

pharmaceutical sales associated with the channel-stuffing. When BMS' financial results still fell short of the Company's internal earnings targets and analysts' earnings estimates despite the channel-stuffing, the Company, at Schiff's direction, used "cookie jar" reserves to further inflate its earnings. At Schiff's direction, BMS also underaccrued for Medicaid and prime vendor rebate liabilities incurred in connection with sales associated with the channel-stuffing. As a result of these improper accounting measures, BMS materially overstated its sales, earnings and earnings per share in, among other things, press releases and periodic reports filed with the Commission and signed by Schiff. Schiff and Lane also made other misstatements and failed to disclose material facts in conference calls with Wall Street securities analysts that concealed BMS' channel-stuffing activities. In addition, Schiff made misstatements to BMS' auditors which concealed his and the Company's activities. In March 2003, BMS restated the financial statements it filed with the Commission during the scheme, admitting that, as a result of its channel-stuffing and other improper accounting, for 2000 and 2001, the Company overstated: net sales by \$521 million (2.86%) and \$1.284 billion (6.6%), respectively, and net earnings from continuing operations before minority interest and income taxes by \$389 million (6.9%) and \$999 million (31.1%). Investors lost millions of dollars as a result of the scheme. Schiff and Lane profited from the salary, bonuses, stock options and other benefits they received, which were based, in part, on BMS' artificially inflated financial performance

2. By virtue of the conduct described herein, Schiff, directly or indirectly, engaged and, unless enjoined, will continue to engage in transactions, acts, practices or courses of business which constitute violations of Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act of 1933 (Securities Act) [15 U.S.C. §§77q(a)(1), 77q(a)(2) and 77q(a)(3)] and Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 (Exchange Act) [15 U.S.C. §§78j(b)

and 78m(b)(5)], and Rules 10b-5, 13b2-1 and 13b2-2 [17 C.F.R. §§240.10b-5, 240.13b2-1 and 240.13b2-2] promulgated thereunder, and aiding and abetting BMS' violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)], and Rules 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. §§240.12b-20, 240.13a-1 and 240.13a-13].

3. By virtue of the conduct described herein, Lane, directly or indirectly, engaged and, unless enjoined, will continue to engage in transactions, acts, practices or courses of business which constitute violations of Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§77q(a)(1), 77q(a)(2) and 77q(a)(3)], Sections 10(b) and 13(b)(5) the Exchange Act [15 U.S.C. §§78j(b) 78m(b)(5)] and Rule 10b-5 promulgated thereunder [17 C.F.R. §240.10b-5], and aiding and abetting BMS' violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act [15 U.S.C. §§78m(a) 78m(b)(2)(A)] and Rules 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. §§240.12b-20, 240.13a-1 and 240.13a-13].

4. The Commission seeks orders permanently enjoining Schiff and Lane from further violations, and from aiding and abetting further violations, of the federal securities laws as alleged herein. The Commission also seeks disgorgement of all ill-gotten gains Schiff and Lane derived from their violations of the federal securities laws, plus prejudgment interest, and a civil monetary penalty.

JURISDICTION AND VENUE

5. The Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)] and Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§78u(e), 78aa] and 28 U.S.C. §1331.

6. Venue is proper in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)] and Section 27 of the Exchange Act [15 U.S.C. §78aa].

7. In connection with the transactions, acts, practices and courses of business alleged in this Complaint, BMS, Schiff and Lane, directly or indirectly, made use of the means or instrumentalities of interstate commerce or of the mails. Some of these transactions, acts, practices and courses of business occurred within the District of New Jersey.

DEFENDANTS

8. Frederick S. Schiff, 56, is a resident of New York, New York. In 1973, Schiff was licensed as a certified public accountant (CPA) by the State of New York. At all relevant times, Schiff was a licensed CPA. From in or about April 2001 to in or about April 2002, when he resigned, Schiff was BMS' CFO. From in or about 1990 until in or about April 2001, Schiff was BMS' controller. From in or about 1982 to in or about 1989, Schiff held other financial and accounting positions within BMS. Before joining BMS, Schiff worked in public accounting for Arthur Young & Company in New York, New York. At all relevant times, Schiff was 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' business and financial goals.

9. Richard J. Lane, 53, is a resident of Doylestown, Pennsylvania. From in or about January 2000 to in or about April 2002, Lane was an Executive Vice President and President of BMS' Worldwide Medicines Group. As President of the Worldwide Medicines Group, Lane was in charge of BMS' 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. From in or about 1997 to 2000, Lane was President of BMS' U.S. Medicines Group.

From in or about 1995 to in or about 1997, Lane held other positions in BMS' Worldwide Medicines Group. Lane joined BMS in 1995 after working at several other pharmaceutical companies. At all relevant times, Lane was a member of the BMS Corporate Operating and Executive Committees.

RELATED PARTY

10. BMS is a Delaware corporation with offices and significant operations in New Jersey. BMS is a pharmaceutical and related health care products company. At all relevant times, BMS' securities were registered with the Commission pursuant to Section 12(b) of the Exchange Act and its common stock was actively traded on the NYSE. 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' sales and earnings were from sales of its pharmaceutical products.

THE FRAUDULENT CONDUCT

A. BACKGROUND

11. At all relevant times, BMS' primary business was the sale of prescription pharmaceutical products.

12. At all relevant times, BMS sold its pharmaceutical products in the United States through its U.S Medicines Group.

13. At all relevant times, BMS recognized revenue from sales of its pharmaceutical products upon shipment.

14. At all relevant times, BMS sold its pharmaceutical products primarily to a small number of U.S. wholesalers. Specifically, four U.S. wholesalers handled the distribution of approximately 85% of BMS' U.S. pharmaceutical products. These wholesalers sold BMS'

pharmaceutical products to thousands of independent pharmacies, retail chains and other health care providers across the country. Wholesalers generally purchased product at least sufficient to meet the demand of these retail businesses.

15. At all relevant times, BMS filed the following periodic reports with the Commission pursuant to Section 13(a) of the Exchange Act and the rules and regulations promulgated thereunder, each of which contained the consolidated financial statements of BMS and its subsidiaries:

Period	Date Filed	Form
Quarter ended March 31, 2000	5/15/00	10-Q
Quarter ended June 30, 2000	8/15/00	10-Q
Quarter ended Sept. 30, 2000	11/14/00	10-Q
Year ended Dec. 31, 2000	3/30/01	10-K
Quarter ended March 31, 2001	5/15/01	10-Q
Quarter ended June 30, 2001	8/14/01	10-Q
Quarter ended Sept. 30, 2001	11/14/01	10-Q
Year ended Dec. 31, 2001	4/01/02	10-K

16. Schiff reviewed and signed the following reports filed with the Commission: BMS' annual reports on Form 10-K for 2000 and 2001, and BMS' quarterly reports filed on Form 10-Q for the first, second and third quarters of 2000 and for the first and second quarters of 2001.

17. At all relevant times, BMS' stock was covered by Wall Street securities analysts. Wall Street securities analysts routinely issued quarterly and annual earnings estimates (collectively, analysts' earnings estimates) based, in significant part, on information publicly

communicated by the Company through: periodic reports on Forms 10-Q and 10-K, press releases and conference calls with analysts.

B. BMS' EARNINGS MANAGEMENT SCHEME

1. BMS' History of Channel-Stuffing

18. In the fourth quarter of 1991, prior to the conduct that is the subject of this action, BMS sold large quantities of its pharmaceutical products to its wholesalers in advance of a January 1992 price increase, which contributed to a significant buildup in wholesaler inventory. In the first two quarters of 1992, the buildup in wholesaler inventory caused wholesalers to sell, or “destock,” their excess inventory, and reduce their orders for new products. As a result, BMS' earnings were significantly lower than the Company had publicly projected. In a June 1992 press release, BMS admitted that its results were being significantly depressed by wholesaler destocking. The Company also admitted that wholesaler destocking was likely to continue in future quarters and, as a result, the Company significantly lowered its earnings projections for 1992. Following this announcement, BMS' share price dropped about 11%, from a high of 73¾ to 65¾. Shareholders, in turn, filed class action lawsuits alleging that BMS' officers deliberately misled the market, and negative press soon followed. BMS responded by, among other things, modifying its internal controls to closely monitor and restrict wholesaler purchases to prevent another buildup in excess wholesaler inventory and resulting reduction in BMS' earnings from wholesaler destocking. Defendant Schiff was BMS' controller at the time of these events. At Schiff and Lane's direction, BMS engaged in the channel-stuffing conduct that is the subject of this action despite these purportedly enhanced internal controls.

2. The “Double-Double,” “Mega-Double” and “Top Down” Budgeting

19. In or about 1994, BMS publicly announced a plan to double the sales, earnings and earnings per share that the Company reported for its fiscal year 1993 by the end of its fiscal year 2000. BMS called this plan the “Double-Double.” The Double-Double required average compound annual growth of approximately 10%.

20. In September 2000, BMS announced the Strategy for Growth, which incorporated an even more ambitious growth plan than the Double-Double called the “Mega-Double.” The Mega-Double was a plan to double the sales and earnings BMS reported for its fiscal year 2000 by the end of its fiscal year 2005. Achievement of the Mega-Double required average compound annual growth of nearly 15%.

21. At all relevant times, BMS, through Schiff, Lane and others promoted a corporate culture in which meeting or exceeding the Company’s internal earnings targets, dictated by the Double-Double and Mega-Double growth plans and analysts’ earnings estimates, was considered mandatory. Achieving these goals was known as “making the numbers” or “hitting the numbers.” Meeting internal earnings targets generally also resulted in sales and earnings that met or exceeded the analysts’ earnings estimates. To this end, BMS set aggressive internal sales and earnings targets in order to achieve the growth necessary to achieve the widely touted Double-Double and Mega-Double goals. During the scheme, Schiff and Lane pressured lower level employees to meet their internal earnings targets. Certain employees who suggested that the Company’s internal earnings targets were too aggressive or expressed doubts that they could make their numbers were subsequently transferred or demoted.

3. Channel-Stuffing to Achieve the Double-Double and Mega-Double

22. By in or about the fourth quarter of 1997, BMS began confronting millions of dollars in gaps between the internal earnings targets it had set for its business units and their actual operating results.

23. Lane and others pressured the U.S. Medicines Group to help make up the shortfalls that would be caused by these gaps by, among other things, inducing wholesalers to purchase excess inventory.

24. In or about the fourth quarter of 1997, the U.S. Medicines Group, which at that time was called the U.S. Pharmaceutical Group, responded to this pressure primarily by inducing the Company's wholesalers to purchase \$40 to \$50 million of excess inventory of BMS' pharmaceutical products.

25. In or about February 1998, the Vice President of Finance in the U.S. Medicines Group objected to this tactic. This executive raised her concerns in writing with Lane hoping it would dissuade him from accelerating sales ahead of demand in future periods. It did not.

26. When this practice continued over the first two quarters of 1998, the Vice President of Finance for the U.S. Medicines Group decided she could no longer continue in her position.

27. On about July 17, 1998, the Vice President of Finance for the U.S. Medicines Group met with the CFO of the U.S. Medicines Group and told him, in substance, that she could no longer continue in her position because she believed the practice of accelerating sales to wholesalers ahead of demand was wrong. The CFO of the U.S. Medicines Group responded by telling the Vice President of Finance of the U.S. Medicines Group that he would raise her concerns with Schiff. However, when the CFO of the U.S. Medicines Group went on vacation

shortly thereafter without getting back to her, the Vice President of Finance for the U.S. Medicines Group decided to meet with Lane.

28. Several days after her meeting with the CFO of the U.S. Medicines Group, the Vice President of Finance for the U.S. Medicines Group met with Lane. At that meeting, the Vice President of Finance for the U.S. Medicines Group again expressed her objection to BMS' practice of selling product in excess of prescription demand to meet the Company's internal targets. In her conversation with Lane, she also told him she could no longer continue in her position. She also told Lane that the situation had reached the point where she felt that she needed to go to Schiff and inform him that she could no longer continue in her position. Lane urged her not to go to Schiff because doing so would "limit Fred's options."

29. On or about July 30, 1998, the Vice President of Finance for the U.S. Medicines Group nevertheless met with Schiff. At this meeting, she told Schiff that "based on the amount of sales acceleration and the continuation of it that I was formally resigning my position." Schiff responded by stating, "If we can't make you comfortable in this position, we'll find something where you are comfortable." In or about September 1998, she was reassigned outside the medicines business. At this time, BMS' wholesalers were carrying excess inventory of about \$125 million.

30. In or about July 1999, BMS entered into an agreement to pay its second largest wholesaler 2% of the value of any excess inventory it agreed to take, per month, until this wholesaler sold the products. For purposes of this agreement, BMS permitted its second largest wholesaler to treat anything over two weeks of inventory on hand as excess inventory. BMS agreed to pay the 2% to this wholesaler through sales incentives on future purchases, primarily in the form of price discounts. These payments covered this wholesaler's costs of carrying excess

inventory, and guaranteed this wholesaler would meet its target return on investment of about 24 percent per year on any excess inventory this wholesaler agreed to take (ROI Agreement).

31. Schiff and Lane knew or were reckless in not knowing that BMS entered into this ROI Agreement with its second largest wholesaler. Schiff and Lane also knew or were reckless in not knowing that, pursuant to this ROI Agreement, BMS was covering this wholesaler's costs of carrying excess inventory, and guaranteeing this wholesaler would meet its target ROI of about 24 percent per year on any excess inventory this wholesaler agreed to take.

32. Since all of the risks of ownership of any excess inventory did not pass to this wholesaler upon shipment of goods pursuant to the ROI Agreement, generally accepted accounting principles (GAAP) did not permit BMS to recognize revenue from such transactions at the time of shipment. Nevertheless, from July 1999 through December 2001, at Schiff's direction, BMS improperly recorded revenue from all shipments to this wholesaler *upon shipment*. Schiff knew or was reckless in not knowing that BMS was recording revenues from all sales to its second largest wholesaler, including sales pursuant to the ROI Agreement, upon shipment. Schiff knew or was reckless in not knowing that GAAP did not permit BMS to record revenues from sales to its second largest wholesaler pursuant to this ROI Agreement upon shipment.

33. In or about August and October 1999, Schiff and Lane attended meetings regarding the 2000 budget. During these meetings, the head of the Worldwide Medicines Group presented a summary of his Group's projections and stated that he anticipated about 12% growth in 2000, with only 5% growth in the first quarter, far lower than BMS needed to achieve the Double-Double. He also stated that sales by the U.S. Medicines Group, which was the driver of his division's growth, had to be slower in the first half of 2000 in order to keep excess inventory

from increasing. At the end of the third quarter of 1999, excess inventory had risen to about \$180 million. Shortly after the October 1999 meeting, the head of the Worldwide Medicines Group was reassigned to a position outside the medicines business. Within BMS, his reassignment was widely regarded as a message that anyone challenging the internal earnings targets sought by BMS' officers would be removed or reassigned.

34. The 2000 budget ultimately approved by BMS targeted the Worldwide Medicines Group to grow by 17% in 2000 and the U.S. Medicines Group to grow in excess of 20%.

35. By 2000, BMS had met or exceeded analysts' earnings estimates for at least twenty-four straight quarters, and this consistency was part of the Company's public image. BMS, Schiff and Lane understood that the Company's failure to meet or exceed analysts' earnings estimates for a quarter likely would result in a decrease in the Company's stock price. However, in 2000 and 2001, the gaps between the internal earnings targets and demand increased significantly. To fill these widening gaps, at Schiff and Lane's direction, BMS' U.S. Medicines Group regularly used a variety of financial incentives to induce wholesalers to buy pharmaceutical products in excess of prescription demand so BMS could report higher sales and earnings. This practice, which is commonly known as "channel-stuffing," was referred to by BMS executives as "sales acceleration" or "trade loading."

36. BMS' channel-stuffing in 2000 and 2001 resulted in a steady quarter-after-quarter increase in excess inventory.

37. Schiff and Lane knew about the buildup in excess inventory in 2000 and 2001. They approved the quarterly sales plans for the U.S. Medicines Group and the financial incentives offered to wholesalers to induce them to purchase products ahead of demand. Schiff and Lane also knew that the wholesaler incentives were costing BMS millions of dollars per

quarter. Schiff and Lane also knew that the cost of the wholesaler incentives increased significantly from the beginning of 2000 until the end of 2001.

38. On or about January 29, 2000, upon being informed of an anticipated monthly sales shortfall of \$70 million, Lane wrote an email to the Vice President of Finance for the U.S. Medicines Group that stated, “This is troubling performance We will make our 1Q BUC [i.e., pre-tax earnings]!!”

39. On or about January 30, 2000, Lane sent the Vice President of Finance for the U.S. Medicines Group an email that stated:

I am very concerned about this start to the year. New York is very focused on making this years [sic] plan and hence has been focusing on early results as predictors. We need to really understand where we are in terms of trends to insure we are managing to make our numbers. You and I will also need to walk Fred through this as soon as we are ready.

40. On or about February 11, 2000, three executives in the U.S. Medicines Group, including the Vice President of Finance of the U.S. Medicines Group and the head of trade sales, met with Schiff and Lane. At this meeting, the three U.S. Medicines Group executives warned Schiff and Lane about the buildup in excess inventory resulting from channel-stuffing, and the rising costs of the sales incentives that were being granted to wholesalers to induce them to take excess inventory. In this meeting, the three U.S. Medicines Group executives explained to Schiff and Lane, among other things: (1) that there were gaps between the Company’s internal targets and prescription demand; (2) to close these gaps, the U.S. Medicines Group was using various financial incentives, which they identified, to induce wholesalers to purchase excess inventory near the end of each quarter; (3) the financial incentives BMS was using to induce wholesalers to take excess inventory each quarter were costing the Company millions of dollars each quarter, and these costs were rapidly increasing because wholesalers expected a return on

investment of 20-24% on any excess inventory they agreed to take; (4) the quarterly practice of selling excess inventory to boost sales and meet the targets was resulting in an unusual buildup of excess inventory; and (5) this unusual buildup of excess inventory posed a risk to the Company's future sales and earnings.

41. On or about February 18, 2000, Schiff and Lane approved a plan to offer wholesalers extended payment terms to induce these wholesalers to take an additional \$180 million in pharmaceutical products to bring BMS' February sales closer to its projections. As a result, excess inventory rose to at least \$230 million by the end of the first quarter of 2000. In addition, the extended payment terms reduced the Company's first quarter cash flow by \$180 million, and cost the Company millions of additional dollars in lost interest income.

42. On or about March 15, 2000, executives in the U.S. Medicines Group, including the Vice President of Finance, again warned Schiff and Lane about the buildup in excess inventory. They also warned Schiff and Lane about the risk that the buildup in excess inventory posed to BMS' future sales and earnings. They also warned Schiff and Lane of the rising costs of the wholesaler incentives. They also recommended that BMS take steps to reduce excess inventory by the end of 2000.

43. In or about March 2000, with Schiff and Lane's knowledge, BMS retained an outside consultant (Consultant) to study the buildup in excess inventory, the wholesaler sales incentives and the Company's relationships with its wholesalers (wholesaler inventory project).

44. From in or about April to May 2000, in connection with the wholesaler inventory project, the Consultant investigated the nature of BMS' relationship with its wholesalers, the magnitude of the buildup of excess inventory and the likely effects on BMS' current and future operations.

45. On or about May 5, 2000, the Vice President of Finance for the U.S. Medicines Group sent Schiff and Lane an email informing them that: (1) he had updated the excess inventory projections; (2) the projected first quarter ending inventory had increased by \$45 million; and (3) the projected excess inventory for the second through fourth quarters of 2000 had increased by \$30 to \$35 million. Lane replied, in pertinent part, “This is not good. We need to either drive volume up or cut expenses to offset.”

46. On or about May 15, 2000, BMS filed its Form 10-Q for the first quarter of 2000 with the Commission. BMS publicly reported results that met or exceeded analysts’ earnings estimates. However, this filing materially overstated BMS’ sales, earnings and earnings per share. This filing also failed to disclose that: (1) BMS stuffed its distribution channels with millions of dollars of excess inventory near the end of the quarter to artificially inflate its financial results and meet the Double-Double targets and analysts’ earnings estimates; (2) BMS was stuffing its distribution channels by using financial incentives to induce wholesalers to buy excess inventory; (3) BMS was covering the costs that its second largest wholesaler was incurring from carrying the excess inventory and guaranteeing that wholesaler a specified return on any excess inventory it agreed to take until it sold the products; (4) channel-stuffing was causing an unusual buildup in excess inventory; and (5) this unusual buildup in excess inventory posed a material risk to BMS’ future sales and earnings. Schiff reviewed and signed this filing.

47. On or about May 19, 2000, Lane wrote an email to three subordinate executives in the U.S. Medicines Group stating, “Sales continue to be concerningly weak. We need to make our May target! [W]hen will start to happen??”

48. On or about May 19, 2000, the Consultant presented its findings from the wholesaler inventory project to Schiff and Lane. The Consultant informed Schiff and Lane,

among other things, that: (1) BMS' wholesalers were carrying between \$230 million of excess inventory at the end of the first quarter of 2000, assuming wholesalers needed one month of inventory on hand for normal operations, and \$387 million of excess inventory, assuming wholesalers needed only 21 days of inventory on hand for normal operations; (2) BMS' wholesalers were carrying high levels of excess inventory, both in absolute terms, and relative to competitors; (3) excess inventory "pose[d] risks to earnings" because wholesalers would eventually work down such inventory by destocking, and wholesalers would pass on the increased costs of carrying excess inventory to BMS since they "expect a return on investment above their cost of capital"; (4) "the high levels of [excess wholesaler] inventory and the wholesalers' knowledge of [BMS'] need to meet quarterly targets may increase the wholesalers' leverage;" and (5) the cost of the wholesaler incentives had increased from \$2.31 million in the first quarter of 1999 to \$7.65 million in the first quarter of 2000, and were continuing to increase beyond that.

49. The Consultant recommended that BMS reduce its excess inventory levels. However, BMS did not follow this recommendation.

50. Instead, BMS increased its efforts to stuff the channel with excess inventory to meet the sales and earnings projections set by BMS' officers. In or about July 2000, BMS entered into an agreement with its largest wholesaler to ensure that its largest wholesaler would continue to take on additional excess inventory. This agreement was substantially similar to the ROI Agreement the Company entered into with its second largest wholesaler about a year earlier. Specifically, the Company agreed to guarantee this wholesaler an annual ROI of at least 25% on any excess inventory this wholesaler agreed to take. Moreover, for purposes of this agreement, BMS allowed this wholesaler to treat anything over 21 days on hand as excess

inventory. BMS further agreed that, if this wholesaler's ROI on excess inventory fell below 25%, the Company would provide this wholesaler with sales incentives on future purchases, primarily in the form of price discounts.

51. Schiff and Lane knew or were reckless in not knowing that: (1) BMS' had entered into this ROI Agreement with the Company's largest wholesaler; and (2) pursuant to this ROI Agreement, BMS was covering this wholesaler's costs of carrying excess inventory, and guaranteeing that this wholesaler would meet its target ROI of about 25 percent on any excess inventory this wholesaler agreed to take, until it sold the products.

52. Since all of the risks of ownership did not pass to this wholesaler upon shipment of goods pursuant to this ROI Agreement, GAAP did not permit BMS to recognize revenue from sales to this wholesaler pursuant to the ROI Agreement upon shipment. Nevertheless, from July 2000 through at least December 2001, at Schiff's direction, BMS improperly recognized revenue from all sales to this wholesaler, including sales pursuant to this ROI Agreement, *upon shipment*. Schiff knew or was reckless in not knowing that GAAP did not permit BMS to recognize revenue from sales to the Company's largest wholesaler pursuant to this ROI Agreement upon shipment.

53. On July 20, 2000, BMS conducted a conference call with securities analysts regarding BMS' second quarter 2000 results. During this call, an analyst asked, in pertinent part, "any unusual inventory builds? ..." In response, Lane stated that, "There was no change in our channel management." Lane's response was misleading because Lane failed to disclose that: (1) BMS was undertaking increasing efforts to stuff its distribution channels with millions of dollars of excess inventory near the end of each quarter to artificially inflate its financial results and meet the Double-Double targets and analysts' earnings estimates; (2) BMS was stuffing its

distribution channels by using financial incentives to induce wholesalers to purchase excess inventory; (3) BMS was covering the costs its two largest wholesalers incurred from carrying the excess inventory and was guaranteeing those wholesalers a specified return on any excess inventory they agreed to take, until they sold the products; (4) channel-stuffing was causing an unusual buildup in excess inventory; and (5) this unusual buildup in excess inventory posed a material risk to BMS' future sales and earnings.

54. On or about August 7, 2000, the U.S. Medicines Group warned Schiff that the Company had to offer additional sales incentives to the Company's wholesalers to induce them to take \$200-250 million in additional pharmaceutical products in order for the Company to achieve the August sales targets.

55. On or about August 15, 2000, BMS filed its Form 10-Q for the second quarter of 2000. BMS' reported results that met or exceeded analysts' earnings estimates. However, this filing materially overstated BMS' sales, earnings and earnings per share. This filing also failed to disclose that: (1) BMS had stuffed its distribution channels with millions of dollars of excess inventory near the end of the quarter to artificially inflate its financial results and meet the Double-Double targets and analysts' earnings estimates; (2) BMS stuffed its distribution channels by using financial incentives to induce wholesalers to purchase excess inventory; (3) BMS was covering the costs its two largest wholesalers incurred from carrying the excess inventory and was guaranteeing those wholesalers a specified return on any excess inventory they agreed to take, until they sold the products; (4) channel-stuffing was causing an unusual buildup in excess inventory; and (5) this unusual buildup in excess inventory posed a material risk to BMS' future sales and earnings. Schiff reviewed and signed this filing.

56. On or about September 28, 2000, BMS publicly announced the Mega-Double growth plan, which was to go into effect at the beginning of fiscal year 2001. The Mega-Double significantly increased the pressure on the U.S. Medicines Group to find ways to generate incremental sales and earnings.

57. On or about October 19, 2000, BMS issued a press release regarding its results for the third quarter of 2000. BMS' reported results met or exceeded analysts' earnings estimates. However, this release materially overstated BMS' sales, earnings and earnings per share. This release also failed to disclose that: (1) BMS had stuffed its distribution channels with millions of dollars of excess inventory near the end of the quarter to artificially inflate its financial results and meet the Double-Double targets and analysts' earnings estimates; (2) BMS stuffed its distribution channel by using financial incentives to induce wholesalers to purchase excess inventory; (3) BMS was covering the costs its two largest wholesalers incurred from carrying the excess inventory and guaranteeing these wholesalers a specified return on any excess inventory they agreed to take, until they sold the products; (4) channel-stuffing was causing an unusual buildup in excess inventory; and (5) this unusual buildup in excess inventory posed a material risk to BMS' future sales and earnings.

58. On or about October 19, 2000, BMS conducted a conference call with analysts to discuss its third quarter results. During this call, an analyst asked BMS to "review any wholesaler inventory actions in the quarter on various products." In response, Lane misrepresented that: "I don't think there was really any significant wholesaler inventory activity in the quarter." Lane failed to disclose that: (1) BMS had stuffed its distribution channels with millions of dollars of excess inventory near the end of the quarter to artificially inflate its financial results and meet the Double-Double targets and analysts' earnings estimates; (2) BMS

stuffed its distribution channels by using financial incentives to wholesalers to induce them to buy excess inventory; (3) BMS was covering the costs its two largest wholesalers incurred from carrying the excess inventory and guaranteeing those wholesalers a specified return on any excess inventory they agreed to take, until they sold the products; (4) channel-stuffing was causing an unusual buildup in excess inventory; and (5) this unusual buildup in excess inventory posed a material risk to BMS' future sales and earnings.

59. On or about November 15, 2000, BMS filed its Form 10-Q for the third quarter of 2000 with the Commission. BMS reported results which met or exceeded analysts' estimates. However, this filing materially overstated BMS' sales, earnings and earnings per share. This filing also failed to disclose: (1) BMS had stuffed its distribution channels with millions of dollars of excess inventory near the end of each quarter to artificially inflate its financial results and meet the Double-Double targets and analysts' earnings estimates; (2) BMS stuffed its distribution channels by using financial incentives to wholesalers to induce them to buy excess inventory; (3) BMS was covering the costs its two largest wholesalers incurred from carrying the excess inventory and guaranteeing these wholesalers a specified return on any excess inventory they agreed to take, until they sold the products; (4) channel-stuffing was causing an unusual buildup in excess inventory; and (5) this unusual buildup in excess inventory posed a material risk to BMS' future sales and earnings. Schiff reviewed and signed this filing.

60. In the fourth quarter of 2000, with Schiff and Lane's knowledge, BMS again engaged in channel-stuffing near the end of the quarter to meet the Double-Double targets, which contributed to a further buildup in excess inventory. By the end of the fourth quarter of 2000, excess inventory had risen to at least \$500 million.

61. On January 24, 2001, BMS issued a press release announcing its results for the fourth quarter of 2000 and for the full year 2000. In this release, the Company in essence stated that it accomplished the Double-Double. Specifically, the Company stated, “We have moved from single-digit growth rates seven years ago to an accelerated rate of 15%, helping us to meet the goal we set back then of doubling earnings and earnings per share by the end of 2000, essentially doubling the size of the Company over that period.” However, this release materially overstated BMS’ sales, earnings and earnings per share for the fourth quarter of 2000 and full year 2000. The release also failed to disclose that: (1) BMS had stuffed its distribution channels with millions of dollars of excess inventory near the end of each quarter in 2000 to artificially inflate its financial results and meet the Double-Double targets and analysts’ earnings estimates; (2) BMS stuffed its distribution channel by using financial incentives to wholesalers to induce them to buy excess inventory; (3) each quarter in 2000, BMS covered the costs its second largest wholesaler incurred from carrying the excess inventory and guaranteed these wholesalers a specified return on any excess inventory it agreed to take, until they sold the products; and BMS granted the same financial incentives to its largest wholesaler in the third and fourth quarters of 2000; (4) channel-stuffing was causing an unusual buildup in excess inventory; and (5) this unusual buildup in excess inventory posed a material risk to BMS’ future sales and earnings.

62. In the first quarter of 2001, at Schiff and Lane’s direction, BMS again stuffed its distribution channels with excess inventory near the end of the quarter to meet the Mega-Double-Double targets. As a result of channel-stuffing in the first quarter of 2001, excess inventory rose to about \$650 million.

63. In or about April 2001, Schiff was appointed chief financial officer of BMS.

64. On or about April 2, 2001, BMS filed its 2000 Form 10-K with the Commission. BMS reported results that met or exceeded analysts' earnings estimates. This filing materially overstated BMS' sales, earnings and earnings per share. This filing also failed to disclose that: (1) BMS stuffed its distribution channels with millions of dollars of excess inventory near the end of the quarter to artificially inflate its financial results and meet the Mega-Double targets and analysts' earnings estimates; (2) BMS stuffed its distribution channels by using financial incentives to wholesalers to induce them to buy excess inventory; (3) BMS was covering the costs its two largest wholesalers incurred from carrying the excess inventory and guaranteeing those wholesalers a specified return on any excess inventory they agreed to take, until they sold the products; (4) channel-stuffing was causing an unusual buildup in excess inventory; and (5) this unusual buildup in excess inventory posed a material risk to BMS' future sales and earnings. Schiff reviewed and signed this filing.

65. On or about April 25, 2001, BMS issued a press release announcing record-breaking results for the first quarter of 2001. BMS' reported results for the first quarter of 2001 met or exceeded analysts' earnings estimates. However, this release materially overstated BMS' sales, earnings and earnings per share. This release also failed to disclose that: (1) the Company stuffed its distribution channels with millions of dollars of excess inventory near the end of the quarter to artificially inflate its financial results and meet the Mega-Double targets and analysts' earnings estimates; (2) BMS stuffed its distribution channels by using financial incentives to wholesalers to induce them to buy excess inventory; (3) BMS was covering the costs its two largest wholesalers incurred from carrying the excess inventory and guaranteeing those wholesalers a specified return on any excess inventory they agreed to take, until they sold the

products; (4) channel-stuffing was causing an unusual buildup in excess inventory; and (5) this unusual buildup in excess inventory posed a material risk to BMS' future sales and earnings.

66. On April 25, 2001, BMS also conducted a conference call with analysts to discuss BMS' first quarter 2001 results. Schiff and Lane participated in this conference call. During the call, Schiff misrepresented BMS' excess inventory situation. Specifically, an analyst asked: "[G]iven the large number of price increases in Q1, any unusual buying patterns we need to be aware of in Q2?" Schiff CFO responded that, "We look at, very closely, the wholesaler stocking inventories, and we've looked at it very closely this quarter as well as with all previously... there are no unusual items that we see in the inventory levels." Schiff and Lane failed to disclose that: (1) BMS was stuffing its distribution channels with millions of dollars of excess inventory near the end of each quarter to artificially inflate its financial results and meet the Mega-Double targets and analysts' earnings estimates; (2) BMS stuffed its distribution channel by using financial incentives to wholesalers to induce them to buy excess inventory; (3) BMS was covering the costs its two largest wholesalers incurred from carrying the excess inventory and guaranteeing those wholesalers a specified return on any excess inventory they agreed to take, until they sold the products; (4) channel-stuffing was causing an unusual buildup in excess inventory; and (5) this unusual buildup in excess inventory posed a material risk to BMS' future sales and earnings.

67. On or about May 11, 2001, BMS filed its Form 10-Q for the first quarter of 2001 with the Commission. BMS reported results met or exceeded analysts' earnings estimates. However, this filing materially overstated BMS' sales, earnings and earnings per share. This filing failed to disclose that: (1) BMS was stuffing its distribution channels with millions of dollars of excess inventory near the end of each quarter to artificially inflate its financial results

and meet the Mega-Double targets and analysts' earnings estimates; (2) BMS stuffed its distribution channel by using financial incentives to wholesalers to induce them to buy excess inventory; (3) BMS was covering the costs its two largest wholesalers incurred from carrying the excess inventory and was guaranteeing those wholesalers a specified return on any excess inventory they agreed to take, until they sold the products; (4) channel-stuffing was causing an unusual buildup in excess inventory; and (5) this unusual buildup in excess inventory posed a material risk to BMS' future sales and earnings. Schiff reviewed and signed this filing.

68. In the second quarter of 2001, at Schiff and Lane's direction, BMS again stuffed its distribution channels with excess inventory near the end of the quarter to meet the Mega-Double targets. By June 2001, as a result of BMS' channel-stuffing activities, excess inventory increased to about \$900 million.

69. In or about July 2001, with Schiff and Lane's approval, BMS informed its wholesalers of a price increase. At or prior to the effective date of this price increase, with Schiff and Lane's approval, BMS offered its wholesalers the opportunity to purchase four weeks of additional inventory of BMS' pharmaceutical products at the current, lower prices. As a result, excess inventory levels climbed even higher in the following months.

70. In or about July 2001, BMS also registered \$5 billion in debt securities. BMS incorporated, by reference, its 2000 Form 10-K and first quarter 2001 Form 10-Q into an unallocated shelf registration statement on Form S-3 initially filed on July 19, 2001. BMS filed an amended Form S-3 on August 9, 2001, which also incorporated by reference BMS' 2000 Form 10-K and first quarter 2001 Form 10-Q. BMS' 2000 Form 10-K and first quarter 2001 Form 10-Q reported results that met or exceeded analysts' earnings estimates. However, both of these filings materially overstated BMS' sales, earnings and earnings per share. These filings

also failed to disclose: (1) BMS stuffed its distribution channels with millions of dollars of excess inventory near the end of the quarter to artificially inflate its financial results and meet the Mega-Double targets and analysts' earnings estimates; (2) BMS stuffed its distribution channels by using financial incentives to wholesalers to induce them to buy excess inventory; (3) BMS was covering the costs its two largest wholesalers incurred from carrying the excess inventory and guaranteeing those wholesalers a specified return on any excess inventory they agreed to take, until they sold the products; (4) channel-stuffing was causing an unusual buildup in excess inventory; and (5) this unusual buildup in excess inventory posed a material risk to BMS' future sales and earnings. Schiff reviewed and signed BMS' 2000 Form 10-K, first quarter 2001 Form 10-Q, the Form S-3 initially filed on July 19, 2001, and the amended Form S-3 filed on August 9, 2001. Beginning in or about September 2001, BMS offered and sold these securities.

71. On or about July 25, 2001, BMS issued a press release regarding its results for the second quarter of 2001. BMS' reported results met or exceeded analysts' earnings estimates. However, this release materially overstated BMS' sales, earnings and earnings per share. This release also failed to disclose that: (1) BMS was stuffing its distribution channels with millions of dollars of excess inventory near the end of each quarter to artificially inflate its financial results and meet the Mega-Double targets and analysts' earnings estimates; (2) BMS stuffed its distribution channel by using financial incentives to wholesalers to induce them to buy excess inventory; (3) BMS was covering the costs its two largest wholesalers incurred from carrying the excess inventory and was guaranteeing those wholesalers a specified return on any excess inventory they agreed to take, until they sold the products; (4) channel-stuffing was causing an unusual buildup in excess inventory; and (5) this unusual buildup in excess inventory posed a material risk to BMS' future sales and earnings.

72. On or about August 14, 2001, the Vice President of Finance for the U.S. Medicines Group informed Schiff and Lane that “we could close the quarter to meet projection (sic), but we would add significantly to the wholesaler pipeline in the process and pay incremental dollars to wholesalers for their carrying costs. Wholesaler inventories would grow even larger at the current 4Q projection ... This is pretty big news, sorry ...” The same day, BMS filed its Form 10-Q for the second quarter of 2001. This filing materially overstated BMS’ sales, earnings and earnings per share. This filing also failed to disclose that: (1) BMS was stuffing its distribution channels with millions of dollars of excess inventory near the end of each quarter to artificially inflate its financial results and meet the Mega-Double targets and analysts’ earnings estimates; (2) BMS stuffed its distribution channel by using financial incentives to wholesalers to induce them to buy excess inventory; (3) BMS was covering the costs its two largest wholesalers incurred from carrying the excess inventory and was guaranteeing those wholesalers a specified return on any excess inventory they agreed to take, until they sold the products; (4) channel-stuffing was causing an unusual buildup in excess inventory; and (5) this unusual buildup in excess inventory posed a material risk to BMS’ future sales and earnings. Schiff signed this filing

73. On or about August 29, 2001, the Vice President of Finance for the U.S. Medicines Group informed Schiff and Lane that, for the third quarter of 2001, excess inventory at the wholesalers would increase an additional \$470 million over the second quarter of 2001.

74. On or about August 30, 2001, Lane was informed by a subordinate that excess inventory was projected to exceed \$1 billion by the end of the third quarter of 2001, and that the cost of the sales incentives to compensate wholesalers for carrying excess inventory was projected to be \$47 million for the quarter.

75. In or about October 2001, at a meeting attended by Schiff and Lane, the Vice President of Finance of the U.S. Medicines Group stated that: (1) he estimated there was \$900 million to \$1 billion in excess inventory in the channel; and (2) he considered excess inventory to be the most serious risk to the U.S. Medicines Group meeting its projections for 2002. The Vice President of Finance of the U.S. Medicines Group also explained that the \$900 million to \$1 billion of excess inventory in the channel “means it’s a billion dollars you don’t sell next year if the [wholesalers] don’t need it.”

76. On or about October 23, 2001, BMS issued a press release regarding its third quarter 2001 results. BMS’ reported results met or exceeded analysts’ earnings estimates. However, this release materially overstated BMS’ sales, earnings and earnings per share. This release also failed to disclose that: (1) BMS was stuffing its distribution channels with millions of dollars of excess inventory near the end of each quarter to artificially inflate its financial results and meet the Mega-Double targets and analysts’ earnings estimates; (2) BMS stuffed its distribution channel by using financial incentives to wholesalers to induce them to buy excess inventory; (3) BMS was covering the costs its two largest wholesalers incurred from carrying the excess inventory and was guaranteeing those wholesalers a specified return on any excess inventory they agreed to take, until they sold the products; (4) channel-stuffing was causing an unusual buildup in excess inventory; and (5) this unusual buildup in excess inventory posed a material risk to BMS’ future sales and earnings.

77. On or about October 23, 2001, BMS conducted a conference call with securities analysts regarding BMS’ third quarter results. Schiff and Lane participated in this call. During this call, Schiff misrepresented that: “Our wholesaler inventory levels in the U.S. overall increased a couple of weeks. [The Company] anticipate[s] lower levels in the fourth quarter.”

Schiff and Lane failed to disclose that: (1) BMS was stuffing its distribution channels with millions of dollars of excess inventory near the end of each quarter to artificially inflate its financial results and meet the Mega-Double targets and analysts' earnings estimates; (2) BMS stuffed its distribution channel by using financial incentives to wholesalers to induce them to buy excess inventory; (3) BMS was covering the costs its two largest wholesalers incurred from carrying the excess inventory and was guaranteeing those wholesalers a specified return on any excess inventory they agreed to take, until they sold the products; (4) channel-stuffing was causing an unusual buildup in excess inventory; and (5) this unusual buildup in excess inventory posed a material risk to BMS' future sales and earnings.

78. On or about November 15, 2001, Lane gave his written approval for a package of \$85 million in additional sales incentives to wholesalers in the fourth quarter of 2001.

79. On or about December 13, 2001, BMS conducted a conference call with securities analysts that was outside the regular analyst conference call cycle. Schiff and Lane participated in this call. During the call, Schiff misrepresented that, "We said at the third quarter the inventory levels are slightly higher. They would be reduced by the end of the year. And that's the guidance we're really giving on the inventory levels. We don't see any significant changes in that in the guidance that we're giving." Schiff and Lane failed to disclose that: (1) BMS was engaging in increasing efforts to stuff its distribution channels with millions of dollars of excess inventory near the end of each quarter to artificially inflate its financial results and meet the Mega-Double targets and analysts' earnings estimates; (2) BMS stuffed its distribution channel by using financial incentives to wholesalers to induce them to buy excess inventory; (3) BMS was covering the costs its two largest wholesalers incurred from carrying the excess inventory and was guaranteeing those wholesalers a specified return on any excess inventory they agreed

to take, until they sold the products; (4) channel-stuffing was causing an unusual buildup in excess inventory; and (5) this unusual buildup in excess inventory posed a material risk to BMS' future sales and earnings.

80. On December 18, 2001, the head of BMS' U.S. Primary Care Division, a division of the U.S. Medicines Group, warned Lane about the high levels of wholesaler inventory in the channel.

81. At no time during the relevant period did BMS, Schiff or Lane disclose that: (1) BMS was stuffing its distribution channels with millions of dollars of excess inventory near the end of each quarter to artificially inflate its financial results and meet the Double-Double or Mega-Double targets and analysts' earnings estimates; (2) BMS stuffed its distribution channel by using financial incentives to wholesalers to induce them to buy excess inventory; (3) BMS was covering the costs of certain of its wholesalers incurred from carrying the excess inventory and was guaranteeing those wholesalers a specified return on any excess inventory they agreed to take, until they sold the products; (4) channel-stuffing was causing an unusual buildup in excess inventory; and (5) this unusual buildup in excess inventory posed a material risk to BMS' future sales and earnings.

82. The channel-stuffing activities that Schiff and Lane directed in 2000 and 2001 circumvented the enhanced internal controls the Company implemented after the events described in paragraph 18 to monitor and restrict wholesaler purchases.

4. Additional Improper Accounting

83. When BMS' financial results fell short of analysts' earnings estimates despite its efforts to stuff excess inventory into the channel, at Schiff's direction, the Company used improperly established reserves to further inflate its earnings in order to meet those estimates.

84. In furtherance of the scheme to artificially inflate its earnings, BMS, at Schiff's direction, improperly established reserves associated with certain divestiture transactions by inflating the reserves above what Schiff's assistant controllers had determined to be necessary to cover the costs associated with the transaction. These reserves were established contrary to GAAP. At Schiff's direction, portions of the improperly established reserves were improperly reversed into earnings in subsequent quarters when the Company needed a penny or two per share of earnings in order meet the Double-Double or Mega-Double targets and analysts' earnings estimate. BMS, at Schiff's direction, thereby improperly transformed one-time gains into operating income, thus giving investors the false impression that BMS' continuing operations had met or exceeded its targets.

85. BMS improperly established and reversed reserves in connection with divestiture transactions in at least the following amounts:

<u>Year</u>	Amount of Divestiture Reserves Inappropriately Established	Divestiture Reserves Inappropriately Reversed Into Income
2000	\$104 million	\$ 66 million
2001	\$115 million	\$157 million

86. For each divestiture, Schiff reviewed an assistant controller's calculation of the gain (or loss) on the transaction. GAAP permits a company to establish reserves only for identifiable, probable and estimable risks. Instead, in each case, Schiff inflated the divestiture reserves, directly or indirectly, above what the assistant controller had determined to be necessary to cover the costs associated with the divestiture transactions, contrary to GAAP.

87. Schiff told his assistant controllers that he wanted no surprises, smooth earnings, and no unusual gains or losses that BMS would have to explain to investors. As a result, his

assistant controllers inflated divestiture reserves, as Schiff directed, in order to later use them to smooth earnings. In addition to the inflated divestiture reserves, Schiff also suggested that his assistant controllers create, in connection with divestitures, inappropriate “corporate contingency” reserves not in accordance with GAAP. Schiff approved all of his assistant controllers’ gain calculations and the reserves improperly established in connection with each divestiture transaction.

88. Following the creation of these improper divestiture reserves, Schiff oversaw and approved the improper reversal of portions of such reserves into BMS’ operating income.

89. Schiff kept track of the “corporate contingency” reserves, and other inflated reserve accounts, by recording them on a reserve schedule. The reserve schedule operated as a scorecard that tracked, on a quarterly basis, when cookie jar reserves were created, and when they were reversed into operating income. The head of the corporate staff accounting department, who reported to Schiff, maintained the reserve schedule. Only excess reserves that could be reversed into earnings were placed on the reserve schedule. Schiff decided which reserves were placed on the schedule and which reserves were removed or reversed into earnings; or his assistant controllers did so with his approval.

90. At Schiff’s direction, BMS used the improper reserves to give the Company the incremental earnings it needed to falsely claim that it met analysts’ earnings estimates in the second quarter of 2000, and the first, third and fourth quarters of 2001:

	Q2 2000	Q1 2001	Q3 2001	Q4 2001
Amount of Reserves Reversed into earnings (in millions)	\$54.5	\$72.2	\$34.2	\$48.2
Analysts’ Consensus Estimate of Diluted EPS	\$0.54	\$0.62	\$0.63	\$0.59
BMS’ Reported	\$0.54	\$0.63	\$0.63	\$0.59

Diluted EPS				
Amount of Diluted EPS Gained from Reversal of “Cookie Jar” Reserves	\$0.02	\$0.02	\$0.01	\$0.02

91. In March 2003, BMS restated most of the reserves listed on the reserve schedules. In its March 2003 restatement, BMS admitted that there was no “quantifiable or specific category of liability supporting the establishment of ... portions of these liabilities and such amounts were ultimately inappropriately reversed.”

C. FAILURE TO PROPERLY ACCRUE FOR MEDICAID AND PRIME VENDOR REBATE LIABILITIES

92. As a result of the buildup in excess inventory, BMS materially understated its accruals for certain rebate liabilities incurred by the Company in connection with the pharmaceutical sales associated with its channel-stuffing.

93. Schiff knew that a portion of BMS pharmaceutical products would be sold by the wholesalers to Medicaid recipients or prime vendors. Prime vendors are customers of the wholesalers who purchase large quantities of BMS’ products. Schiff knew that BMS had alternate pricing arrangements with these customers and these special pricing arrangements required BMS to pay rebates to these customers. The Medicaid Rebate Program is a federal program that is managed by the individual member states. The purpose of the Medicaid Rebate Program is to ensure that Medicaid pays outpatient drug prices that are as low as the prices paid by managed healthcare plans or other customers. That objective is met through the payment of rebates by drug manufacturers, such as BMS, to state Medicaid agencies.

94. Under GAAP, at all relevant times, BMS was required to estimate and accrue for Medicaid and prime vendor rebate liabilities at the time of sale to the wholesalers by recording a reduction to revenue and a corresponding liability.

95. At Schiff and Lane's direction, BMS was stuffing its distribution channels with millions of dollars of excess inventory near the end of each quarter to artificially inflate its financial results and meet the Double-Double or Mega-Double targets and analysts' earnings estimates. GAAP required BMS to estimate and accrue for Medicaid and prime vendor rebate liabilities on all sales at the time of sale to wholesalers. However, at Schiff's insistence, BMS did not fully accrue for Medicaid and prime vendor rebate liabilities with respect to the excess inventory of BMS' pharmaceutical products at the wholesalers, contrary to GAAP.

96. As a result of understating its accruals for Medicaid and prime vendor rebate liabilities, BMS inflated its pre-tax earnings in 2001 and 2000 by \$145 million and \$117 million, respectively.

97. On or about April 25, 2002, BMS admitted that it under-accrued for Medicaid and prime vendor rebate liabilities in 2000 and 2001 in connection with pharmaceutical sales associated with the channel-stuffing, and took a one-time adjustment to increase these accruals. This one-time adjustment reduced the Company's first quarter 2002 pre-tax net earnings by \$262 million.

D. SCHIFF MISREPRESENTED AND FAILED TO DISCLOSE MATERIAL FACTS TO BMS' AUDITORS

98. In connection with: (1) the audit and examination of BMS' financial statements for its fiscal years 2000 and 2001 by its auditors, PricewaterhouseCoopers LLP (PwC); and (2) the preparation and filing by BMS of reports required to be filed with the Commission, Schiff misrepresented and failed to disclose material facts to PwC with respect to BMS' fraudulent channel-stuffing and "cookie jar" reserve activities, and the rebate under-accrual.

99. PwC's audit engagement partner, Jorge Milo (Milo), met with Schiff at least once each quarter between January 2000 and December 2001 and inquired, among other things, about business issues facing BMS. During these meetings, Schiff ascribed BMS' revenue growth to improved sales and marketing activities. He never disclosed to Milo: BMS' channel-stuffing activities, the resulting excess inventory buildup, the improper reserve activities described above in paragraphs 80 through 88 or the fact that BMS was accruing for Medicaid and prime vendor rebates contrary to GAAP, as described above in paragraphs 89 through 94.

100. In addition, prior to the conclusion of the 2000 and 2001 audits of BMS' financial statements, PwC asked BMS about its sales terms, reviewed BMS' written sales contracts with wholesalers, and reviewed BMS' revenue recognition policies. Schiff never disclosed to Milo that: (1) BMS was stuffing its distribution channels with millions of dollars of excess inventory near the end of each quarter to artificially inflate its financial results and meet the Double-Double or Mega-Double targets and analysts' earnings estimates; (2) BMS stuffed its distribution channel by using financial incentives to wholesalers to induce them to buy excess inventory; (3) pursuant to oral side agreements, BMS was covering the costs of certain of its wholesalers incurred from carrying the excess inventory and was guaranteeing those wholesalers a specified return on any excess inventory they agreed to take, until they sold the products; (4) channel-stuffing was causing an unusual buildup in excess inventory; (5) this unusual buildup in

excess inventory posed a material risk to BMS' future sales and earnings; (6) BMS was improperly accounting for divestiture reserves to artificially inflate its earnings, meet the Double-Double and Mega-Double targets and analysts' earnings estimates, or (7) BMS understated its accruals for certain rebate liabilities with respect to the excess inventory. Schiff also failed to disclose to Milo Schiff's role in BMS' fraud scheme, the findings of the wholesaler inventory project and the various concerns raised by BMS executives about BMS' channel-stuffing activities.

101. Schiff signed a management representation letter to PwC dated January 24, 2001 in connection with the 2000 year-end audit of BMS' financial statements. Schiff also signed a management representation letter to PwC dated January 24, 2002 in connection with the 2001 year-end audit of BMS' financial statements. Schiff caused these letters to be sent to PwC. These letters stated that BMS' financial statements, results of operation and cash flows for the years ended 2000 and 2001 were fairly presented in conformity with GAAP. These letters misrepresented that: (1) the financial statements and appended notes included all disclosures necessary for a fair presentation of the financial position, results of operation and cash flows of the Company in accordance with GAAP, and disclosures otherwise required to be included therein by the laws and regulations of which the Company is subject; (2) no matters or occurrences have come to the Company's attention up to the date of this letter which would materially affect the financial statements and related disclosures for the three years ended, December 31, 2000, and the three years ended December 31, 2001, or although not affecting such financial statements or disclosures, have caused or are likely to cause any material change, adverse or otherwise, in the financial position or results of operations of the Company; (3) no material transactions, agreements or accounts that have not been properly recorded in the

accounting records underlying the consolidated financial statements; (4) there are no uncorrected financial statements misstatements that could have a material effect on the consolidated financial statements; and (5) there has been no: (a) fraud involving management or employees who have significant roles in the Company's internal controls, (b) fraud involving others that could have a material effect on the consolidated financial statements, (c) violations or possible violations of laws or regulations whose effects should be considered for disclosure in the consolidated financial statements or as a basis for recording a loss contingency.

102. The January 24, 2001 and January 24, 2002 management representation letters signed by Schiff also failed to disclose to PwC, among other things, that: (1) BMS was stuffing its distribution channels with millions of dollars of excess inventory near the end of each quarter to artificially inflate its financial results and meet the Double-Double and Mega-Double targets and analysts' earnings estimates; (2) BMS stuffed its distribution channel by using financial incentives to wholesalers to induce them to buy excess inventory; (3) BMS was covering the costs of certain of its wholesalers incurred from carrying the excess inventory and was guaranteeing those wholesalers a specified return on any excess inventory they agreed to take, until they sold the products; (4) channel-stuffing was causing an unusual buildup in excess inventory; (5) this unusual buildup in excess inventory posed a material risk to BMS' future sales and earnings; (6) BMS was improperly accounting for divestiture reserves to artificially inflate its earnings and to meet the Double-Double and Mega-Double targets and analysts' earnings estimates; and (7) BMS understated its accruals for certain rebate liabilities with respect to the excess inventory. The January 24, 2001 and January 24, 2002 management representation letters signed by Schiff also failed to disclose Schiff's and Lane's roles in BMS' fraud scheme,

the findings of the wholesaler inventory project and the various concerns raised by BMS executives about BMS' channel-stuffing activities.

E. THE SCHEME UNRAVELS

103. In or about February 2002, BMS initiated an internal investigation of wholesaler incentives.

104. By late March 2002, BMS' internal investigation confirmed the channel-stuffing activities explained above, including the ROI Agreements with its two largest wholesalers.

105. On April 1, 2002, BMS filed its Form 10-K for fiscal year 2001 and, in the Management Discussion and Analysis section, partially disclosed its channel-stuffing activities:

Average wholesaler inventories of products in the U.S. increased during 2001 by approximately four weeks of its average sales to these wholesalers primarily due to sales incentives offered by the Company to them. As a result, the Company estimates the Company's 2001 domestic pharmaceutical sales included approximately four weeks of additional sales. The Company believes current inventories of its products held by wholesalers in the U.S. significantly exceed levels the Company considers desirable on a going forward basis. The Company is in the process of developing a plan (wholesaler inventory work down plan) to reduce these wholesaler inventory levels. This Company expects this reduction in wholesaler inventories to lower levels will negatively impact its results in future periods.

However, BMS failed to disclose its Form 10-K for fiscal year 2001 the ROI Agreements with its

two largest wholesalers, its cookie jar reserve activities or the rebate underaccrual. Schiff signed this filing.

106. On April 3, 2002, BMS announced that its past earnings projections were "dramatically off track," and warned investors that its 2002 earnings could drop by as much as 46 percent, in part, because of anticipated wholesaler destocking in 2002. BMS also disclosed that the Company's wholesaler inventory work down plan would negatively impact its pre-tax earnings by \$0.35 to \$0.40 per share, or about \$800 million to \$1 billion. BMS also announced

that, because of these problems: Lane would be leaving the Company; the Company's Chairman and CEO had personally assumed responsibility for the medicines business; and the Company had taken other steps to address the excess inventory problem. As a result of the disclosures on April 1st and April 3rd, BMS' share price dropped \$8.34 from \$40.49, its closing price on March 28, 2002, to \$32.15, its closing price on April 4, 2002, a decline of about 20%.

107. On or about April 16, 2002, Schiff resigned from BMS.

108. On October 24, 2002, BMS announced that it expected to restate approximately \$2 billion in sales primarily from fiscal years 2000 and 2001 due to revenue recognition timing errors. The Company also disclosed that the decision to restate was based on "further review and consideration of the company's accounting for its previously disclosed wholesaler inventory situation and on recent advice from the company's auditors, PricewaterhouseCoopers LLP" In response to this announcement, the Company's stock further dropped from \$24.79 to \$24.17.

F. THE RESTATEMENT

109. In March 2003, BMS restated its financial statements for 1997 through the first two quarters of 2002. In its March 2003 restatement, BMS admitted:

The Company experienced a substantial buildup of wholesaler inventories in its U.S. pharmaceuticals business over several years, primarily in 2000 and 2001. This buildup was primarily due to sales incentives offered by the Company to its wholesalers. These incentives were generally offered towards the end of a quarter in order to incentivize wholesalers to purchase products in an amount sufficient to meet the Company's sales projections established by the Company's officers.

110. In its March 2003 restatement, the Company also admitted, among other things, that: (1) from the first quarter of 2000 through the fourth quarter of 2001, the Company improperly recognized upon shipment nearly \$1.5 billion in revenue from pharmaceutical sales to its two largest wholesalers; (2) as a result of sales incentives offered to its other wholesalers, there was a buildup at these other wholesalers "in the range of \$550 to 750 million at December

31, 2001”; (3) the Company improperly created, reversed or otherwise improperly accounted for acquisition, divestiture and restructuring reserves; (4) the Company committed numerous other books and records violations, including improper accounting for: product returns, dividends, and other items, which, further inflated its 2001 and 1999 earnings, in the aggregate, by \$37 million and \$139 million respectively; (5) the “errors and inappropriate accounting resulted, at least, in part, from a period of unrealistic expectations, and consequent overestimation of products”; and (6) PwC had identified and communicated two “material weaknesses” relating to the Company’s accounting and public financial reporting of significant matters, and its initial recording and management review and oversight of certain accounting matters. On March 10, 2003, the day BMS announced the Restatement, the Company’s share price further dropped from about \$21.32, the previous day’s closing price, to about \$21.04.

G. SCHIFF AND LANE’S PECUNIARY GAINS FROM THEIR FRAUD

111. Schiff and Lane profited from their fraud because they received salary, bonuses, stock options and other benefits, portions of which were directly tied to BMS’ financial performance.

COUNT I

(Against Schiff and Lane)

**Violations of Section 17(a)(1) of the Securities Act of 1933
[15 U.S.C. §77q(a)(1)]**

112. Paragraphs 1 through 91 and 98 through 111 are realleged and incorporated by reference as if set forth fully herein.

113. In or about September 2001 and later, Schiff and Lane, in the offer or sale of securities by BMS, by the use of the means or instruments of transportation or communication in

interstate commerce or by use of the mails, directly or indirectly: employed devices, schemes or artifices to defraud, as described above in paragraphs 1 through 91 and 98 through 111.

114. Schiff and Lane acted knowingly or with reckless disregard for the truth of the facts and circumstances described above in Paragraphs 1 through 91, and 98 through 111.

115. By reason of the activities described in paragraphs 112 through 114, Schiff and Lane violated Section 17(a)(1) of the Securities Act [15 U.S.C. §77q(a)(1)].

COUNT II

(Against Schiff and Lane)

Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 [15 U.S.C. §§77q(a)(2) and 15 U.S.C. §77q(a)(3)]

116. Paragraphs 1 through 91 and 98 through 111 are realleged and incorporated by reference as if set forth fully herein.

117. In or about September 2001, and later, Schiff and Lane, in the offer or sale of securities by BMS, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly: obtained money by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or engaged in transactions, practices or courses of business which operated as a fraud or deceit upon the purchasers of such securities, as set forth above in paragraphs 1 through 91 and 98 through 111.

118. By reason of the activities described in paragraphs 116 and 117, Schiff and Lane violated Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(2), §77q(a)(3)].

COUNT III

(Against Schiff and Lane)

**Violations of Section 10(b) of the Securities Exchange Act of 1934
[15 U.S.C.§78j(b)] and Rule 10b-5 Promulgated Thereunder
[17 C.F.R. §240.10b-5]**

119. Paragraphs 1 through 91 and 98 through 111 are realleged and incorporated by reference as if set forth fully herein.

120. During the relevant period, as a result of the activities described above in paragraphs 1 through 91 and 98 through 111, Schiff and Lane, in connection with the purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce, the mails, or the facilities of a national securities exchange, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated as a fraud or deceit upon any person in violation of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder.

121. Schiff acted knowingly or with regardless disregard for the truth of the facts and circumstances described in paragraphs 1 through 91 and 98 through 111 above. Lane acted knowingly or with reckless disregard for the truth of the facts and circumstances described in paragraphs 1 through 91 above.

122. By reason of the activities described in paragraphs 119 through 121, Schiff and Lane violated Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

COUNT IV

(Against Schiff and Lane)

Violations of Section 13(b)(5) of the Securities Exchange Act of 1934 [15 U.S.C. §78m(b)(5)]

123. Paragraphs 1 through 111 are realleged and incorporated by reference as if set forth fully herein.

124. During the relevant period, as alleged above, Schiff knowingly circumvented or failed to implement a system of internal accounting controls or falsified books, records, and accounts of BMS that were subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. §78m(b)(2)].

125. From the first quarter of 2000 through the fourth quarter of 2001, as alleged above, Lane knowingly circumvented BMS' system of internal accounting controls.

126. By reason of the activities described in paragraphs 123 through 125 above, Schiff and Lane violated Section 13(b)(5) of the Exchange Act [15 U.S.C. §78m(b)(5)].

COUNT V

(Against Schiff)

**Violations of Rule 13b2-1 of the Securities Exchange Act of 1934
[17 C.F.R. §240.13b2-1]**

127. Paragraphs 1 through 111 are realleged and incorporated by reference as if set forth fully herein.

128. At various times between in or about January 2000 through December 31, 2001, Schiff, directly and indirectly, falsified or caused to be falsified books, records or accounts of BMS subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. §78m(b)(2)(A)].

129. By reason of the activities described in paragraphs 127 and 128 above, Schiff violated Rule 13b2-1 of the Securities Exchange Act of 1934 [17 C.F.R. 240.13b2-1] promulgated under Section 13(b)(2) of the Exchange Act [15 U.S.C. §78m(b)(2)].

COUNT VI

(Against Schiff)

Violations of Rule 13b2-2 of the Securities Exchange Act of 1934 [17 C.F.R. §240.13b2-1]

130. Paragraphs 1 through 111 are realleged and incorporated by reference as if set forth fully herein.

131. At various times during the relevant period, as alleged in paragraphs 98 through 102 above, Schiff, directly or indirectly, made or caused to be made a materially false or misleading statement, or omitted to state, or caused another person to omit to state, a material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with: (1) any audit or examination of the financial statements of BMS, or (2) the preparation or filing of a document or report required to be filed by BMS with the Commission.

132. By reason of the activities described in paragraphs 130 and 131, above, Schiff violated Rule 13b2-2 of the Exchange Act [17 C.F.R. 240.13b2-1] promulgated under Section 13(b)(2) of the Exchange Act [15 U.S.C. §78m(b)(2)].

COUNT VII

(Against Schiff and Lane)

Aiding and Abetting Violations of Section 13(a) of the Securities Exchange Act of 1934 [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1 and 13a-13 Promulgated Thereunder [17 C.F.R. §§240.12b-20, 240.13a-1, and 240.13a-13]

133. Paragraphs 1 through 111 are realleged and incorporated by reference as if set forth fully herein.

134. During the relevant period, BMS failed to file with the Commission, in accordance with the rules and regulations prescribed by the Commission, such annual and quarterly reports as the Commission has prescribed and BMS failed to include, in addition to the information expressly required to be stated in such reports, such further material information as was necessary to make the statements made therein, in light of the circumstances in which they are made, not misleading.

135. By reason of the activities described above in paragraphs 133 and 134, BMS violated Section 13(a) of the Securities Exchange Act of 1934 [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1 and 13a-13 promulgated thereunder [17 C.F.R. §§240.12b-20, 240.13a-1, and 240.13a-13].

136. Schiff knowingly provided substantial assistance to BMS in the activities described in paragraphs 133 through 135.

137. Lane knowingly provided substantial assistance to BMS in the activities described in paragraphs 133 through 135.

138. By reason of the activities described in paragraphs 133 through 137 above, Schiff and Lane aided and abetted BMS' violations of Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§240.12b-20, 240.13a-1, and 240.13a-13] promulgated thereunder.

COUNT VIII

(Against Schiff and Lane)

**Aiding and Abetting Violations of Sections 13(b)(2)(A) of the Securities Exchange Act of
1934
[15 U.S.C. §§ 78m(b)(2)(A)]**

139. Paragraphs 1 through 111 are realleged and incorporated by reference as if set forth fully herein.

140. During the relevant period, BMS, directly and indirectly, failed to make and keep books, records, and accounts, which in reasonable detail accurately and fairly reflected the transactions and dispositions of the assets of BMS.

141. By reason of the activities described in paragraphs 139 and 140 above, BMS violated Section 13(b)(2)(A) of the Securities Exchange Act of 1934 [15 U.S.C. §§78m(b)(2)(A)].

142. Schiff knowingly provided substantial assistance to BMS in the activities described in paragraphs 139 through 141.

143. Lane knowingly provided substantial assistance to BMS in the activities described in paragraphs 139 through 141.

144. By reason of the activities described in paragraphs 139 through 143, Schiff and Lane aided and abetted BMS' violations of 13(b)(2)(A) of the Securities Exchange Act of 1934 [15 U.S.C. §§78m(b)(2)(A) and 78m(b)(2)(B)].

COUNT IX

(Against Schiff)

**Aiding and Abetting Violations of Sections 13(b)(2)(B) of the Securities Exchange Act of
1934
[15 U.S.C. §§ 78m(b)(2)(B)]**

145. Paragraphs 1 through 111 are realleged and incorporated by reference as if set forth fully herein.

146. During the relevant period, BMS failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:

- a. transactions are executed in accordance with management's general or specific authorization;
- b. transactions are recorded as necessary (1) to permit preparation of financial statements in accordance with generally accepted accounting principles or any other criteria applicable to such statements, and (2) to maintain accountability for assets;
- c. access to assets is permitted only in accordance with management's general or specific authorization; and
- d. the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

147. By reason of the activities described in paragraphs 145 and 146 above, BMS violated Section 13(b)(2)(B) of the Securities Exchange Act of 1934 [15 U.S.C. §§78m(b)(2)(B)].

148. Schiff knowingly provided substantial assistance to BMS in the activities described in paragraphs 145 through 147.

149. By reason of the activities described in paragraphs 145 through 148 above, Schiff aided and abetted BMS' violations of Sections 13(b)(2)(B) of the Securities Exchange Act of 1934 [15 U.S.C. §§ 78m(b)(2)(B)].

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that the Court:

I.

Issue findings of fact and conclusions of law that Schiff and Lane committed the violations charged and alleged herein.

II.

Issue an Order of Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendant Schiff, his officers, agents, servants, employees, attorneys, assigns and all those persons in active concert or participation with them who receive actual notice of the Final Judgment by personal service or otherwise, and each of them from, directly or indirectly, engaging in the transactions, acts, practices and courses of business alleged above, or in conduct of similar purport and object, in violation of: Sections 17(a)(1), (a)(2) and (a)(3) of the Securities Act [15 U.S.C. §§77q(a)(1), 77q(a)(2) and 77q(a)(3)] and Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§78j(b) and 78m(b)(5)] and Rules 10b-5, 13b2-1 and 13b2-2 promulgated thereunder [17 C.F.R. §§240.10b-5, 240.13b2-1 and 240.13b2-2], or aiding and abetting a violation of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20, 13a-1 and 13a-13 promulgated thereunder [17 C.F.R. §§240.12b-20, 240.13a-1 and 240.13a-13].

III.

Issue an Order of Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendant Lane, his officers, agents, servants, employees, attorneys, assigns and all those persons in active concert or participation with them who receive actual notice of the Final Judgment by personal service or otherwise, and each of them from, directly or indirectly, engaging in the transactions, acts, practices and courses of business alleged above, or in conduct of similar purport and object, in violation of Sections 17(a)(1), (a)(2) and (a)(3) of the Securities Act [15 U.S.C. §§77q(a)(1), 77q(a)(2) and 77q(a)(3)], Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§78j(b)

and 78m(b)(5)] and Rules 10b-5 and 13b2-1 promulgated thereunder [17 C.F.R. §§240.10b-5 and 240.13b2-1], or aiding or abetting a violation of Sections 13(a) and 13(b)(2)(A) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78m(b)(2)(A)] and Rules 12b-20, 13a-1 and 13a-13 promulgated thereunder [17 C.F.R. §§240.12b-20, 240.13a-1 and 240.13a-13].

IV.

Issue an Order requiring Defendants Schiff and Lane to disgorge all ill-gotten gains that they received as a result of their wrongful conduct.

V.

With regard to Defendant Schiff's and Lane's violative transactions, acts, practices and courses of business set forth herein, issue an Order imposing appropriate civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

VI.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VII.

Granting such other and further relief as the Court may deem appropriate.

Respectfully submitted,

Dated: August 22, 2005

s/

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