



DIVISION OF
CORPORATION FINANCE

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

March 1, 2019

Lisa A. Atkins
Bristol-Myers Squibb Company
lisa.atkins@bms.com

Re: Bristol-Myers Squibb Company
Incoming letter dated December 21, 2018

Dear Ms. Atkins:

This letter is in response to your correspondence dated December 21, 2018 concerning the shareholder proposal (the "Proposal") submitted to Bristol-Myers Squibb Company (the "Company") by People for the Ethical Treatment of Animals (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated January 3, 2019. 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,

M. Hughes Bates
Special Counsel

Enclosure

cc: Jared Goodman
PETA Foundation
jaredg@petaf.org

March 1, 2019

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Bristol-Myers Squibb Company
Incoming letter dated December 21, 2018

The Proposal asks the board to implement a policy that it will not fund, conduct or commission use of the “Forced Swim Test.”

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7), as relating to the Company’s ordinary business operations. In our view, the Proposal micromanages the Company by seeking to impose specific methods for implementing complex policies. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,

Kasey L. Robinson
Special Counsel

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

January 3, 2019

Via e-mail

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
shareholderproposals@sec.gov

Re: Bristol-Meyers Squibb 2019 Annual Meeting Shareholder Proposal
Submitted by PETA

Dear Sir or Madam:

I am writing on behalf of People for the Ethical Treatment of Animals (PETA) and pursuant to Rule 14a-8(k) in response to Bristol-Meyers Squibb Company's ("BMS" or "Company") request that the Staff of the Division of Corporation Finance ("Staff") of the Securities and Exchange Commission ("Commission") concur with its view that it may properly exclude PETA's shareholder resolution and supporting statement ("Proposal") from the proxy materials to be distributed by BMS in connection with its 2019 annual meeting of shareholders ("No-Action Request").

The Company seeks to exclude the Proposal on the basis of Rule 14a-8(i)(7). As the Proposal significantly relates to BMS's business, focuses on the significant social policy issue of the humane treatment of animals, and is not too complex for shareholders to make an informed judgment, PETA urges the Staff to deny BMS's request for a no-action letter.

I. The Proposal

PETA's resolution, titled "REDUCE ANIMAL SUFFERING IN BRISTOL-MEYERS SQUIBB EXPERIMENTS," provides:

RESOLVED, given the animal suffering inherent in the "Forced Swim Test" (FST), its questionable scientific validity, and the fact that the majority of Americans object to the use of animals in experiments, our Board should implement a policy that it will not fund, conduct, or commission use of this test.

The supporting statement then describes the FST, the company's use of and reference to the test, and expert acknowledgment of its ineffectiveness and impediment to legitimate medical progress.

II. The Proposal Focuses on a Significant Social Policy Issue and May Not Be Excluded Pursuant to Rule 14a-8(i)(7).

Rule 14a-8(i)(7) provides that a company may exclude a proposal "[i]f the proposal deals with a matter relating to the company's ordinary business operations." Only "business matters that are mundane in nature and do not involve any substantial policy" considerations may be omitted under this exemption. Adoption of Amendments Relating to Proposals by Security

PEOPLE FOR
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Norfolk, VA 23510
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Berkeley, CA 94705
510-763-PETA

PETA FOUNDATION IS AN
OPERATING NAME OF FOUNDATION
TO SUPPORT ANIMAL PROTECTION.

AFFILIATES:

- PETA U.S.
- PETA Asia
- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Netherlands
- PETA Foundation (U.K.)

Holders, 41 Fed. Reg. 52,994, 52,998 (1976). As the Company notes, the policy underlying **this rule rests on two central considerations. The first consideration “relates to the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which stockholders, as a group, would not be in a position to make an informed judgment.”** Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 40018 (May 21, 1998) (“**Rule 14a-8 Release**”).

Second, “certain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” *Id.* **The Commission has stated and repeatedly found since that “proposals relating to such matters but focusing on sufficiently significant social policy issues ... generally would not be considered to be excludable, because *the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.*”** *Id.* (emphasis added).

PETA’s Proposal does not implicate a day-to-day operation that is “mundane in nature,” but rather involves an important “substantial policy” consideration, and does not seek to “‘micro-manage’ the company by probing too deeply into matters of a complex nature,” as it does not involve “intricate detail” or seek “to impose specific time-frames or methods for implementing complex policies.” *Id.* Indeed, the Staff has found on several occasions that proposals for pharmaceutical companies to end particular tests could not be excluded on this basis.

- A. The Proposal focuses on the significant social policy issue of animal welfare.

A company may rely on Rule 14a-8(i)(7) to exclude a proposal only where that proposal **relates to the company’s ordinary business operations—those matters that are “mundane in nature and do not involve any substantial policy” considerations.** Release No. 34-12999 (Dec. 3, 1976). Proposals that relate to ordinary business matters but that focus on **“sufficiently significant social policy issues ... would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.”** Release No. 34-40018 (May 21, 1998).

BMS does not dispute that the Staff has previously determined that the humane treatment of animals, including the use of animals in scientific research, is a significant policy issue that is appropriate for a shareholder vote. *See, e.g., Revlon, Inc.* (Mar. 18, 2014); *Coach, Inc.*, 2010 WL 3374169 (Aug. 19, 2010) (“although the proposal relates to the acquisition and sale of fur products, it focuses on the significant policy issue of the humane treatment of animals, and it does not seek to micromanage the company to such a degree that we believe exclusion of the proposal would be appropriate”); *Bob Evans Farms, Inc.* (June 6, 2011) (a proposal to encourage the board to phase-in the use of “cage-free” eggs so that **they represent at least five percent of the company’s total egg usage “focuses on the significant policy issue of the humane treatment of animals and does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate”**); *Denny’s* (March 17, 2009) (a proposal requesting the board to commit to selling at least 10% cage-free eggs by volume could not be excluded in reliance on Rule 14a-8(i)(7)); *Wendy’s Int’l Inc.* (Feb. 19, 2008) (a proposal requesting that the board issue a report on the feasibility of committing to purchase a percentage of its eggs from cage-free hens could not be excluded in reliance on Rule 14a-8(i)(7)).

Moreover, “the presence of widespread public debate regarding an issue is among the factors to be considered in determining whether proposals concerning that issue **‘transcend the day-to-day business matters.’**” **SLB No. 14A (July 12, 2002)**. The use and welfare of animals used in research specifically is subject to widespread debate, exemplified by **BMS’s own purported oversight of the Company’s animal use**. See *No-Action Request*, at 4-5. Additionally, polling by the Pew Research Center found that 52 percent of U.S. adults oppose the use of animals in scientific research altogether—regardless of the level of care they receive, Mark Strauss, *Americans Are Divided Over the Use of Animals in Scientific Research*, Pew Research Center (Aug. 16, 2018), up from just eight percent in 1948, Harold A. Herzog & Lorna B. Dorr, *Electronically Available Surveys of Attitudes Toward Animals*, 8(2) *Society & Animals* 1 (2000). Other surveys suggest that the shrinking group that does accept animal experimentation does so only because it believes it to be necessary for medical progress. See Peter Aldhous and Andy Coghlan, *Let the People Speak*, *New Scientist* (May 22, 1999). As one United Kingdom court has recognized, the public interest in the welfare of animals in laboratories **“is almost so obvious as not to require much by way of spelling it out.”** See *Judgment, Covance Laboratories Ltd. v. The Covance Campaign et al.*, Claim No 5C – 00295 (June 16, 2005).

Accordingly, as the Company apparently concedes, the Proposal focuses on a significant social policy issue that transcends day-to-day business matters, and it is therefore appropriate for a shareholder vote.

B. The Proposal does not seek to micromanage the company.

BMS argues that it may exclude the Proposal pursuant to Rule 14a-8(i)(7) because “[b]y attempting to impose upon the Company a prohibition with respect to a specific animal test that the Company may use as part of its drug development program, the Proposal **seeks to micromanage the Company’s operations by interfering with management’s** essential function of making day-to-day business and operational decisions on behalf of the Company.” *No-Action Request*, at 5. The Proposal urges the board to make a single decision regarding **BMS’s** use of a single test, which, the Proposal describes, is cruel and distressing, results in poor animal welfare, and does not produce human-relevant results. **The Company does not dispute any of the Proposal’s assertions regarding the FST.**

The Staff has already rejected the position that a proposal addressing pharmaceutical research methods and techniques is necessarily too complex for a shareholder vote. The Staff refused to issue no-action letters where, like here, a proposal requested the end of particular animal experiments. In a series of proposals, PETA requested that the boards of various companies:

1. Commit specifically to using only non-animal methods for assessing skin corrosion, irritation, absorption, phototoxicity and pyrogenicity.
2. Confirm that it is in the Company’s best interest to commit to replacing animal-based tests with non-animal methods.
3. Petition the relevant regulatory agencies requiring safety testing for the Company’s products to accept as total replacements for animal-based methods, those approved non-animal methods described above, along with any others currently used and accepted by the Organization for Economic Cooperation and Development (OECD) and other developed countries.

In every instance, although the proposals called on the companies to abandon all animal-based “methods for assessing skin corrosion, irritation, absorption, phototoxicity and pyrogenicity,” and instead commit to using only non-animal methods for each of those assessments, the Staff was “unable to concur in [the company’s] view that [it] may exclude the proposal under rule 14a-8(i)(7).” *3M Co.*, 2005 WL 433468 (Feb. 22, 2005); *Schering-Plough Corp.*, 2005 WL 329675 (Feb. 10, 2005); *The Dow Chemical Co.*, 2005 WL 180977 (Jan. 21, 2005); *Johnson & Johnson*, 2005 WL 291551 (Jan. 13, 2005); *General Electric Co.*, 2005 WL 130007 (Jan. 11, 2005); see also *Wyeth* (February 4, 2004) (finding that a proposal requesting that the board issue a policy statement publicly committing to use *in vitro* tests and generally committing to the elimination of product testing on animals could not be excluded in reliance on Rule 14a-8(i)(7)).

BMS does not attempt to distinguish these previous decisions. Instead, the Company relies on the Staff’s inapplicable decision in *SeaWorld Entertainment Inc.* (Apr. 23, 2018), which involved a proposal that the animal theme park ban all captive breeding at its facilities. The company argued that banning the captive breeding of “over 1,700 species,” both through natural breeding and artificial insemination, would need to be tailored to each species and would ultimately “require replacement of all of the company’s live animal exhibits.” The Staff agreed that the proposal was therefore too complex for a shareholder vote. Unlike *SeaWorld*, the Proposal here involves ending one particular test that would not require BMS to fundamentally alter its business.

The Company’s no-action request is littered with irrelevant policy statements regarding animal use and oversight. Whether BMS staff receives training in animal use or BMS pays a third-party certification body for accreditation, for example, are entirely irrelevant as to whether the Proposal seeks to micromanage the Company by ending a specific test that is inherently cruel, has been recognized as ineffective, and has not led to the marketing of new drugs for our Company in more than a decade. An end to the FST would have no bearing on any of those existing policies or processes, and the Company does not assert that the Proposal has been substantially implemented by them.

Additionally, the Company misleads the Staff regarding its “legal ... obligation to ensure the safety and efficacy of investigational new medicines prior to their use in humans.” *Id.* at 4. After making the undisputed assertion that pre-clinical testing sometimes requires animal research, BMS asserts that that “the Company cannot summarily remove a particular animal test as requested by the Proponent.” The Proposal does not seek an end to all animal-based research, and the Company does not, and cannot truthfully, assert that the FST is or may be required by law to ensure the safety or efficacy of its products. In fact, not only can BMS stop using the FST, but a company spokesperson informed a reporter “that the company no longer uses the test and ended neuroscience research in 2013.” Ed Silverman, *Animal Rights Group Urges Drug Makers to Discontinue a Test That ‘Traumatizes’ Rodents*, *Stat* (Nov. 8, 2018).

Finally, the Company makes broad pronouncements of its need to “maintain discretion in determining which research and development activities it deems appropriate” and be free from interference “with intricate business and operational decisions.” *Id.* at 3. Per Rule 14a-8, shareholder proposals must be significantly related to a company’s business. Any billion-dollar public company should have experienced and knowledgeable management that will be impacted by a Proposal that relates to a significant, non-mundane, business decision. Indeed, addressing a company’s action or inaction on a particular matter is the very purpose of the shareholder proposal process. To allow companies to exclude a

proposal **because it would “turn on a variety of factors with which management ... has substantial knowledge, experience, and familiarity”** would virtually gut Rule 14a-8.

Accordingly, as with the proposals cited above that sought to eliminate certain (or all) animal tests by pharmaceutical and other companies, and to require certain animal raising standards by suppliers of food service companies, this is not a complex matter into which **shareholders seek to “prob[e] too deeply,” and is one for which they can make an informed judgment.** Indeed, the elimination of the FST is far less complex than those matters in which the Staff declined to issue no-action relief.

III. Conclusion

We respectfully request that the Staff decline to issue a no-action response to BMS and inform the company that it may not omit the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7).

Should you need any additional information in reaching your decision, please contact me at your earliest convenience. If you intend to issue a no-action response to BMS, we would welcome the opportunity to discuss this matter further before that response is issued.

Thank you.

Very truly yours,



Jared Goodman
Deputy General Counsel for Animal Law
(323) 210-2266
JaredG@petaf.org

cc: Kerry Burke, kburke@cov.com



Bristol-Myers Squibb

Lisa A. Atkins
Senior Counsel

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December 21, 2018

VIA E-MAIL: shareholderproposals@sec.gov

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

Re: Shareholder Proposal of People for the Ethical Treatment of Animals

Dear Ladies and Gentlemen:

This letter is submitted by Bristol-Myers Squibb Company (the “*Company*”) to notify the Securities and Exchange Commission (the “*Commission*”) that the *Company* intends to omit from its proxy statement and form of proxy for its 2019 Annual Meeting of Stockholders (the “*2019 Proxy Materials*”) a shareholder proposal and supporting statement (the “*Proposal*”) submitted by People for the Ethical Treatment of Animals (the “*Proponent*”). We also request confirmation that the staff of the Division of Corporation Finance (the “*Staff*”) will not recommend enforcement action to the *Commission* if the *Company* omits the *Proposal* from the 2019 *Proxy Materials* for the reasons discussed below.

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008), we are emailing this letter to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended, we are simultaneously sending a copy of this letter to the *Proponent* as notice of the *Company*’s intent to omit the *Proposal* from the 2019 *Proxy Materials*. Likewise, we take this opportunity to inform the *Proponent* that if the *Proponent* elects to submit any correspondence to the *Commission* or the *Staff* with respect to the *Proposal*, a copy of that correspondence should be provided concurrently to the undersigned on behalf of the *Company*.

THE PROPOSAL

The Proposal (attached hereto as Exhibit A) provides in pertinent part:

“REDUCE ANIMAL SUFFERING IN BRISTOL-MYERS SQUIBB EXPERIMENTS

RESOLVED, given the animal suffering inherent in the “Forced Swim Test” (FST), its questionable scientific validity, and the fact that the majority of Americans object to the use of animals in experiments,¹ our Board should implement a policy that it will not fund, conduct, or commission use of this test.”

BASIS FOR EXCLUSION

The Company hereby respectfully requests that the Staff concur in its view that the Company may exclude the Proposal from the 2019 Proxy Materials pursuant to Rule 14a-8(i)(7).

ANALYSIS

Rule 14a-8(i)(7) permits the exclusion of shareholder proposals dealing with matters relating to a company’s “ordinary business operations.” The Commission has stated that the underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.” Exchange Act Release No. 40018 (May 21, 1998). The term “ordinary business” in this context refers to “matters that are not necessarily ‘ordinary’ in the common meaning of the word, and is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations.” *Id.*

The ordinary business exclusion rests on two central considerations: (1) the subject matter of the proposal (i.e., whether the subject matter involves a matter of ordinary business), provided the proposal does not raise significant social policy considerations that transcend ordinary business; and (2) the degree to which the proposal attempts to micromanage a company by “probing too deeply into matters of a complex nature upon which shareholders as a group, would not be in a position to make an informed judgment.” Exchange Act Release No. 40018 (May 21, 1998). A proposal may involve micromanagement if it “involves intricate detail, or

¹ Strauss (2018) Americans are divided over the use of animals in scientific research. <https://tinyurl.com/ydbgts8z>

seeks to impose specific time-frames or methods for implementing complex policies.” *Id.* Determinations as to the excludability of proposals on the basis of micromanagement “will be made on a case-by-case basis, taking into account factors such as the nature of the proposal and the circumstances of the company to which it is directed.” *Id.* As recently explained by the Staff, the consideration of the excludability of a proposal based on micromanagement “looks only to the degree to which a proposal seeks to micromanage” and does not focus on the subject matter of the proposal. Staff Legal Bulletin No. 14J (Oct. 23, 2018) (“*SLB 14J*”). The Staff further explained in *SLB 14J* that “Unlike the first consideration [of the ordinary business exclusion], which looks to a proposal’s subject matter, the second consideration looks only to the degree to which a proposal seeks to micromanage. Thus, a proposal that may not be excludable under the first consideration may be excludable under the second if it micromanages the company.”

The Company is a global specialty biopharmaceutical company whose mission is to discover, develop and deliver innovative medicines that help patients prevail over serious diseases. We are highly supportive of the principles of protecting the care and welfare of animals and fully recognize the fundamental ethical obligation to treat animals used in research responsibly. Furthermore, we are committed to reducing and replacing animals, where feasible. The Company’s mission requires a deep commitment to research and development activities to establish the safety and effectiveness of the Company’s products, particularly in light of the time-consuming and expensive nature of the drug development process. The research and development process for a single drug typically takes about fourteen years, and on average, only about one in 10,000 chemical compounds discovered by pharmaceutical industry researchers proves to be both medically effective and safe enough to become an approved medicine. Accordingly, to fulfill its mission and to achieve continued success, it is essential for the Company to maintain a consistent pipeline of innovative research and development activity to bring new products and indications to market.

As a global specialty biopharmaceutical company, advancement of the Company’s drug research and development programs is an essential element of the Company’s management function. The ability of the Company to maintain discretion in determining which research and development activities it deems appropriate in helping to bring new products and indications to the market is fundamental to the operation of its business. Here, the Proposal seeks to micromanage the Company’s operations by endeavoring to impose a specific prohibition with respect to pre-clinical animal research, thereby interfering with intricate business and operational decisions upon which shareholders as a group are not in a position to make an informed judgment. These decisions turn on a variety of factors with which management, including oversight committees, has substantial knowledge, experience and familiarity, such as the nature of the relevant pharmaceutical product candidate, the indication under investigation, including designing the most appropriate studies to establish the safety and efficacy of a product, as well as compliance with applicable laws and Company policies and procedures, including animal use protocols, and considerations informed by contemporary scientific understanding. The Staff has consistently permitted the exclusion of shareholder proposals that attempt to micromanage a

company by substituting shareholder judgment for that of management with respect to such complex day-to-day business operations. *E.g.*, *SeaWorld Entertainment, Inc.* (Apr. 23, 2018) (proposal requesting a ban of all captive breeding excludable on the basis of micromanagement for “seeking to impose specific methods of implementing complex policies”) (“*SeaWorld II*”); *SeaWorld Entertainment, Inc.* (Mar. 30, 2017, reconsideration denied Apr. 17, 2017) (proposal requesting the replacement of live orca exhibits with virtual reality experiences excludable for “probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment”).

We have both a legal and an ethical obligation to ensure the safety and efficacy of investigational new medicines prior to their use in humans. In order for a new drug to reach the market, government regulations in the United States (including the U.S. Food and Drug Administration), the European Union and most foreign countries require investigational medicines be thoroughly evaluated, including for the determination of a drug’s safety and effectiveness through pre-clinical tests and controlled clinical evaluation before approving them for use in human clinical trials. At times, to fulfill these obligations, certain of this pre-clinical testing requires animal research. The Company is unable to bring any transformative new pharmaceutical products to market that serve high unmet needs if it does not comply with applicable regulatory requirements around pre-clinical testing. *See, e.g.*, 21 CFR § 314.50 (requiring a New Drug Application to include a description of relevant animal and in vitro studies and, for each nonclinical laboratory study subject to the good laboratory practice regulations, a statement of compliance, or explanation of non-compliance, with such regulations). As a result, the Company cannot summarily remove a particular animal test as requested by the Proponent, since pre-clinical testing with animals continues to be an important and necessary component of its research and development efforts.

The Company’s researchers are well versed in the scientific literature and constantly adopt the latest technology and animal models to ensure compliance with the highest levels of scientific scrutiny and data integrity. In addition, employees involved in any aspect of the animal research program attend regular training to ensure that they are competent in the care of the animals and in the procedures required to complete the proposed work, that they are aware of the ethical issues involved in the use of animals, and that they demonstrate humane care, use and respect for all research animals. Disciplinary actions, up to and including termination, can be taken against employees that do not comply with these standards and procedures. Therefore, the Company is best positioned to make decisions regarding the necessary pre-clinical tests to employ to ensure that its pharmaceutical products are safe and effective for human use.

At the same time, the Company believes high-quality, humane animal care and use is a moral, scientific and legal necessity. The Company’s sustainability report, available on the Company’s website at www.bms.com/sustainability, details the Company’s long-standing, highly regarded animal testing program that is committed to reducing reliance on animal testing methods, promoting the development, validation and use of non-animal tests, and providing the highest level of care when use of animals is required. The Company has programs, processes and

procedures in place to ensure the humane treatment of animals, including through its Animal Welfare Oversight Committee, which, among other things, oversees research, provides guidance on animal welfare policies and standards and clarifies the Company's expectations for implementation of new regulations and guidelines related to animal care and use. In addition, the Company's Animal Care and Use Committees and Animal Ethics Committees review, approve and monitor all animal use, and perform audits and semiannual facility inspections and program reviews, to ensure the animals are healthy and treated humanely. Decisions regarding animal research are informed by a variety of inputs, as described above, including animal welfare considerations. For instance, the Company's Animal Care and Use Directives only permit animal research under specified circumstances. When animal research is required, researchers must give careful consideration to the "3Rs" of animal research – replacement of animals with alternative non-animal methods, reduction in the number of animals used by the application of good experimental design and proper statistical methods, and refinement to eliminate or minimize pain or distress. Notably, all animal research is conducted under approved protocols, and initial submission of a protocol includes a thorough review of the underlying science using the most up-to-date practices available. The Company also endeavors to adhere to standards set forth in the U.S. Animal Welfare Act and has been accredited for more than 30 years by AAALAC International, formerly known as the Association for Assessment and Accreditation of Laboratory Animal Care. The AAALAC accreditation process includes a detailed, comprehensive review of the Company's animal research program, including animal care and use policies and procedures. Contractors who carry out research for the Company are expected to comply with the same care and ethical standards and accreditation requirements, and their compliance with these standards is subject to audit by the Company.

Like the husbandry and breeding practices at issue in *SeaWorld II*, decisions regarding necessary animal testing for pre-clinical trials require "detailed knowledge of [the Company's] business and operations – information to which the Company's shareholders may not have access." The Supporting Statement makes clear that the Proponent merely intends to substitute its view on these issues for the reasoned analysis and judgment of management, including the Company's oversight committees, citing reasons to purportedly refute the utility of the forced swim test. "Allowing shareholders to dictate which tests the Company [may use as part of required animal testing], however, would inappropriately delegate to shareholders management's role in directing the day-to-day business of the Company." *SeaWorld II*. By attempting to impose upon the Company a prohibition with respect to a specific animal test that the Company may use as part of its drug development program, the Proposal seeks to micromanage the Company's operations by interfering with management's essential function of making day-to-day business and operational decisions on behalf of the Company. Such decisions are not properly delegated to, and should not be micromanaged, by the Company's shareholders. As a result, the Proposal is excludable under Rule 14a-8(i)(7) as a matter relating to the Company's ordinary business operations.

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that the Company may exclude the Proposal from the 2019 Proxy Materials. Should the Staff disagree with the conclusions set forth in this letter, or should you require any additional information in support of our position, we would welcome the opportunity to discuss these matters with you as you prepare your response. Any such correspondence regarding this letter should be sent to Kerry Burke at kburke@cov.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (212) 546-5727 or Kerry at (202) 662-5297.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lisa A. Atkins', written over a horizontal line.

Lisa A. Atkins
Senior Counsel, Corporate Governance & Securities
Bristol-Myers Squibb Company
430 E. 29th Street
New York, NY 10016

cc: Sandra Leung, Bristol-Myers Squibb Company
Kate Kelly, Bristol-Myers Squibb Company
James Cotton, Bristol-Myers Squibb Company
Jared Goodman, People for the Ethical Treatment of Animals

Exhibit A
Proposal

See attached



November 12, 2018

Katherine R. Kelly
Corporate Secretary
Bristol-Myers Squibb Company
345 Park Avenue
New York, New York 10154

Via UPS Next Day Air Saver

Dear Ms. Kelly:

Attached to this letter is a shareholder proposal (also known as a “resolution”) submitted for inclusion in the proxy statement for the 2019 annual meeting. Also enclosed is a letter from People for the Ethical Treatment of Animals’ (PETA) brokerage firm, RBC Wealth Management, confirming ownership of 67 shares of Bristol-Myers Squibb Company common stock, which were acquired at least one year ago. PETA has held at least \$2,000 worth of common stock continuously and intends to hold at least this amount through and including the date of the 2019 shareholders meeting.

If there are any issues with this proposal being included in the proxy statement or if you need any further information, please contact PETA's authorized representative Jared S. Goodman at 2154 W. Sunset Blvd., Los Angeles, CA 90026, (323) 210-2266, or JaredG@PetaF.org.

Sincerely,

Carrie Edwards, Executive Assistant
PETA Corporate Affairs

Enclosures: 2019 Shareholder Resolution
RBC Wealth Management letter

PEOPLE FOR
THE ETHICAL
TREATMENT
OF ANIMALS

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November 12, 2018

Tracy Reiman
Executive Vice President
People for the Ethical Treatment of Animals
501 Front Street
Norfolk, VA 23510

Re: Verification of Shareholder Ownership in Bristol-Myers Squibb Company

Dear Ms. Reiman:

This letter verifies that People for the Ethical Treatment of Animals (PETA) is the beneficial owner of 67 shares of Bristol-Myers Squibb Company common stock and that PETA has continuously held at least \$2,000.00 in market value for at least one year prior to and including the date of this letter.

Should you have any questions or require additional information, please contact me at (408) 947-3322.

Sincerely,

A handwritten signature in blue ink that reads 'Thach Nguyen'.

Thach Nguyen
Registered Client Associate to Joshua Levine
Senior Vice President – Financial Advisor
RBC Wealth Management

REDUCE ANIMAL SUFFERING IN BRISTOL-MYERS SQUIBB EXPERIMENTS

RESOLVED, given the animal suffering inherent in the “Forced Swim Test” (FST), its questionable scientific validity, and the fact that the majority of Americans object to the use of animals in experiments,¹ our Board should implement a policy that it will not fund, conduct, or commission use of this test.

BACKGROUND

In the FST, animals are dropped into a container of water. Terrified that they will drown, they swim frantically trying to find an escape. Eventually they become exhausted and stop struggling. It causes substantial distress and is not required by the government to be conducted.

BMS-affiliated authors have described the FST as a model or test of depression.² Our Company uses the FST to purportedly test the “antidepressant-like”³ effects of compounds on the assumption that the sooner the animal stops swimming, the more depressed the animal is. However, there is evidence that floating is an adaptive behavior that saves energy and benefits survival,⁴ not a sign of depression.

The FST’s ability to accurately predict human antidepressants is further undermined by the fact that it yields positive results for compounds that are not prescribed as human antidepressants, like caffeine,⁵ and negative results for compounds that are.⁶ Therefore, useful antidepressant compounds may be abandoned if they do not produce desired results in the FST. Indeed, the applicability of the FST to human depression has been substantially refuted by experts.⁷

According to our Company’s records none of the compounds tested by BMS since 2008 using the FST are currently approved to treat human depression, which means that the test did not lead to marketing these compounds as new medications.

We need to develop new therapeutics to treat human depression, but experts cite the use of such animal experiments as a major reason for lack of progress in generating effective treatments.⁸

Given the suffering and distress the FST causes to animals and the failure of test data to produce human-relevant results, our Company should include an assurance in its bioethics policy statement⁹ that it will no longer fund, conduct, or commission use of the forced swim test.

¹ Strauss (2018) Americans are divided over the use of animals in scientific research. <https://tinyurl.com/ydbgts8z>

² Wallace-Boone (2008) <https://doi.org/10.1038/sj.npp.1301586>

³ Gillman (2013) <https://doi.org/10.1016/j.bmcl.2012.11.094>

⁴ Molendijk (2015) Immobility in the forced swim test is adaptive and does not reflect depression. <https://doi.org/10.1016/j.psyneuen.2015.08.028>

⁵ Schechter (1979) Non-specificity of “behavioral despair” as an animal model of depression. [https://doi.org/10.1016/0014-2999\(79\)90212-7](https://doi.org/10.1016/0014-2999(79)90212-7)

⁶ Suman (2018) Failure to detect the action of antidepressants in the forced swim test in Swiss mice. <https://doi.org/10.1017/neu.2017.33>; Cryan (2002) [https://doi.org/10.1016/S0165-6147\(02\)02017-5](https://doi.org/10.1016/S0165-6147(02)02017-5)

⁷ Hendrie (2013) The failure of the antidepressant drug discovery process is systemic. <https://doi.org/10.1177/02F0269881112466185>; Garner (2014) The significance of meaning: Why do over 90% of behavioral neuroscience results fail to translate to humans, and what can we do to fix it? <https://doi.org/10.1093/ilar/ilu047>; Molendijk (2015); Commons (2017) The rodent forced swim test measures stress-coping strategy, not depression-like behavior. <https://pubs.acs.org/doi/10.1021/acscemneuro.7b00042>

⁸ Hendrie (2013); Garner (2014)

⁹ Bristol-Myers Squibb Bioethics Policy Statement. <https://www.bms.com/about-us/responsibility/position-on-key-issues/bioethics-policy-statement.html>