Bristol-Myers Squibb Company Agrees to Pay $150 Million to Settle Fraud Charges

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Washington, D.C., Aug. 4, 2004 -- The Securities and Exchange Commission today announced that it filed an enforcement action against Bristol-Myers Squibb Company, a New York-based company whose largest division, the U.S. Medicines Group, is based in New Jersey. The Commission's complaint, filed today in the United States District Court for the District of New Jersey, alleges that Bristol-Myers perpetrated a fraudulent earnings management scheme by, among other things, selling excessive amounts of pharmaceutical products to its wholesalers ahead of demand, improperly recognizing revenue from $1.5 billion of such sales to its two largest wholesalers and using "cookie jar" reserves to meet its internal sales and earnings targets and analysts' earnings estimates.

In settling the Commission's action, Bristol-Myers agreed to an order requiring it to pay $150 million dollars and perform numerous remedial undertakings, including the appointment of an independent adviser to review and monitor its accounting practices, financial reporting and internal controls.

Stephen M. Cutler, Director of the SEC's Division of Enforcement, said, "Bristol-Myers' earnings management scheme distorted the true performance of the company and its medicines business on a massive scale and caused significant harm to the company's shareholders. The company's conduct warrants a stiff civil sanction. As our investigation continues, we will be focusing on, among other things, those individuals responsible for the company's failures."

Timothy L. Warren, Associate Regional Director of the SEC's Midwest Regional Office, added, "For two years Bristol-Myers deceived the market into believing that it was meeting its financial projections and market expectations, when, in fact, the company was making its numbers primarily through channel-stuffing and manipulative accounting devices. Severe sanctions are necessary to hold Bristol-Myers accountable for its violative conduct, and deter Bristol-Myers and other public companies from engaging in similar schemes."

Specifically, the Commission's complaint alleges, among other things, that:

- From the first quarter of 2000 through the fourth quarter of 2001, Bristol-Myers engaged in a fraudulent scheme to inflate its sales and earnings in order to create the false appearance that the company had met or exceeded its internal sales and earnings targets and Wall Street analysts' earnings estimates.

- Bristol-Myers inflated its results primarily by (1) stuffing its distribution channels with excess inventory near the end of every quarter in amounts sufficient to meet its targets by making pharmaceutical sales to its wholesalers ahead of demand; and (2) improperly recognizing $1.5 billion in revenue from such pharmaceutical sales to its two biggest wholesalers. In connection with the $1.5 billion in revenue, Bristol-Myers covered these wholesalers' carrying costs and guaranteed them a return on investment until they sold the products. When Bristol-Myers recognized the $1.5 billion in revenue upon shipment, it did so contrary to generally accepted accounting principles.

- When Bristol-Myers' results still fell short of the Street's earnings estimates, the company tapped improperly created divestiture reserves and reversed portions of those reserves into income to further inflate its earnings.

- At no time during 2000 or 2001 did Bristol-Myers disclose that (1) it was artificially inflating its results through channel stuffing and improper accounting; (2) channel-stuffing was contributing to a buildup in excess wholesaler inventory levels; or (3) excess wholesaler inventory posed a material risk to the company's future sales and earnings.

- In addition, as a result of its channel-stuffing, Bristol-Myers materially understated its accruals for rebates due to Medicaid and certain of its prime vendors, customers of its wholesalers that purchased large quantities of pharmaceutical products from those wholesalers.

Bristol-Myers has agreed, without admitting or denying the allegations in the Commission's complaint, to the following relief:

- a permanent injunction against future violations of certain antifraud, reporting, books and records and internal controls provisions of the federal securities laws;

- disgorgement of $1;

- a civil penalty of $100 million;

- an additional $50 million payment into a fund for the benefit of shareholders;

- various remedial undertakings, including the appointment of an independent adviser to review, assess and monitor Bristol-Myers' accounting practices, financial reporting and disclosure processes and internal control systems.

The Commission's investigation is continuing.

For further information contact:

- Timothy L. Warren (312) 353-7394
  Associate Regional Director, Midwest Regional Office

- Daniel R. Gregus (312) 353-7423
  Assistant Regional Director, Midwest Regional Office

See Also: Litigation Release 18820; Complaint