

In the Matter of Bristol-Myers Squibb Company (2015)

Nature of the Business.

Bristol-Myers Squibb Company (“BMS”) is an American pharmaceutical company headquartered in New York, New York and incorporated in Delaware. BMS is registered with the SEC under Section 12(g) of the Exchange Act and maintains a class of common stock on the New York Stock Exchange. Bristol-Myers Squibb (China) Investment Co. Limited (“BMS China”) is BMS’ Chinese subsidiary.

Influence to be Obtained.

According to the SEC, between 2009 and 2014, employees of BMS China engaged in the regular practice of offering cash payments, gifts, meals, travel, entertainment, and sponsorships for conferences and meetings to various health care providers of Chinese state-owned and state-controlled hospitals in exchange for increased sales. To execute these transactions, the SEC alleges that BMS China employees regularly submitted false or altered reimbursement invoices and receipts to secure the funds to facilitate the improper payments. The SEC claims that BMS China falsely recorded the relevant transactions as legitimate business expenses in its books and records.

The SEC also cited numerous red-flags, including admissions by employees that it was a widespread practice within BMS’ Chinese operations to submit false reimbursement claims to secure prescription sales. Nevertheless, BMS officials failed to investigate the red-flags. Likewise, when BMS established a formal FCPA compliance program in 2006 in China, it identified numerous compliance gaps in its Chinese operations, including the lack of a permanent compliance officer in China, but allegedly failed to take remedial action. Finally, the SEC identified numerous contemporaneous documents, such as emails to district or regional sales managers, indicating that sales representatives used funds derived from travel and expense claims to offer improper benefits to HCPs.

Enforcement.

On October 5, 2015, the SEC announced that it settled its FCPA enforcement action against BMS through an administrative proceeding for violations of the FCPA’s books-and-records and internal controls provisions. According to the cease-and-desist order, BMS was required to pay \$11,442,000 in disgorgement, \$500,000 in prejudgment interest, and a \$2,750,000 civil penalty—totaling \$14,692,000 in sanctions.

Key Facts

Citation. *In the Matter of Bristol-Myers Squibb Co.*, Admin. Proc. File No. 3-16881 (Oct. 5, 2015).

Date Filed. October 5, 2015.

Country. China.

Date of Conduct. 2009 – 2014.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Local Subsidiary.

Foreign Official. Unnamed health care providers at Chinese state-owned and state-controlled hospitals.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant’s Citizenship. United States.

Total Sanction. \$14,692,000.

Compliance Monitor/Reporting Requirements. Two-year Reporting Requirement.

Related Enforcement Actions. None.

Total Combined Sanction. \$14,692,000.