

C A M P A I G N F O R

ACCOUNTABILITY

January 14, 2022

BY EMAIL: ChairmanOffice@sec.gov

Honorable Gary Gensler
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Disclosure Review Program
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chairman Gensler:

Campaign for Accountability, a 501(c)(3) organization, respectfully requests that the Securities and Exchange Commission (“SEC”) investigate whether Natera, Inc. has misled investors in violation of the Securities Act of 1934.

Factual Background

Natera Non-invasive Prenatal Testing

Natera, Inc. is a clinical genetic testing company with headquarters, in Austin, Texas.¹ Among other things, the company produces and markets a non-invasive prenatal testing (“NIPT”) panel with the trademarked name of Panorama that uses a blood sample from expectant mothers to screen fetuses for a multitude of genetic disorders, including Down, Prader-Willi, and Angelman syndromes.² The company claims that Panorama is “overall the most accurate NIPT commercially available in the United States.”³

Natera’s website touts Panorama, claiming it delivers “the most accurate non-invasive prenatal testing on the market.”⁴ The site explains that Panorama is a “trusted resource,” “evaluated in 23 peer-reviewed publications in more than 1.3 million pregnancies.” The page also lists the numerous rare abnormalities Panorama screens for: Down Syndrome, Edwards Syndrome,

¹ See <https://www.natera.com/company/about-us/>.

² Natera, Inc., [2020 10-K](#), Feb. 26, 2021, pages 8-9, available at <https://investor.natera.com/sec-filings/sec-filing/10-k/0001558370-21-001907>.

³ *Id.* at 9.

⁴ <https://www.natera.com/womens-health/panorama-nipt-prenatal-screening>.

Patau Syndrome, Turner Syndrome, Klinefelter Syndrome, Triple X Syndrome, Jacob's Syndrome, 22Q11.2 Deletion Syndrome, Prader-Willi Syndrome, Angelman Syndrome, 1P36 Deletion Syndrome, Cri-du-Chat Syndrome, and Triploidy, including the terrifying and debilitating features of each, but nowhere on the page does Natara provide any information whatsoever about the accuracy of its tests or the potential for false positives. Similarly, the July 16, 2021, Panorama patient brochure found on Natera's website explains that Panorama is different because it results in "fewer false positives and fewer false negatives."⁵

New York Times Investigation

On January 1, 2022, *The New York Times* ("NYT") reported that Natera and other NIPT makers are misleading consumers about the accuracy of their products.⁶ The NYT analyzed study data and spoke to researchers, concluding that positive results from tests screening for extremely rare chromosomal microdeletion disorders such as DiGeorge and Prader-Willi syndromes are incorrect approximately 85% of the time.⁷ The negative impacts of such false results are myriad, including pregnant women obtaining abortions based on incorrect information, and expectant parents incurring severe emotional anguish in the perhaps mistaken belief that their fetuses have incurable genetic disorders.⁸

A genetic expert called the tests "purely a marketing thing" because of the rarity of the diagnosed disorders and a former Food and Drug Administration ("FDA") director said the information Natera and other companies provide about the tests is "misleading."⁹

While NIPT was originally developed for more commonly found genetic disorders such as Down syndrome, a January 2016 meta-analysis in the *British Medical Journal* found that false positives for even Down syndrome occur as frequently as 20% of the time, and the review recommended that positives from NIPT be confirmed by secondary testing.¹⁰ The American College of Obstetricians and Gynecologists ("ACOG") provides a more detailed analysis, showing that among high-risk pregnant women with a positive NIPT result for Down syndrome, 83% will actually have babies with the genetic disorder, but only 33% of low-risk pregnant women with a positive result will.¹¹

⁵ Panorama Patient Brochure, Natera, accessed Jan. 10, 2022, available at <https://www.natera.com/resource-library/panorama/panorama-patient-brochure>.

⁶ Sarah Kliff and Aatish Bhatia, When They Warn of Rare Disorders, These Prenatal Tests Are Usually Wrong, *The New York Times*, Jan. 1, 2022, available at <https://www.nytimes.com/2022/01/01/upshot/pregnancy-birth-genetic-testing.html>.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Sian Taylor-Phillips, Karoline Freeman, et. al., Accuracy of non-invasive prenatal testing using cell-free DNA for detection of Down, Edwards and Patau syndromes: a systematic review and meta-analysis, *British Medical Journal*, Jan. 18, 2016, available at <https://pubmed.ncbi.nlm.nih.gov/26781507/>.

¹¹ American College of Obstetricians and Gynecologists, Press Release "Cell-Free DNA Prenatal Screening Test," May 2019, available at <https://www.acog.org/womens-health/infographics/cell-free-dna-prenatal-screening-test>.

Moreover, a study by the Reproductive Biomedicine & Society Online reported that as patients increasingly rely on the internet for healthcare information, there is a corresponding increase in the risk that unclear or misleading information about NIPT finds an audience.¹² The analysis found “a high degree of variability in the presentation of information about NIPT” including most concerningly that companies, including Natera, described NIPT as a screening or diagnostic test unevenly, a key distinction for understanding the accuracy of results and easily misunderstood by patients if not presented clearly.¹³ Natera Chairman Steve Chapman has contributed to the confusion, appearing on CNBC’s *Mad Money* in 2019, he touted the company’s technology, explaining it is the “market leader” in prenatal testing, having achieved nearly \$300 million in revenue based on non-invasive prenatal testing and said the tests “significantly” reduced the need for more invasive tests such as amniocentesis.¹⁴

Despite the questionable utility of NIPT in average risk pregnancies, in September 2020, ACOG changed its guidelines, recommending NIPT for all pregnancies, not just those classified as high-risk.¹⁵ The American Society for Clinical Pathology called the new recommendations:

[W]elcome news for laboratories that currently offer cfDNA-based NIPT tests, including Natera whose share price shot up 15 percent on news of the new guidelines which are expected to boost use of the firm’s Panorama test for average-risk pregnancies just the way it did after the announcement of the previous guidelines endorsing ctDNA NIPT for high-risk pregnancies.¹⁶

Even a commentator writing purportedly to criticize the NYT piece asked:

Given the limitations of NIPS in certain areas, like microdeletions, should more published data be required before roll-out? And is it unfair to alarm many expectant parents to find a few genetic diagnoses? Are companies being incentivized to release screening tools before they are ready because they are collecting a lot of money from insurance companies to do so? Is the marketing being used by these companies accurate or deceptive? Should these areas be more tightly regulated? These are all questions very much worth asking.¹⁷

¹² Ruth M. Farrell, Patricia K. Agatista, et.al., Online direct-to-consumer messages about non-invasive prenatal genetic testing, *Reproductive Biomedicine & Society Online*, March 10, 2016, available at [https://www.rbmsociety.com/article/S2405-6618\(16\)00003-4/fulltext](https://www.rbmsociety.com/article/S2405-6618(16)00003-4/fulltext).

¹³ *Id.*

¹⁴ *Mad Money*, CNBC, Dec. 19, 2020, available at <https://www.cnbc.com/video/2019/12/06/natera-ceo-talks-using-dna-technology-to-changed-how-disease-is-managed.html>.

¹⁵ See American Society for Clinical Pathology, New ACOG Guidelines Recommend cfDNA-Based NIPT for All Pregnancies, Not Just Risky Ones, Sept. 2023, available at <https://www.ascp.org/content/news-archive/news-detail/2020/09/24/new-acog-guidelines-recommend-cfdna-based-nipt-for-all-pregnancies-not-just-risky-ones>.

¹⁶ *Id.*

¹⁷ Ellen Matloff, What the NYT Got Wrong on Prenatal Screening, *Forbes*, Jan 6., 2022, available at <https://www.forbes.com/sites/ellenmatloff/2022/01/06/what-the-nytimes-got-wrong-on-prenatal-screening/?sh=7af4dab337a7>.

Notably, in the weeks running up to the publication of the NYT story, Natera COO Robert Allan Schueren sold approximately 10,800 shares of Natera stock valued at nearly \$ 1 million, indicating he may have been aware of the potential negative impact of the story on the company's share price.¹⁸ These trades may warrant an investigation into whether Mr. Schueren engaged in insider trading in violation of the Securities Exchange Act of 1934.¹⁹

Natera's Statements

As a result of ACOG's guideline change, in the company's 2020 Q4 earnings call, Natera CEO Steve Chapman described Q4 2020 as "the best quarter we've ever had at Natera."²⁰ Chapman explained that because of ACOG's recommendation, by January 2021 all major national insurance plans were covering NIPT for all women and there had been significant adoption among state Medicaid plans as well.²¹ Chapman also explained that the company had released the results of the company's "SMART" trial and announced the validation of our new Panorama artificial intelligence platform. He called the final results of the long-running trial "even stronger than expected" and claimed this would put Natera "in an excellent position to achieve reimbursement for our microdeletions test and further drive market share gains within the NIPT space."

On the same call, Natera founder Matthew Rabinowitz detailed the SMART trial, explaining that the company had used more than 1.6 million samples to train the deep learning network, the performance of which would continue to evolve with more samples to even more accurately detect abnormalities. Rabinowitz described this as the "modern biotech equivalent of the competition between Kasparov and the supercomputer over the game of chess, which the supercomputer ultimately had to win."²²

More specifically, Rabinowitz claimed:

SMART serves as a major advancement for microdeletion testing, rigorously validating Panorama's best-in-class performance and advanced and clinical knowledge of the most common microdeletions 22Q11.2. We showed excellent performance in detecting 22Q, as we expected detecting a 100% of cases of the most common microdeletion, 2.6 megabases or greater.

Using Panorama AI, we were able to also detect the smaller microdeletions below 2.6 megabases, down to 0.7 megabases, which amounted to 41% of the disease load, significantly more than previously believed. Including microdeletions of all sizes in the

¹⁸ See [Robert Alan Schueren Sells 1,382 Shares of Natera, Inc. Stock](https://www.marketbeat.com/instant-alerts/nasdaq-ntra-insider-buying-and-selling-2021-12-2-3/), *Marketwatch*, Dec. 29, 2021, available at <https://www.marketbeat.com/instant-alerts/nasdaq-ntra-insider-buying-and-selling-2021-12-2-3/>.

¹⁹ 15 U.S.C. § 78j, 17 C.F.R. § 240.10b-5.

²⁰ Natera, Inc. Q-4-2020 Earnings Call Transcript, available at <https://seekingalpha.com/article/4410074-natera-inc-ntra-ceo-steve-chapman-on-q4-2020-results-earnings-call-transcript>.

²¹ *Id.*

²² *Id.*

22Q region, we demonstrated a sensitivity of 83% and a positive predictive value of 53%. This performance is unique in the industry.²³

In its Q1 2021 earnings call Natera continued to tout its NIPT. Chapman stated, “now with the completion of the SMART trial, we have the validation data for the largest and most rigorous study aneuploidy and microdeletion testing.”²⁴ When an analyst asked Chapman why Natera, which then had about 30% of the NIPT market expected to claim a significant portion of the remaining 70%. Chapman responded that Panorama:

[A]lso allows us to get higher sensitivity and specificity on things like trisomy 21 and [indiscernible] chromosomes. When you shift over to something like 22q microdeletion disorder, and you look at the performance using SNPs there versus the shotgun sequencing method, I mean, it's really night and day, the difference in the performance. I mean we're talking about sensitivity in the 90s versus others that have published performance sensitivity in the 20s. So the technique works exceptionally well, and that's now being shown out in the volumes. On the microdeletion standpoint, we now have published – or have presented and intend to be published the largest prospective trial that has ever been done in the microdeletion space. The results look exceptional.

There were two key findings on microdeletions. One is that the 22q disease is much more common than what was previously expected at approximately one in 1,500. The – and the second was that our test works really, really well. So the sensitivity was very high. And the positive predictive value was also very high. And those are two of the – I guess, combined those are the three things, disease incidence, sensitivity, specificity that societies look at when they are deciding whether or not something meets the criteria to be approved for a prenatal screening test. So we think we're in a good position to, at some point in the future, get into the guidelines and receive payer coverage. And we're doing hundreds of thousands of these tests already every year that are not reimbursed. So as soon as reimbursement comes in, this is going to be an immediate, very significant impact to Natera's revenue and the bottom line.²⁵

By the end of the third quarter of 2021, Chapman claimed Natera's market share in NIPT was up to 40%.²⁶ In a July 2021 interview, he declared Natera to be “by far the market leader, testing roughly 25% of all pregnancies in the U.S. and growing rapidly.”²⁷

²³ *Id.*

²⁴ <https://seekingalpha.com/article/4426414-nateras-ntra-ceo-steve-chapman-on-q1-2021-results-earnings-call-transcript>.

²⁵ *Id.*

²⁶ Natera, Inc. Q-4 earnings Call transcript, Nov. 4, 2021, available at <https://www.fool.com/earnings/call-transcripts/2021/11/05/natera-inc-ntra-q3-2021-earnings-call-transcript/>.

²⁷ Paul Moss, Steve Chapman of Natera: Five Things You Need to Create a Highly Successful Startup, *Authority Magazine*, July 7, 2021, available at <https://medium.com/authority-magazine/steve-chapman-of-natera-five-things-you-need-to-create-a-highly-successful-startup-5815f3621ace>.

Natera's Disclosures to Investors

Failure To Disclose Risk of False Positives

A review of Natera's quarterly and annual SEC filings from 2018 through 2021 indicates the company did not disclose to investors the risk presented by the number of false positives returned by its Panorama microdeletion panel. Natera did disclose the investor risk presented by false negatives²⁸, however, which proved prescient given that at least one patient sued the company for delivering a false negative for Down syndrome, discovered after the baby was born with the genetic disorder.²⁹ Natera described this lawsuit dispassionately to its investors, calling it the result of a "discordant test result," but the mother who sued Natera told local press she hopes her lawsuit "can get Natera and other companies working in this space to understand the impact their products have on human beings."³⁰ The litigation threat based on false positives is now apparent. Since the NYT published its story, several law firms announced they are exploring securities class action lawsuits on behalf of investors harmed by plunging stock value ostensibly caused by the revelation that results delivered by NIPTs are unreliable.³¹

Natera also did not disclose in its investor filings the prevalence of false positives from four of the five disorders screened in its Panorama NIPT. While Panorama screens for DiGeorge, Angelman, Cri-du-chat and Prader-Willi syndromes and the 1p36 deletion, it only included false positive rates for DiGeorge syndrome in its 2018 to 2021 SEC quarterly and annual reports.³² Natera stated that "Panorama has demonstrated best-in-class performance in screening for

²⁸ Natera, Inc. 2018 Q1 10-Q, May 10, 2018, page 62, available at <https://investor.natera.com/sec-filings/sec-filing/10-q/0001558370-18-004660>; Natera, Inc. 2018 10-K, March 15, 2018, page 47, available at <https://investor.natera.com/sec-filings/sec-filing/10-k/0001558370-18-002153>.

²⁹ Anna Schuessler, Mother speaks up about risks of prenatal testing, *The Daily Journal*, Feb. 25, 2019, available at https://www.smdailyjournal.com/news/local/mother-speaks-up-about-risks-of-prenatal-testing/article_5739d5ca-38ab-11e9-a7bf-675355c57802.html.

³⁰ Natera, Inc. 2018 Q1 10-Q, May 10, 2018, page 62, available at <https://investor.natera.com/sec-filings/sec-filing/10-q/0001558370-18-004660>; Natera, Inc. 2018 10-K, March 15, 2018, page 123, available at <https://investor.natera.com/sec-filings/sec-filing/10-k/0001558370-18-002153>; Anna Schuessler, Mother speaks up about risks of prenatal testing, *The Daily Journal*, Feb. 25, 2019, available at https://www.smdailyjournal.com/news/local/mother-speaks-up-about-risks-of-prenatal-testing/article_5739d5ca-38ab-11e9-a7bf-675355c57802.html.

³¹ The Law Offices Of Frank R. Cruz Announces Investigation Of Natera, Inc. (Ntra) On Behalf Of Investors, *Lawyer Monthly*, Jan. 4, 2022, available at <https://www.lawyer-monthly.com/2022/01/the-law-offices-of-frank-r-cruz-announces-investigation-of-natera-inc-ntra-on-behalf-of-investors/>; Glancy Prongay & Murray LLP, a Leading Securities Fraud Law Firm, Announces Investigation of Natera, Inc. (NTRA) on Behalf of Investors, *Pharmaweb.com*, Jan. 4, 2022, available at <https://www.pharmiweb.com/press-release/2022-01-04/glancy-prongay-murray-llp-a-leading-securities-fraud-law-firm-announces-investigation-of-natera>; Natera Alert: Bragar Eigel & Squire, P.C. Is Investigating Natera, Inc. On Behalf Of Natera Stockholders And Encourages Investors To Contact The Firm, *Lawyer Monthly*, Jan. 5, 2022, available at <https://www.lawyer-monthly.com/2022/01/natera-alert-bragar-eigel-squire-p-c-is-investigating-natera-inc-on-behalf-of-natera-stockholders-and-encourages-investors-to-contact-the-firm/>; SHAREHOLDER ALERT: Robbins LLP Investigates Natera, Inc. (NTRA) on Behalf of Shareholders, Jan. 10, 2022, available at <https://www.businesswire.com/news/home/20220110005401/en/SHAREHOLDER-ALERT-Robbins-LLP-Investigates-Natera-Inc.-NTRA-on-Behalf-of-Shareholders>.

³² Natera, Inc. 2020 10-K, Feb. 26, 2021, page 9, available at <https://investor.natera.com/sec-filings/sec-filing/10-k/0001558370-21-001907>.

microdeletions” but only includes Panorama’s 90% sensitivity for DiGeorge syndrome, and not the sensitivity for the other four screen disorders.³³

Further, it appears Natera’s extravagant claims of Panorama’s accuracy – that its AI is akin to the supercomputer beating Kasparov, for instance – are, quite simply, untrue. The NYT initially reported in a bubble appearing with the DiGeorge syndrome graphic:

Take Natera, which ran 400,000 tests in 2020 for DiGeorge syndrome, a disorder associated with heart defects and intellectual disability. The 400,000 tests would be expected to identify about 200 actual cases of the disorder. Natera claims its latest algorithm would identify about an equal number of false positives. That’s a lot better than the company has been able to do in a clinical trial. Those numbers suggest there would be three times as many false positives as actual cases.”³⁴

Apparently responding to complaints from Natera, the graphic caption was edited, somewhat incomprehensibly, to state:

Take Natera, which ran 400,000 tests in 2020 for DiGeorge syndrome, a disorder associated with heart defects and intellectual disability. The 400,000 tests would be expected to identify about 200 actual cases of the disorder. In a recent study, Natera said that its latest algorithm would identify about an equal number of false positives. But that same study also included the results from when the tests were actually taken. Those numbers suggest there would be three times as many false positives as actual cases. At least six percent of the tests include the full panel of microdeletions. Those would be expected to find about eight true positives and between 17 and 134 false ones.³⁵

Regardless, the results of the SMART trial have not yet been published so no one other than Natera can speak to the findings.

Forward Looking Statements

While Natera has lost no opportunity to gush about the results of its SMART trial in public, its lawyers clearly have attempted to create a bulwark to protect the company from the consequences of its unfounded and hyperbolic claims. In Natera’s quarterly SEC filings from 2018 through 2021, the company includes in its forward-looking statements include “our expectations of the reliability, accuracy, and performance of our tests, as well as expectations of the benefits of our tests to patients, providers, and payers.”³⁶

³³ *Id.*

³⁴ On January 6, 2022, the NYT included a correction, stating “The article [regarding the accuracy of prenatal tests] also referred imprecisely to projected numbers from the test maker Natera’s newest algorithms. Natera said those figures were included in its clinical studies.” Corrections, *New York Times*, Jan. 8, 2022, available at <https://www.nytimes.com/2022/01/01/upshot/pregnancy-birth-genetic-testing.html>.

³⁵ Kliff and Bhatia, *New York Times*, Jan. 1, 2022.

³⁶ See, e.g., Natera, Inc. 2021 Q3 10-Q, Nov. 5, 2021, page 3, available at <https://investor.natera.com/sec-filings/sec-filing/10-q/0001558370-21-014721>.

Similarly, the Power Point presentation Natera employed during the same earnings calls in which Rabinowitz compared Panorama's AI to those of the supercomputer that beat Kasparov, includes a slide entitled, "Safe harbor statement," where – in very small print – the company notes:

the results of our clinical studies, including our SNP-based Microdeletion and Aneuploidy RegisTry, or SMART, Study, may not be compelling to professional societies or payors as supporting the use of our tests, particularly in the average-risk pregnancy population or for microdeletions screening, or may not be able to be replicated in later studies required for regulatory approvals or clearances . . ."³⁷

In fact, Natera regularly includes the same caveat in its earnings calls slide decks.³⁸ In effect, Natera wants to have its cake and eat it too, declaring far and wide that its NIPT technology is incredibly accurate and reliable, while more quietly claiming its testing results might not be replicable. An effort to create a safe harbor for "a concrete factual assertion about a specific present or past circumstance," such as the testing results must fail under the Private Securities Litigation Reform Act.³⁹

Potential Violations

By disingenuously touting the accuracy of its NIPT to investors, Natera may be directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by the use of mails, obtaining money or property by means of untrue statements of material fact, or omitting to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made, not misleading. Further Natera may be engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon purchasers, in potential violation of sections 17(a)(2) and (3) of the Securities Act, 15 U.S.C. §§ 77q(a)(2) and 77q(a)(3).

Similarly, Natera's filings with the SEC, including its Forms 10-K and 10-Q, include misleading statements concerning the accuracy of its genetic tests in revealing genetic abnormalities, likely in violation of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and

³⁷ Natera, Investor Presentation, Safe Harbor Statement in Slide Deck, Q4-2020 Earnings Call, Feb. 28, 2021, available at <https://natera.gcs-web.com/static-files/d2c2e7fa-3a45-489f-80bd-b53e410d7094..>

³⁸ See e.g. Q-1 2021 Earnings Call Slide Deck, May 7, 2021, available at https://seekingalpha.com/article/4425505-natera-inc-2021-q1-results-earnings-call-presentation?utm_medium=email&utm_source=seeking_alpha.

Q2-2021 Earnings Call Slide Deck, Aug. 5, 2021, available at <https://investor.natera.com/static-files/d33e5ab5-6afb-4eb8-9098-cef0b3c97e34>; and Q3-2021, Nov. 4, 2021, available at <https://investor.natera.com/static-files/075388d9-fbac-42ce-abb5-8e35ca04a2ab>.

³⁹ See 15 U.S.C. § 78u-5.

Honorable Gary Gensler

January 14, 2022

Page 9

Rules 12b-20, 13a-1, and 13a-13, which obligates issuers of securities to file with the Commission periodic reports with information that is accurate and not misleading.

Finally, if insurance companies increasingly are covering NIPTs for average risk pregnancies because they have been misled regarding the accuracy or reliability of the tests, this also raises the specter of potential healthcare fraud.

Conclusion

At first glance, the SEC might believe questions about a genetic testing company's effort to persuade pregnant women and their doctors of the efficacy of NIPTs falls more squarely into the jurisdiction of the Department of Health and Human Services. Natera, however, is a publicly traded company, the stock price of which has risen and fallen based on investors' confidence in the reliability of its technology. Therefore, it is incumbent upon the SEC to investigate whether Natera knowingly overstated the accuracy of its NIPT to the detriment of its shareholders.

Campaign for Accountability looks forward to the SEC's prompt investigation into this very important matter.

Sincerely,

A handwritten signature in black ink that reads "Michelle Koppersmith". The signature is written in a cursive, flowing style.

Michelle J. Koppersmith
Executive Director

cc: Allan Medina, Chief Health Care Fraud
Department of Justice