ligand's violation of antifraud, reporting and internal controls provisions of federal securities laws and possibly criminal statutes. I also will gladly make myself available to your respective Committees and offices to review and explain these abuses and to testify--under Congressional oath to substantiate the case that I have laid out here.

Thank you for your attention to this important matter.

Sincerely,

Rev. Fr. Emmanuel Lemelson

Rev. Fr. Emmanuel Lemelson
Chief Investment Officer
Lemelson Capital Management, LLC

Enclosure

cc:

The Honorable Adam L. Braverman, US Attorney, Southern District of California
U.S. Senate Special Committee on Aging Members
Kevin L. Kelley, Staff Director
Derron Reynard Parks, Staff Director
Mia Lenee Woodward, Investigative Counsel

Report of Rev. Fr. Emmanuel Lemelson

Abuses at Ligand Pharmaceuticals - Update

Prepared for Congressmen Gowdy, Hensarling, Senators Crapo, Collins and
McCaskill and Inspector General Hoecker

July 13, 2018

Background

Lemelson Capital Management (LCM) is the general partner and sponsor of The Amvona Fund, LP a hedge fund focused on deep value and special situation investments. I am the CIO of the firm, and have authored or appeared in over 100 essays, articles, interviews and op-eds since 2010 on issues of security analysis, mortgage securitization fraud, corporate governance and ethics. The Amvona Fund, since its September 2012 inception, has consistently outperformed the markets and been ranked a top-performing fund.

I have made openness and transparency the cornerstone of all my work on security analysis and investments since 2010 when I began in this field.

Overview of the Ligand matter

Ligand Pharmaceuticals' (NASDAQ: LGND) accounting and business practices are fraudulent.

Lemelson Capital Management was one of the first to point out in 2014 abuses at Ligand which have now been widely-recognized both at the company and in the pharmaceutical industry at large² (Please see the attached timeline for further details.) In September and October 2015, I provided the SEC with extensive evidence of the fraud at Ligand Pharmaceuticals. In January 2016, I filed a whistleblower report with the SEC on the company and in July of 2016 I provided sworn testimony to the SEC regarding the dangers to investors of the SEC's failure to act on the fraud, detailing material misrepresentations the company has made to investors. (These materials are available upon request.)

Given the SEC's failure to act, in December 2016 I brought Ligand's fraud to the attention of the US Senate Special Committee on Aging as well as the US Food and Drug Administration (FDA) in a 9-page letter.³ Since that time both the US Senate and FDA have correctly moved to enact new laws⁴ and policies to prevent the type of regulatory abuses Ligand has engaged in and which I wrote about in my December 2016 letter. A great injustice is committed when a company exploits the Orphan Drug Act of 1983 to use the patent-like protections to dramatically increase prices while qualifying for certain benefits from the federal government, such as reduced taxes.

² For example, the same or similar abuses have been uncovered at Valeant Pharmaceuticals, Turing Pharmaceuticals, Retrophin, Mylan and others since Lemelson Capital published its initial reports. **see US Senate Special Committee on Aging Hearings here:**

- a) March 17, 2016 - [“Sudden Price Spikes in Decades-Old Rx Drugs: Inside the Monopoly Business Model”](#)
- b) April 27, 2016 - [“Valeant Pharmaceuticals' Business Model: the Repercussions for Patients and the Health Care System”](#)

³A copy of that letter is archived at <https://lemelsoncapital.com/reports/commentary-and-activism/12-lemelson-urges-senate-committee-to-commence-investigation-into-ligand-pharmaceuticals/file>

⁴ See [“Increasing Competition in Pharmaceuticals Industry Act”](#)

The SEC has failed to stop Ligand despite overwhelming evidence of fraud

Ligand's accounting and business model is by design opaque and complex. The SEC, by ignoring the warnings about Ligand, despite a multi-year effort to explain the fraud in clear and simple terms, has categorically failed in its core mission. My original June 2014 research reports, which were made public, gave the SEC enough evidence to stop Ligand's fraud, yet, as far as I know, the commission has taken no action against Ligand. (This is explained in greater details in the accompanying timeline of events).

The Commission has failed to adjust to a rapidly changing business environment amongst this new breed of pharmaceutical companies in which accurate corporate accounting is scarce, and highly complex accounting is intended to confuse and obscure rather than explain and elucidate. Ligand, for example, has been filing amended financial statements while acknowledging errors and loss of control over accounting at a startling rate in recent years. Nevertheless, for reasons that remain unclear, the SEC has failed to act on the company's clear accounting fraud.⁵

One clear example: the 2015 Viking "round-trip" transaction

For instance, Ligand used an accounting method popularly known as a "round-trip" transaction that enabled it to inflate its revenue and earnings although no money changed hands. Ligand misled investors about its partnership with Viking Therapeutics, which generated approximately \$28 million of revenue during 2015. Ligand failed to adequately disclose that it engaged in "round-trip" transactions,⁶ in which the venture paid fees to Ligand using cash and stock that Ligand had essentially provided to Viking via loans and pre-arranged open market stock purchases. It makes the company's numbers look good on paper, but does not reflect the actual health of the firm nor does it provide increased value to shareholders. The SEC accepted misstatements by the company as the basis for closing its inquiry into this transaction. By early 2018, Ligand had continued to make other deliberately false and misleading statements about the nature of its business to the SEC.⁷

⁵ Ligand misled investors by failing to disclose material information about the company's financial results in periodic reports filed with the SEC and in quarterly earnings press releases disseminated to investors. Ligand represented that it was generating record amounts of revenue, net income, and operating cash flow from drug sales and licensing activities. However, these statements were materially misleading because Ligand failed to disclose, or adequately disclose, certain transactions that were critical to Ligand's perceived success. As a result, investors were led to believe that Ligand had achieved record results through improvements in the company's business, when in fact it had not.

⁶ Because of this "round-trip" transaction, Ligand obscured the true demand for its licensed technology and the company's ability to generate license revenue in the future, thereby misleading investors about the quality of the revenue, earnings and cash flow that it generated from its licensing programs. The company had previously executed similar transactions with TG Therapeutics and has planned other similar transactions.

Ligand facilitated an essentially artificial licensing agreement between an on-balance-sheet entity, Viking Therapeutics, only to deconsolidate the entity into an off-balance-sheet entity in order to continue to receive favorable accounting treatment for its artificially inflated revenues. The creation of Viking is a misuse of the corporate form (known in legal parlance as *alter ego*, a critical component for the court to invoke alter ego consists of control over an entity).

⁷ For example, in a letter dated January 17, 2018, Ligand indicated to the SEC that it was unable to "analyze to what extent the variance in royalty income (from Promacta/Revolade, Kyprolis and Evomela) is from product

The private sector has failed Ligand investors

Wall Street analysts such as Roth Capital, of *The China Hustle* fame,⁸ which covered Ligand and was an underwriter for Ligand proxy and alter ego entity Viking Therapeutics, are exposed to a spectrum of conflicts that make objective, critical analyses nearly impossible. These “analysts” promote the companies they cover rather than report accurately for those who rely on the information - middle-class people trying to save for their retirement or their children’s education.

Ligand’s auditors have been indefensibly lax in their audit work issuing clean audit opinions that should never have been issued. Grant Thornton, amongst others, failed to ask probing questions and generally accepted at face value whatever Ligand’s executives and board have chosen to tell them.⁹

SEC leaks to the media expose the whistleblower

Since my July 2016 testimony before the SEC, warning the commission of fraud at the company, Ligand has been the subject of multiple class-actions lawsuits for securities fraud, which casts a shadow over the failures of the regulatory structures, procedures and institutions, in place to prevent such fraud.

Increasingly the Ligand investigation points to personal motivations on the part of SEC in collusion with the media, to create a false narrative that would justify regulatory misconduct and abuse of process while exacting retribution from a whistleblower.

This matter is not unlike the securities industry executive, Harry M. Markopolos who discovered evidence over nine years suggesting that Bernard Madoff’s wealth management business, Bernard L. Madoff Investment Securities LLC, was a massive Ponzi scheme. In 2000, 2001, and 2005, Markopolos alerted the SEC of the fraud, supplying supporting documents, but each time, the SEC ignored him.

As I have raised the issue of Ligand’s fraud, and focused on the inaction of the SEC, I too have been ignored. More importantly, I have found myself targeted as a whistleblower. More troubling, even though SEC investigations are non-public, it is disturbing that information was leaked involving Ligand which exposed the whistleblower in this case to tremendous public scorn and ridicule.¹⁰

volume versus price increases.” However, this was a knowingly false and misleading statement since Ligand specifically seeks to market indications (Including Promacta/Revolade, Kyprolis and Evomela) to licensees based on the patent-like protections of the Orphan Drug Act of 1983, which address small patient populations, but support potentially limitless price increases.

A copy of that letter is archived at <https://www.bamsec.com/filing/88616318000005?cik=886163>

⁸ *The China Hustle* is a 2018 finance documentary produced by Magnolia Pictures and directed by Jed Rothstein. The documentary depicts the fraud that continues to occur in the United States, wherein small nondescript Chinese companies are hyped up and sold by American investment banks to U.S. based investors. Roth Capital is featured in the documentary as a key underwriter of these frauds.

⁹ Grant Thornton’s audit opinion, like Deloitte’s before them, was later retracted.

¹⁰ Lemelson Capital Management later filed a defamation suit against the global financial media outlet that published the defamatory article. During the July 2016 testimony before the commission, the SEC Staff Attorney leading the investigation expressed great consternation at the existence of the complaint, which can reveal, through the discovery process, the source of the potential leaks within the commission.

SEC Internal Watchdog must investigate failures

The Office of the Inspector General (OIG) must act to address these investigational failures. The Enforcement Division's inaction in the Ligand matter lack adequate justification, appear to be based on personal feelings and preferences, undermine the SEC's mission, are proving to be a waste of tax payer dollars and stand to badly tarnish the reputation of this venerable Commission.

Conclusion

I ask that you investigate the decisions of the Enforcement Division not to act on Ligand's fraud, to determine whether they are in keeping with the Commission's core mission and if any civil or criminal laws or regulations have been violated.

The Ligand fraud serves as a reminder of our moral and civic duty to do our part to speak out against market abuse and manipulation that puts patients, taxpayers, investors and employees at risk.

I hope this report leads to more effective oversight by the SEC and other regulatory bodies and a greater commitment to honest, independent information from the private sector watchdogs so that the American people's trust in our system will endure, financial oversight will be strengthened and our economy and markets will continue to grow.

Report of Rev. Fr. Emmanuel Lemelson

Abuses at Ligand Pharmaceuticals - Timeline

Prepared for Congressmen Gowdy, Hensarling, Senators Crapo, Collins and
McCaskill and Inspector General Hoecker

July 13, 2018

The following is a timeline of events covering the period between 2014 and 2018.

2004

August Deloitte resigns after nearly four years as Ligand’s independent auditor. At the time, Ligand noted that the auditor’s reports on the previous two fiscal years:

“had contained no adverse opinion or disclaimer of opinion, and were not qualified or modified as to uncertainty, audit scope, or accounting principles.”

Deloitte had continually noticed instances in Ligand’s management’s estimates for returns were off, leading the firm to consider its Ligand engagement as a “greater than normal” risk¹¹

2005

September 12 Ligand is informed that the SEC has opened a formal investigation in connection with the restatement of the company's financial statements.¹²

2007

December 10 PCAOB Fines Deloitte \$1 million for not following the PCAOB’s auditing standards during its 2003 audit of Ligand.

At issue is how Ligand recognized revenue.¹³

2012

June 8 A federal securities class action and shareholder derivative lawsuit is filed in Pennsylvania alleging that the Company and its chief executive officer John Higgins assisted various breaches of fiduciary duties based on Ligand’s purchase of a licensing interest in a development-stage pharmaceutical program from the Genaera Liquidating Trust in 2010

¹¹ A copy of the report is archived at <http://ww2.cfo.com/accounting-tax/2007/12/pcaob-fines-deloitte-1-million/>

¹² A copy of the report is archived at <http://www.businesswire.com/news/home/20050912006326/en/Ligand-Announces-SEC-Investigation>

¹³ A copy of the report is archived at <http://ww2.cfo.com/accounting-tax/2007/12/pcaob-fines-deloitte-1-million/>

and Ligand's subsequent sale of half of its interest in the transaction to Biotechnology Value Fund, Inc. (BVF)¹⁴

2014

- June 16** Lemelson Capital Management (LCM) publishes its first Ligand research report. The report warns of excessive promotion of adjusted non-GAAP accounting measures¹⁵ and materially misleading statements by management in the company's earnings releases.
- LCM points out that the company has "dangerously undiversified revenue streams" and its revenues are dependent on a material called Captisol®, which is being single-sourced to a third party.
- June 17** Roth Capital Analyst calls LCM report "foolish," and reiterates his firm's positive outlook on Viking Therapeutics (NASDAQ: VKTX) sponsor Ligand, including for one of the company's key royalty generating assets Promacta.¹⁶
- June 19** Rev. Fr. Emmanuel Lemelson (EL) appears on Benzinga pre-market prep show discussing accounting and corporate governance failures at Ligand and speaks about the problem of promoting adjusted non-GAAP measures over GAAP measures at Ligand.¹⁷
- July** About two weeks after Roth analyst criticized the LCM Ligand research reports, Roth Capital emerges as underwriter of the Viking IPO and is set to become the beneficiary of significant transactional banking fees.¹⁸
- July 3** LCM publishes its second Ligand research report which points out that the purpose of the company's promotion of non-GAAP measures is to cloak enormous increases in compensation to Ligand executives John Higgins and Mathew Foehr and examines in detail the pending Viking Therapeutics IPO, questioning the true purpose and beneficiary of the "round-trip" transaction.¹⁹

¹⁴ This is the same entity Ligand would later engage in a highly dilutive, privately negotiated transaction – see August 22, 2014 transaction below.

¹⁵ Adjusted earnings should be given no greater prominence than GAAP results, as required.

¹⁶ The analyst in his commentary fails to disclose Roth's conflict of interest in underwriting the upcoming Viking IPO which will later significantly (and artificially) inflate Ligand's earnings.

¹⁷ <https://youtu.be/P6ucSfDnO24?t=14m35s>

¹⁸ Roth in its critical opinion commentary on the LCM reports, failed to disclose its financial interest in Ligand and the Viking IPO.

¹⁹ On August 4, 2016 Ligand was forced to begin writing down the value of its stake in Viking Therapeutics triggering a precipitous decline in stock price. In late 2016 and early 2017 after LCM's letter to the US Senate, the SEC would begin questioning this transaction as well in a series of letters to the company.

- August 4** LCM publishes its third Ligand research report with further analysis of the problem of excessive promotion of adjusted non-GAAP measures and questions the long-term viability of one of Ligand’s key royalty generating assets Kyprolis stating:²⁰
- “Kyprolis... faces an extraordinary competitive threat from two entrenched multiple myeloma (MM) indications, Celgene’s (NASDAQ:CELG) Revlimid and Takeda Pharmaceutical Company Limited’s (OTC:TKPYY) Velcade.”*
- August 13** EL on Benzinga pre-market prep show says Ligand’s earnings deserve “close scrutiny” particularly the company’s promotion of adjusted non-GAAP earnings over GAAP, especially as it relates to Ligand’s non-cash transaction with TG Therapeutics – says adjusted non-GAAP figures are only used to cloak stock awards to management. Points out that management compensation now exceeds entire H1 2014 earnings and the risk to common shareholders of privately negotiated transactions with large institutional shareholders.²¹
- August 14** LCM publishes its fourth Ligand research report outlining materially misleading statements by Ligand to investors specifically as it relates to the accounting for and representation of the cost of the company’s debt.²²
- August 22** LCM publishes its fifth Ligand research report. The report outlines the preferential treatment of BVF,²³ a large institutional holders of Ligand shares in private out-of-market transactions and calculates the true cost of Ligand debt to ongoing shareholders.²⁴
- September 2** Roth Capital underwrites Viking IPO earning significant transactional banking fees.²⁵
- September 16** EL on Benzinga pre-market prep show discusses Ligand, covers comments by Janet Yellen and improper functioning of public markets for formation of capital, also discusses fiduciary responsibilities of management to shareholders.
- October 16** EL on Benzinga pre-market prep show discusses Ligand, explains the problem of the company’s pattern of reporting and promoting adjusted non-GAAP earnings. Says there is a place for non-GAAP earnings, but not at Ligand. Encourages listeners to read the company’s annual reports and SEC filings. Says prospective shareholders should take a close look at GAAP EPS.²⁶

²⁰ See September 27, 2016 entry on timeline.

²¹ A copy of the interview is archived at <https://youtu.be/V8UX2X24R1s?t=6m52s>

²² See November 11, 2016 entry on timeline.

²³ See the 2012 class-action lawsuit for more on the relationship between CEO Higgins and BVF.

²⁴ On November 15, 2016 Ligand would amend and restates its FY 2015 financial statements acknowledging the debt has not been correctly accounted for.

²⁵ The firm would later participate as an investment banker on follow-on offerings for Viking while continuing to issue positive analyst ratings and price targets on the stock.

²⁶ A copy of the interview is archived at <https://youtu.be/n2RheT5zJ4I?t=1m16s>

November 18 EL on Benzinga pre-market prep show discusses Ligand, explains stock awards to management, describes it as a “wealth transfer operation,” says hopes the work has “helped protect” investors.²⁷

2015

February 20 EL on Benzinga pre-market prep show discusses Ligand’s debt, says company cannot maintain market valuation.²⁸

February 23 Ligand auditor Grant Thornton, LLP issues a clean audit opinion stating:
“In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2014”

April 27 EL on Benzinga pre-market prep show discusses Ligand.²⁹

March 24 EL on Benzinga pre-market prep show says Ligand’s accounting is “not an accurate portrayal of things that are really going on at the company,” discusses in detail the problem of the company promoting adjusted non-GAAP measures and the difference between the company’s real financial performance and enormous increases in compensation to senior executive’s.³⁰

April 27 EL on Benzinga pre-market prep show explains small biotech is part of a bubble.³¹

May 22 Viking Therapeutics releases a joint statement together with Ligand, announcing that it had signed a “broad licensing deal” with Ligand Pharmaceuticals. Shares of Ligand closed 3% higher on the news, representing an increase of almost \$40 million in market capitalization for Ligand in just a matter of hours. Shares rise ~5.3% in the ensuing 50 days.

June 2 Ligand summarizes the accounting impact of the Viking IPO. Ligand fails to disclose the entry as non-GAAP and non-Cash or the “round-trip” nature of the transaction.³²

June 5 EL on Benzinga pre-market prep explains in detail the accounting manipulation around the Viking IPO, describes it as “unsustainable”.³³

²⁷ A copy of the interview is archived at <https://youtu.be/o1REGcNcCxl?t=13m59s>

²⁸ A copy of the interview is archived at <https://youtu.be/Atllbv3n1jg>

²⁹ A copy of the interview is archived at <https://youtu.be/Atllbv3n1jg?t=11m36s>

³⁰ A copy of the interview is archived at <https://youtu.be/umKYoWGFIt4?t=16m30s>

³¹ A copy of the interview is archived at <https://youtu.be/sqlQt2i3mol?t=5m57s>

³² SEC issued letters of inquiry into the handling of this disclosure in early 2017

³³ A copy of the interview is archived at <https://youtu.be/3xOhiQl9ISo?t=15m9s>

- August 15** EL on Benzinga pre-market prep explains customer and product line concentration at Ligand, issuance of stock to management and subsequent sales, reaffirms that the valuation is part of a bubble in biotech.³⁴
- September 1** LCM and EL receive subpoenas from SEC for production of documents and testimony as witnesses in an investigation involving Ligand.
- September 14** LCM and EL eager to help in the investigation and holding nothing back, waive attorney-client privilege and turn over (without any internal review) entire contents³⁵ of all company hard drives and produce all documents responsive to subpoena. In the letter to the SEC EL emphasizes readiness to assist in the investigation.
- October 19** EL provides SEC with additional 18-page report outlining how Idiopathic Thrombocytopenic Purpura (ITP) is not a commercially viable application for Ligand's key royalty generating asset Promacta and how comments by the U.S. Food and Drug Administration (FDA) support this conclusion. Report outlines in detail how this and a litany of other comments by Ligand management are materially misleading to investors. Research concludes with clear analysis of the accounting fraud behind the Viking IPO.
- December 9** Nearly 18 months after LCM's initial report on the subject, SEC Chair Mary Jo White warns that the growing prominence of adjusted earnings "deserves close attention," cautioning that company lawyers, audit committees and others should be asking questions, such as whether the figures are useful to investors, are calculated with **appropriate controls**³⁶ and are given no greater prominence than GAAP results, as required.^{37 38}

2016

- January 26** EL files whistleblower complaint with SEC about Ligand through the Tip, Complaint or Referral (TCR) form online. Complaint outlines material misrepresentations and highly questionable accounting at Ligand, with a focus on the abuse of the Variable Interest Entity (VIE) accounting standard and draws clear parallels to Enron's use of Special Purpose Entities (SPE) to manipulate the company's financial statements.
- February 26** Ligand files form 10-K with SEC for fiscal year 2015. The report includes the 2014 Report of Independent Registered Public Accounting Firm from Grant Thornton, LLP stating:

³⁴ A copy of the interview is archived at <https://youtu.be/W5ZyNgPRR68?t=7m19s>

³⁵ Including the company's complete .OST and .PST Outlook files.

³⁶ On November 11, 2016 Ligand would be forced to acknowledge that it did not "*maintain effective internal control over financial reporting*" in its filings with the SEC leading to multiple class-action law suits.

³⁷ Keynote Address at the 2015 AICPA National Conference: "Maintaining High-Quality, Reliable Financial Reporting: A Shared and Weighty Responsibility"

³⁸ This issue of promoting non-GAAP measures over GAAP figures was raised repeatedly in the LCM 2014 and 2015 Ligand reports and interviews.

“In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2014”

March 18 Approximately six weeks after the whistle blower report is filed, a global financial media outlet publishes a defamatory article profiling EL and the investigation involving Ligand, comparing him to fraudster and convicted felon Jordan Belfort, the notorious “Wolf of Wall Street”. Says SEC is investigating EL for “short and distort” stock price manipulation. Article cites “unnamed sources”.

May 7 EL files defamation suit against global media outlet, seeks to compel production of “unnamed sources” in article, via discovery.

June 8 Bloomberg reports³⁹ that the SEC challenged Valeant Pharmaceutical’s (NASDAQ: VRX) practice of playing down GAAP results in favor of its own adjusted pro-forma numbers, a method of reporting that paints an unrealistically rosy picture of the drug-maker’s health and the same argument LCM had been making since 2014 about Ligand.

July 20-22 EL testifies before the SEC that Ligand is a fraud, mapping out in detail the material misstatements made by management, and fraudulent accounting practices, including the following statement:

“if you took 28 million from the Viking IPO out of the Ligand income statement, the company would be forced to show a massive decline in profits. And that of course, any sort of press release like that would result I'm sure in a precipitous decline in the stock price.”⁴⁰

EL spends 27 hours over three days describing the Ligand fraud to SEC attorney’s. The transcript of this testimony is 1007 pages. The SEC Staff attorney questions TCR whistleblower report submitted to SEC on Ligand and clearly shows irritation regarding filing of defamation claim against the global financial media outlet, a cause of action which could lead to discovery of the outlet’s “unnamed source”.

August 4 Nine business days after EL testifies to the SEC that “any sort of press release” that announced a write down of the Viking entry on Ligand’s income statement would result in a “precipitous decline in the stock price,” Ligand announces in a press release that it has written down \$10 million⁴¹ of the value of the company’s equity holdings of Viking Therapeutics (NASDAQ: VKTX) resulting in a net loss for the second quarter of 2016 of

³⁹ Valeant’s Come-to-GAAP Moment Followed Prodding by SEC - <https://www.bloomberg.com/news/articles/2016-06-08/valeant-s-come-to-gaap-moment-followed-months-of-sec-prodding>

⁴⁰ Transcript of testimony Fr. Emmanuel Lemelson at page 768.

⁴¹ This is a fraction of the \$28 million the company recorded as income in its statement of profit and loss and was written-down only because of dilution from Vikings secondary share offering. Ligand continued to hold, and failed to “mark-to-market” the equity stake on its Income statement at the \$8 per share IPO price even though shares of Viking closed that day at \$1.41 per share.

\$5.8 million or .28 cents per share. Over the ensuing ninety days, **shares of LGND collapse ~32 percent, destroying over \$800 million in shareholder value.**

Importantly Ligand refers to this as a non-cash “GAAP” net loss which does not appear in the release until the 5th paragraph. The company’s previous announcement of the entry on the income statement did not (adequately) identify the revenue as “non-GAAP,” “non-cash,” or “adjusted” entry.

August 26 Ligand terminates its relationship with its auditor Grant Thornton. In the company’s form 8-K filed with the SEC the company says of Grant Thornton’s reports:

“...did not contain any adverse opinion or disclaimer of opinion, nor were they qualified or modified as to uncertainty, audit scope or accounting principles.”

This is nearly identical language to that used by the company when the company’s previous independent auditor Deloitte resigned in August 2004 (see above at August 2004). Ligand asked Grant Thornton to submit a letter to the SEC stating:

“We have read Item 4.01 of Form 8-K of Ligand Pharmaceuticals, Inc. dated August 25, 2016, and agree with the statements concerning our Firm contained therein.”

This letter is attached as exhibit 16.1 to form 8-K.

On November 14, 2016, Grant Thornton would reverse its audit opinion in the company’s form 10-K/A.

September 27 CNBC affirms⁴² the exact analysis made in LCM’s third Ligand report published on August 4, 2014 (that Kyprolis would fail to Velcade) when it reports over two years later that:

“Shares of Ligand Pharmaceuticals shed nearly 12 percent Tuesday after Amgen said its multiple myeloma drug, Kyprolis, did not outperform Takeda Pharmaceutical’s Velcade in a late-stage study.”

Further noting that:

“...the trial did not meet its goal in improving progression-free survival versus Velcade in patients who had not yet been treated for the disease.”

October 31 Valeant ex-CEO, ex-CFO become focus of U.S. criminal probe⁴³ for accounting fraud charges related to Valeant’s ties to Philidor Rx, a company Valeant controlled. The Valeant fraud and kickback scheme resembles in principles the Viking arrangement with Ligand.

⁴² Shares of Ligand plunge 12% after Amgen drug misses study goal - <http://www.cnbc.com/2016/09/27/shares-of-ligand-plunge-13-percent-after-amgen-drug-misses-study-goal.html>

⁴³ A copy of the report is archived at <http://www.reuters.com/article/us-valeant-investigation-idUSKBN12V29J>

- November 9** Ligand files form NT 10-Q, late filing notification for Q3 2016 with the SEC.
- November 11** Ligand amends and restates its FY 2015 financial statements and includes the following statement in the amendment:
- “...management identified control deficiencies that represent material weaknesses... there is a reasonable possibility that a material misstatement of our annual or interim financial statements... management has concluded that we did not maintain effective internal control over financial reporting as of December 31, 2015.”*
- November 14** Ligand files amended for 10-K/A **that reverses Grant Thornton’s clean audit opinion** of the 2015 financials stating:
- “...the Company has not maintained effective internal control over financial reporting as of December 31, 2015...”*
- November 15** Ligand amends and restates its Q1 and Q2 2016 financial statements, files form 10-K/A.
- Nov-Dec** Ten U.S. law firms announce investigations into Ligand for breaching their fiduciary duties to shareholders and for securities fraud. During this same period, eleven U.S. law firms file class action lawsuits against Ligand, alleging materially false and misleading statements by the company and its management, including the company’s accounting of its debt expense.⁴⁴
- December 19** In 9-page letter, EL urges Senate Special Committee on aging to commence investigation into Ligand, specifically calling attention to abuse of the Orphan Drug Act of 1983 that has led to outrageous price increases, accounting and regulatory abuses related to Viking and its IPO.
- On the same day, Jim B. Rosenberg, Senior Chief Accountant in the Office of Healthcare and Insurance at the SEC issue a letter (via email) of inquiry to Ligand regarding the company’s accounting of the Viking transactions.

2017

- January 27** Rosenberg sends a follow up inquiry to Ligand regarding further clarification of the Viking IPO, requesting proposed disclosures and authoritative support for the transaction.
- February 9** Ligand in response to Mr. Rosenberg’s inquiry misrepresents the justification for the deconsolidation under the VIE accounting standard and fails to notify the SEC that Ligand maintained full control and ownership over the 5 programs licensed to Viking, stating simply: *“Ligand was no longer deemed the primary beneficiary”*. One of the key elements for the deconsolidation was Viking’s ability to obtain financing independently in the IPO,

⁴⁴ See LCM August 22, 2014 report which discussed the mischaracterization of Ligand’s debt.

however, one of the primary purchasers of shares in the IPO was Ligand itself, thus negating the accounting guidance for the deconsolidation.

February 14 SEC completes its review of Ligand’s accounting of its stake in Viking and takes no further action.

The SEC by allowing Ligand to abuse the VIE accounting standard has enabled company to artificially inflate its revenue and earnings without consequences.

December 15 Rosenberg sends a follow up inquiry to Ligand regarding further clarification of amongst other things, the company’s investment in Viking and increases in revenue as a result of price-increases (the same issues outlined in the LCM December 2016 letter to the US Senate) to quote:

“...the extent to which each of the increases in royalty income during the year ended December 31, 2016 and the nine months ended September 30, 2017 for Promacta/Revolade, Kyprolis and Evomela was due to volume versus price increases in sales of these products,”

Rosenberg requests the proposed disclosures and authoritative support for the transaction.

2018

January 17 Ligand CFO Matthew Korenberg, responds to Rosenberg’s December 15, 2017 inquiry with a materially mis-leading statement:

“The Company respectfully advises the staff that its royalty partners provide the Company aggregate product sales information and therefore it is not possible to analyze to what extent the variance in royalty income is from product volume versus price increases.”

Korenber fails to notice the SEC that Ligand specifically markets these drugs to royalty partners because of monopoly-like protections under the Orphan Drug Act of 1983 which allow for limitless price increases. By definition, the Orphan Drug Act means these drugs do not have a commercially viable market to begin with, let alone one which would have any appreciable increase in volume.

January 30 Alan Biloski publishes “*Ligand Pharma is a Short*” on SeekingAlpha,⁴⁵ stating in part:

“Ligand Pharmaceuticals (NASDAQ:LGND) is a prime short candidate since the company claims to be proprietary biopharma development organization, but actually is one

⁴⁵ See Ligand Pharma Is A Short, SeekingAlpha, January 30, 2018 - <https://seekingalpha.com/article/4141370-ligand-pharma-short>

product, commodity chemical middleman. The company has aggressively hyped its R&D credentials,”

The report includes the following summary points:

- LGND is not a diversified biopharma technology specialist, but a one product commodity middleman.
- A direct Captisol substitute is available from a fully integrated, high-quality supplier.
- Ligand does not have a Captisol manufacturing capability and is dependent upon a sole source of supply.
- Captisol customers use the product at their discretion and are free to terminate the relationship with Ligand.

Biloski continues:

“Apparently, management is aware of this threat since there has been a longstanding imbalance of insider selling and the pace has accelerated over the past year...”

It certainly is reasonable for them to sell since the company is vastly overvalued as a commodity chemical supplier with extreme risk to virtually 100% of its revenue base. Despite that dismal picture, LGND has strongly outperformed the market for an extended period...”

The report concludes with the words “SELL SHORT”

The report makes substantially the same claims as the Lemelson commentary between 2014 and 2015.

April 4

Seven Corners Capital Management publishes “*Ligand's Market Valuation Does Not Withstand Scrutiny*” on SeekingAlpha,⁴⁶ stating in part:

“...find that LGND magically transforms \$12.6MM of GAAP net income into \$72.5MM in non-GAAP "adjusted net income" for 2017 (an increase of 475%) and converts \$1.6MM of GAAP net losses in 2016 into \$46.7MM of "adjusted net income" (an increase of 2,819%),”

As well as the following summary points:

- LGND's non-GAAP adjusted financial results do not present an accurate picture to investors of the company's true economic performance.
- LGND is overly reliant on just three marketed drugs, which will inevitably go off patent.

⁴⁶ See Ligand's Market Valuation Does Not Withstand Scrutiny, SeekingAlpha, April 4, 2018 - <https://seekingalpha.com/article/4141370-ligand-pharma-short> also available here: https://docs.wixstatic.com/ugd/153e48_4bbad319e24e4a59a277c6d236f9bb59.pdf

- LGND shares are extremely overvalued and due for a fall.

Seven Corners makes substantially the same arguments as LCM in its 2014-2015 commentary, and uses the same words to describe Ligand's valuation, including the following:

"LGND currently trades at a nosebleed 106X P/E on a trailing basis, meaning LGND is about 4X overvalued versus the overall market multiple of approximately 25X."

April 24

Blomberg, SeekingAlpha⁴⁷ and TheFly⁴⁸ report that Lakewood Capital Management has disclosed in a quarterly letter that it initiated a short position in Ligand Pharmaceuticals, with the firm's CIO Anthony Bozza stating that he sees "more than 50% downside"

⁴⁷ Ligand Pharma, iRhythm Tech new shorts at Lakeland Capital, SeekingAlpha, April 24, 2018 - https://seekingalpha.com/news/3348110-ligand-pharma-irhythm-tech-new-shorts-lakeland-capital?app=1&uprof=32#email_link

⁴⁸ Lakewood Capital discloses short positions in iRhythm, Ligand, TheFly, April 24, 2018 - <https://thefly.com/landingPageNews.php?id=2717836>