

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 76073 / October 5, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16881

In the Matter of

**BRISTOL-MYERS SQUIBB
COMPANY**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Bristol-Myers Squibb Company (“BMS” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

SUMMARY

These proceedings arise out of violations of the internal controls and recordkeeping provisions of the Foreign Corrupt Practices Act (the "FCPA") by BMS and its majority-owned joint venture in China. Between 2009 and 2014, BMS failed to design and maintain effective internal controls relating to interactions with health care providers ("HCPs") at state-owned and state-controlled hospitals in China. Through various mechanisms during this period, certain sales representatives of the joint venture improperly generated funds that were used to provide corrupt inducements to HCPs in the form of cash payments, gifts, meals, travel, entertainment, and sponsorships for conferences and meetings in order to secure new sales and increase existing sales. BMS falsely recorded the relevant transactions as legitimate business expenses in its books and records.

RESPONDENT

1. BMS, a Delaware corporation based in New York, NY, develops, licenses, manufactures, markets, distributes, and sells pharmaceutical and over-the-counter products on a worldwide basis. The common stock of BMS is registered with the Commission under Section 12(b) of the Exchange Act and its convertible preferred stock is registered with the Commission under Section 12(g) of the Exchange Act. The common stock of BMS trades on the New York Stock Exchange under the symbol BMY.

OTHER RELEVANT ENTITIES

2. Bristol-Myers Squibb (China) Investment Co. Limited ("BMS China") is a company through which BMS conducts business in China. BMS China, in turn, primarily operates through Sino-American Shanghai Squibb Pharmaceuticals Limited ("SASS"), a majority-owned joint venture. BMS holds a 60% equity interest in SASS and has held operational control over this entity since 2009 when it obtained the right to name the President of SASS and a majority of the members of SASS's Board of Directors.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

FACTS

3. BMS began operating in China in 1982 when it formed SASS, the first Sino-American pharmaceutical joint venture. Following a successful product launch in 2005, BMS China's business grew quickly. By 2009, BMS China had 1490 full-time employees and net sales of more than \$200 million. This upward trend continued through 2014 when the number of full-time employees expanded to 2464 and net sales reached nearly \$500 million.

4. Certain BMS China employees achieved their sales, in part, by providing HCPs and other government officials with cash and other inducements in exchange for prescriptions and drug listings.

Failure to Respond to Red Flags

5. BMS China failed to respond effectively to red flags indicating that sales personnel provided improper payments and other benefits in order to generate sales from HCPs. In 2009, BMS China initiated a review of travel and entertainment expenses submitted for reimbursement by its sales personnel and found non-compliant claims, fake and altered invoices and receipts, and consecutively numbered receipts. Shortly thereafter, BMS China retained a local accounting firm to conduct monthly post-payment reviews of all claims for travel, entertainment, and meeting expenses to identify false, improperly documented, and unsubstantiated claims. BMS China brought this function in-house in early 2011 and the results of both the external and internal reviews were provided to management of BMS China as well as regional compliance and corporate business managers who reported directly to senior management of BMS.

6. During the period between mid-2009 and late 2013, BMS China identified numerous irregularities in travel and entertainment and event documentation, including fake and altered purchase orders, invoices, agendas, and attendance sheets for meetings with HCPs that likely had not occurred. BMS China inaccurately recorded the reimbursement of these false claims as legitimate business expenses in its books and records, which were then consolidated into the books and records of BMS.

7. Certain BMS China employees admitted that they had submitted false reimbursement claims and used the funds for the benefit of HCPs in support of sales by BMS China. They also alleged that the use of false reimbursement claims to fund payments to and for the benefit of HCPs in order to secure prescription sales was a widespread practice at BMS China. In emails to the BMS China President in November 2010 and January 2011, certain terminated employees wrote that they used the funds to pay rebates, provide entertainment, and fund gift cards for HCPs, as there was no other way to meet their sales targets. Citing the "open secret" that HCPs in China rely upon the "gray income" to maintain their livelihood, they said that they tried to meet the demands of the HCPs for the benefit of BMS China. Despite the widespread exceptions and serious allegations of potentially widespread bribery practices, BMS China did not investigate these claims.

Compliance and Controls Environment

8. Despite its longstanding presence in China, BMS did not implement a formal FCPA compliance program until April 2006 when it adopted its first standalone anti-bribery policy and corresponding corporate directive. At approximately the same time, BMS began conducting compliance assessments and audits of BMS China that included a review of internal controls relating to anti-bribery risks. These internal reviews revealed weaknesses in the monitoring of payments made to HCPs, the lack of formal processes around the selection and compensation of HCPs as speakers, deficiencies in obtaining and documenting the approval of donations, sponsorships, and consulting arrangements with HCPs, and the failure to conduct post-event verification of meetings and conferences sponsored by sales representatives. Reports of these findings were provided to senior management of BMS China as well as members of BMS's global compliance department.

9. These identified controls deficiencies were not timely remediated and compliance resources were minimal. The corporate compliance officer responsible for the Asia-Pacific region through 2012 was based in the U.S. and rarely traveled to China. There was no dedicated compliance officer for BMS China until 2008, and no permanent compliance position in China until 2010. In addition, the BMS sales force in China received limited training and much of it was inaccessible to a large number of sales representatives who worked in remote locations. For example, when BMS rolled out mandatory anti-bribery training in late 2009, 67% of employees in China failed to complete the training by the due date.

10. Annual internal audits of BMS China repeatedly identified substantial gaps in internal controls, and the results were reported to the Audit Committee and senior management of BMS. In connection with each audit, the audit team cited a lack of effective controls and documentation relating to interactions with HCPs and the monitoring of potential inappropriate payments to HCPs. Among Internal Audit's conclusions were that BMS China's controls around the review and approval of travel and entertainment expenses and gifts to HCPs were not effective and that it failed to track payments to HCPs, including high-risk payments, in its quarterly review of potential inappropriate payments, and to enforce controls relating to the documentation, approval, and payment of distributor rebates. Internal Audit also cited the lack of due diligence assessments of distributor compliance, including anti-bribery compliance, the failure to properly document and approve agreements with HCPs who served as speakers, and the lack of a mechanism to ensure that services were received in exchange for sponsorships. As a result, Internal Audit issued a series of qualified opinions in connection with its annual audits of BMS China between 2009 and 2013.

Internal Documents Reveal Improper Benefits Provided to HCPs

11. Emails and other BMS China documents detail, among other things, proposed "activity plans," "action plans," and plans for "investments" in HCPs to increase prescription sales. These contemporaneous documents were prepared at the direction of, and sometimes transmitted to, district and regional sales managers of BMS China, and show that sales representatives used funds derived from travel and expense claims to make cash payments to HCPs and to provide gifts,

meals, entertainment, and travel to HCPs in order to induce them to prescribe products sold and marketed by BMS China. The sales representatives provided a variety of benefits to HCPs, ranging from small food and personal care items to shopping cards, jewelry, sightseeing, and cash payments, in exchange for prescription sales. This kind of conduct was captured in a July 2013 email from a sales representative to a regional manager. The sales representative explained that a former sales representative had offered cash for sales to HCPs at a local hospital and “the attitude of the director of the infectious diseases department was extremely clear when I took over: ‘No money, no prescription.’” Similarly, the work plans prepared by other sales representatives also identified correlations between the value of the benefits provided to specific HCPs and the volume of prescription sales expected.

12. Certain documents within BMS China were replete with references to “investments” made in order to obtain sales, such as offering speaking engagements and sponsorships for domestic and international conferences and meetings in exchange for prescriptions. Some sales representatives also sought to increase prescription sales and maintain drug listings at pharmacies by hosting cash promotions and events for pharmacy employees. Based on the volume of prescriptions, certain BMS China sales representatives gave cash, shopping cards, and foodstuffs as promotional prizes to pharmacy employees; at least one sales representative characterized the expenses as a “departmental development fee” in contemporaneous documents.

LEGAL STANDARDS

13. Under Section 21C(a) of the Exchange Act, the Commission may impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act or any rule or regulation thereunder or any other person that is, was, or would be a cause of the violation due to an act or omission the person knew or should have known would contribute to such violation.

Violations of the Recordkeeping and Internal Controls Provisions of the FCPA

14. Section 13(b)(2)(A) of the Exchange Act requires issuers to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and disposition of the assets of the issuer. 15 U.S.C. §78m(b)(2)(A).

15. Section 13(b)(2)(B) of the Exchange Act requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management’s general or specific authorization; (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management’s general or specific authorization; and (iv) the recorded

accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. 15 U.S.C. § 78m(b)(2)(B).

16. As described herein, BMS, through the actions of certain BMS China employees, violated Section 13(b)(2)(A) of the Exchange Act by falsely recording, as advertising and promotional expenses, cash payments and expenses for gifts, meals, travel, entertainment, speaker fees, and sponsorships for conferences and meetings provided to foreign officials, such as HCPs at state-owned and state-controlled hospitals as well as employees of state-owned pharmacies in China, to secure prescription sales. BMS also violated Section 13(b)(2)(B) of the Exchange Act by failing to devise and maintain a system of internal accounting controls relating to payments and benefits provided by sales representatives at BMS China to these foreign officials. As identified in various internal reviews, audits, and investigations conducted since at least 2009, BMS lacked effective internal controls sufficient to provide reasonable assurances that funds advanced and reimbursed to employees of BMS China were used for appropriate and authorized purposes.

REMEDIAL EFFORTS

17. BMS has implemented significant measures to enhance its anti-bribery and general compliance training and policies and to strengthen its accounting and monitoring controls relating to interactions with HCPs, including travel and entertainment expenses, meetings, sponsorships, grants, and donations funded by BMS China. BMS took numerous steps to improve the internal controls and compliance program at BMS China. Examples include a 100% pre-reimbursement review of all expense claims; the implementation of an accounting system designed to track each expense claim, including the request, approval, and payment of each claim; and the retention of a third-party vendor to conduct surprise checks at events sponsored by sales representatives. Additionally, BMS terminated over ninety employees, and disciplined an additional ninety employees, including sales representatives and managers of BMS China, who failed to comply with or sufficiently supervise compliance with relevant policies. In addition, BMS replaced certain BMS China officers as part of an overall effort to enhance “tone at the top” and a culture of compliance. Further, BMS revised the compensation structure for BMS China employees by reducing the portion of incentive-based compensation for sales and distribution, eliminated gifts to HCPs, implemented enhanced due diligence procedures for third-party agents, implemented monitoring systems for speaker fees and third-party events, and incorporated risk assessments based on data analytics into its compliance program.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent BMS's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Bristol-Myers Squibb Company cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

B. Respondent shall, within fourteen (14) days of the entry of this Order, pay disgorgement of \$11,442,000, which represents profits gained as a result of the conduct described herein, prejudgment interest of \$500,000, and a civil penalty of \$2,750,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Bristol-Myers Squibb Company as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Kara N. Brockmeyer, Chief, Foreign Corrupt Practices Act Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5646.

C. Respondent undertakes to:

- (1) Report to the Commission periodically, at no less than nine-month intervals during a two-year term, the status of its FCPA and anti-corruption related remediation and implementation of compliance measures. During this two-year period, should the Respondent discover credible evidence, not already reported to the Commission, that questionable or corrupt payments or questionable or corrupt transfers of property or interests may have been offered, promised, paid, or authorized by any Respondent entity or person, or any entity or person acting on behalf of Respondent, or that related false books and records have been maintained, Respondent shall promptly report such conduct to the Commission staff. During this two-year period, Respondent shall (1) submit an initial report, and (2) conduct and prepare two follow-up reviews and reports, as described below:
 - a. Respondent shall submit to the Commission staff a written report within one-hundred eighty (180) calendar days of the entry of this Order setting forth a complete description of its remediation efforts to date, its plans for any future enhancements or improvements to its policies and procedures for ensuring compliance with the FCPA and other applicable anti-corruption laws, and the parameters of the subsequent reviews (the “Initial Report”). The Initial Report shall be transmitted to Charles E. Cain, Deputy Chief, FCPA Unit, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5648. Respondent may extend the time period for issuance of the Initial Report with prior written approval of the Commission staff.
 - b. Respondent shall undertake two follow-up reviews and submit written reports relating to Respondent’s remedial efforts to devise and maintain policies and procedures reasonably designed to detect and prevent violations of the FCPA and other applicable anti-corruption laws (the “Follow-up Reports”).
 - c. The first Follow-up Report shall be completed by no later than two-hundred seventy (270) calendar days after the Initial Report. The final Follow-Up Report shall be completed by no later than two-hundred seventy (270) calendar days after the completion of the first Follow-Up Report. Respondent may extend the time period for issuance of each Follow-up Report with prior written approval of the Commission staff.
 - d. The periodic reviews and reports submitted by Respondent will likely include proprietary, financial, confidential, and competitive business information. Public disclosure of the reports could

discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (a) pursuant to court order, (b) as agreed by the parties in writing, (c) to the extent that the Commission staff determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties, or (d) is otherwise required by law.

- (2) Certify, in writing, compliance with the undertaking set forth above. The certification and any supporting material shall be submitted to Charles E. Cain, Deputy Chief, FCPA Unit, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) calendar days from the date of the completion of the undertakings.

By the Commission.

Brent J. Fields
Secretary