UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

March 12, 2013

Justin Danhof
The National Center for Public Policy Research
jdanhof@nationalcenter.org

Re: Bristol-Myers Squibb Company
Incoming letter dated February 5, 2013

Dear Mr. Danhof:

This is in response to your letter dated February 5, 2013 concerning the shareholder proposal that the National Center for Public Policy Research submitted to Bristol-Myers. In that letter, you requested that the Commission review the Division of Corporation Finance's January 29, 2013 letter granting no-action relief to Bristol-Myers' request to exclude the proposal from its 2013 proxy materials.

Under Part 202.1(d) of Section 17 of the Code of Federal Regulations, the Division may present a request for Commission review of a Division no-action response relating to Rule 14a-8 under the Exchange Act if it concludes that the request involves "matters of substantial importance and where the issues are novel or highly complex." We have applied this standard to your request and determined not to present your request to the Commission.

Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Jonathan A. Ingram
Deputy Chief Counsel

cc: Robert J. Wollin
Bristol-Myers Squibb Company
robert.wollin@bms.com

THE NATIONAL CENTER

FOR PUBLIC POLICY RESEARCH

Amy M. Ridenour
Chairman

David A. Ridenour
President

Via Email: shareholderproposals@sec.gov

February 5, 2013

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549

RE: Stockholder Proposal of the National Center for Public Policy Research, Securities Exchange Act of 1934 – Rule 14a-8: Request for Reconsideration

Dear Sir or Madam:

I am writing in response to the letter of Ted Yu, SEC Senior Special Counsel, dated January 29, 2013, informing us of the decision rendered by Mark F. Vilardo, SEC Special Counsel, that informed Bristol-Myers Squibb (the "Company") that the Securities and Exchange Commission (the "Commission" or "Staff") would not recommend enforcement action if Company omits our shareholder Proposal (the "Proposal") from their 2013 proxy materials for its 2013 annual shareholder meeting.

We respectfully request that the Division of Corporate Finance, under Part 202.1(d) of Title 17 of the Code of Federal Regulations, present the Staff decision to the full Commission for review.

REQUEST FOR RECONSIDERATION

The Proposal should not be excluded under Rule 14a-8 because the Commission wrongly relied on a material misrepresentation made by the Company, the Commission's denial upends years of Rule 14a-8 precedent and belies the Commission's Mission Statement.

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The Commission's decision to reject our call for transparency was based on the Company's complete mischaracterization of our Proposal. The Commission's decision contradicts years of precedent upholding substantially similar proposals, and renders many existing Staff decisions meaningless. In denying our Proposal, the Commission hinders its own mission.

Under Part 202.1(d) of Title 17 of the Code of Federal Regulations, the Division of Corporate Finance may request Commission review of a Division no-action response relating to Rule 14a-8 of the Exchange Act if it so determines that the request involves "matters of substantial importance and where the issues are novel or complex." Our Proposal easily meets this threshold. Corporate participation in public policy debates and the American legislative process, including Company participation, affects the daily lives of all Americans. The Company's power over the delivery of health care services in the United States, borne through its lobbying and public policy advocacy, is an issue of almost limitless importance to the American people and Company shareholders.

In this request for reconsideration we also present a novel issue. The Company made material misrepresentations concerning our Proposal, and the Commission relied on those misrepresentations to *its* detriment in ruling against our Proposal. It should also be substantially important to the Commission, as it is certainly important to the interests of justice, that this Staff decision contradicts years of Rule 14a-8 decisions. Such a decision would set a pall over investors and companies alike for years to come. That the Staff's decision also contravenes the Commission's Mission Statement should in itself warrant a review and a full reconsideration of our Proposal.

1. The Commission's denial was improper since it was based solely on temporal – and material – misrepresentations of our Proposal made by the Company.

The Commission need not concern itself with the task of reconsidering our Proposal on the basis of whether our view of Rule 14a-8(i)(7) line of decisions is more persuasive than the Company's. Rather, the Company materially misrepresented our Proposal – by claiming that we are seeking a report and referendum on the Patient Protection and Affordable Care Act – while in reality, our Proposal calls for honesty and transparency on future, *not past,* events. The Commission relied on this misrepresentation in rejecting our Proposal.

On January 29, 2013, the Staff issued a no-action letter, stating:

> In our view, the proposal and supporting statement, when read together, focus primarily on Bristol-Myers' specific lobbying activities that relate to the operation of Bristol-Myers' business and not on Bristol-Myers' general political activities. Accordingly, we will not recommend enforcement action to the Commission if Bristol-Myers omits the proposal from its proxy materials in reliance on rule 14a-8(i)(7).

We request reconsideration by noting that the Company's deceptive characterization of our Proposal led the Staff to conclude that we seek information and reports which we do not. The crux of the Company's argument, which was accepted wholesale by the Staff, is that our Proposal focuses primarily on the Company's involvement with the Patient Protection and Affordable Care Act (PPACA), and therefore, is excludable. To wit, the Company claimed:

> The Proponent is asking shareholders to vote on a Proposal that, when read together with the Supporting Statement, transforms the Proposal into a referendum on the Company's specific lobbying activities relating to the Company's ordinary business (*e.g.*, PPACA and membership in PhRMA)."[1]

Our Proposal seeks an annual report, the first report to be issued in November 2013 – a full three and a half years after the PPACA became law.

Our Proposal calls for an annual report to be issued starting in November 2013. The PPACA became law on March 23, 2010; therefore, it is illogical to suggest that our Proposal seeks information regarding the Company's involvement with the PPACA.[2] Rather, the PPACA is simply a clear example of the Company's *past* involvement in the public policy arena.

The PPACA is the law of the land. Surely, the Company is not suggesting it wastes funds lobbying for passage of legislation years after its passage. (If so, the Company's shareholders have a right to know about this gross misuse of Company finances.)

The Proposal's discussion of the PPACA highlights a watershed moment in American history, in which the Company assisted in the passage of perhaps the most contentious piece of legislation in the last 40 years. Mentioning the PPACA in our Proposal's Supporting Statement informs shareholders of the magnitude of the Company's activities in the political arena. Aware of the Company's past involvement in public policy debates, shareholders can reasonably expect the Company to be similarly engaged in future health care legislation debates. Indeed, it is likely that many shareholders are unaware of the Company's intricate involvement in the PPACA. Therefore, a generic request for a public policy involvement report may not garner adequate shareholder consideration. However, by informing Company shareholders of the awesome power that the Company wields in the public policy arena, the Proposal makes more sense and is likely to receive more serious consideration from the shareholders.

The Proposal does not seek a report that has anything to do with the PPACA. Rather, by informing Company shareholders about past Company activity, we intended to help

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[1] From Robert Wollin's January 22, 2013 letter to which we were not allotted reasonable time to reply.

[2] The U.S House of Representatives passed the PPACA on March 21, 2010, and President Barack Obama signed the bill into law on March 23, 2010.

shareholders make a more informed vote on our Proposal by sharing with them the knowledge that the Company will likely be involved in the public policy arena in a significant way going forward.

Since our Proposal calls only for *future* reports describing the Company's *future* activities in the public policy realm, and in no way seeks information regarding the PPACA, we respectfully request the Commission allow our Proposal to be presented to the Company's shareholders for a vote.

2. The Staff's decision upends years of Commission precedent upholding substantially similar proposals.

The Staff's decision to reject our Proposal also contradicts clear Commission precedent, threatening to confuse shareholders and companies alike for years to come. The Commission has recently upheld many proposals that are substantially similar to our Proposal. By issuing contradictory decisions, the Commission threatens to unnecessarily confuse the shareholder proposal process.

For 35 years, it has been the Commission's position that shareholder proposals concerning matters with "significant policy, economic or other implications" should not be excluded as ordinary business.[3] Despite the Staff's opinion to the contrary, our Proposal *does seek* a report "on Bristol-Myers' general political activities" insomuch as it relates to lobbying and public policy.

The Company engages at the legislative battles that can powerfully impact the American people and are of extreme importance. The delivery of health care to the public is one of the most critical aspects of the American economy – and one of the more personal aspects of our collective existence. The Company is deeply engaged in the public policy discussions that make these decisions and dramatically affect our citizenry.[4] The Commission should stay true to its more than three-decade old policy and uphold our Proposal.

In addition to explicit Commission policy, specific and consistent Staff decisions have rejected no-action requests for proposals that are substantial similar to our Proposal.

Specifically, it is unfeasible to reconcile recent Staff decisions in *Wal-Mart Stores, Inc.* (March 29, 2010), *PepsiCo, Inc.* (February 26, 2010) and *JP Morgan Chase & Co.* (March 7, 2008), with the decision to reject our Proposal.

[3] Adoption of Amendments Relating to Proposals by Security Holders, Release No. 12999 (Nov. 22, 1976).
[4] It is indeed troubling that our simple call for transparency regarding these activities has been met with such a vociferous response.

In *Wal-Mart*, the Staff refused a no-action letter for a proposal that requested that the "Board of Directors, at a reasonable cost and excluding confidential information, report to shareholders on the Company's process for identifying and prioritizing legislative and regulatory public policy advocacy activities." Our Proposal similarly "request[s] the Board of Directors prepare a report describing the policies, procedures, costs and outcomes of the Company's legislative and regulatory public policy advocacy activities." Our Proposal seeks essentially the same information sought by the proponent in *Wal-Mart*. To treat our Proposal differently calls into question the integrity of the shareholder proposal process.

In *PepsiCo, Inc.*, the Commission refused a no-action request for a proposal with the exact same language as in *Wal-Mart*. The Staff explained: "In our view, the proposal focuses on PepsiCo's general political activities and does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate."

In *JP Morgan*, the Staff rejected the company's request for a no-action letter under Rule 14a-8(i)(7) where the proposal requested that "the Board of Directors report to shareholders ... on the Company's process for identifying and prioritizing legislative and regulatory public policy advocacy activities." Our Proposal, in nearly identical language, asks Bristol-Myers Squibb to "[d]isclose the policies and procedures by which the Company identifies, evaluates and prioritizes public policy issues of interest to the Company," and should likewise survive the Company's no-action request.[5]

The Company deceptively distinguished our Proposal from these decisions by claiming that the Supporting Statement's focus on the PPACA was reason enough for rejection. As made crystal clear above, the PPACA is *an* example of the Company's *past* involvement in public policy debates, and our Proposal calls for reports on *future* events. The Company's deliberate distraction and recasting of our express purpose sheds light on Company leadership's desire to hide its activities from its shareholders. It should in no way be permitted to block our Proposal in light of the Commission's clear precedent.

3. The Staff's ruling contravenes the Commission's mission and it's clear stance on transparency.

The Commission's Mission Statement notes: "The mission of the U.S. Securities and Exchange Commission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation."[6] The Commission has long maintained that corporate transparency is one of the best – if not the best – way to protect investors. Our

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[5] See also, *Time Warner, Inc. (February 11, 2004)*; *American Telephone & Telegraph Co. (January 11, 1984)*. Both affirming that proposals that focus on a company's political activities, including a company's lobbing expenditures, cannot be excluded under Rule 14a-8(i)(7).

[6] "The Investor's Advocate: How the SEC Protects Investors, Maintains Market Integrity, and Facilitates Capital Formation," U.S. Securities and Exchange Commission, available at http://www.sec.gov/about/whatwedo.shtml as of February 1, 2013.

Proposal is nothing more than a call for transparency regarding a vital aspect of the Company's spending.

In section 2 of this Request for Reconsideration, we highlight a string of cases in which the Staff sided with the same call for transparency that we presented to the Company. Under Rule 14a-8, the Commission has been clearly tacking towards greater corporate transparency in recent years. In 2009, the Commission issued Staff Legal Bulletin No.14E in which the Staff recognized it had strayed from its duty to be transparent and would set a new course for openness. The Staff noted:

> [W]e are concerned that our application of the analytical framework discussed in SLB No. 14C may have resulted in the unwarranted exclusion of proposals that relate to the evaluation of risk but that focus on significant policy issues ... Accordingly, we have reexamined the analysis that we have used for risk proposals, and upon reexamination, we believe that there is a more appropriate framework to apply for analyzing these proposals.[7]

While SLB 14E concerns proposals that focus on risk, it clearly highlights the Commission's volition to trumpet transparency and increase shareholder access to corporate information. This policy has also extended well beyond the disclosure our Proposal seeks.

On August 22, 2012 the Commission adopted new rules that require "resource extraction issuers" to disclose payments made to the U.S. Federal government (as well as foreign governments) when they seek development of natural gas, oil or minerals.[8] Surely transparency concerning political spending on healthcare lobbying is as important as transparency on mining.

Furthermore, in January 2009, the SEC issued a Commission-wide clarion call for increased transparency, noting:

> As the Commission moves into its 75th year, it faces new challenges to increase transparency. Now in the midst of turmoil in the world's capital markets, the Commission has the opportunity to demonstrate the leadership it has provided since its founding in 1934. The Commission should lead the way in fostering greater transparency for investors.[9]

In denying our Proposal, the Staff has denied its very mission. The Commission should correct the Staff's decision and reaffirm its support for transparency.

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[7] "Staff Legal Bulletin No. 14E (CF)," U.S. Securities and Exchange Commission, October 27, 2009, available at http://www.sec.gov/interps/legal/cfslb14e.htm as of February 1, 2013.

[8] These rules were adopted to implement Section 1504 of the Dodd-Frank Act.

[9] "Toward Greater Transparency: Modernizing the Securities and Exchange Commission's Disclosure System," U.S. Securities and Exchange System, January 2009, available at http://www.sec.gov/spotlight/disclosureinitiative/report.pdf as of February 1, 2013.

CONCLUSION

Since our Proposal calls for reports on future Company activities – not the PPACA – and the Commission has accepted many shareholder proposals that are nearly identical to our Proposal, the Commission should reestablish its directive to increase corporate transparency.

Based upon the above analysis, we respectfully request that the Commission reconsider the Staff's decision, and allow our Proposal to proceed to the Company's shareholders for a vote.

A copy of this correspondence has been timely provided to Bristol-Myers Squibb. If we can provide additional materials to address any queries the Staff may have with respect to this letter, our initial reply or Bristol-Myers Squibb's no-action requests, please do not hesitate to call me at 202-543-4110.

Sincerely,

Justin Danhof, Esq.
General Counsel and Free Enterprise Project Director

cc: Robert J. Wollin, Senior Counsel, Bristol-Myers Squibb, via e-mail and Federal Express