

August 5, 2004

Bristol-Myers Agrees to Settle Accounting Case

By ERIC DASH

The drug giant [Bristol-Myers Squibb](#) said yesterday that it would pay \$150 million to settle Securities and Exchange Commission accusations that the company improperly inflated its sales and earnings in a series of accounting frauds.

The amount is one of the largest penalties ever exacted by federal regulators in an accounting fraud case - and it comes just days after Bristol-Myers agreed to pay \$300 million to settle a shareholder class-action lawsuit over similar claims.

While the recent legal actions resolve more than two years of regulatory investigations into the company, the S.E.C. said it would still pursue an inquiry that could result in civil fraud charges against individuals. Nor does the settlement resolve a Justice Department criminal investigation into the same accounting practices that could bring criminal charges against Bristol-Myers or its employees.

Bristol-Myers said in a statement that the company had agreed to the S.E.C. settlement without admitting or denying any liability, and company executives would not comment on any other investigations into its accounting practices or the future steps it might take.

"We are obviously pleased to get this resolved," a Bristol-Myers spokesman, Wilson Grabil, said.

In its settlement with federal regulators, Bristol-Myers agreed to pay a \$100 million civil penalty and \$50 million to be set aside for shareholders who were harmed by the fraud. The S.E.C. has yet to determine how both amounts will be distributed.

The company also said that Frederick B. Lacey, a former federal judge who has been overseeing the company's accounting and disclosure practices since June 2003, would remain as an independent adviser until sometime next year.

Daniel R. Gregus, the S.E.C. assistant regional director who led the investigation, said the substantial penalty was appropriate for the severity of the company's missteps.

"This is extremely egregious accounting fraud," Mr. Gregus said. "There was a \$1.5 billion revenue recognition problem, which puts it second only to [WorldCom](#)."

WorldCom, now known as MCI, filed for bankruptcy protection in 2002 after an accounting scandal in which it defrauded investors out of more than \$11 billion. The company's top executives were indicted, and it paid \$750 million to settle with the S.E.C.

According to the S.E.C.'s complaint, Bristol-Myers used several earnings management techniques to distort the company's true performance from early 2000 until the end of 2001. Charles A. Heimbold Jr. was chairman and chief executive of the company through September 2001, when he was succeeded by Peter R. Dolan, previously president of Bristol-Myers.

Regulators say that Bristol-Myers inflated its revenues by more than \$1 billion, going back at least to 1991, through an aggressive accounting method known as "channel stuffing," which is not necessarily illegal unless it is used excessively. The S.E.C. said the company pressured its wholesalers to buy substantial amounts of pharmaceuticals ahead of anticipated demand, permitting it to meet its ambitious sales and earnings projections - even though the tactic also meant that the wholesalers would buy less in the future, causing sales to eventually decline.

The S.E.C. said the company also relied on what it called "cookie jar" reserves to inflate its income by a total of \$223 million in 2000 and 2001. Both accounting practices, regulators said, helped it to meet internal earnings goals, as well as to keep pace with rivals by reporting double-digit profit growth.

Some legal experts said that Bristol-Myers's settlement with the S.E.C. might mean that the Justice Department had decided not to proceed with criminal charges against the company because regulators often wait until any criminal case had been resolved before seeking civil damages.

But David S. Ruder, a law professor at Northwestern University and a former chairman of the S.E.C., said that the sequence was not always followed and that the civil settlement did not preclude criminal charges against individuals.

A spokesman for the United States attorney's office in Newark, which is conducting the criminal inquiry, would not comment on the investigation.

Many financial analysts said that even though the settlement was substantial, it might be good news for a company that has gone from one of the American pharmaceutical industry's leaders to one of its laggards over the last few years. The company had set aside \$470 million to cover its potential legal liabilities. Its shares closed yesterday at \$23.30, up 16 cents, after the settlement was announced.

"The clouds have cleared and there is just a tiny ray of sunshine beginning to enter their world," said Jake Dollarhide, the chief executive of Longbow Asset Management, a private money manager in Tulsa, Okla. "Bristol-Myers has been embroiled in one setback after another."

Beyond the recent legal and regulatory challenges, the company's performance has been hampered by increased competition, and it has little in the way of promising drugs in its development pipeline. Its top drugs include Plavix, a blood thinner, and Pravachol, a cholesterol treatment, as well as the over-the-counter pain reliever Excedrin.

Mr. Dollarhide considered the company an attractive takeover target and said the settlement might pave the way for talks.

"Getting the legal and financial problems out of the way," he said, "probably does more for them being an attractive takeover target, than for them being an attractive investment."