UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933   **CORRECTED**
Release No. 8825 / July 17, 2007

SECURITIES EXCHANGE ACT OF 1934
Release No. 56082 / July 17, 2007

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2644 / July 17, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12695

In the Matter of	: **ORDER INSTITUTING CEASE-AND-**
	: **DESIST PROCEEDINGS, MAKING**
	: **FINDINGS, AND IMPOSING A**
QUOVADX, INC.,	: **CEASE-AND-DESIST ORDER**
	: **PURSUANT TO SECTION 8A OF**
Respondent.	: **THE SECURITIES ACT OF 1933 AND**
	: **SECTION 21C OF THE SECURITIES**
	: **EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted against Quovadx, Inc. ("Quovadx") pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act").

II.

In anticipation of the institution of these proceedings, Quovadx has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings which are admitted, Quovadx consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

FACTS

On the basis of this Order and Quovadx's Offer, the Commission finds[1] that:

A.   Respondent

Quovadx, a Delaware corporation based in Englewood, Colorado, is a software company that licenses software and sells related services to the healthcare industry. Quovadx's stock was registered with the Commission under Section 12(g) of the Exchange Act during the relevant time and traded on the NASDAQ National Market. During 2002 and 2003, Quovadx derived about one-third of its reported revenue from software licensing fees, with the rest coming from software maintenance and service contracts. Quovadx separately reported its software licensing revenue, which included sales of both software and licenses.[2] During the relevant period, Quovadx had a continuously effective offering of securities pursuant to Form S-8. It also registered an offer of securities pursuant to Form S-4 in the fourth quarter of 2003.

B.   Summary

Between 2002 and 2003, Quovadx improperly recognized over $12 million in revenue from software licensing deals with four of its customers in an attempt to meet aggressive revenue and sales goals set by the company. In transactions with three customers - Sourceworks, Microstar, and Infotech - Quovadx's recognition of revenue was fraudulent. In each of these transactions, one or more members of Quovadx's then senior management knowingly or recklessly engaged in the improper revenue recognition and other conduct described herein.[3] In the fourth transaction, Quovadx improperly accelerated recognition of the revenue. As a result, Quovadx materially overstated its software licensing revenues in its quarterly reports by amounts ranging from 10% in the third quarter of 2002 to nearly 180% by the third and fourth quarters of 2003.

On March 15, 2004, when it could not collect payment from Infotech for transactions it had previously booked as revenue, Quovadx announced that it would restate its prior results to decrease revenue by approximately $11 million. Quovadx's stock price fell 29%, and dropped further after Quovadx announced on May 13, 2004, that it was reviewing two additional contracts. By August 16, 2004, when Quovadx restated its results for the second time to correct for the transactions with Sourceworks, MicroStar, and the fourth customer, Quovadx's stock was trading at $1.65 per share.

C.   Applicable Accounting Principles for Software Sales

As a public company, Quovadx was required to file quarterly and annual reports with the Commission that presented its financial results in conformity with Generally Accepted

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[1]   The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

[2]   Throughout this Order, "software sales" and "software license sales" are used interchangeably.

[3]   References below to Quovadx's "management" refer to the former management that departed Quovadx in Spring 2004.

Accounting Principles ("GAAP"). The American Institute of Certified Public Accountants' Statement of Position 97-2, *Software Revenue Recognition* ("SOP 97-2") and related interpretations are the principal GAAP provisions governing the recognition of revenue for sales of software and software licenses. Under SOP 97-2, a company may not recognize revenue from a software license sale unless and until there is: persuasive evidence of an arrangement; delivery of the software; a fixed or determinable seller's fee; and a reasonable probability of collecting the accounts receivable. Further, if payment is substantially contingent on the buyer's success in distributing the product to the customer, either due to the terms of the deal or because the buyer is so undercapitalized that it cannot pay until it sells the product, the seller may not recognize the software license revenue at the time of sale.

In its financial reports filed with the Commission, Quovadx claimed that it had recognized revenue in accordance with GAAP. Between 2002 and 2003, in a series of transactions with four different customers, however, Quovadx recognized revenue that was not in conformity with SOP 97-2 and that materially overstated the company's financial results.

D.   The Sourceworks Transaction

In early 2003, Quovadx solicited the Veterans' Administration ("VA") to buy licenses for Quovadx's Insurenet software, a product for processing patient medical insurance information. The VA refused to buy the licenses, but expressed an interest in using the software and periodically paying Quovadx a fee based on the number of insurance transactions that it processed. Quovadx was not interested in this proposal because it did not want to license software on a per-use basis. Quovadx therefore developed a plan whereby Quovadx would sell the licenses to a third party, which would then enter into a contract with the VA to offer the software on a per-use basis.

A Quovadx employee contacted a Colorado-based venture capital firm and proposed that the firm buy the Insurenet licenses from Quovadx. In return, Quovadx would negotiate a contract for the venture capital firm to license the software on a per-use basis to the VA. As the end of the second quarter of 2003 approached, the venture capital firm agreed in principle to Quovadx's proposal. However, because it was not a software reseller, the firm repeatedly said that it would not pay for the Insurenet licenses unless and until Quovadx obtained the promised user contract with the VA. The Quovadx employee expressed confidence that it would obtain the contract with the VA early in the third quarter. With that understanding, the venture capital firm created a shell company, Sourceworks USA LLC, in late June 2003 to buy the Insurenet licenses from Quovadx and enter into the user contract with the VA. On June 30, 2003, Quovadx and Sourceworks executed a contract requiring Sourceworks to pay Quovadx $600,000 for the Insurenet licenses. The contract, which gave Sourceworks six months to pay Quovadx, did not indicate that Sourceworks' ability to pay Quovadx was contingent upon Quovadx successfully negotiating a VA deal for Sourceworks.

Quovadx knew or was reckless in not knowing that Sourceworks could not pay for the licenses unless the venture capital firm provided the funds or the VA contract was secured.[4] Nevertheless, Quovadx recognized the entire $600,000 in the second quarter, based upon the

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[4]   Sourceworks USA LLC was formed as a subsidiary of Sourceworks Consulting, a Canadian firm. Sourceworks Consulting supplied incomplete and unaudited financial statements to Quovadx that did not support a conclusion that either the parent or the subsidiary Sourceworks could pay for the Insurenet licenses.

June 30, 2003 contract. It issued a press release on July 23, 2003, touting the company's second quarter financial results, which included the Sourceworks revenue. For the next eight months, Quovadx attempted to secure a contract between Sourceworks and the VA. However, these negotiations ultimately failed. As a result, other than one $30,000 payment in August 2003, Sourceworks did not pay Quovadx for the Insurenet licenses.[5] Because Sourceworks did not pay the remaining $570,000, Quovadx's new senior management and auditor reviewed the Sourceworks transaction in the Spring of 2004 and reversed the revenue as part of the company's second restatement.

As a result of its fraudulent recognition of the Sourceworks revenue, Quovadx overstated its software licensing revenues by $570,000, or approximately 9%, in the second quarter of 2003.[6]

E. The MicroStar Transactions

In the third quarter of 2003, Quovadx fraudulently recognized $380,000 in software licensing revenue from three purported sales of licenses to MicroStar, Inc. ("MicroStar"), an Ohio company that sells software licenses and maintenance services to the healthcare industry. The sales were, in fact, part of a parking arrangement designed to accelerate revenue recognition from other transactions that Quovadx was in the process of negotiating, but had been unable to finalize before the end of the quarter. Quovadx carried out this arrangement in an attempt to meet its third quarter sales targets. Quovadx knew or recklessly disregarded that MicroStar was merely holding the licenses in its inventory so that Quovadx could recognize revenue on their "sale." MicroStar had no ability or intent to pay for the licenses unless Quovadx found customers to which MicroStar could resell the licenses. Therefore, Quovadx should not have recorded the transactions as revenue.

In late September 2003, shortly before the close of the third quarter, MicroStar and Quovadx signed three separate software license purchase contracts with a total value of about $380,000. Quovadx and MicroStar simultaneously reached a side-agreement that MicroStar did not have to pay Quovadx for the licenses until Quovadx finalized sales of those licenses to three anticipated customers with whom Quovadx had already been negotiating. Under the side-agreement, Quovadx gave MicroStar a discount on the license price in exchange for holding the licenses in MicroStar's inventory. Certain senior management at Quovadx became aware of this arrangement with MicroStar before the end of the third quarter. Nevertheless, Quovadx treated the MicroStar contracts as bona fide sales agreements and recorded $380,000 of revenue in the third quarter. Quovadx issued a preliminary earnings release and a quarterly report for the third quarter of 2003 that included the revenue from the arrangement with MicroStar.

In fact, MicroStar was unwilling or unable to pay for the licenses unless and until it was able to resell them to the customers with whom Quovadx had been negotiating. Shortly after Quovadx filed its quarterly report, the company learned that MicroStar had not paid for any of the software licenses because the anticipated customers had declined to buy the licenses from

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[5]   Sourceworks has since demanded that Quovadx return the $30,000; Quovadx has not done so. Sourceworks, in turn, has rejected Quovadx's demand for payment of the $570,000 balance due on the purchase of the licenses.

[6]   Quovadx overstated its software licensing revenue in its July 23, 2003, Form 8-K, which incorporated its preliminary earnings results, its quarterly report for the second quarter of 2003, and its annual report for 2003.

MicroStar. Quovadx did not reverse the MicroStar revenue, but instead Quovadx's sales staff attempted to find alternative customers to buy the software licenses from MicroStar. Quovadx's sales staff was unable to find other buyers.

In December 2003, one of the three anticipated customers purchased different software licenses for approximately $257,000 from a Quovadx subsidiary in the United Kingdom.   In February 2004, when the customer made payment, the U.K. subsidiary, at Quovadx's direction, reversed the transaction from its books and sent the approximately $257,000 to Quovadx's U.S. offices. Quovadx then wired this money to MicroStar with the instruction that MicroStar would wire it back to Quovadx, less $10,000 as payment to MicroStar. MicroStar wired the money less its payment. By channeling the payment through MicroStar, Quovadx created the false appearance that MicroStar had paid a significant portion of what it owed. Quovadx's employees also continued unsuccessfully to search for additional opportunities to channel software license sales through MicroStar to eliminate the remaining balance. In August 2004, Quovadx reversed all three software license sales to MicroStar as part of its second restatement.[7]

F.   The Infotech Transactions

In the third and fourth quarters of 2003, Quovadx fraudulently recognized a total of $11.1 million in software licensing revenue from a series of transactions with Infotech Network Group ("Infotech"), a company based in India.[8] Because each of these transactions had material contingencies and the collection of payment was not probable, Quovadx was precluded from recognizing this revenue. Moreover, even after Infotech did not pay for its third quarter 2003 purchases, Quovadx shipped additional software to Infotech and recognized revenue on those sales in the fourth quarter of 2003.

1.   The Third Quarter Transactions

In early September 2003, Quovadx and Infotech executed two related agreements. Under the first ("the distributor agreement"), Infotech agreed to buy $5 million of software licenses from Quovadx and to be the exclusive distributor of Quovadx products in India. Under the second agreement ("the outsourcing agreement"), Quovadx agreed to pay Infotech to perform certain services and conduct various research and development projects, pursuant to Statements of Work that would be subsequently negotiated. The agreements required both parties to fund letters-of-credit to guarantee the payment of their respective obligations. The distributor agreement required that Infotech fund a $5.46 million letter-of-credit before Quovadx shipped any software to it.

As required by the outsourcing agreement, Quovadx immediately funded a letter-of-credit for $2.46 million to pay Infotech as it rendered outsourcing services. By mid-September, however, Infotech had not funded its letter-of-credit. Quovadx nevertheless shipped the $5 million of software licenses to Infotech. In an attempt to meet its third quarter revenue goals, Quovadx also asked Infotech to buy more software. Infotech agreed, on the condition that

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[7]   Quovadx overstated its software licensing revenue by $380,000 in its October 22, 2003, Form 8-K incorporating its preliminary earnings results, its quarterly report for the third quarter of 2003, and its annual report for 2003.

[8]   Infotech Network Group represented itself to Quovadx as a consortium of major Indian companies that sought outsourced research and development projects from U.S. software companies.

Quovadx guarantee pre-payment of outsourcing funds. On September 30, 2003, the parties signed supplemental contracts under which Infotech was to buy $2.1 million of software licenses and Quovadx was to pre-pay Infotech approximately $1 million for unspecified outsourcing work. Quovadx shipped the additional $2.1 million in software to Infotech on the last day of the quarter. Quovadx, with the concurrence of its outside auditor, offset the revenue from these two purported sales by its estimated outsourcing obligation to Infotech and recognized approximately $4.6 million in revenue for the quarter. Quovadx planned to recognize the remaining revenue as Infotech performed outsourcing services.

In early October 2003, before Quovadx filed its quarterly report for the third quarter, Infotech told Quovadx that it did not have enough money to fund its required letters-of-credit. Quovadx agreed to wire $410,000 to assist Infotech in making a margin payment to an Indian bank, purportedly to establish and fund the required letters of credit.[9] In return, Infotech gave Quovadx a letter from the Indian bank expressing confidence that Infotech's letter-of-credit would be opened (not funded) by October 21, 2003. Quovadx relied on this letter as support for Infotech's supposed ability to pay and recognized revenue on the third quarter Infotech transactions. Quovadx falsely entered the $410,000 payment to Infotech in its books and records as a prepayment under the outsourcing agreements, when in fact Infotech had not satisfied the conditions for prepayment.

On October 22, 2003, Quovadx issued both a press release announcing the distribution and software development agreement with Infotech and a preliminary earnings release touting a 183% increase in software licensing revenue over the third quarter of 2002. The Infotech transaction accounted for approximately 60% of Quovadx's reported third quarter software licensing revenue. Quovadx's share price increased over 25% on the news of the third quarter results.

2.   The Fourth Quarter Transactions

By mid-December 2003, although it appeared to Quovadx that Infotech had established one letter-of-credit, Infotech still had not funded this letter-of-credit and had not paid for either of its third quarter purchases. Infotech told Quovadx that the software had still not been released from customs in India, which Infotech claimed was necessary before it could fund its letter-of-credit. Despite these significant issues, Quovadx, hoping to meet Wall Street expectations, asked Infotech to make another software purchase. Infotech was unwilling to agree unless Quovadx immediately wired $500,000 to it as part of the outsourcing prepayment to which Quovadx had committed at the end of the third quarter. Quovadx made this payment, even though Infotech had not met the conditions for prepayment under the outsourcing agreement for $440,000 of this amount. To preserve its legal remedies, Quovadx also sent Infotech a default letter for failing to pay for its third quarter purchases. Thus, by mid-December, Quovadx had sent $910,000 to Infotech, yet Infotech had not paid for any of the software licenses that it had bought from Quovadx.[10]

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[9]   In fact, unbeknownst to Quovadx, Infotech never used the money to establish and fund a letter-of-credit.

[10]   During the fourth quarter, Quovadx provided Infotech with about $10,000 in outsourcing work, and trained some Infotech subcontractors on the use of Quovadx software. Infotech eventually performed outsourcing work for Quovadx worth about $500,000 based on the December 2003 prepayments.

On December 31, 2003, Quovadx signed a contract to sell $6.5 million of software licenses to Infotech. Quovadx simultaneously signed a supplemental agreement to pay Infotech up to $1.94 million for any outsourcing work that Infotech actually performed through August 2004. Quovadx also provided Infotech assurances that it would increase Quovadx's outsourcing to Infotech significantly over the coming year.

On February 11, 2004, Quovadx issued its preliminary fourth quarter earnings release (attached to a Form 8-K filed the same day), which included the $6.5 million in Infotech revenue. Quovadx issued this release even though Infotech had not paid for the third quarter purchases and Infotech's ability to pay for the fourth quarter purchases depended on its ability to resell the software licenses. The earnings release claimed that Quovadx's total annual revenue for 2003 had increased about 30% and that its year-over-year software licensing revenue had grown about 173%. The Infotech transactions accounted for virtually the entire increase in Quovadx's software licensing revenue. After this announcement, Quovadx's stock price increased by about 10%, closing at $6.66 per share on February 12.

At the time of Quovadx's year-end audit in mid-February 2004, Infotech still had not funded a letter-of-credit or made any payments for either the third or fourth quarter software purchases. In early March 2004, Quovadx's auditor advised it that the company would have to reverse the Infotech revenue from both the third and fourth quarters unless Infotech made a substantial payment before Quovadx's annual report was due to be filed. On March 8, 2004, therefore, Quovadx authorized Infotech to draw down the $1.94 million balance on Quovadx's outsourcing letter-of-credit, with the understanding that Infotech would use these funds to arrange bank financing to pay Quovadx for the software purchases. Immediately after receiving the $1.94 million, Infotech told Quovadx that it believed it was entitled to this money under the outsourcing agreement and would not use it to pay Quovadx for the software. When Quovadx requested that Infotech return the money, Infotech refused. Infotech never returned the money or paid for the software.

On March 15, 2004, Quovadx announced that it would reverse all revenue on sales to Infotech in the third and fourth quarters of 2003. On March 18, Quovadx filed its annual report for 2003 which restated its financial results for the third and fourth quarters of 2003 and removed $11.1 million in revenue from transactions with Infotech. In response to these events, the Quovadx board of directors commenced an investigation into the Infotech relationship which subsequently encompassed the Sourceworks and MicroStar transactions. Shortly thereafter, Quovadx's chief executive officer and chief financial officer resigned. On May 14, 2004, Quovadx filed a Form 8-K in which it indicated that, as a result of its internal investigation, Quovadx had discontinued any further severance payments to its former chief executive officer and chief financial officer and demanded the return of severance payments already paid and prior compensation, including bonuses. Quovadx also indicated that it had terminated its executive vice president of sales.

G.   **Quovadx Prematurely Recognized $250,000 in Revenue in the Third Quarter of 2002**

In addition to the software licensing revenue that Quovadx fraudulently recognized in 2003, Quovadx prematurely recognized $250,000 in the third quarter of 2002. In May 2002, Quovadx announced the release of QuickTrials 1.0, a software product designed to help automate the management of clinical drug trials. The following month, Quovadx entered into negotiations to sell QuickTrials for $250,000 to a company that managed clinical trials in the

pharmaceutical industry. Because the existing version of QuickTrials did not meet all of the customer's specifications, Quovadx and the customer discussed developing an acceptable version of QuickTrials, to be called QuickTrials 2.0. In early September 2002, Quovadx proposed that the customer pay $250,000 for the platform software needed to run QuickTrials, and that they enter into a partnership to develop QuickTrials 2.0. Quovadx told the customer that it would deliver the platform software in September and the first development (or beta) version of QuickTrials 2.0 in October 2002.

On September 30, 2002, the last day of the third quarter, Quovadx and the customer executed a contract under which Quovadx would provide the company beta versions of QuickTrials 2.0 and a commercial version of that software, if and when released. Further, at the request of the customer, Quovadx extended the payment over eight months, which roughly corresponded to the anticipated completion of the development of QuickTrials 2.0. Despite this extended payment plan and promise to deliver QuickTrials 2.0 in the future if and when Quovadx released it, Quovadx recognized the full $250,000 in revenue in the third quarter of 2002.

In substance, the value of the transaction for the customer lay in obtaining the beta versions of QuickTrials 2.0, not the platform programs delivered in the third quarter.[11] Therefore, Quovadx should not have recognized the revenue from the transaction with the customer until at least the fourth quarter of 2002. By prematurely recognizing this revenue, Quovadx overstated its software revenues for the third quarter of 2002 by approximately 10%. As part of its second restatement, Quovadx reversed the $250,000 in revenue from the third quarter of 2002 and recognized that amount for the fourth quarter of 2002.

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IV.

LEGAL CONCLUSIONS

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A.   Violations of the Antifraud Provisions

Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit a variety of fraudulent practices in connection with the offer, purchase or sale of securities. An issuer violates these provisions when it makes material misstatements or omissions in annual or quarterly reports filed with the Commission, or in earning releases or other public statements. *SEC v. McNulty*, 137 F.3d 732, 741 (2d Cir. 1998). "Moreover, half-truths are as violative ... as outright falsehoods." *SEC v. Schiffer*, S.D.N.Y. 1998 Fed. Sec. L. Rep. ¶ 90,247, 1998 WL 307375, at *2 (S.D.N.Y.). A fact is material if there is a substantial likelihood that a reasonable investor would consider the information to be important. *Basic v. Levinson*, 485 U.S. 224, 231-32 (1988). Information concerning a company's financial condition and profitability is material information. *See, e.g., SEC v. Murphy*, 626 F.2d 633, 653 (9th Cir. 1980). "[E]arnings reports are among the pieces of data that investors find most relevant to their investment decisions." *Ganino v. Citizens Util. Co.*, 228 F.3d 154, 164 (2d Cir. 2000) (citation omitted).

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[11]   SOP 97-2 provides in pertinent part that: "When-and-if-available deliverables should be considered in determining whether an arrangement includes multiple elements.... If an arrangement includes multiple elements, the fee should be allocated to the various elements based on vendor-specific objective evidence of fair value, regardless of any separate prices stated within the contract for each element."

Section 10(b) and Rule 10b-5 of the Exchange Act and Section 17(a)(l) of the Securities Act require that a defendant act with scienter, which has been defined as "a mental state embracing intent to deceive, manipulate, or defraud." *Aaron v. SEC*, 446 U.S. 680, 701-02 (1980); *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n. 12 (1976). Scienter can be satisfied by showing that a defendant acted recklessly. *See. e.g., ITT v. Cornfeld*, 619 F.2d 909, 923 (2d Cir. 1980); *Schiffer*, 1998 WL 307375, at *3. For the purposes of establishing scienter on the part of a company, the mental state of the company's officers is imputed to the company. *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1089 n.3 (2d Cir. 1972).

Quovadx fraudulently recognized revenue on the Sourceworks, MicroStar, and Infotech transactions. In each of those transactions, one or more members of Quovadx's senior management knew, or recklessly disregarded that those transactions either had material contingencies or were not true sales, and collection from the customers was not reasonably probable. Sourceworks could not and would not pay for software licenses unless and until Quovadx secured a contract between Sourceworks and the VA. The arrangement with MicroStar to hold software licenses in MicroStar's inventory had no legitimate business purpose and MicroStar had no intent or ability to pay for the software licenses unless it could resell them to customers identified by Quovadx. Quovadx attempted to disguise this arrangement by funneling an unrelated payment through MicroStar to make it appear that MicroStar had partially paid for the licenses. Finally, Quovadx recognized more than $11 million in revenue on software sales to Infotech, even after the company knew or was reckless in not knowing that it was not reasonably probable that Infotech would pay for the software. Indeed, Quovadx advanced Infotech nearly $1 million as an inducement for Infotech to buy some of the software, even though Infotech had not funded its required letters-of-credit. Further, fearing that its auditor would require it to reverse the Infotech revenue, Quovadx gave Infotech nearly another $2 million in the vain hope that Infotech would use that money to pay some of its debt.

As a result of its improper recognition of revenue from these transactions, Quovadx fraudulently overstated its software licensing revenue by $600,000 in the second quarter of 2003, by almost $5 million in the third quarter of 2003, and by $6.5 million in the fourth quarter of 2003. Moreover, although Quovadx had reversed the Infotech overstatement by the time the company filed its annual report for 2003, that annual report still included the revenue from the Sourceworks and MicroStar transactions. Quovadx also issued false and misleading press releases during the period that materially misrepresented the company's financial results and were attached to the Forms 8-K that Quovadx filed with the Commission in the second, third and fourth quarters of 2003.

As a result of this conduct, Quovadx violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Because Quovadx had a continuously effective offering of securities pursuant to Forms S-8 and S-4 during the period, the company also violated Section 17(a) of the Securities Act.[12]

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[12]   In May 2002, Quovadx filed a Form S-8 that became effective to offer stock in connection with the company's employee stock purchase plan (the Form S-8 was incorporated into Quovadx's subsequent annual and quarterly reports). In addition, Quovadx filed a Form S-4 on November 12, 2003, and Amended Forms S-4 on December 4 and December 10, 2003, registering an offer of securities in connection with Quovadx's acquisition of RogueWave Software.

B.   Reporting Violations

Section 13(a) of the Exchange Act and Rules 13a-1, 13a-11, and 13a-13 thereunder require that issuers with securities registered under Section 12 of the Exchange Act, such as Quovadx, file annual and quarterly reports with the Commission and keep this information current. These reports must be complete and accurate in all material respects. *United States v. Bilzerian*, 926 F.2d 1285, 1298 (2d Cir. 1991); *SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978), *cert. denied*, 440 U.S. 913 (1979). Rule 12b-20 of the Exchange Act requires that an issuer's periodic reports include any additional information "necessary to make the required statements, in the light of the circumstances under which they are made, not misleading." The issuer's legal obligation "extends not only to accurate quantitative reporting of the required items in its financial statements, but also to other information, qualitative as well as quantitative, needed to enable investors to make informed decisions." *In re Sony Corp. and Sumio Sano*, 67 SEC Docket 1609, 1998 WL 439898 at *4 (Aug. 5, 1998).

Quovadx filed a quarterly report on Form 10-Q for the third quarter of 2002 that overstated the company's software licensing revenue by 10% as a result of the company's premature recognition of revenue from the transaction with the clinical trials manager. Recognition of the $250,000 in revenue in the third quarter did not conform to SOP 97-2, and Quovadx should have deferred recognizing this revenue until a subsequent quarter.

Quovadx entered into transactions with Sourceworks, MicroStar, and Infotech in which Quovadx knew or was reckless in not knowing that revenue should not be recognized. By doing so, Quovadx fraudulently recognized revenue on transactions that were not actual sales. As a result, Quovadx's annual report for 2003, quarterly reports for the second and third quarters of 2003, and earning releases for the second, third, and fourth quarters of 2003 contained materially false and misleading statements concerning Quovadx's software licensing revenue. Accordingly, Quovadx violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

C.   Record-Keeping and Internal Controls Violations

Section 13(b)(2)(A) of the Exchange Act requires that issuers make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company. Section 13(b)(2)(B) of the Exchange Act requires reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability of assets.

As discussed above, Quovadx improperly recognized revenue in the third quarter of 2002 from the transaction with the clinical trials manager and, in the second, third and fourth quarters of 2003, from the transactions with Sourceworks, MicroStar, and Infotech. As a result, Quovadx's books and records were materially inaccurate because they overstated software licensing revenue and did not accurately or fairly reflect the transactions of the company. Quovadx also failed to maintain internal controls sufficient to ensure that revenue recognition would occur properly and that its financial statements would be prepared in conformity with GAAP. Therefore, Quovadx violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

V.

<u>FINDINGS</u>

Based on the foregoing, the Commission finds that Quovadx violated Section 17(a) of the Securities Act and Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

VI.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Quovadx's offer.

Accordingly, **IT IS HEREBY ORDERED** that:

Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Quovadx cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

By the Commission.

Nancy M. Morris
Secretary