

GIBSON, DUNN & CRUTCHER LLP

LAWYERS

A REGISTERED LIMITED LIABILITY PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

1050 Connecticut Avenue, N.W. Washington, D.C. 20036-5306

(202) 955-8500

www.gibsondunn.com

agoodman@gibsondunn.com

December 27, 2006

RECEIVED

2006 DEC 28 PM 1:12

OFFICE OF CHIEF COUNSEL
CORPORATION FINANCE

Direct Dial

(202) 955-8653

Fax No.

(202) 530-9677

Client No.

C 11810-00003

VIA HAND DELIVERY

Office of Chief Counsel

Division of Corporation Finance

Securities and Exchange Commission

100 F Street, N.E.

Washington, DC 20549

Re: *Stockholder Proposal of Lucian Bebhuck*
Exchange Act of 1934—Rule 14a-8

Dear Ladies and Gentlemen:

This letter is to inform you that our client, Bristol-Myers Squibb Company (the "Company"), intends to omit from its proxy statement and form of proxy for its 2007 Annual Stockholders Meeting (collectively, the "2007 Proxy Materials") a stockholder proposal and statements in support thereof (the "Proposal") received from Lucian Bebhuck (the "Proponent").

Pursuant to Rule 14a-8(j), we have:

- enclosed herewith six (6) copies of this letter and its attachments;
- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company files its definitive 2007 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) provides that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to

Office of Chief Counsel
Division of Corporation Finance
December 27, 2006
Page 2

inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should concurrently be furnished to the undersigned on behalf of the Company pursuant to Rule 14a-8(k).

THE PROPOSAL

The Proposal would amend the Company's Bylaws to provide:

[A]ny decision of the Board, or any committee thereof, with respect to the compensation of the Company's Chief Executive Officer shall be valid only if approved or ratified by at least three-quarters of all of the independent directors. For purposes of this bylaw, "independent director" shall mean any director who is not a present or former employee or officer of the Company, and who satisfies the criteria for qualifying as an "independent" director under the applicable listing requirements of the New York Stock Exchange. Nothing in this bylaw shall prohibit the Board of Directors from delegating authority or responsibility with respect to executive compensation to a committee or sub-committee of the Board of Directors, provided, however, that any decision of such committee or sub-committee with respect to compensation of the Company's Chief Executive Officer shall require the ratification of three-quarters of all directors meeting the qualifications for independence set forth in this bylaw.

A copy of the Proposal and supporting statement, as well as related correspondence from the Proponent, is attached to this letter as Exhibit A. We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2007 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

ANALYSIS

The Proposal Is Excludable Pursuant To Rule 14a-8(i)(10) Because The Company Has Substantially Implemented The Proposal.

A. Background

Rule 14a-8(i)(10) permits a company to exclude a stockholder proposal if the company has substantially implemented the proposal. The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) "is designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." *See Proposed Amendments to Rule 14a-8 Under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders*, Exchange Act Release No. 12598 (July 7, 1976). The Commission has refined Rule 14a-8(i)(10) over the years. In the 1983 amendments to the proxy rules, the Commission indicated:

GIBSON, DUNN & CRUTCHER LLP

Office of Chief Counsel
Division of Corporation Finance
December 27, 2006
Page 3

In the past, the staff has permitted the exclusion of proposals under Rule 14a-8(c)(10) only in those cases where the action requested by the proposal has been fully effected. The Commission proposed an interpretative change to permit the omission of proposals that have been “substantially implemented by the issuer.” While the new interpretative position will add more subjectivity to the application of the provision, the Commission has determined the previous formalistic application of this provision defeated its purpose. *Amendments to Rule 14a-8 Under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders*, Exchange Act Release No. 20091, at § II.E.6. (August 16, 1983) (the “1983 Release”).

The 1998 amendments to the proxy rules, which (among other things) implemented the current Rule 14a-8(i)(10), reaffirmed this position. *See Amendments to Rules on Shareholder Proposals*, Exchange Act Release No. 40018 at n.30 and accompanying text (May 21, 1998). Consequently, as noted in the 1983 Release, in order to be excludable under Rule 14a-8(i)(10), a stockholder proposal need only be “substantially implemented,” not “fully effected.” In addressing no-action requests under Rule 14a-8(i)(10), the staff has indicated that the focus of Rule 14a-8(i)(10) is on whether “particular policies, practices and procedures compare favorably” with those requested under the proposal, and not on the exact means of implementation. *Texaco, Inc.* (avail. Mar. 28, 1991). In other words, Rule 14a-8(i)(10) permits exclusion of a stockholder proposal when a company has implemented the essential objective of the proposal, even where the manner by which a company implements a proposal does not precisely correspond to the actions sought by a stockholder proponent. *See* 1983 Release; *AMR Corporation* (avail. Apr. 17, 2000); *Masco Corp.* (avail. Mar. 29, 1999); *Erie Indemnity Co.* (avail. Mar. 15, 1999).

B. The Company Has Substantially Implemented The Proposal Because The NYSE Listing Standards And The Company's Compensation Committee Charter Already Require Independent Director Approval Of Chief Executive Officer Compensation.

We believe that the Proposal has been substantially implemented by the Company pursuant to the New York Stock Exchange (“NYSE”) Listing Standards, the Company’s Compensation and Management Development Committee Charter and ongoing practices. In this regard, Commission statements and Staff precedent with respect to Rule 14a-8(i)(10) confirm that the standard for determining whether a proposal has been “substantially implemented” is not dependent on the means by which implementation is achieved. When the Commission initially adopted the predecessor of Rule 14a-8(i)(10), it specifically determined not to require that a proposal be implemented “by the actions of management,” observing, “it was brought to the attention of the Commission by several commentators that mootness can be caused for reasons other than the actions of management, such as statutory enactments, court decisions, business changes and supervening corporate events.” *Adoption of Amendments Relating to Proposals by*

GIBSON, DUNN & CRUTCHER LLP

Office of Chief Counsel
Division of Corporation Finance
December 27, 2006
Page 4

Security Holders, Exchange Act Release No. 19771 (November 22, 1976). Staff precedent supports that a shareholder proposal may be implemented by actions beyond those of management. For example, in *Intel Corp.* (avail. Feb. 14, 2005), the company had received a proposal asking that it “establish a policy” of expensing all future stock options. The company argued that the proposal had been substantially implemented through FASB’s adoption of Statement No. 123(R), requiring the expensing of stock options. Although the proponent asserted that adoption of the accounting standard was different than company adoption of a policy as requested under the proposal, the Staff concurred that the new accounting rule had substantially implemented the proposal and permitted its exclusion.

In a very similar situation the Staff permitted the exclusion of a proposal as substantially implemented where the company asserted that it already was required to implement the shareholder proposal by stock exchange listing standards and its own Board committee charters. In *Siliconix, Inc.* (avail. Mar. 1, 2004), the proposal requested that the Board appoint a committee of independent directors to review all related party transactions. The Company was required by the rules of the NASDAQ Stock Market and its own Audit Committee Charter to have an Audit Committee of three independent directors. The company also was required by the NASDAQ rules and its Audit Committee Charter to have that Committee vote on all related party transactions. See also *Johnson and Johnson* (avail. Feb. 17, 2006) (where the Staff found a proposal requesting the company identify and discharge undocumented or illegal workers was substantially implemented by the applicable immigration laws and regulations); *AMR Corp.* (avail. Apr. 17, 2000) (where the Staff permitted exclusion of a proposal requesting certain Board committees be composed entirely of independent directors where company bylaws required that these committees be composed of independent directors and all current members complied with the proposal’s definition of independence).

In the instant case, NYSE Listed Company Manual Section 303A.05(a) requires that each listed company have a compensation committee, composed entirely of independent directors, and Section 303A.05(b) *et seq.* require that the compensation committee have a charter which provides that the compensation committee alone, or together with the other independent directors, approve CEO compensation. In compliance with these rules and pursuant to Section 141(c) of the Delaware Corporation Law, the Board of the Directors of the Company has adopted the Bristol-Meyers Compensation and Management Development Committee Charter, attached to this letter as Exhibit B. The Charter provides that the “Committee shall consist of three or more independent directors of the Company...[t]he members of the Committee shall meet the independence requirements of the New York Stock Exchange” The Charter further provides that the committee shall “annually review and approve corporate goals and objectives relevant to CEO compensation, evaluate the CEO’s performance together with the other independent directors in light of those goals and objectives, and *recommend to the independent directors* the CEO’s compensation levels based on this evaluation.” (*emphasis added*). Therefore, consistent with its Charter, the Compensation and Management Development Committee must submit its recommended compensation to the CEO to all of the independent

GIBSON, DUNN & CRUTCHER LLP

Office of Chief Counsel
Division of Corporation Finance
December 27, 2006
Page 5

directors for approval. Moreover, in accordance with Section 303A.05(b)(i)(A) of the NYSE Manual, only independent board directors of the Company vote on the CEO's compensation. Thus, as in *Siliconix*, the Company has substantially implemented the proposal through its compliance with applicable listing standards, its Compensation and Management Development Committee Charter and its Board practices.

While the Proposal calls for approval or ratification of CEO compensation by three-quarters of the independent directors, its essential objective is increased independent director involvement in decision-making with respect to CEO compensation, which clearly is in place. In this regard, the Staff has not required companies to implement the entirety of shareholder proposals in order for them to be substantially implemented as long as the essential objective of the Proposal is addressed. *See e.g. Intel Corp.* (avail. Mar. 11, 2003) (concurring that a proposal requesting that Intel's board "submit to stockholder vote all equity compensation plans and amendments to add shares to those plans that would result in material potential dilution" was substantially implemented by a board policy that excepted certain awards from the policy); *Nordstrom, Inc.* (avail. Feb. 8, 1995) (concurring that a proposal requesting a report to stockholders on Nordstrom's relationship with suppliers and a commitment to regular inspections was substantially implemented by existing company guidelines and a press release, even though the guidelines did not commit the company to conduct regular or random inspections to ensure compliance).

This precedent confirms that where, as here, stock exchange listing standards, a Board committee charter and Board practices address the essential objectives of a shareholder proposal, it has been substantially implemented. Accordingly, we believe that the Proposal may be excluded pursuant to Rule 14a-8(i)(10).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the 2007 Proposal from its 2007 Proxy Materials. We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. In addition, the Company agrees to promptly forward to the Proponent any response from the Staff to this no-action request that the Staff transmits by facsimile to the Company only.

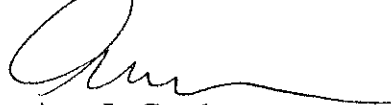
If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8653 or Sandra Leung, the Company's Acting General Counsel, Vice-President and

GIBSON, DUNN & CRUTCHER LLP

Office of Chief Counsel
Division of Corporation Finance
December 27, 2006
Page 6

Secretary, at (212) 546-4260.

Sincerely,



Amy L. Goodman

Enclosures

cc: Sandra Leung, Bristol-Myers Squibb Company
Lucian Bebhuck

100137671_2.DOC