Grant & Eisenhofer P.A.

Chase Manhattan Centre
1201 North Market Street
Wilmington, DE 19801
Tel: 302-622-7000 • Fax: 302-622-7100

45 Rockefeller Center, 15th Floor
630 Fifth Avenue
New York, NY 10111
Tel: 646-722-8500 • Fax: 646-722-8501

www.gelaw.com

Jay W. Eisenhofer
Stuart M. Grant
Megan D. McIntyre
Geoffrey C. Jarvis
Sidney S. Liebesman
John C. Kairis
Michael J. Barry
James J. Sabella*
David E. Sellinger

Charles T. Caliendo*
Leslie A. Conason*
Stephen G. Grygiel
Mary S. Thomas*
Diane T. Zilka

Jill Agro
Jeff A. Almeida□
Naumon A. Amjed
Peter B. Andrews
James R. Banko
Cynthia A. Calder
Ananda Chaudhuri
P. Bradford deLeeuw
Lydia Ferrarese*
Gregg S. Levin‡
Christine Mackintosh°
Jonathan D. Margolis*
James P. McEvilly, III
Sharan Nirmul

Serena Palumbo■
Catherine Pratsinakis
Brian M. Rostocki
Ralph N. Sianni
Marc D. Weinberg□
Kimberly L. Wierzel

□ Admitted in NJ & PA Only
‡ Admitted in MA & DC Only
* Admitted in NY Only
° Admitted in PA Only
♦ Admitted in SC Only
• Admitted in CA Only
■ Admitted in Italy Only

Stephen K. Benjamin♦
Of Counsel

Direct Dial: 302-622-7065
Email: mbarry@gelaw.com

January 22, 2007

VIA OVERNIGHT MAIL AND FACSIMILE

Securites and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, DC 20549

Re: Shareholder Proposal Submitted by Lucian Bebchuk for Inclusion in Bristol-Myers Squibb Company's 2007 Proxy Statement

Ladies and Gentlemen,

This letter is submitted on behalf of our client, Lucian Bebchuk ("Bebchuk") in connection with the shareholder proposal which Bebchuk submitted to Bristol-Myers Squibb Company ("Bristol-Myers" or the Company") for inclusion in the Company's 2007 Proxy Statement (the "Proposal"). The letter responds the Company's December 27, 2006 letter to the Staff of the Division of Corporate Finance (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") requesting the Staff's concurrence that it will not commence enforcement if the Company excludes the Proposal from its 2007 Proxy Statement (the "No-Action Request').[1]

As explained below, Bristol-Myers' no-action request should be denied. Prof. Bebchuk's Proposal advocates the adoption of a bylaw which, if adopted by shareholders, would require that a supermajority (75%) of the Company's independent directors ratify any decision of the Board,

[1] Invoking Rule 14a-8(i)(10), the Company asserts that the Proposal may properly be excluded from its 2007 Proxy Statement because it has already "substantially implemented" the Proposal. According to the Company, because the listing requirements of the New York Stock Exchange ("NYSE") and the Compensation and Management Development Committee Charter ("Compensation Committee Charter") require that the Company's compensation committee be comprised of independent directors and decisions concerning compensation be voted on *by a simple majority* of the independent directors of the Board, "the essential objectives" of the Proposal have been met.

or committee thereof, involving the compensation of the Company's Chief Executive Officer. In its no-action request, Bristol-Myers argues that the Proposal may be excluded because it has been "substantially implemented" by the Company. But, as Bristol-Myers admits, the Company's existing policies and the NYSE listing requirements only require approval of executive compensation by a *majority* of independent directors. Accordingly, there is a material difference between the current situation at the Company and Prof. Bebchuk's proposal – *i.e.*, the difference between *majority* approval and a *supermajority* approval requirement – that plainly rebuts Bristol-Myers' "substantially implemented" argument.

Prof. Bebchuk's Proposal simply advocates making the requirements for approving executive compensation at the Company *more stringent* than they currently exist. Bristol-Myers' request for no-action relief on the grounds that the Company has "substantially implemented" the Proposal should be denied.

I. Bristol-Myers Has Mischaracterized the Thrust of the Proposal

The No-Action Request betrays a fundamental misunderstanding of the Proposal. The Proposal seeks an amendment of the bylaws to require that a supermajority (75%) of the independent directors of the Company ratify any decision of the Board, or committee thereof, involving the compensation of the Company's Chief Executive Officer. The adoption of such a bylaw amendment by shareholders is expressly permitted under Delaware law. Section 109 of the DGCL permits shareholders to adopt and amend corporate bylaws on any matter "not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees." 8 Del. C. § 109(b). Further, Section 141(b) provides that, although the default rule is that a board may act by majority vote, *the bylaws may impose a more stringent requirement.* 8 Del. C. § 141(b) ("The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors *unless the certificate of incorporation or the bylaws shall require a vote of a greater number.*" (emphasis supplied)).

This is precisely what the Proposal does in this case. Specifically, while the Bristol-Myers' Board currently may approve executive compensation by a vote of a majority of the independent directors, the Proposal seeks to make the approval process more stringent by requiring supermajority approval. Bristol-Myers' argument that the "essential thrust" of the Proposal is to require approval *by a simple majority* of independent directors not only ignores the plain language of the Proposal, but also completely fails to appreciate the distinction between majority approval and a supermajority requirement.

The following chart illustrates the respective requirements imposed by: (i) the Proposal; (ii) the NYSE Listed Company Manual; and (iii) Bristol-Myers' Compensation Committee Charter:

Proposal/ Other Provision	Basic Characteristics	Distinction(s)
Bebchuk Proposal	Amend the Bylaws to require that supermajority (75%) of the independent directors of the Company ratify any decision of the Board, or committee thereof, involving the compensation of the Company's Chief Executive Officer.	CEO compensation decisions must be approved by 75% of independent directors

NYSE Listed Company Manual Section 303A.05	Requires listed companies to have compensation committee composed of independent directors; requires compensation committee charter to provide that compensation committee (alone or together with other independent directors) must approve CEO compensation.	Does not require supermajority vote of independent directors to approve CEO compensation
Bristol-Myers' Compensation and Management Development Committee Charter	Provides that committee shall consist of 3 or more independent directors that shall recommend the CEO's compensation level to the independent directors.	Does not require supermajority vote of independent directors to approve CEO compensation

Thus, the Company's suggestion that the combination of: (a) provisions NYSE listed Company Manual and (b) the Company's Compensation Committee Charter accomplishes the "essential objective" of the Proposal is patently incorrect. The objective of the Proposal is to require (via a shareholder adopted bylaw and consistent with Delaware law) that decisions regarding CEO compensation must be approved by 75% (*e.g.*, a *supermajority*) of the independent directors. Neither the NYSE listed Company Manual, the Company's Compensation Committee Charter, or any other regulatory requirements or policies or practices of the Company accomplish – or even seek to attain – this objective.

II. Bristol-Myers has not Substantially Implemented the Proposal

We do not dispute that Rule 14a-8(i)(10) permits, under certain circumstances, the exclusion of shareholder proposals that have been "substantially implemented" and that a shareholder proposal may be rendered moot by circumstances other than management action. *See, e.g.*, Exchange Act Release No. 20,091, at § II.E.5. (Aug. 16, 1983); Exchange Act Release No. 19,771 (Nov. 22, 1976). *See also FedEx Corporation* (publicly Available June 26, 2006) (proposal recommending simple majority vote requirement properly excluded under Rule 14a-8(i)(10) where Company represented to the Staff that it would provide shareholders at Company's 2006 annual meeting with an opportunity to approve amendments to the Company's certificate of incorporation and by-laws that would eliminate supermajority voting requirements); *Northrop Grumman Corporation* (publicly Available March 28, 2006) (same).

However, as in this case, where there are important differences between a proposal and acts taken by a company (alone or in conjunction with other circumstances), the Staff has consistently declined to issue no-action relief. *See, e.g., Bristol-Myers Squibb Company* (publicly available Mar. 17, 2006) (Staff declined to concur with Company's position that it could omit a proposal under Rule 14a-8(i)(10) noting that "while the proposal requests that, under circumstances specified in the proposal, Bristol-Myers recoup all bonuses and any other awards made to senior executive officers in the event of a restatement of financial results or significant extraordinary write-off, Bristol-Myers' Recoupment Policy would result in recoupment only from those officers who, in the Board's view, engaged in misconduct that caused or partially caused the need for the restatement."). *Siliconix* (publicly available Mar. 1, 2004) is inapposite, because in those proceedings, the exact objectives sought by the proposal (*e.g.*, appointment of a committee of independent directors to review related-party transactions) were required by the NASDAQ rules and the Company's audit committee charter.[2] Similarly, in *Intel Corp.*(publicly available Mar. 11, 2003) and *Nordstrom Inc.* (publicly available Feb. 8, 1995), the respective companies had implemented policies substantially similar to the ones

[2] The proposal in *Siliconix* also did not seek to enact a valid bylaw amendment.

proposed by shareholders. In *Intel Corp.*, after a stockholder submitted a proposal recommending shareholder approval of equity compensation plans, Intel adopted a policy requiring shareholder approval of equity compensation plans. In *Nordstrom Inc.*, a shareholder proposal requested that the company adopt a code of conduct to ensure that overseas suppliers treat workers humanely. Nordstrom, however, already had such a policy that closely tracked the language of the shareholder proposal. Here, in stark contrast, the NYSE Listed Company Manual Section 303A.05 and the Company's Compensation Committee Charter indisputably *do not* require what is sought to be accomplished through the proposal (*i.e.*, the amendment of the Company's bylaws to require decisions regarding CEO compensation be approved by 75% of the independent directors).

As Bristol-Myers itself notes, "a determination that the company has substantially implemented the proposal depends upon whether its particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (avail. Mar. 28, 1991). But as illustrated above, Bristol-Myers falls hopelessly short of demonstrating that this standard is satisfied under the present circumstances.[3] To the contrary, even a cursory comparison between the Proposal and the circumstances cited by the Company illustrates that the sole objective of the Proposal is to require something (*i.e.* that CEO compensation decisions must be approved by a 75% of the Company's independent directors) *which is not required* by the NYSE Listed Company Manual or the Company's Compensation Committee Charter.

Finally, for the Staff to accept the position stated in the Company's no-action request, it would have to conclude that there is no substantive difference between a provision requiring supermajority approval and a provision requiring simple majority approval. But Bristol-Myers has cited no support for such a proposition, nor can it, as it would be inconsistent with Delaware law, which expressly authorizes and enforces such supermajority provisions. Accordingly, for all the reasons stated herein, it is respectfully requested that the Staff decline the Company's request for no-action relief.

Sincerely,

Michael J. Barry

MJB/rm

cc: Amy L Goodman, Esquire

[3] The burden is on Bristol-Myers to establish that it has a reasonable basis for excluding the Proposal from the proxy materials. *See* Rule 14a-8(g) ("Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude the proposal"); Staff Legal Bulletin No 14 (CF) (July 13, 2001).

GRANT & EISENHOFER, P.A.

1201 N. MARKET STREET # 21st FLOOR # WILMINGTON, DELAWARE 19801

302-622-7000 # FAX: 302-622-7100

Jan 22, 2007

FACSIMILE MESSAGE TRANSMITTAL FORM

TO	COMPANY	FAX	PHONE
Office of Chief Counsel	Securities and Exchange Commission, Division of Corporation Finance	202-772-9360	202-551-3500
Amy L. Goodman	Gibson Dunn & Crutcher	202-530-9677	202-955-8683

If you experience problems with a transmission, please call (302) 622-7000 between 9:00 a.m and 9:00 p.m.

ORIGINAL will [x] follow will not [ ] follow

FROM: Michael J. Barry **Pages (including cover sheet):** 5

RE:

* * * COMMUNICATION RESULT REPORT (JAN. 22. 2007 6:50PM) * * *

FAX HEADER 1:
FAX HEADER 2:

TRANSMITTED/STORED : JAN. 22. 2007 6:44PM

FILE MODE	OPTION	ADDRESS	RESULT	PAGE
0005 MEMORY TX		1326*010#12027729360	OK	5/5
		GD&C -- DC	OK	5/5

REASON FOR ERROR
E-1) HANG UP OR LINE FAIL
E-2) BUSY
E-3) NO ANSWER
E-4) NO FACSIMILE CONNECTION

GRANT & EISENHOFER, P.A.

1201 N. MARKET STREET # 21st FLOOR # WILMINGTON, DELAWARE 19801

302-622-7000 # FAX: 302-622-7100

Jan 22, 2007

FACSIMILE MESSAGE TRANSMITTAL FORM

TO	COMPANY	FAX	PHONE
Office of Chief Counsel	Securities and Exchange Commission, Division of Corporation Finance	202-772-9360	202-551-3500
Amy L. Goodman	Gibson Dunn & Crutcher	202-530-9677	202-955-8683

If you experience problems with a transmission, please call (302) 622-7000 between 9:00 a.m and 9:00 p.m.

ORIGINAL will [x] follow will not [ ] follow

FROM: Michael J. Barry **Pages (including cover sheet):** 5

RE: