

MIMEDX GROUP, INC.

Form 10-K/A

September 30, 2008

Table of Contents

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-K/A
Amendment No. 2**

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934**

For the fiscal year ended March 31, 2008

Commission file number 0-52491

MIMEDX GROUP, INC.

(Exact name of registrant as specified in its charter)

Florida

(State or other jurisdiction of incorporation)

26-2792552

(I.R.S. Employer Identification Number)

1234 Airport Road, Suite 105

Destin, Florida

(Address of principal executive offices)

32541

(Zip Code)

(850) 269-0000

Registrant's telephone number, including area code

Securities registered pursuant to Section 12(b) of the Act: None

Securities registered pursuant to Section 12(g) of the Act:

Common Stock, par value \$0.001 per share

(Title of class)

Indicate by check mark whether the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes ☐ No ☒

Indicate by check mark whether the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐

Accelerated filer ☐

Non-accelerated filer ☐
(Do not check if a smaller
reporting company)

Smaller reporting company ☒

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

The aggregate market value of Common Stock held by non-affiliates on September 28, 2007, based upon the last sale price of the shares as reported on the OTC Bulletin Board on such date, was approximately \$7,067,163.

There were 37,282,128 shares of Common Stock outstanding as of June 10, 2008.

Documents Incorporated by Reference

None.

TABLE OF CONTENTS

<u>EXPLANATORY NOTE</u>	1
<u>PART II</u>	2
<u>Item 9A(T). Controls and Procedures</u>	2
<u>SIGNATURES</u>	4
<u>EXHIBITS TO FORM 10-K/A</u>	5
<u>Exhibit 31.1</u>	
<u>Exhibit 31.2</u>	

Table of Contents

EXPLANATORY NOTE

This Form 10-K/A (Amendment No. 2) amends the annual report on Form 10-K of MiMedx Group, Inc. for the fiscal year ended March 31, 2008, filed with the Securities and Exchange Commission (the SEC) on June 27, 2008, as amended by Amendment No. 1 (the 2008 Form 10-K). The purpose of this Amendment No. 2 is to provide management's evaluation of disclosure controls and procedures, as required by Item 9A(T) of Part II of the 2008 Form 10-K and Item 307 of Regulation S-K, which we failed to include in our annual report on Form 10-K based on an incorrect assumption. We have reevaluated the requirements of Item 307 of Regulation S-K, and as a result, performed an evaluation of our disclosure controls and procedures as they existed at March 31, 2008 and included such evaluation in this Amendment No. 2.

On the cover page of this Amendment No. 2, we have also corrected the disclosure noting that portions of the definitive proxy statement were to be incorporated by reference, which change was originally made in Amendment No. 1 on Form 10-K/A (the Cover Page Change).

This Amendment No. 2 has no effect on our consolidated statements of operations, statements of cash flows or balance sheets.

This Amendment No. 2 is limited in scope to Item 9A(T) of Part II and the Cover Page Change, and does not amend, update or change any other items or disclosures contained in the 2008 Form 10-K or otherwise reflect events that occurred subsequent to the filing of the 2008 Form 10-K. This Amendment No. 2 continues to speak as of the date of filing of the 2008 Form 10-K except with respect to 9A(T) of Part II and the Cover Page Change contained in Amendment No. 2, which speak as of the date of filing of this Amendment No. 2 or as otherwise disclosed in this Amendment No. 2.

As noted in Part I, Item I of the 2008 Form 10-K:

MiMedx Group, Inc. was originally formed as a Utah corporation on July 30, 1985 under the name Leibra, Inc. We later changed domicile, through a merger, to Nevada, and later changed our name to Alynx, Co. We had several additional name changes in connection with various business acquisitions, all of which were discontinued or rescinded. We were an inactive shell corporation for at least the past 10 years, seeking to acquire an interest in a business with long-term growth potential. On March 6, 2007, we (then Alynx, Co.) filed a registration statement with the SEC on Form 10-SB to register our Common Stock under the Securities Exchange Act of 1934. We have filed all periodic reports with the SEC since that time.

As used herein, the terms the Company, we, our and us refer to MiMedx Group, Inc., a Florida corporation (formerly Alynx, Co., a Nevada corporation), and our consolidated subsidiaries as a combined entity, except where it is clear that the terms mean only MiMedx Group, Inc.

On February 8, 2008, MiMedx Group, Inc., MMX Acquisition Corp., a Florida corporation wholly-owned by Alynx, Co., and MiMedx, Inc., a Florida-based, privately-held, development-stage medical device company (MiMedx), consummated the arrangement set forth in an Agreement and Plan of Merger between the parties (the Merger), whereby (i) MMX Acquisition Corp. merged with and into MiMedx; (ii) MiMedx became a wholly-owned subsidiary of the Company; and (iii) former MiMedx shareholders received approximately 97.25% of the post-merger company's outstanding shares. On March 31, 2008, we merged into a Florida entity, thereby becoming MiMedx Group, Inc. and also effected a reverse split so that each former MiMedx shareholder owned the same number of shares in the Company as such shareholder held in MiMedx prior to the Merger.

Table of Contents

PART II

Item 9A(T). Controls and Procedures

Management's Report on Internal Control over Financial Reporting

We have not included a management's report on internal control over financial reporting. Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15 and 15d-15 under the Exchange Act (ICFR). Our ICFR should be designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with U.S. generally accepted accounting principles.

The Company's predecessor, Alynx, Co., was previously a shell company with the objective to acquire an operating business. As such, it only had to maintain internal and disclosure controls on a very limited number of activities, and also, was in a transition period for newly public companies established by the SEC for compliance with the internal control over financial reporting requirements of Section 404 of SOX. On February 8, 2008, Alynx, Co. acquired MiMedx, Inc., a privately held, development-stage company, and its affiliated companies, in a transaction accounted for as a reverse merger (the Acquisition). Upon the consummation of the Acquisition, Alynx, Co.'s former internal controls and management were entirely supplanted by those of MiMedx, Inc. and its affiliates. In effect, this annual report on Form 10-K for the year ending March 31, 2008 is the first annual or quarterly report that has been filed with respect to the assets and operations of MiMedx.

Our new and current management acknowledges that they are responsible for establishing and maintaining adequate internal control over financial reporting for the Company. Because of the abbreviated period of less than two months during which the Company, operating as MiMedx, was a reporting company during the fiscal year ended March 31, 2008, management had not completed as of March 31, 2008, an assessment of the Company's internal control over financial reporting under a recognized control framework. That assessment process is ongoing and will be completed during the 2009 fiscal year. Accordingly, the Company will include management's report on its assessment regarding internal control over financial reporting in its next annual report. As of the date of this filing, management has not identified any material weaknesses.

This annual report on Form 10-K does not include an attestation report of the Company's registered public accounting firm regarding internal control over financial reporting due to a transition period established by the rules of the SEC. We anticipate that our internal control system will be designed to provide reasonable assurance to our management and Board of Directors regarding the preparation and fair presentation of published financial statements. The steps management expects to undertake include a top-down risk assessment of all risks associated over financial reporting and disclosure, the identification and ranking of risks and the corresponding financial accounts and business processes. Additionally, the associated system applications will be identified, as well as the controls over information technology and general computer controls. Company-wide controls will also be identified and documented. This control environment will be reviewed and assessed to allow management to conclude regarding the effectiveness of the design of the controls as well the operating effectiveness. In making its assessment of internal control over financial reporting, management anticipates using the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control - Integrated Framework. We have hired new accounting personnel. In addition, we are in the process of implementing a comprehensive new accounting software system and are in the process of retaining the services of a consulting business specializing in audit, compliance, financial management, and support.

All internal control over financial reporting, no matter how well designed, have inherent limitations, including the possibility of human error and the circumvention or overriding of controls. Therefore, even effective internal control over financial reporting can provide only reasonable assurance with respect to financial statement preparation and presentation. Further, because of changes in conditions, the effectiveness of internal controls over financial reporting may vary over time.

Notwithstanding the foregoing, we believe that the financial statements and other information included in this annual report on Form 10-K fairly present in all material respects our financial position, business, and results of operations.

Table of Contents

Changes in Internal Control over Financial Reporting

As described above, the Company's predecessor, Alynx, Co., was previously a publicly traded shell corporation that had no operating activities, and upon consummation of the Acquisition, the Company's legacy ICFR and management were entirely supplanted by those of MiMedx, a private company that did not have to perform an assessment of ICFR. Accordingly, as a result of the Acquisition, all of the ICFR during the fiscal year ended March 31, 2008 that have materially affected, or are reasonably likely to materially affect, the Company's ICFR have changed, and the controls, processes and systems in place at the Company prior to the Acquisition should no longer be relied upon.

Evaluation of Disclosure Controls and Procedures

As required by Rule 13a-15 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), we have carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this report. This evaluation was carried out under the supervision and with the participation of our management, including our Chief Executive Officer and Principal Financial Officer. Based upon that evaluation, our Chief Executive Officer and Principal Financial Officer concluded that our controls and procedures were effective as of the end of the period covered by this report.

Disclosure controls and procedures are controls and other procedures that are designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include controls and procedures designed to ensure that information required to be disclosed in our reports filed under the Exchange Act is accumulated and communicated to management, including our Chief Executive Officer, as appropriate, to allow timely decisions regarding disclosures.

Limitations on the Effectiveness of Controls

We have confidence in our internal controls and procedures. Nevertheless, our management, including our Chief Executive Officer and Principal Financial Officer, does not expect that our disclosure procedures and controls or our internal controls will prevent all errors or intentional fraud. An internal control system, no matter how well-conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of such internal controls are met. Further, the design of an internal control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all internal control systems, no evaluation of controls can provide absolute assurance that all our control issues and instances of fraud, if any, have been detected.

Table of Contents

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Amendment No. 2 to Form 10-K to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: September 30, 2008

MIMEDX GROUP, INC.

By: /s/ John C. Thomas, Jr.
John C. Thomas, Jr.
Chief Financial Officer

Table of Contents

EXHIBITS TO FORM 10-K/A

Exhibit Number	Description
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Acts of 2002
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Acts of 2002