

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 51585 / April 20, 2005

ADMINISTRATIVE PROCEEDING
File No. 3-11906

In the Matter of

ANDREW E. GOLD,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER PURSUANT TO
SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Andrew E. Gold (“Gold” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent 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 him and the subject matter of these proceedings, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that

RESPONDENT

1. Andrew E. Gold, age 40, is a resident of Potomac, Maryland. Since April 2002, Gold has been a registered representative associated with a broker-dealer registered with the Commission.

ISSUERS

2. Anika Therapeutics, Inc. ("Anika") is a Massachusetts corporation headquartered in Woburn, Massachusetts. At all relevant times, Anika's securities were registered with the Commission pursuant to Section 12(g) of the Exchange Act and were quoted on the NASDAQ Stock Market, Inc.

3. Chindex International, Inc. ("Chindex") is a Delaware corporation headquartered in Bethesda, Maryland. At all relevant times, Chindex's securities were registered with the Commission pursuant to Section 12(g) of the Exchange Act and were quoted on the NASDAQ Stock Market, Inc.

4. Clarus Corp ("Clarus") is a Delaware corporation headquartered in Stamford, Connecticut. At all relevant times, Clarus' securities were registered with the Commission pursuant to Section 12(g) of the Exchange Act and were quoted on the NASDAQ Stock Market, Inc. until October 5, 2004, when they were delisted. They are currently quoted on the Pink Sheets LLC.

5. Drugmax, Inc. ("Drugmax") is a Nevada corporation headquartered in Largo, Florida. At all relevant times, Drugmax's securities were registered with the Commission pursuant to Section 12(g) of the Exchange Act and were quoted on the NASDAQ Stock Market, Inc.

SUMMARY

6. This matter concerns a pattern of violations of the beneficial ownership reporting requirements of the federal securities laws by Gold, a licensed registered representative associated with a registered broker-dealer while he committed the violations. Between July 2003 and November 2004, Gold failed to file required reports concerning his greater than 5% ownership

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.

interest in four different issuers. The Commission's staff contacted Gold in July 2004 and, by August 2004, he was aware of his failure to file the required reports. He ultimately filed Schedules 13D concerning his interest in the four companies in November 2004. He traded in the stocks of three of the companies in the intervening period.

OWNERSHIP OF CLARUS

7. Gold began purchasing shares of Clarus on April 29, 2003. Over the course of the following six months, Gold accumulated shares of Clarus until, on November 5, 2003, his ownership reached 5.01%. Gold made no filings with the Commission at that time concerning his ownership of Clarus. Gold continued to accumulate Clarus shares into 2004, owning as much as 8.49% on March 8, 2004. In November 2004, three months after being contacted by the Commission's staff, Gold filed a 73-page Schedule 13D concerning his prior and then-current ownership of Clarus' common stock. During the period in which he was delinquent in his obligation to report his ownership, Gold bought and sold in excess of 7.5 million Clarus shares in transactions with an approximate total market value in excess of \$63 million. As of November 5, 2004, Gold had reduced his ownership of Clarus to less than 1%.

OWNERSHIP OF ANIKA

8. Gold began purchasing shares of Anika on May 20, 2003. Over the course of the following six months, Gold steadily accumulated shares of Anika until, on November 11, 2003, his ownership reached approximately 5.15%. Gold made no filings with the Commission at that time concerning his ownership of Anika. Between November 2003 and March 2004, Gold sold off his entire Anika position. In November 2004, three months after being contacted by the Commission's staff, Gold filed a 6-page Schedule 13D concerning his prior ownership of Anika's common stock. During the period in which he was delinquent in his obligation to report his ownership, Gold bought and sold in excess of 900,000 Anika shares in transactions with an approximate total market value in excess of \$6 million.

OWNERSHIP OF CHINDEX

9. Gold began purchasing shares of Chindex on January 24, 2003. Over the course of the following seven months, Gold steadily accumulated shares of Chindex until, on July 21, 2003, his ownership reached approximately 5.26%. Gold made no filings with the Commission at that time concerning his ownership of Chindex. Gold continued to accumulate Chindex shares during July and August 2003, owning as much as 8.68% on August 19, 2003. Between August 2003 and November 2004, Gold regularly bought and sold Chindex stock, gradually decreasing his total ownership position to approximately 2.12% by November 2004. In November 2004, three months after being contacted by the Commission's staff, Gold filed a 12-page Schedule 13D concerning his prior and then-current ownership of Chindex's common stock. During the period in which he was delinquent in his obligation to report his ownership, Gold bought and sold in excess of 1 million Chindex shares in transactions with an approximate total market value in excess of \$25 million.

OWNERSHIP OF DRUGMAX

10. Gold began purchasing shares of Drugmax on June 2, 2003. Over the course of the following nine months, Gold accumulated shares of Drugmax until, on February 19, 2004, his ownership reached approximately 5.19%. Gold made no filings with the Commission at that time concerning his ownership of Drugmax. Between February and May 2004, Gold continued to accumulate shares until, on May 21, 2004, his ownership reached approximately 10.06%. Gold again made no filings with the Commission concerning his growing ownership of the company. Gold's ownership eventually reached as much as 10.34%. In November 2004, three months after being contacted by the Commission's staff, Gold filed a 21-page Schedule 13D concerning his prior and then-current 8.46% ownership of Drugmax's common stock. In February and March 2005, Gold filed Forms 3 and 5 concerning his prior 10% ownership of Drugmax's common stock. During the period in which he was delinquent in his obligation to report his ownership, Gold bought and sold in excess of 1 million Drugmax shares in transactions with an approximate total market value in excess of \$5 million.

LEGAL ANALYSIS

11. As a result of the conduct described above, Gold willfully² violated Section 13(d) of the Exchange Act, Rules 13d-1 and 13d-2 thereunder, and Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

12. Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder require persons or groups that acquire, directly or indirectly, the beneficial ownership of more than 5% of the outstanding shares of a class of voting equity securities to file with the Commission a Schedule 13D within 10 days of the date on which their beneficial ownership exceeded 5% and promptly file an amendment to that schedule if there is any material change to the information set out in it.

13. Gold's ownership of Clarus, Anika, Chindex and Drugmax exceeded 5% on November 5, 2003, November 11, 2003, July 21, 2003 and February 19, 2004, respectively. Gold made no filings with the Commission concerning his ownership of any of the companies within 10 days of the respective dates. Gold further made no amended filings concerning subsequent relevant changes in his beneficial ownership of each of the four issuers. Because he did not file Schedules 13D or any required amendments in a timely manner, Gold violated Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder in connection with his acquisitions and sales of Clarus, Anika, Chindex and Drugmax stock.

14. Section 16(a) of the Exchange Act requires that beneficial owners of more than ten percent of any class of any equity security registered pursuant to Section 12 of the Exchange Act and the officers and directors of the issuer of any such security (hereinafter "insider") file a statement with the Commission by the effective date of a registration statement filed pursuant to Section 12 of the Exchange Act, or within ten days of becoming such officer, director or beneficial

² "Willfully" as used in this Order means intentionally committing the act which constitutes the violation, see *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000); *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). There is no requirement that the actor also be aware that he is violating one of the Rules or Acts.

owner, reporting the amount of all equity securities of such issuer of which they are a beneficial owner. Section 16(a) also requires an insider to file with the Commission before the end of the second business day following a change in the insider's ownership of the issuer's equity securities. Exchange Act Rule 16a-3 provides that an initial statement by an insider is to be made on a Form 3 and subsequent statements of changes in beneficial ownership are to be made on a Form 4 or a Form 5.

15. Gold became a 10% owner of Drugmax common stock on May 21, 2004. Gold should have filed a Form 3 at that time, but failed to do so. Gold subsequently engaged in at least a dozen transactions in Drugmax stock that should have been reported on Form 4 pursuant to Section 16(a). Gold did not make any Form 4 filings. Because he did not file the required Forms 3 and 4, Gold violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder in connection with his acquisitions and sales of Drugmax stock.

UNDERTAKING

16. Respondent shall provide to the Commission, within 14 days after the end of the twelve (12) month suspension period described below, an affidavit that he has complied fully with the sanctions described in Section IV below.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 13(d) of the Exchange Act, Rules 13d-1 and 13d-2 thereunder, and Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

B. Respondent be, and hereby is, suspended from association with any broker or dealer for a period of twelve (12) months, effective on the second Monday following the entry of this Order.

C. It is further ordered that Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$120,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Andrew E. Gold as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or

check shall be sent to Peter Bresnan, Associate Director, Division of Enforcement, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, DC 20549.

D. Respondent shall comply with the undertaking enumerated in Section III, Paragraph 16 above.

By the Commission.

Jonathan G. Katz
Secretary