

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL NO. <u>08-</u>
v.	:	DATE FILED: <u>December 11, 2008</u>
RICHARD J. MARGULIES	:	VIOLATIONS:
	:	18 U.S.C. § 371 (conspiracy - 1 count)
	:	15 U.S.C. §§ 78j(b), 78ff, and 17 C.F.R.
	:	§ 240.10b-5 (securities fraud - 1 count)
	:	18 U.S.C. § 2 (aiding and abetting)

INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

BACKGROUND

At all times material to this indictment:

1. Advatech Corporation (“Advatech”) was a West Palm Beach, Florida corporation that described itself as an early stage biotechnology company engaged in the research and development and the commercialization of non-invasive electrical therapies. Advatech stock was publicly traded under the ticker symbol “ADVA” on Pink OTC Markets Inc., an inter-dealer electronic quotation and trading system in the over-the-counter (“OTC”) securities market commonly referred to as the “Pink Sheets.”

2. The companies traded on the Pink Sheets tend to be closely held,

extremely small, and/or thinly traded. Most do not meet the minimum listing requirements for trading on a national securities exchange, such as the New York Stock Exchange or the NASDAQ Stock Market.

3. Defendant RICHARD J. MARGULIES was the chief financial officer and a director of Advatech. Defendant MARGULIES owned and/or controlled a significant portion of Advatech stock either directly or through nominees.

4. The United States Securities and Exchange Commission (the “SEC”) was an independent agency of the United States which was charged by law with the duty of protecting investors by regulating and monitoring, among other things, the purchase and sale of publicly traded securities, including securities traded on the Pink Sheets.

THE CONSPIRACY

5. From in or about May 2008 through in or about June 2008, in the Eastern District of Pennsylvania, and elsewhere, defendant

RICHARD J. MARGULIES

conspired and agreed, together and with others known and unknown to the grand jury, to commit an offense against the United States, that is, to willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and the facilities of national securities exchanges, use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices,

and courses of business which operated and would operate as a fraud and deceit upon any person, in connection with the purchase and sale of a security, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

MANNER AND MEANS

6. It was a part of the conspiracy that defendant RICHARD J. MARGULIES and his co-conspirators sought to artificially inflate the price of Advatech stock by causing manipulative market activity in Advatech stock that was designed to appear to be the product of free and fair market forces. They did this in various ways, including the following:

a. The defendant and his co-conspirators agreed to engage in manipulative and deceptive securities transactions to artificially inflate the price of Advatech stock.

b. The defendant and his co-conspirators entered into illegal agreements to orchestrate their trading activity to create the false impression of market demand for Advatech stock.

c. The defendant and his co-conspirators coordinated trading activity with issuing Advatech press releases to provide a false pretext for the increased trading volume in Advatech stock.

OVERT ACTS

7. In furtherance of the conspiracy and to accomplish its objects, defendant RICHARD J. MARGULIES and his co-conspirators committed the following overt acts, among others, in the Eastern District of Pennsylvania and elsewhere:

a. On or about May 21, 2008, defendant MARGULIES met with

Eduardo Rodriguez, charged elsewhere, and an individual secretly cooperating with the government (identified here as the “CW”) to discuss a scheme to artificially inflate Advatech stock. Defendant MARGULIES agreed to pay Rodriguez and the CW 20 percent of the cost of shares in Advatech stock that they, or individuals working with them, purchased and held as part of the scheme.

b. On or about May 30, 2008, defendant MARGULIES emailed to the CW a list of shareholder positions in Advatech to demonstrate that, according to defendant MARGULIES, he knew “where every share” of Advatech was and could exercise control over the free trading shares of Advatech stock.

c. On or about June 11, 2008, defendant MARGULIES told the CW by telephone that an upcoming Advatech press release would announce an agreement with a major university and that they should “move [the stock] up nice and slow, so it doesn’t look like we’re a bunch of idiots.”

d. On or about June 12, 2008, defendant MARGULIES told the CW by telephone that he was issuing the Advatech press release on June 16, 2008 and that he expected it to create trading activity in the stock. Defendant MARGULIES instructed the CW that to avoid scrutiny, he should make sure that the individuals they were using in the scheme did not purchase Advatech stock until after the news was released. Defendant MARGULIES stated that he was “not going to get [his] ass in hot water or partners’ ass[es] in hot water” and that he would instruct the CW about the details for purchasing the stock.

e. On or about June 16, 2008, before its public release on or about June 17, 2008, defendant MARGULIES emailed the CW an Advatech press release announcing a

research agreement with a major university.

f. On or about June 17, 2008, at approximately 2:00 p.m., defendant MARGULIES told the CW by telephone that the press release should be public by 3:00 p.m. and instructed the CW to purchase the stock after that time. Defendant MARGULIES agreed to wire the CW's fee after the trades cleared but stated he would make the payment from an account that was not his.

g. On or about June 17, 2008, at approximately 3:20 p.m., defendant MARGULIES and the CW discussed by telephone that the news had not yet been released and that the CW should refrain from purchasing the stock until the next day because defendant MARGULIES did not want buying "in the absence of news."

h. On or about June 17, 2008, at approximately 3:37 p.m., defendant MARGULIES and the CW discussed by telephone that the Advatech press release was now publicly available. The CW agreed to purchase the stock the next day and defendant MARGULIES instructed the CW to send him wiring instructions for the CW's fee.

i. On or about June 17, 2008, at the direction of defendant MARGULIES, the CW and Rodriguez caused purported retail purchases to be made of approximately 1,000 shares of Advatech stock at a price of approximately 90 cents per share for a total of approximately \$900. Those trades were settled using undercover funds of the Federal Bureau of Investigation ("FBI").

j. On or about June 18, 2008, defendant MARGULIES discussed with the CW by telephone that the CW would cause additional purchases to be made in Advatech stock later that day.

k. On or about June 18, 2008, the CW and Rodriguez caused purported retail purchases to be made of approximately 4,100 shares of Advatech stock at price of approximately \$1 per share for a total of approximately \$4,100. Those trades were settled using FBI undercover funds.

l. On or about June 19, 2008, defendant MARGULIES discussed with the CW by telephone that defendant MARGULIES had bought Advatech shares on June 18, 2008 to raise the share price to \$1. Defendant MARGULIES confirmed that he would pay the CW the fee of 20 percent, but stated that to help conceal the scheme, he would make the payments in multiple transactions from different accounts. Defendant MARGULIES and the CW also agreed that the CW would compensate Rodriguez for his participation in the scheme.

m. On or about June 20, 2008, defendant MARGULIES deposited to an undercover account maintained by the FBI at a financial institution in Philadelphia, Pennsylvania, approximately \$520 as partial payment to Rodriguez and the CW

n. On or about June 20, 2008, defendant MARGULIES requested by telephone that the CW send him a fake invoice to disguise the deposit defendant MARGULIES made to the CW's account. Defendant MARGULIES instructed the CW to direct the invoice to a shell company that defendant MARGULIES controlled. Defendant MARGULIES also instructed the CW that in the future, to avoid detection, the CW should not communicate with him about this scheme by email.

o. On or about June 23, 2008, defendant MARGULIES deposited to an undercover account maintained by the FBI at a financial institution in Philadelphia, Pennsylvania approximately \$520 as partial payment to Rodriguez and the CW.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 4, 6, and 7 of Count One are incorporated here.
2. From in or about May 2008 through in or about June 2008, in the Eastern District of Pennsylvania and elsewhere, defendant

RICHARD J. MARGULIES

willfully and knowingly, by the use of the means and instrumentalities of interstate commerce and the facilities of national securities exchanges, directly and indirectly, used and employed manipulative and deceptive devices and contrivances, and aided and abetted the use and employment of manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon other persons in connection with purchases and sales of Advatech stock.

In violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17,
Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2.

A TRUE BILL:

GRAND JURY FOREPERSON

LAURIE MAGID
Acting United States Attorney