



Athenex – Financial Situation

Ahead of earnings, Viceroy provide an insight of what's to come.



November 4, 2019 – This report provides a deep dive on Athenex's significant revenue declines and capital over-commitment that investors can expect in the coming months. We believe revenues from the second half of 2019 will fall ~40% against the first half of 2019.

- Athenex **best seller, Vasopressin, has been pulled due** to FDA ruling brought about by a lawsuit against Athenex by its largest customer, AmerisourceBergen.
- COO Jeffrey Yordon is on record as stating the **Vasopressin ban "did not come unexpected"**.
- Almirall licensing payments in 2018 **were non-recurring**, and 2019 milestones appear to have been delayed as Almirall redefine Athenex deliverables.
- Per management's guidance, **we expect product sales revenue to fall approximately 40% in the second half of 2019 against the first half of 2019.**
- Athenex have not only **committed >US\$1.5b** expenditure at their Dunkirk site across the next ten years but are also **on the hook for excess development costs for the facility**, whose floorplan has expanded by 28% on-the-fly and falling significantly behind schedule.
- Athenex's new **China-funded plant must also generate unrealistic revenues of almost US\$1b within 5 years of opening, despite turning over only \$160m across the last 5 years combined.**
- **Athenex must also pay RMB 10b in taxes over 10 years at its China Site**, according to project commitments. Strangely, Athenex's own tax projections do not meet the required sum from these commitments by over 30%.
- To manage its cash burning commitments to major facilities and accelerated R&D, **Athenex has issued dilutive equity, and incredulously borrowed US\$50m from major investor, Perceptive, at a punitive rate of 11%.**

Athenex		
Exchange		NASDAQ
Ticker		ATNX
Shares Outstanding	m	77.3
Share Price	US\$	11.12
Market Cap	US\$m	859.6
Net Cash	US\$m	78.7
NCI	US\$m	11.7
EV	US\$m	769.2
NTA	US\$m	131.6
Licensing Revenue	US\$m	87.2
Revenue Multiple	X	1.0
Viceroy Valuation	US\$m	218.8
Viceroy Price Target	US\$	2.83
Downside	%	-75%
*As at close of market - Oct 28, 2019		
NB: LTM/balance from Jun 30, 2019		

Considering the quantum of issues Viceroy have highlighted, it is alarming to shareholders that Athenex have not addressed a single point of our work. Opting instead to simply state we have published "inaccurate information". Other commentators have begun to back-test our work¹.

Where are the inaccuracies, Athenex?

We have *already* highlighted **management's involvement in Sino Forest, GCL Silicon/Poly, Suntech, Chelsea Therapeutics, the world's largest illegal taxol smuggling operation, and now LyphoMed, Gensia and Sagent**. It is mind blowing that Athenex investors would continue to associate with any one of these farces, let alone a collection such as this.

Viceroy reiterate our view that **Oraxol is obsolete in the modern medicine**, and that Athenex will be effectively **bankrupt by mid-2020 with no profitable operations given management's overenthusiastic spending habits**.

Viceroy remain short Athenex, and are in the process of obtaining a compiled, detailed report by industry specialists pertaining to Oraxol and its inability to be commercialized.

In considering the above, Viceroy estimate that Athenex's risks of a highly discounted and dilutive capital raise is all but guaranteed.

<https://seekingalpha.com/instablog/38002746-denniskneale/5369151-cancer-conflicts-interest>

¹ Blog entry-Dennis Kneale:<https://seekingalpha.com/instablog/38002746-denniskneale/5369151-cancer-conflicts-interest>



Report 1: <https://viceroyresearch.org/2019/10/22/athenex-too-little-too-late/>

Report 2: <https://viceroyresearch.org/2019/10/23/athenex-where-theres-smoke/>

Report 3: <https://viceroyresearch.org/2019/10/24/athenex-no-integrity/>

Report 4: <https://viceroyresearch.org/2019/10/25/athenex-bonus-round/>

Report 5: <https://viceroyresearch.org/2019/10/28/athenex-rehash/>

Report 6: <https://viceroyresearch.org/2019/10/29/athenex-unpopular-operating-officer/>

Other Coverage: <https://seekingalpha.com/instablog/38002746-denniskneale/5369151-cancer-conflicts-interest>

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. Non-recurring revenue

A “pressin” issue

The judgement banning the sale of Vasopressin has destroyed Athenex best sales prospect to date:

APD currently markets 29 products with 54 SKUs, APS markets six products with 16 SKUs, and we're looking ahead, we expect to launch an additional six to eight products in 2019 and we should be able to capitalize on additional shortage of products through Q2. Vasopressin will continue to be a major contributor to Q2 revenue, while we await resolution regarding its status on the FDA's 503B API bulks list. In fact, in Q1 alone, Vasopressin revenue came close to surpassing all of 2018 revenue for this product.

Figure 1 Athenex Q1 2019 Earnings Call Transcript²

Financial Results for the First Quarter Ended March 31, 2019

Athenex is on track to achieve its revenue guidance on products sales issued in March 2019. Product sales for the three months ended March 31, 2019 were \$25.2 million, compared with \$12.6 million for the three months ended March 31, 2018, an increase of \$12.6 million or approximately 100%. The increase was attributable to a \$6.0 million increase in specialty product sales, a \$5.0 million increase in 503B product sales driven significantly by Vasopressin, and a \$2.1 million increase in API product sales.

Figure 2 Athenex Q1 2019 Earnings press release³

Since its prospectus the company has only disclosed a complaint for declaratory judgement against Endo Par Innovation, Par Pharmaceutical and Par Sterile Products (the Par entities) regarding an infringement on their patents. This developed into a landmark case for the FDA based on Athenex's use of “bulk” pharmaceutical ingredients.

Recently, a judgement in favor of Endo's subsidiary Par Sterile Products, LLC entities was passed July 15, 2019 putting a stop to vasopressin revenue for Athenex. As a further blow, the FDA upheld their decision that vasopressin was not a viable use for bulk manufacturing as there was an FDA-approved product already on the market.

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JUDGMENT in favor of Endo Par Innovation Company, LLC, Par Pharmaceutical, Inc., Par Sterile Products, LLC against Athenex Pharma Solutions, LLC, Athenex Pharmaceutical Division, LLC. Signed by Mary C. Loewenguth, Clerk of Court on 7/10/2019. (KM) (Entered: 07/10/2019)

2019-07-15

Figure 3 ⁴Docket summary – Case 1:18-cv-00896

Vasopressin is no longer a source of income for the company. Since its prospectus the company has only disclosed a complaint for declaratory judgement against Endo Par Innovation, Par Pharmaceutical and Par Sterile Products (the Par entities) regarding an infringement on their patents. This developed into a landmark case for the FDA based on Athenex's use of “bulk” pharmaceutical ingredients.

² <https://www.fool.com/earnings/call-transcripts/2019/05/09/athenex-inc-atnx-q1-2019-earnings-call-transcript.aspx>

³

<https://www.globenewswire.com/news-release/2019/05/09/1820625/0/en/Athenex-Inc-Announces-First-Quarter-2019-Financial-Results-and-Provides-Corporate-Update.html>

⁴ <https://portal.unifiedpatents.com/litigation/New%20York%20Western%20District%20Court/case/1:18-cv-00896>



Legal Proceedings

On August 13, 2018, Athenex Pharma Solutions and Athenex Pharmaceutical Division, LLC, our wholly-owned subsidiaries, filed a complaint for declaratory judgment against Par Pharmaceuticals, Inc., Par Sterile Products, LLC and Endo Par Innovation Company, LLC (together, Par) in the United States District Court for the Western District of New York (the Court), seeking a declaratory judgment from the Court that our compounded vasopressin drug products in ready-to-use form do not infringe on patents that Par has with respect to its Vasostrict® product and that Par's patents are invalid. On October 22, 2018, Par filed a motion to dismiss the complaint on the basis that the Court does not have subject matter jurisdiction. Athenex has opposed Par's motion and that motion is fully briefed and currently pending. Par has not filed a claim for infringement of its patents in this suit but if Par's motion to

Figure 4 Athenex Prospectus

Athenex's API arm, Athenex Pharma Solutions, was put under fire in September 2018 by PharMEDium Services (PharMEDium) for allegedly abusing the Drug Quality and Security Act of 2013 in their Amicus Curiae brief on the case. **What makes this more interesting is that PharMEDium is a subsidiary of AmerisourceBergen, Athenex's largest customer, accounting for 21% of revenues in Q2 2019.**

CORPORATE DISCLOSURE STATEMENT

The undersigned certifies that PharMEDium Services, LLC is an indirect wholly owned subsidiary of AmerisourceBergen Corporation.

Figure 5 PharMEDium Services Amicus Curiae brief

Our total revenue is highly dependent on a limited number of API customers and pharmaceutical wholesalers, and the loss of, or any significant decrease in business from, any one or more of our major API customers or pharmaceutical wholesalers could adversely affect our financial condition and results of operations.

We have derived a significant portion of our revenue from a limited number of customers, as is typical in the pharmaceutical industry. During the year ended December 31, 2016, prior to the launch of our specialty products, we generated 62% of our total revenue from our two largest API customers, Intas Pharmaceuticals and Ebewe Pharmaceuticals. During the year ended December 31, 2017, we generated 28% of our total revenue from those API customers and generated 28% of our total revenue from the three largest wholesalers in the U.S. market, Amerisource, Cardinal Health, and McKesson (15%, 7%, and 6%, respectively). During the year ended December 31, 2018, we generated 10% of our total revenue from those API customers and generated 30% of our total revenue from the three largest wholesalers in the U.S. market, Amerisource, Cardinal Health, and McKesson (12%, 9%, and 9%, respectively). During the period ended June 30, 2019, we generated 10% of our total revenue from those API customers and generated 50% of our total revenue from the three largest wholesalers in the U.S. market, Amerisource, Cardinal Health, and McKesson (21%, 15%, and 14%, respectively).

Figure 6 Athenex 2019 Q2 10-Q

The brief filed September 20, 2018 by PharMEDium claims that Athenex intentionally misinterpreted section 503B to prepare its products from bulk pharmaceutical ingredients. This is likely to cut down on costs as bulk ingredients are generally cheaper and easier to procure.

Under the DQSA, bulks can only be used under direction from the FDA in the event of a shortage in the market or inclusion on a list; note that a shortage alone is not considered permission.

In response to this dismissal, Athenex COO, Jeffrey Yordon, stated the FDA's decision **"did not come unexpected"**.

Jeffrey Yordon, Chief Operating Officer of Athenex, stated, "While we are disappointed by the court's decision, it does not come unexpected. We believe our vasopressin product helps to meet an important clinical need, so while we will comply with the court's and FDA's decision, we may explore additional actions, including an appeal. Vasopressin is part of a portfolio of specialty

Figure 7 Extract – Bloomberg Article⁵

Either this is a complete lie, or the Athenex had been selling as much Vasopressin as possible before the FDA undoubtedly came knocking.

⁵ <https://www.bloomberg.com/press-releases/2019-08-02/athenex-provides-an-update-regarding-the-vasopressin-case>



Viceroy's projection of Athenex's ongoing earning power treats vasopressin revenue as non-recurring revenue to reflect that the company is prohibited from selling it.

Athenex - Cash Projection (USD'000)	2014	2015	2016	2017	2018	LTM HY2019
Product sales	342	12,816	19,394	36,106	56,394	79,487
License fees & consulting revenue	659	314	392	1,105	32,387	7,415
Grant revenues	210	814	765	832	319	274
Total Revenues	1,211	13,944	20,551	38,043	89,100	87,176
Cost of sales	558	13,153	19,718	25,122	47,005	63,080
SG&A	5,392	27,036	25,956	46,112	49,008	55,468
Total operating costs	5,950	40,189	45,674	71,234	96,013	118,548
Operating income	(4,739)	(26,245)	(25,123)	(33,191)	(6,913)	(31,372)
R&D	12,972	24,463	60,624	76,797	119,905	115,014
EBIT	(17,711)	(50,708)	(85,747)	(109,988)	(126,818)	(146,386)
D&A	162	888	2,026	3,673	3,269	3,411
EBITDA	(17,549)	(49,820)	(83,721)	(106,315)	(123,549)	(142,975)
Significant non-recurring revenue						
Almirall license payment	-	-	-	-	30,000	-
Vasopressin*					15,637	19,191
Revised EBITDA	(17,549)	(49,820)	(83,721)	(106,315)	(169,186)	(162,166)
*Viceroy estimate						

Figure 8 Viceroy Revised EBITDA

Per management's guidance, we expect product sales revenue to fall approximately 40% in the second half of 2019 against the first half of 2019.

Other historical non-recurring sources

We have also removed several non-recurring revenue sources:

- Almirall's US\$30m payment for KX01 from 2018.
- PharmeEssentia's US\$2m payment for KX01.

Revenue

Revenue for the year ended December 31, 2018 was \$89.1 million, an increase of \$51.1 million, or 134%, as compared to \$38.0 million for the year ended December 31, 2017. The increase was primarily attributable to the \$30.0 million license fees related to the collaboration agreement with Almirall, S.A. and the \$2.0 million upfront license fees related to our license agreement with PharmaEssentia. Revenue from product sales also

Figure 9 – Extract Athenex 10-K



Non-recurring future payments

Athenex have received \$20m that is dependent on the results of clinical trials for Athenex's KX01-AK-003 and KX01-AK-004 drug, being satisfactory.

(a) <u>Current Product Payment.</u>
(i) Within forty-five (45) days of being provided with the Day 57 Phase 3/Phase 1 Contact Sensitization Data, Almirall shall notify Athenex in writing whether or not such data is, in
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Almirall's sole discretion, satisfactory to Almirall and Almirall LLC. If such notice indicates that such data is satisfactory, or no such notice is provided within such forty-five (45) day period, and provided that Athenex has delivered to Almirall and Almirall LLC the first demand bank guarantee required under Section 4.2(b) with an expiry date of December 15, 2019, Almirall and Almirall LLC shall pay in total to Athenex \$20,000,000 on the Effective Date, which date shall be no later than three (3) business days following Athenex delivery of the first demand bank guarantee to Almirall required in Section 4.2(b) below.

Figure 10 Second amendment to Athenex/Almirall

Did Almirall catch on to the conflicts of interest in Athenex conducting its own research?

Alongside delays in this licensing contract fulfilment and drug development, it is increasingly concerning that Athenex appears to have been given a greater burden of proof in providing "satisfactory" data to Almirall. Athenex, as a Company, must now not only provide clinical trial data, but also **"summary of the findings signed off by an executive member of Athenex with fully audited listings, tables and figures including SAS datasets."**

Original Contract: December 11, 2017

1.1 "12 Months Phase 3 Long-Term Recurrence Data" means the final study report for the 12-month follow-up period post-Day 57 for studies KX01-AK-003 and KX01-AK-004.

Second amendment change – June 18, 2019⁶

2. Article 1.1 of the License shall be superseded and replaced with the following:

1.1 "12 Months Phase 3 Long Term Recurrence Data": means Top Line Results for studies KX01-AK-003 and KX01-AK-004 with summary of the findings signed off by an executive member of Athenex with fully audited listings, tables and figures including SAS datasets.

Athenex has received this cash, guaranteed against a bank deposit. We are unsure at this date as to whether Almirall has provided a notice that it is satisfied with KX01 results. I suppose we will find out at Q3 release.

It is astonishing how low Athenex's risk management controls are, especially given the Board's and Management's history of fraud.

⁶ https://www.sec.gov/Archives/edgar/data/1300699/000156459019029706/atnx-ex10302_120.htm



2. Diving into commitment

Dunkirk's Buffalo Billions

Athenex has committed to US\$1.5bn in operational expenditure in Dunkirk over the course of 10 years at its allegedly soon-to-be-completed facility.

We are substantially dependent on our public-private partnerships and if we or our counterparties fail to meet the obligations of those agreements and we lose the benefits of those partnerships, it would materially impact our development, operations and prospects.

Our long-term public-private partnerships with governments and government agencies, including in certain emerging markets, include agreements to build and/or maintain manufacturing facilities for us. For example, we entered into an agreement with FSMC, whereby FSMC agreed to fund the costs of construction of a new manufacturing facility in Dunkirk, New York. FSMC is responsible for the costs of construction and of all equipment for the facility, up to an amount not to exceed \$200 million plus any

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amounts not used under the prior \$25 million grant to construct our North American headquarters and formulation lab in Buffalo, New York, and shall retain ownership of the Dunkirk facility and the equipment. To the extent the costs of constructing the Dunkirk facility exceed approximately \$206 million, we will be responsible for those costs. We are entitled to lease the facility and all equipment at a rate of \$1.00 per year for an initial 10-year term, and for the same rate if we elect to extend the lease for an additional 10-year term. We are responsible for all operating costs and expenses for the facility. **In exchange, we have committed to spending \$1.52 billion on operational expenses in the Dunkirk facility in our first 10-year term in the facility, and an additional \$1.5 billion on operational expenses if we elect to extend the lease for a second 10-year term.** We have also committed to hiring 450 permanent employees within the first 5 years at the Dunkirk facility. In addition, in July 2017, we entered into a 20-year payment in-lieu of tax agreement with the CCIDA for the construction of our Dunkirk facility, valued at approximately \$9.1 million. We have also entered into similar arrangements with FSMC relating to our headquarters, and Chongqing Maliu Riverside Development & Investment Co., Ltd. relating to a plant in Chongqing, China, under which we have committed to achieving certain operating, revenue and tax generation milestones. If we are unable to comply with our obligations under these arrangements, including the milestones we have committed to achieve, we may lose access to the properties covered by such arrangements which could disrupt our operations and manufacturing activities, cause us to divert resources to finding alternative facilities, which would not have any subsidies, and would have a significant impact on our operations and financial performance. We may also be subject to lawsuits or claims for damages against us if we are unable to comply with our obligations under these arrangements. For example, our potential liability in connection with a failure to comply with the New York State partnership agreements could be as high as \$225 million, depending on the amount of funding ESD had contributed to the Dunkirk project at the time of the claim.

Figure 11 – Extract from Athenex Q2 2019 10-Q ⁷

The facility is not only far behind schedule, but has also been upgraded in size:

Net Cash Used in Operating Activities

The use of cash in our operating activities resulted primarily from our net loss adjusted for non-cash charges and changes in components of working capital. The primary use of our cash in the periods presented was to fund our research and development, regulatory and other clinical trial costs, drug licensing costs, inventory purchases, pre-launch commercialization activities, and other expenditures related to sales, marketing and administration.

Net cash used in operating activities was \$37.8 million for the six months ended June 30, 2019. This resulted primarily from our net loss of \$68.3 million, adjusted for non-cash charges of \$7.9 million, and by cash provided by our operating assets and liabilities of \$22.7 million. Our operating assets decreased \$3.4 million for accounts receivable mainly related to the decreased sales of API products in the current period, and \$1.5 million for inventory of all drug products, while prepaid and accrued expenses increased by \$25.3 million primarily related to Dunkirk construction. **This manufacturing facility, which was originally planned to be 320,000 square feet, has expanded to meet the required needs of the facility to be approximately 409,000 square feet upon completion and within the terms of our agreement with FSMC.** Our operating liabilities increased by \$43.1 million mainly due to \$24.3 million related to Dunkirk construction, and \$20.0 million of deferred revenue related to a milestone payment received from Almirall S.A. ("Almirall"). We will recognize the milestone payment revenue upon confirmation from Almirall of their satisfactory review of certain data we submitted pursuant to the license agreement with Almirall. Our net non-cash charges during the six months ended June 30, 2019 primarily consisted of \$5.1 million of stock-based compensation expense, and \$1.8 million depreciation and amortization expense.

Figure 12 – Extract from Athenex Q2 2019 10-Q ⁸

Therefore, the risk for Athenex does not only lie in its commitment to expenditure in Dunkirk, but it is also liable for the thinly budgeted site's excess costs over its budget of \$200m.

⁷ https://www.sec.gov/Archives/edgar/data/1300699/000156459019029706/atnx-10q_20190630.htm

⁸ https://www.sec.gov/Archives/edgar/data/1300699/000156459019029706/atnx-10q_20190630.htm



Chongqing

On September 23, 2019 – almost three years behind schedule – Athenex announced the completion of its new 440,000sqft facility in Chongqing⁹. This government funded project does come with its caveats. For instance, Athenex must reach certain revenues and tax milestones:

Article VI — Party B shall achieve sales revenue of RMB 915 million in the second year after the Project is up and running. Within 10 years after the Project is up and running, sales revenue shall reach a cumulative total of RMB 52 billion, and value-added taxes (VAT), surtaxes, and income taxes shall reach a cumulative total of more than RMB 10 billion. See the tables below for the specific sales revenues and tax amounts for each year (these figures allow a differential decrease of 20%):

Figure 13 The Athenex Pharmaceutical Base Project Agreement¹⁰

Strangely, Athenex's projections do not meet these caveats.

Additionally, the sum of Athenex's tax projections for the first 10 years sums to only RMB 6.8b, well below the required RMB 10b.

This is besides the ridiculous projection that the plant will operate at yearly sales of ~US\$1bn within 5 years, while Athenex in its entirety is still doing sub-\$90m at its peak, a figure which will now drop substantially, and while opening another major facility in Dunkirk!

Plant Figures (RMB'000s)	1st Year	2nd Year	3rd Year	4th Year	5th Year	6th Year	7th Year	8th Year	9th Year	10th Year
Manufacturing	465,000	1,560,000	3,200,000	4,320,500	4,958,720	5,437,580	5,706,700	5,875,500	6,049,370	6,228,450
API	450,000	630,000	810,000	910,000	930,000	930,000	930,000	930,000	930,000	930,000
Total Sales Revenue	915,000	2,190,000	4,010,000	5,230,500	5,888,720	6,367,580	6,636,700	6,805,500	6,979,370	7,158,450
Total VAT and surtax	56,000	187,000	384,000	518,000	595,000	653,000	685,000	705,000	726,000	747,000
Income tax	9,000	50,000	114,000	157,000	183,000	200,000	210,000	217,000	223,000	230,000
Total Tax	65,000	237,000	498,000	675,000	778,000	853,000	895,000	922,000	949,000	977,000

Figure 14 Viceroy recreation of Athenex Chongqing projections

Dilution solution – Perceptive hedging their bet

To manage its cash burning commitments to major facilities and accelerated R&D, Athenex has issued dilutive equity, and incredulously borrowed US\$50m from major investor, Perceptive, at a punitive rate of 11%, when banks are lending at approximately half of that rate.

In all fairness, Viceroy would have asked for a lot more.

Debt and Equity Offering

On July 3, 2018, the Company closed a privately placed debt and equity financing deal with Perceptive Advisors LLC and its affiliates ("Perceptive") for gross proceeds of \$100.0 million and received aggregate net proceeds of \$97.1 million, net of fees and offering expenses. The Company entered into a 5-year senior secured loan for \$50.0 million of this financing and issued 2,679,528 shares of its common stock at a purchase price of \$18.66 per share for the remaining \$50.0 million. The loan matures on the fifth anniversary from the closing date and bears interest at a floating per annum rate equal to London Interbank Offering Rates ("LIBOR") (with a floor of 2.0%) plus 9.0%. The Company is required to make monthly interest-only payments with a bullet payment of the principal at maturity. The loan agreement contains specified financial maintenance covenants. In connection with the loan agreement, the Company granted Perceptive a warrant for the purchase of 425,000 shares of common stock at a purchase price of \$18.66 per share. This was accounted for as a detachable warrant at its fair value and is recorded as an increase to additional paid-in-capital on the condensed consolidated statement of stockholders' equity.

Figure XX – Extract from Athenex Q2 2019 10-Q¹¹

We estimate that Athenex, if lucky, may make it to HY 2020 before hats are out for a >10% equity dilution.

⁹ <https://ir.athenex.com/news-releases/news-release-details/athenex-completes-construction-new-api-facility-chongqing>

¹⁰ <https://www.sec.gov/Archives/edgar/data/1300699/000119312517168575/d201422dex1020.htm>

¹¹ https://www.sec.gov/Archives/edgar/data/1300699/000156459019029706/atnx-10q_20190630.htm