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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

v.

FREDERICK S. SCHIFF and
RICHARD J. LANE

Criminal No. 05-474 (FSH)

Hon.

18 U.S.C. §§ 371 & 2;
15 U.S.C. §§ 78j(b) & 78ff;
17 C.F.R. § 240.10b-5

I N D I C T M E N T

The Grand Jury in and for the District of New Jersey,
sitting in Newark, charges:

COUNT ONE

(Conspiracy to Commit Securities Fraud)

The Defendants

1. Defendant **FREDERICK S. SCHIFF** was: (a) a certified public accountant at all times relevant to this Indictment; (b) Vice President and Controller of Bristol-Myers Squibb Company ("BMS" or "Bristol") from in or about June 1990 to April 2001; (c) Senior Vice President and Chief Financial Officer (CFO) of BMS beginning in April 2001 until he left BMS on or about April 16, 2002; (d) acting as Controller between April and September 2001, while he was CFO; and (e) at all times relevant to this Indictment, a member of the BMS Corporate Operating Committee and its successor the BMS Executive Committee, which were responsible for reviewing business operations and ensuring progress towards BMS's business and financial goals.

2. Defendant **RICHARD J. LANE** was an Executive Vice President and President of BMS's Worldwide Medicines Group from January 2000 to in or about early April 2002, when he entered into a separation agreement with BMS. As President of the Worldwide Medicines Group, defendant **LANE** was in charge of Bristol's pharmaceutical business, the largest component of which was the U.S. business unit, known at various times as the U.S. Medicines Group or the U.S. Pharmaceuticals Group. Defendant **LANE** joined BMS in 1995 after working at several other pharmaceutical companies. Prior to heading BMS's Worldwide Medicines Group, defendant **LANE** was President of the U.S. Medicines Group. At all times relevant to this Indictment, defendant **LANE** was a member of the BMS Corporate Operating and Executive Committees, along with defendant **SCHIFF**.

3. For 2000 and 2001, defendants **SCHIFF** and **LANE** and other BMS senior executives received salary, bonuses, stock options and other benefits, a portion of which were directly tied to the financial performance of BMS.

Bristol-Myers Squibb Company

4. At all times relevant to this Indictment, BMS, a co-conspirator not named as a defendant herein: (a) was a Delaware corporation with offices in New Jersey and New York; (b) was one of the world's leading producers of pharmaceutical and health care products; (c) was a publicly traded corporation, the

common stock of which was listed and actively traded on the New York Stock Exchange; and (d) had shareholders located throughout the United States, including in the District of New Jersey.

5. BMS reported sales of \$18.216 billion and net earnings of \$4.711 billion for 2000, and sales of \$19.423 billion and net earnings of \$5.245 billion for 2001. The great majority of BMS's sales and earnings were from sales of its pharmaceutical products.

Background

Wholesaler Distribution, Channel Stuffing & Excess Inventory

6. At all times relevant to this Indictment, BMS manufactured pharmaceutical products and distributed those products through wholesalers. In the United States, four wholesalers distributed approximately 85% of BMS's pharmaceutical products. These wholesalers delivered BMS pharmaceutical products to thousands of retail pharmacies, hospitals and other health care providers across the country.

7. Wholesalers generally sought to maintain inventories of prescription drug products sufficient to satisfy prescription demand from retail pharmacies, hospitals and other health care providers. This level of inventory was sometimes referred to as the "normal" wholesaler inventory level for a prescription drug. Inventory levels in excess of normal levels resulted in greater carrying costs for wholesalers, which the

wholesalers generally sought to avoid.

8. A reduction of excess inventory to levels closer to normal was often called a "workdown," and involved BMS selling less than prescription demand during the workdown period, while wholesalers sold excess inventory down to normal levels.

9. In 2000 and 2001, BMS deliberately used financial incentives to spur wholesalers to buy product in excess of prescription demand, so that BMS could report higher sales and earnings. This practice was commonly known as "channel stuffing" and was also referred to as "sales acceleration" or "trade loading."

10. In 2000 and 2001, Bristol's deliberate use of financial incentives to accelerate sales ahead of prescription demand artificially inflated its reported sales and earnings, and had a corresponding adverse effect on future sales and earnings.

11. Bristol's financial incentives to the wholesalers resulted in excess inventory at the wholesalers. At the beginning of 2000 BMS estimated its excess inventory at U.S. wholesalers was approximately \$139 million, and by the end of 2001 BMS estimates of the excess inventory at U.S. wholesalers had grown as high as \$1.95 billion.

Double-Double, Mega-Double and "Top-Down" Budgeting

12. In 1994, BMS announced what became known as its "Double-Double" goal: to double BMS's 1993 sales, earnings and earnings per share ("EPS") in seven years. The seventh and last

year of the Double-Double was 2000, and at the end of 2000 BMS announced that it had achieved the doubling of earnings and EPS, and that it had "virtually" doubled its sales since 1993.

13. In September 2000 BMS announced its "Strategy for Growth," which incorporated what became known as its "Mega-Double" goal, a plan to double year-end 2000 sales and earnings over five years, by the end of 2005.

14. In 2000 and 2001, the Double-Double and Mega-Double goals were accompanied by a budget process in which senior executives in BMS's corporate headquarters set aggressive sales and earnings budget targets for the company and its business units, consistent with the Double-Double and Mega-Double goals. This process was sometimes referred to as "top-down" budgeting.

BMS Earnings Guidance and Analysts' Consensus Estimates

15. BMS provided "guidance" to the investing public regarding the expected performance of its business, including EPS, for upcoming periods. In 2000 and at least until December 13, 2001, BMS advised the investing public through its guidance that it expected performance consistent with the Double-Double and Mega-Double goals.

16. Relying in part on a company's guidance, professional securities analysts established their own estimates of the company's expected performance. These "earnings estimates" or "analyst expectations," which when averaged were referred to as the "consensus estimates" or "consensus

