

## Cashing out

**As Boston Scientific's stock value has fallen, founders Pete M. Nicholas and John E. Abele have shed tens of millions of the company's shares**

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Even after [Boston Scientific Corp.](#) gave its new chief executive a contract last summer loaded with incentives to boost a slumping share price, the company's cofounders have continued their four-year pattern of cashing out stock totaling hundreds of millions of dollars.

In recent months, Pete M. Nicholas and John E. Abele, who started the Natick medical-device maker 31 years ago, have been selling shares weekly, in blocks of 75,000 or 100,000. In addition, they have used a controversial hedging method to protect themselves against further stock drops — a strategy the board banned earlier this month.

As the stock's value has fallen 75 percent — partly because of Boston Scientific's ill-fated \$28.4 billion purchase of Guidant Corp. in 2006 — Nicholas and Abele have shed tens of millions of shares at progressively lower prices, reducing their joint ownership from more than 20 percent to about 3 percent. The cofounders and company executives aren't talking, but the massive sell-off has compounded investors' anxiety about the company, which has faced a string of problems.

“What this shows is their uncertainty about the stock price,” said Alex Romayev, partner at Form4Oracle, a Somerville firm that tracks trading by executives and directors at public companies. “I wouldn't want to invest in a company where the insiders were consistently getting rid of their shares.”

The selling has helped weigh down Boston Scientific's stock as J. Raymond Elliott, a former director hired as chief executive last July, tries to mount a turnaround. At \$33.5 million, Elliott's 2009 compensation package was one of the largest in the country.

Nicholas, 68, who is chairman of the board, cut his holdings from 105 million shares at the beginning of 2006 to 20.6 million today, according to an analysis by Form4Oracle. A stake once worth \$3.8 billion is now valued at about \$142 million. And Abele, 73, who remains a director, reduced his holdings from 54.7 million shares worth just over \$2 billion in 2006 to 18.2 million shares worth \$126 million.

The practice of company founders selling shares is not uncommon. They often have the majority of their wealth locked up in the stock.

But the volume of Nicholas and Abele's stock sales became dramatic in 2008, when together they unloaded nearly 50 million shares. In a statement issued by the company in October of that year, they said they had to sell to raise cash because of the financial crisis. At the time, Wall Street brokers were calling in loans from big investors, and Abele and Nicholas had borrowed heavily against Boston Scientific stock. Both said then that the stock selling did not mean they had lost faith in the company.

Borrowing against large stock positions, as Abele and Nicholas did, is one way founders extract cash from their holdings. Another approach is to use a hedge — known as a forward contract — in which a bank buys stock from a seller at discounted price, with the shares to be delivered at a set date. Under this arrangement, the seller gets cash up-front and does not pay taxes or give up voting rights until the stock changes hands.

The instruments also allow the seller to insure against the shares falling below a certain price. For instance, on March 1, Boston Scientific shares closed at \$7.77. Abele that day entered into a contract to protect himself in the event the stock fell below \$6.76 two years later, according to a regulatory filing.

It worked like this: An unnamed bank agreed to buy 490,000 shares for \$2.3 million — significantly less than Abele would have fetched on the open market that day. If the stock is at or below \$6.76 on May 4, 2012, the bank gets the 490,000 shares. If the price is higher, it gets fewer shares. Abele also has the option of repaying the cash instead.

**“It’s a very sophisticated transaction,” said Howard D. Medwed, a lawyer at Burns & Levinson in Boston who reviewed the instruments. It protects executives from a major drop in share value, he said, and lets them profit if the stock rises.**

**But Medwed and other analysts said the bank handling the transaction is probably shorting the stock — or betting it will fall — to protect itself, a tactic that puts downward pressure on the shares. Most large companies don’t allow officers to sell**

**shares in this manner, mostly because it doesn't look good — investors want executives and board members to focus their attention on boosting stock value, not finding ways to insure themselves against a decline.**

The financial overhaul bill being negotiated in Congress includes a requirement that companies disclose such transactions more fully.

A Globe review of filings with the Securities and Exchange Commission found Abele and Nicholas made far more hedge filings over the past two years than officers or directors at any other US company.

On the day of Boston Scientific's annual shareholders' meeting this month, the board voted to ban the hedging method. Company officials declined to say why, and Abele and Nicholas did not respond to multiple requests for comment. In a departure from past practice, reporters were not allowed into the meeting.

Frank Glassner, chief of Veritas Executive Compensation Consultants in San Francisco, said Boston Scientific's refusal to explain the ban on the hedges is alarming. "A little bit of transparency and candor would go a long way here," he said. "It simply baffles me and, I'm sure, baffles the shareholders."

The two founders stepped down as executives in May 2005, but still receive annual paychecks "for life" from Boston Scientific and have offices and secretaries at the company's headquarters. Abele receives \$150,000 a year, plus medical benefits and life insurance. The company also donated \$1 million to a nonprofit at Abele's request, according to the latest proxy filing. Nicholas gets \$225,000 a year for life and also directed a \$1 million charitable donation from the company to a nonprofit. In addition, he was given \$35,529 last year for "transportation services."

From the day he started, Elliott faced an uphill battle at Boston Scientific, which is best known for its stents, tiny mesh tubes implanted in cleared arteries to keep them open. With the acquisition of Guidant, it also began focusing on defibrillators, implantable devices that apply electric shocks to restore heart rhythm. The cofounders championed the deal, but industry analysts said Boston Scientific paid too much.

Under Elliott's watch, and following heavy turnover on the board, the company's problems have not abated. In February, it reached the largest legal settlement in its

history, agreeing to pay more than \$1.7 billion to Johnson & Johnson to resolve three patent disputes. It also said it would cut 1,300 of its 25,000 jobs worldwide.

Boston Scientific's share price, which got a short-lived boost after Elliott's arrival, resumed sliding last September and closed yesterday at \$6.04, near a 52-week low.

A number of major investors have lost enthusiasm for the company. Mutual fund firm [T. Rowe Price](#) sold 9.7 million shares in the first quarter, about 40 percent of its stake, according to filings.

And hedge fund manager David Einhorn of Greenlight Capital, who bought a huge chunk of shares in the fourth quarter of 2009, at about \$8.42 apiece, sold them in the first quarter of 2010 at \$7.57. The firm told investors it had believed new management would right the company.

“Instead, management decided not to provide any meaningful targets, raised new operating issues, and seemed to say that turning the company around would be harder than they thought and would take a long time,” Greenlight said in an April newsletter.

“We re-assessed our thesis and forecasts, and limited our loss by selling the position.”

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