ELIZABETH WARREN
MASSACHUSETTS

COMMITTEES:
BANKING, HOUSING, AND URBAN AFFAIRS
ARMED SERVICES
FINANCE
SPECIAL COMMITTEE ON AGING

United States Senate

UNITED STATES SENATE
WASHINGTON, DC 20510–2105
P: 202–224–4543

2400 JFK FEDERAL BUILDING
15 NEW SUDBURY STREET
BOSTON, MA 02203
P: 617–565–3170

1550 MAIN STREET
SUITE 406
SPRINGFIELD, MA 01103
P: 413–788–2690

www.warren.senate.gov

April 27, 2021

The Honorable Gary Gensler
Chair
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Dear Chair Gensler:

I am writing to ask that the SEC conduct an investigation of reports that Mr. Robert G. Kramer, the president and CEO of Emergent BioSolutions (Emergent), sold more than $10 million worth of his stock prior to public disclosures that the company had ruined 15 million doses of the Johnson & Johnson coronavirus disease 2019 (COVID-19) vaccine.[1] Mr. Kramer's actions appear to be an egregious example of pandemic profiteering: he personally profited from millions of dollars of taxpayer-funded contracts while the company he led caused critical delays in the COVID-19 response – and he then protected his personal profits by selling his stock at inflated prices before the company disclosed its failures.

I have been concerned about pandemic profiteering since the beginning of this public health crisis.[2] The Securities and Exchange Commission (SEC) has the tools that are needed to investigate and punish corrupt and illegal insider trading and I ask that you act quickly and aggressively to do so.

In March 2021, millions of doses of Johnson & Johnson COVID-19 vaccines were ruined by Emergent Bio Solutions because of accidental cross-contamination during the production process.[3] The error resulted in delayed shipments of the vaccine throughout the U.S. as the Food and Drug Administration (FDA) investigated the incident.[4]

---

[1] Washington Post, "CEO of vaccine maker Emergent sold $10 million in stock before company ruined Johnson & Johnson doses," Jon Swaine, April 25, 2021, https://www.washingtonpost.com/investigations/emergent-robert-kramer-stock-sales/2021/04/25/de151434-a2b6-11eb-a7ee-949c574a09ac_story.html.
[2] *See, e.g.*, Letter from Sen. Warren to SEC Chair Jay Clayton and Commodities Futures Trading Commission Chair Heath Tarbert, October 2020, https://www.warren.senate.gov/imo/media/doc/2020.10.15%20Letter%20to%20SEC%20CFTC.pdf.
[3] New York Times, "Johnson & Johnson's vaccine is delayed by a U.S. factory mixup,"Sharon LaFraniere and Noah Weiland, March 31, 2021, https://www.nytimes.com/2021/03/31/world/johnson-and-johnson-vaccine-mixup.html.
[4] Washington Post, "Johnson & Johnson confirms vaccine production problem at Emergent plant in Baltimore," Christopher Rowland and Laurie McGinley, April 1, 2021, https://www.washingtonpost.com/business/2021/03/31/vaccine-johnson-johnson-emergent/.

This egregious mistake delayed the nation's COVID-19 vaccination production and had significant implications for the financial bottom line of Emergent. Following the error, the company's stock prices immediately declined by nearly 15 percent and then continued to drop.[5] As of today, Emergent stock trades at approximately half of its February 2021 high of $125 per share.[6]

But according to a new report in the *Washington Post*, this "decline has had less of an impact than it might have on the personal finances of Emergent's chief executive, Robert G. Kramer, who sold more than $10 million worth of his stock in the company in January and early February, securities filings show."[7] Mr. Kramer appears to have made approximately $7.5 million in profits on the stock sales – he had stock options that allowed him to purchase the stock for $2.5 million, which he then sold for over $10 million.[8]

According to the report, "Kramer's sales were made as part of a trading plan that he adopted on Nov. 13 … Such plans, which establish in advance when stocks are to be bought and sold, are intended to protect company insiders from suggestions that they traded on the basis of confidential information that would influence the stock price, which is unlawful."[9]

However, as I wrote to the SEC earlier this year, "new evidence indicates that executives – especially those in the healthcare industry – are abusing these plans to obtain huge windfalls at the expense of ordinary investors. These abuses, and the plans' lack of transparency, damage investors and risk undermining public confidence."[10] Mr. Kramer's use of this plan appears to be an example of the abuses that prompted my concerns.

Notably, Mr. Kramer had ample knowledge of potential concerns about Emergent's production problems well before his stock sales, and before he adopted his trading plan in November 2020:

> "[T]he New York Times reported this month that one batch of AstraZeneca's coronavirus vaccine that was being prepared at Emergent's plant was discarded in October 2020 because of suspected contamination, and that a quantity of Johnson & Johnson vaccine was discarded at some point in November following an error by workers involving a gas line.
>
> Months earlier, in April 2020, a Food and Drug Administration inspector discovered violations at the Baltimore site, including inadequate training and a failure to follow testing procedures, The Post recently reported.

---

[5] Yahoo!Finance, Emergent Biosolutions (EBS), April 26, 2021, https://finance.yahoo.com/chart/EBS.
[6] *Id*.
[7] Washington Post, "CEO of vaccine maker Emergent sold $10 million in stock before company ruined Johnson & Johnson doses," Jon Swaine, April 25, 2021, https://www.washingtonpost.com/investigations/emergent-robert-kramer-stock-sales/2021/04/25/de151434-a2b6-11eb-a7ee-949c574a09ac_story.html.
[8] *Id*.
[9] *Id*.
[10] Letter from Sens. Elizabeth Warren, Sherrod Brown, and Chris Van Hollen to Acting SEC Chair Allison Herren Lee, February 10, 2021, https://www.warren.senate.gov/imo/media/doc/02.10.2021%20Letter%20from%20Senators%20Warren,%20Brown,%20and%20Van%20Hollen%20to%20Acting%20Chair%20Lee.pdf.

In July 2020, a company that had hired Emergent to make an experimental ricin vaccine filed a confidential arbitration demand for $19 million in damages, saying Emergent had disclosed after study participants had already received doses that it had supplied drugs that were outside of specification."[11]

Federal law bars individuals from "purchasing or selling a security while in possession of material nonpublic information"[12] – in this case, the CEO's knowledge that Emergent was plagued by production problems. Violation of these laws may subject individuals to civil penalties "three times the amount of the profit gained or loss avoided" and criminal penalties up to $5,000,000 and 20 years imprisonment.[13]

The SEC has a responsibility to protect shareholders, investors, and the public. Given my longstanding concerns about pandemic profiteering and the specific troubling new details about Emergent and Mr. Kramer's sales of company stock amidst its vaccine production failures, I ask that the SEC open an investigation of this matter as rapidly as possible. Specifically, I ask that you investigate:

1) The full extent of all stock sales or other trades by Mr. Kramer or other Emergent executives from January 2020 to the present.

2) The extent of Mr. Kramer's knowledge of the company's production problems, and the effect these problems would have on this stock options' value, when he sold his stock in early 2021.

3) The extent to which the company appropriately disclosed to investors and the public the financial risks posed by its production problems, and whether it did so in a timely fashion.

4) The circumstances surrounding Mr. Kramer's 10b5-1 stock sales plan adopted in November 2020, and whether the terms and conditions of this plan appropriately prevented abuse, profiteering, and insider trading by Mr. Kramer.

Thank you for your attention to this important matter, and I look forward to a response describing your plans to investigate this matter by no later than May 11, 2021.

Sincerely,

Elizabeth Warren
United States Senator

[11] Washington Post, "CEO of vaccine maker Emergent sold $10 million in stock before company ruined Johnson & Johnson doses," Jon Swaine, April 25, 2021, https://www.washingtonpost.com/investigations/emergent-robert-kramer-stock-sales/2021/04/25/de151434-a2b6-11eb-a7ee-949c574a09ac_story.html.
[12] Insider Trading Sanctions Act of 1984, Public Law 98-376.
[13] 15 U.S.C. 78u-l(aX2); 15 U.S.C. 78ff