Athenex – No Integrity

Athenex management’s proliferation for fraud precedes them.

October 24, 2019 – Viceroy expose more managerial ties to established frauds, and address Athenex’s response to our previous work, which addresses absolutely nothing. Management’s response underestimates how many improprieties are recorded in the public domain – we have yet to scratch the tip of the iceberg.

- The company’s response to Viceroy’s research is a further slap in the face to investors: the company has failed to address a single issue highlighted in any of our reports.
  - Athenex’s two-paragraph rebuttal to Viceroy’s reports indicates management refuse to address any improprieties we have uncovered...to date. We believe Athenex will have a tough time explaining to shareholders why their flagship drug is commercially unviable, justifying abusive related party transactions, and explaining why facility pictures are blatantly photoshopped.

- Athenex’s rebuttal state that management “take pride” in its integrity. This is hilarious given management’s track record of overseeing blatant frauds.

- In case Sino Forest and Suntech weren’t enough, Viceroy now reveals direct ties between Athenex directors and more established frauds, responsible for evaporating billions of dollars of shareholder capital: GCL Poly/Silicon, China Lumena.

- Several individuals involved with Zhang’s previous shady ventures are now embedded in the Athenex organization including the Audit committee.
  - Viceroy reveal Athenex Audit Committee member, John Koh, was also a director of Mandra, alongside Songyi Zhang, with direct fiduciary obligation to oversee Sino Forest.

- Zhang was previously a director of China Lumena, which was found to have significantly fabricated its revenues. In addition to this, a subsidiary that had fabricated ~90% of its revenues was sold to China Lumena by Zhang through several of his investment vehicles.

- Zhang was also previously at GCL Silicon where he effectively front-ran an acquisition of that company by GCL-Poly Energy in concert with Zuo Gongshan, the CEO of the latter. This netted Zhang a share in US$200m cash, US$350m in secured notes and a 5% stake in GCL-Poly.

- SinoPhyto solutions, the side-hustle of Athenex Chief Medical Officer Rudolf Min-Fun Kwan and CEO/Chairman Johnson Lau purports to be a seller of traditional Chinese medicines. However, the company’s New Jersey certificate indicates it is an investment company. SinoPhyto has only received one shipment. We question the true purpose of this entity.

Investors should not write off Viceroy’s opinions. We present below a sample of our track record and notably point our Athenex’s directors have been connected to more fraud than any other group we have ever encountered. We only wished they had been our contras since the mid 2000’s.

<table>
<thead>
<tr>
<th>Company</th>
<th>Publication Date</th>
<th>Price at Publication</th>
<th>Price Now</th>
<th>Movement</th>
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<tbody>
<tr>
<td>Ebix</td>
<td>3/12/2018</td>
<td>46.12</td>
<td>40.96</td>
<td>-11%</td>
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<tr>
<td>MiMedx</td>
<td>20/09/2017</td>
<td>13.07</td>
<td>5.1</td>
<td>-61%</td>
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<td>Pareteum</td>
<td>25/06/2019</td>
<td>2.48</td>
<td>0.3822</td>
<td>-85%</td>
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<td>Prosieben</td>
<td>6/03/2018</td>
<td>29.94</td>
<td>13.9</td>
<td>-54%</td>
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<tr>
<td>Steinhoff</td>
<td>7/12/2017</td>
<td>180</td>
<td>10</td>
<td>-94%</td>
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Attention: Whistleblowers

Viceroy encourage any parties with information pertaining to misconduct within Athenex, its affiliates or any other entity to file a report with the appropriate regulatory body.

We also understand first-hand the retaliation whistleblowers sometimes face for championing these issues. Where possible, Viceroy is happy act as intermediaries in providing information to regulators and reporting information in the public interest in order to protect the identities of whistleblowers.

You can contact the Viceroy team via email on viceroy@viceroyresearch.com.

About Viceroy

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1. Company response

Athenex issued a response to Viceroy Research’s reports into significant issues with the company and its management. We view the company’s response to the issues raised as completely inadequate and nothing less than a slap in the face to investors. Management do not even assert Viceroy’s report is incorrect, vouching instead to “believe” our publications are misinformed. The response in its entirety is below:


The company has not responded to a single issue raised in our research. We take issue in particular to Athenex’s “commitment to strong corporate governance”.

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**Athenex’s rebuttal state that management “take pride” in its integrity. This is hilarious given management’s track record of overseeing blatant frauds.**

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In our first report on Athenex we detailed the involvement of several members of Athenex management with frauds Sino-Forest and Suntech. More recently, management flipped CDE in 6 weeks for a 262% profit. CEO Johnson Lau, Director Manson Fok and former Director Song-Yi Zhang took it further, flipping an arginase license for a 3,300% profit.

Yesterday, we detailed Athenex ongoing involvement with William Zuo and Xiaojing Wu Li, two individuals who facilitated an illegal taxol smuggling ring headed by Ms Wu Li’s brother. Calling the consistency and brazenness of the management looting at Athenex “strong corporate governance” is a complete joke. We have uncovered even more evidence of past management issues, as addressed within this report and our prior work.

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**Athenex even refuse to address the blatant photoshopping of their major Chinese API facility!**

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2. China Lumena New Materials Corp

Song-Yi Zhang, former Director of Athenex\(^2\) and party to cash siphoning business Avalon, was a non-executive director of China Lumena New Materials Corp (HK:0067,) from January 2, 2008 to April 1, 2011. As revealed by Glaucus Research in their report on the company, China Lumena had fabricated revenue and sales figures to a massive extent during this period as well as unjustly enriching insiders through selling them re-acquiring stakes in subsidiaries.

Zhang also held, and sold to China Lumena, shares in Sino Polymer through his vehicles Mandra Esop, Mandra Materials and Woo Foong Hong. Sino Polymer was one of China Lumena’s key subsidiaries whose operations’ revenues were overstated by ~90%.

![Acquisition of up to 95% interests in Sino Polymer](image)

Zhang’s tenure seems to have been centered around selling overpromoted assets to his buddies.

3. GCL Silicon

Zhang was more intimately involved with a larger cash and equity scan at GCL-Poly Energy Holdings(HK:3800) (GCL-Poly) where he effectively front-ran the company’s acquisition of Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd (JZPTD). He did this with the company’s CEO Zhu Gongshan who is well known for his ability to obtain financing from Chinese government-controlled banks\(^4\).

Prior to this sale, GCL-Poly was principally concerned with the development, construction, management and operation of power plants.

**Step 1: Have your holding companies purchase an asset to be eventually acquired by the target company.**

Jiangsu Zhongneng Polysilicon Technology Limited is a polysilicate manufacturer with operations in China. Later media statements that claim Gongshan founded the company himself in 2006\(^5\) but he only held 65% of the company at its inception with several investment bodies holding the balance.

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\(^{3}\) Filings dated May 15, 2010 show Woo Foong Hong to be “wholly-owned by Moonchu Foundation for Culture & Education Limited (a tax exempt charity established, but not beneficially owned, by Mr. Zhang Songyi and his family)”.


\(^{5}\) https://news.futunn.com/wiki/hk/03800.html
Enter Zhang, who purchases 64% of JZPTD from Gongshan. What follows is a year of convoluted and opaque dealings which drastically changes the ownership structure of JZPTD.

Effectively Gongshan and Zhang wound up with 75% and 10% respective stakes in GCL Silicon, which now owned 64% of JZPTD. The remaining 36% of JZPTD were owned 20% and 16% by Sun Wave and Greatest Joy, which were affiliated with Gongshan and Zhang respectively.

The terms of all the above are unknown to us but it appears as though Zhang bought in to the project, displacing existing shareholders JZPTD shareholders by solely paying Gongshan.
Step 2: Try to IPO the bogus company using the proceeds to pay yourself for the asset. Syphoning cash is what the related parties and directors of Athenex are used to.

On July 18, 2008, GCL Silicon Technology Holdings, Inc entered into a purchase agreement with Happy Genius Holdings Limited and Mandra Silicon Limited which held 82% and 12% of both Sun Wave and Greatest Joy, respectively.

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The purchase price for these assets was to be paid for through proceeds from the company’s IPO\(^6\), which never occurred due to “unfavourable market conditions”\(^7\).

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\(^7\) [https://www.sec.gov/Archives/edgar/data/1439969/000119312509150695/drw.htm](https://www.sec.gov/Archives/edgar/data/1439969/000119312509150695/drw.htm)
Figure 7 Purchase agreement between Mandra Silicon, Happy Genius Holdings and GCL Silicon Technology Holdings

Had the offering gone ahead it would have effectively placed the company under full control of Zhang and Gongshan, with the added bonus of a US$240m for Gongshan.

Step 3: Using your position as CEO of GCL-Poly, start doing business with GCL Silicon, never complete the work, and pocket some more money.

4 months later, GCL-Poly entered into an agreement with JZPTD for planning and preliminary work on a 2X25MW power plant for RMB10m (~US$1.5m).

On the same announcement dated 8 October 2008, the Company announced that it, through its wholly owned subsidiary, entered into a preliminary work entrusted agreement with Jiangsu Zhongneng Polyvicon Technology Development Co., Ltd. ("Jiangsu Zhongneng") to provide services to Jiangsu Zhongneng for the planning and organizing of the preliminary work before commencement of construction of a 2x25MW power generation facility for a service fee of RMB10,000,000. Mr. Zhu Gong Shan, the Chairman, a Director and controlling shareholder of the Company, was interested in controlling more than 50% or more of the voting power at the general meetings of Jiangsu Zhongneng as at the date of the announcement. Hence, Jiangsu Zhongneng is an associate of Mr. Zhu Gong Shan and a connected person of the Company under the Listing Rules.

Such agreement was terminated and a termination agreement dated 2 March 2009 was executed by the same parties. The termination was due to the construction schedule of the power plant cannot meet Jiangsu Zhongneng’s production schedule for the following two reasons: (i) the production schedule of Jiangsu Zhongneng has moved forward for about seven months; and (ii) the construction schedule of the power facility is delayed for approximately six months due to the approval for environmental assessment appraisal for cogeneration plant project is required to be approved by the relevant department at the ministry level instead of the provincial level. As a result, RMB4,000,000 was charged and paid by Jiangsu Zhongneng under the preliminary work entrusted agreement. Details of the termination of the preliminary work entrusted agreement was announced by the Company on 2 March 2009.

5 months later, the agreement was cancelled as Jiangsu had run into scheduling problem; GCL-Poly still paid out RMB4m (US$0.6m).

Step 4: Once again using your position at GSL-Poly, reverse merge into GSL Silicon stripping yet more assets out of the company.

The big payday was still to come: on June 3, 2009 for a total consideration of HK$26,350m (US$3,399m) including US$200m in cash and the issue of US$350m secured notes. On July 31, 2009 GCL-Poly acquired the entire equity interest of JZPTD.
Note: GCL Solar Energy Technology is the successor company to GCL Silicon

Readers will note that 36% of JZPTD was still held by Sun Wave and Greatest Joy. After all this Zhang wound up with a 5.54% interest in the company and a share in US$200m in cash, US$350m in secured notes and at least 858m shares in GCL-Poly.

4. Previous associates

Several of Zhang’s associates in the companies mentioned above and in previous reports are now embedded in senior positions at Athenex. According to crunchbase, Athenex is the most popular destination for Mandra Capital alumni.

John Koh – GCL, Mandra

John Koh is a current director of Athenex, appointed in April 2019, his bio in the GCL Silicon filings reads “differently” to the one at Athenex which fails to mention his directorship of Zhang’s Mandra investment vehicles.

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8 https://www.crunchbase.com/search/organizations/field/organizations/num_exits/mandra-capital
Koh also sits on the Athenex audit committee, a complete breach of corporate governance considering his involvement with the Mandra entities and Athenex’s failure to disclose it.

Koh made the spotlight in his 1995 representation of the infamous Barings rogue trader Nick Leeson, whose disastrous deals led to the collapse of the bank.

**Ben Tang – Mandra**

Ben Tang, Athenex’s Business Advisor and Executive Assistant to the CEO\(^{10}\), is also an employee of Mandra Capital. Tang is also the Vice President of Avalon Biomedical, the entity used by Lau, Fok and Zhang to flip licenses to Athenex and conduct margin-stripping operations.

**Figure 11 Ben Tang Biography – Avalon Biomedical**

5. **SinoPhyto Solutions**

Founded by Rudolf Min-Fun Kwan on January 12, 2010. Johnson Lau has been presented as chairman at conferences. Treasurer is female relation Rosetta Chan and the address of the business appears to be Kwan’s home address.

The company appears to only sell 3 products, one of which is sold out: all these are products from Tianjin Zhongxin Pharmaceutical and there is a promotional piece on the site about Darentang, a company acquired by Tianjin Zhongxin Pharmaceutical in 2010. Several import websites suggest the company has only ever imported 1 batch of products, the same as those it is still selling\(^{11}\).

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\(^{10}\) https://www.athenex.com/about-athenex/our-team/other-key-people/

\(^{11}\) https://www.importgenius.com/importers/sinophyto-solutions-llc
The website has no means of online ordering or cart functionality and several links are broken, redirect to the home page or are under construction. We are unsure if SinoPhyto Solutions has ever done business.

The registration documents might explain this: they list the business purpose of SinoPhyto to be “investment” although online searches are bare of any investment made by this company. In addition to this the registered office of SinoPhyto is a residential address.

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**Figure 12 SinoPhyto Solutions, LLC Certificate of Formation**

1. **Name:**
   - SINOPHYTO SOLUTIONS, LIMITED LIABILITY COMPANY

2. **Registered Agent:**
   - MIN-FUN RUDOLF KWAN

3. **Registered Office:**
   - 9 FLAIR TUCK CIRCLE
   - SUMMIT, NJ 07901

4. **Business Purpose:**
   - INVESTMENTS

**Signatures:**
- MIN-FUN RUDOLF KWAN
- AUTHORIZED REPRESENTATIVE

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Trenton, this 13th day of January, 2010

R. David Rousseau
State Treasurer

Certificate Number: J1612980
Verify this certificate online at http://www.state.nj.us/TTFR_ServingCorpVSP/Verify_Cert.jsp

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12 http://www.sinophytosolutions.com/leadership.aspx
6. Summary

We believe it is fitting that we reiterate our previous summaries, and stand behind our work in its entirety, given management have decided not to address our data in specifics:

**Viceroy value ATNX stock at US$2.83 – a 71% downside** – the sum of its tangible book value and 1x valuation on its licensing & consulting revenue streams, for the year ending June 30, 2019. With ATNX’s questionable license acquisitions and management’s precedent for overstated top line figures in previous ventures: this is optimistic.

Management – A Company of Rogues

- Several members of Athenex’s management team have a history of what appears to be either gross incompetence in fiduciary duties or clever mismanagement in infamous frauds internationally, collectively resulting in billions of dollars of write-offs including Sino Forest and Suntech.
- ATNX directors have also acted as sellers and drop-shippers to rip off Athenex shareholders with margin-stealing exercises through their investment entity: Avalon Global. Cash has consistently exited the business via similar related party deals.
- Breaches in corporate governance principles: Athenex directors screwed investors by purchasing CDE for themselves and flipping it to Athenex for a 262% profit in 6 weeks. The company failed to report the circumstances of the transaction in any meaningful way.
- In a separate instance, Directors pocketed a 3,300% profit by flipping an “anti-cancer mechanism” license to Athenex for US$5m, for which they paid just US$150,000 just 6 months earlier.
- Directors award themselves millions of dollars’ worth of stock at no cost through the issuance of promissory notes that are cancelled on a time-vested basis.
- Athenex directors have an uncanny ability to avoid any disclosure or reference to their involvement in historical fraud or related party deals. It’s Viceroy’s view that if investors were aware, they would not have bought $ATNX in the first place.
- Athenex’s CFO J. Nick Riehle left unexpectedly for a “planned” retirement, just 10 months after joining the company but is now seeking work as a consultant.
- Our investigations have found ties between Polymed and its management team’s ties to the largest taxol smuggling ring in history Hande Yunnan, resulting in 50 arrests and 32 imprisonments. Major perpetrators and shareholders of this scheme now work for Athenex.
- Polymed appears to continue sourcing its taxol from Hande Yunnan, despite the fact that our investigations show Hande Yunnan no longer produce taxol.
- Further inspection of Polymed’s management show inconsistencies in prior executive roles, specifically of William Zuo. Zuo was also the US liaison of bringing smuggled taxol to the USA.
- A deep dive into Chinese regulatory notes from the Ministry of Emergency Management, coupled with Polymed’s history of objectionable site inspections by Chinese regulators and the FDA, lead us to believe that Polymed’s manufacturing facility suspension was anything but voluntary. In any event, Athenex’s manufacturing facility does not manufacture anything.
- Viceroy dismantles photoshopped Polymed advertisements for its facilities and expose chemical manufacturing facilities we believe are non-existent or outsourced.
Oraxol – Flagship or Shipwreck?

Athenex has been reliant on the marketed prospect of Oraxol in order to obtain access to capital, having received going concern qualifications from Deloitte since 2016 and current yearly cash-burn rates of ~$100m. The company has raised ~US$360m in equity and US$80m in debt since 2017. Even if R&D costs are removed from the equation, Athenex’s licensing and consulting segments are operationally loss-making.

- After consultation with industry specialists and oncologists, Viceroy believes Athenex’s flagship paclitaxel drug, Oraxol, cannot compete with the current standard of care available in the USA.
- Oraxol’s clinical trial’s control dosing regimen of IV paclitaxel as monotherapy is an outdated treatment schedule dating from the 1990’s.
- Oraxol’s marketed quality of life improvements are redundant. Patients will still require IV/treatment post-treatment, alongside complications from oral treatment.
- Oraxol’s side effects appear more severe than those of the current US standard of care, Abraxane, and may require hospitalization due to their life-threatening nature. Reported adverse effects grade 4 neutropenia, grade 3 vomiting and unspecified GI complications were more severe than IV paclitaxel intake.
- None of Oraxol’s clinical trials have included a US patient component. While the FDA does allow data overseas trials, these results are treated with much higher scrutiny. Viceroy believe ATNX studies are being conducted in South America due to a lower local standard of care: US patients could not be enticed to trial a drug against an outdated active control regimen.
- Athenex’s Orascovery program – key to its marketed value proposition – was purchased for just US$7.5m upfront in 2011 after its previous owner experienced decade-long development delays with little headway into development. The Orascovery platform is busted.
- Through consultation with experts, we believe Athenex’s pursuit of the 505b(2) pathway for Oraxol will be hampered by the fact that its paclitaxel delivery mechanism, HM30181A, has never been approved by the FDA. The FDA may require Athenex to pursue a further NDA for HM30181A.
- Viceroy have identified what we believe to be Intellectual Property Theft from UK company Immunocore. XLiFeSc’s flagship technology (in which ATNX put $35m upfront) may already be owned by GSK and further along the development pipeline: GSK’s solution is currently undergoing phase 2 trials in the US.

Athenex’s operational and R&D cash-burn rate is over US$100m a year – the company would be lucky to survive until HY 2020 without needing a further cash injection from investors. Even if Athenex scrapped its R&D completely, the company’s revenue streams operate at a substantial loss.

Accordingly, we believe our valuation of $2.83 is optimistic, and will be realized in the short term. We do not see a future for the company in its current state.