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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Criminal No. 05-474 (FSH)
	:	
v.	:	Hon.
	:	
	:	18 U.S.C. §§ 371 & 2;
FREDERICK S. SCHIFF and	:	15 U.S.C. §§ 78j(b) & 78ff;
RICHARD J. LANE	:	17 C.F.R. § 240.10b-5
	:	
	:	I N D I C T M E N T
	:	

The Grand Jury in and for the District of New Jersey, sitting in Newark, charges:

COUNT ONE

(Conspiracy to Commit Securities Fraud)

The Defendants

1. Defendant **FREDERICK S. SCHIFF** was: (a) a certified public accountant at all times relevant to this Indictment; (b) Vice President and Controller of Bristol-Myers Squibb Company ("BMS" or "Bristol") from in or about June 1990 to April 2001; (c) Senior Vice President and Chief Financial Officer (CFO) of BMS beginning in April 2001 until he left BMS on or about April 16, 2002; (d) acting as Controller between April and September 2001, while he was CFO; and (e) at all times relevant to this Indictment, 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's business and financial goals.

2. Defendant **RICHARD J. LANE** was an Executive Vice President and President of BMS's Worldwide Medicines Group from January 2000 to in or about early April 2002, when he entered into a separation agreement with BMS. As President of the Worldwide Medicines Group, defendant **LANE** was in charge of Bristol's 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. Defendant **LANE** joined BMS in 1995 after working at several other pharmaceutical companies. Prior to heading BMS's Worldwide Medicines Group, defendant **LANE** was President of the U.S. Medicines Group. At all times relevant to this Indictment, defendant **LANE** was a member of the BMS Corporate Operating and Executive Committees, along with defendant **SCHIFF**.

3. For 2000 and 2001, defendants **SCHIFF** and **LANE** and other BMS senior executives received salary, bonuses, stock options and other benefits, a portion of which were directly tied to the financial performance of BMS.

Bristol-Myers Squibb Company

4. At all times relevant to this Indictment, BMS, a co-conspirator not named as a defendant herein: (a) was a Delaware corporation with offices in New Jersey and New York; (b) was one of the world's leading producers of pharmaceutical and health care products; (c) was a publicly traded corporation, the

common stock of which was listed and actively traded on the New York Stock Exchange; and (d) had shareholders located throughout the United States, including in the District of New Jersey.

5. 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's sales and earnings were from sales of its pharmaceutical products.

Background

Wholesaler Distribution, Channel Stuffing & Excess Inventory

6. At all times relevant to this Indictment, BMS manufactured pharmaceutical products and distributed those products through wholesalers. In the United States, four wholesalers distributed approximately 85% of BMS's pharmaceutical products. These wholesalers delivered BMS pharmaceutical products to thousands of retail pharmacies, hospitals and other health care providers across the country.

7. Wholesalers generally sought to maintain inventories of prescription drug products sufficient to satisfy prescription demand from retail pharmacies, hospitals and other health care providers. This level of inventory was sometimes referred to as the "normal" wholesaler inventory level for a prescription drug. Inventory levels in excess of normal levels resulted in greater carrying costs for wholesalers, which the

wholesalers generally sought to avoid.

8. A reduction of excess inventory to levels closer to normal was often called a "workdown," and involved BMS selling less than prescription demand during the workdown period, while wholesalers sold excess inventory down to normal levels.

9. In 2000 and 2001, BMS deliberately used financial incentives to spur wholesalers to buy product in excess of prescription demand, so that BMS could report higher sales and earnings. This practice was commonly known as "channel stuffing" and was also referred to as "sales acceleration" or "trade loading."

10. In 2000 and 2001, Bristol's deliberate use of financial incentives to accelerate sales ahead of prescription demand artificially inflated its reported sales and earnings, and had a corresponding adverse effect on future sales and earnings.

11. Bristol's financial incentives to the wholesalers resulted in excess inventory at the wholesalers. At the beginning of 2000 BMS estimated its excess inventory at U.S. wholesalers was approximately $139 million, and by the end of 2001 BMS estimates of the excess inventory at U.S. wholesalers had grown as high as $1.95 billion.

Double-Double, Mega-Double and "Top-Down" Budgeting

12. In 1994, BMS announced what became known as its "Double-Double" goal: to double BMS's 1993 sales, earnings and earnings per share ("EPS") in seven years. The seventh and last

year of the Double-Double was 2000, and at the end of 2000 BMS announced that it had achieved the doubling of earnings and EPS, and that it had "virtually" doubled its sales since 1993.

13. In September 2000 BMS announced its "Strategy for Growth," which incorporated what became known as its "Mega-Double" goal, a plan to double year-end 2000 sales and earnings over five years, by the end of 2005.

14. In 2000 and 2001, the Double-Double and Mega-Double goals were accompanied by a budget process in which senior executives in BMS's corporate headquarters set aggressive sales and earnings budget targets for the company and its business units, consistent with the Double-Double and Mega-Double goals. This process was sometimes referred to as "top-down" budgeting.

BMS Earnings Guidance and Analysts' Consensus Estimates

15. BMS provided "guidance" to the investing public regarding the expected performance of its business, including EPS, for upcoming periods. In 2000 and at least until December 13, 2001, BMS advised the investing public through its guidance that it expected performance consistent with the Double-Double and Mega-Double goals.

16. Relying in part on a company's guidance, professional securities analysts established their own estimates of the company's expected performance. These "earnings estimates" or "analyst expectations," which when averaged were referred to as the "consensus estimates" or "consensus

expectations," were closely followed by investors in 2000 and 2001.

17. By 2000, BMS had met or exceeded analysts' consensus estimates for at least twenty-four straight quarters, and this consistency was part of the company's public image. At times relevant to this Indictment, BMS's stock price reflected a premium for this consistency, and a failure by BMS to meet or exceed the consensus expectations likely would have resulted in a decrease in the company's stock price.

Press Releases and Analyst Conference Calls

18. After the end of each quarter in 2000 and 2001, BMS made public announcements about its sales, earnings and business operations generally. The company issued press releases which described sales performance, overall and by product, and held conference calls for analysts regarding the performance of the business. In preparation for the conference calls, defendants **SCHIFF** and **LANE** and other senior BMS executives met and discussed issues expected to arise on the conference calls and how to respond to those issues. Defendants **SCHIFF** and **LANE** and others represented BMS on the analyst conference calls.

SEC Reporting

19. As a public company, BMS was required to comply with the rules and regulations of the United States Securities and Exchange Commission ("SEC"). The SEC was an independent

agency of the United States government which was charged with maintaining honest and efficient markets in securities and ensuring that public companies' financial information was accurately disclosed to the investing public.

20. Under the SEC's rules and regulations, BMS and its officers were required to submit quarterly reports on Form 10-Q and annual reports on Form 10-K which included financial statements that accurately presented BMS's financial condition and the results of its business operations. Federal law further required the data in these reports to be truthful and consistent with the underlying facts and required the accounting treatments employed in these reports to be consistent with generally accepted accounting principles ("GAAP").

21. Forms 10-Q and 10-K included a section entitled Management's Discussion and Analysis ("MD&A") containing additional information about the company's financial condition and operations. The MD&A section was supposed to contain any material information necessary to make the 10-Q and 10-K financial statements not misleading. The purpose of MD&A was to give investors an opportunity to look at the company through the eyes of management, and understand the company's prospects for the future.

22. As Controller and CFO, defendant **SCHIFF** had overall responsibility for BMS's financial reporting, had primary responsibility for the accuracy and completeness of BMS's

disclosure in its SEC filings, and signed the Forms 10-K and 10-Q along with other officers and directors of the company.

Corporate Reserve Accounts

23. BMS regularly set aside funds in "reserve" accounts, to be used for costs related to events such as corporate acquisitions, divestitures or restructuring. Under GAAP, reserves were to be based on good-faith estimates of costs that were reasonably likely to occur. BMS was not permitted to establish reserves that were not based on good-faith estimates of reasonably likely future costs, or to carry known excess amounts in its reserve accounts for future use. BMS was not permitted to use reserves to increase operating revenue in the future or for expenses not related to the purpose for which the funds were originally set aside.

Rebate Accruals

24. BMS knew, at the time it sold a number of its pharmaceutical products, that in the future it would have to pay rebates in connection with a portion of those sales. These rebates included Medicaid, "prime vendor" and "managed health care" rebates. Because BMS sold its products to wholesalers, there was a lag period between the time of sale and when BMS received and paid the rebate claims. In keeping with GAAP, BMS was required to set aside funds to pay for expected rebates at the time it booked revenue from its sales. This accounting

principle was sometimes referred to as a "matching principle."

THE CONSPIRACY

25. From at least as early as the first quarter of 2000 to in or around April 2002, in Lawrenceville, New Jersey in the District of New Jersey, and elsewhere, the defendants

FREDERICK S. SCHIFF and **RICHARD J. LANE**

did knowingly and wilfully combine, conspire, confederate, and agree with each other, BMS and others to commit an offense against the United States, that is, to commit securities fraud in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

The Principal Goal of the Conspiracy

26. The principal goal of the conspiracy was for defendants **SCHIFF** and **LANE** and their co-conspirators to use, and conceal from the investing public, channel stuffing and improper accounting measures, to (a) enable BMS to report financial performance consistent with Bristol's targets and analysts' expectations, (b) maintain Bristol's stock price at artificially high levels, and (c) enrich themselves and BMS.

Overview of the Conspiracy to Commit Securities Fraud

"Making the Numbers"

27. In 2000 and 2001 defendants **SCHIFF** and **LANE** and other BMS senior executives promoted a corporate culture in which

meeting or exceeding company budget targets and the consensus estimates was considered mandatory. Achieving these goals was known as "making the numbers" or "hitting the targets." Meeting internal BMS budget targets generally also resulted in sales and earnings that met or exceeded the consensus estimates.

28. BMS senior executives set aggressive internal sales and earnings targets for 2000 and 2001 consistent with the widely-touted Double-Double and Mega-Double goals. Every quarter, and at year-end, defendants **SCHIFF** and **LANE** and other senior executives pressured lower-level employees to meet these budget targets. Certain employees who suggested that the company's budget targets were too aggressive or expressed doubts that they could make the numbers were transferred or demoted.

Manipulation of Corporate Reserves

29. At times relevant to this Indictment, defendant **SCHIFF** and those acting at his direction improperly added "padding" to reserve accounts. Defendant **SCHIFF** and those acting at his direction controlled the use of BMS's improperly-padded reserves as well as excess amounts from other reserves. BMS and defendant **SCHIFF** used these funds for improper purposes, in particular to boost BMS revenue when the company needed additional income to meet consensus expectations.

Deliberate Rebate Under-Accrual

30. At times relevant to this Indictment, defendant

SCHIFF and those acting at his direction controlled the rebate accrual balances. As BMS's excess inventory at the wholesalers grew in 2000 and 2001, defendant **SCHIFF** imposed accounting policies and procedures which caused BMS to fail to accrue for the rebate liabilities for excess inventory of BMS product. These policies were inconsistent with BMS's policy of conforming with GAAP, and resulted in an under-accrual in BMS's rebate accounts.

31. In accordance with defendant **SCHIFF's** instruction, which was sometimes referred to as "cutting the tail," BMS finance staff used an artificially short lag period of six months to estimate rebate accrual balances, even as the excess inventory at the wholesalers grew steadily.

32. By intentionally under-accruing for rebates, defendant **SCHIFF** masked the growth of excess inventory, and made BMS's sales and pre-tax earnings appear stronger than they actually were by at least $290 million and $262 million, respectively.

Closing Budget Gaps Through Channel Stuffing and Improper Accounting

33. Throughout 2000 and 2001, BMS and defendants **SCHIFF** and **LANE** used channel stuffing to artificially inflate Bristol's sales and earnings, which enabled BMS to make its numbers and report results consistent with the Double-Double and Mega-Double goals.

34. In 2000 and 2001, BMS often approached the end of a month or a quarter with a shortfall or gap between actual sales and the company's higher budget targets. BMS and defendants **SCHIFF** and **LANE** used channel stuffing to make up the company's sales and earnings shortfalls and to close the gap. This practice resulted in a steady, quarter-after-quarter increase in wholesaler excess inventory, estimates of which rose to nearly $2 billion by the end of 2001.

35. Additionally, at various times in 2000 and 2001, BMS and defendant **SCHIFF** used funds from improperly-padded or excess reserves to supplement BMS's revenue and enable the company to hit its earnings targets and the consensus estimates.

36. In every quarter in 2000 and 2001, BMS publicly announced that it had met or exceeded consensus expectations. Without channel stuffing and improper accounting measures, BMS would have missed its budget targets and the consensus estimates.

Omissions of Material Fact and Other Misleading Disclosure

37. BMS and defendants **SCHIFF** and **LANE** intentionally concealed from the investing public and made materially misleading statements regarding Bristol's use of financial incentives to the wholesalers to artificially inflate sales and earnings in 2000 and 2001, and the resulting growth of excess inventory.

38. In 2000 and 2001, defendants **SCHIFF** and **LANE** also

did not disclose Bristol's channel stuffing and the growth of excess inventory to the BMS Board of Directors, and defendant **SCHIFF** did not disclose Bristol's channel stuffing and the growth of excess inventory to BMS's external auditors.

39. In 2000 and 2001, BMS and defendants **SCHIFF** and **LANE's** public statements, including in press releases, analyst conference calls, and Forms 10-K and 10-Q, intentionally omitted, concealed and minimized the company's: (a) financial incentives to the wholesalers to generate sales in excess of prescription demand; (b) sales in excess of demand to close budget gaps and hit budget targets; (c) excess inventory levels at the wholesalers; and (d) steady quarterly increase in excess inventory levels at the wholesalers. As a result, BMS's publicly-reported financial condition and results of business operations were materially misleading, including as to the company's past performance and future prospects.

40. BMS and defendants **SCHIFF** and **LANE's** intentional concealment of and misleading statements regarding channel stuffing and excess inventory growth in 2000 and 2001 deprived the investing public of information important to investing decisions. In deciding to purchase and sell BMS stock, members of the investing public relied on BMS and defendants **SCHIFF** and **LANE's** materially misleading public statements of BMS's financial condition and results of business operations.

41. BMS and defendant **SCHIFF** also intentionally concealed from the investing public material information regarding the improper accounting activity described in paragraphs 29 through 32.

Means and Methods of the Conspiracy

42. Among the means and methods employed by the defendants and their co-conspirators to carry out the conspiracy and effect its unlawful object were those set forth below.

43. BMS set aggressive budget targets consistent with the Double-Double and Mega-Double goals, and defendants **SCHIFF** and **LANE** and their co-conspirators pressured BMS employees to hit those targets.

44. Defendants **SCHIFF** and **LANE** and their co-conspirators transferred or demoted certain employees who suggested that the company's budget targets were too aggressive or expressed doubts that they could make the numbers.

45. Throughout 2000 and 2001 defendant **LANE** regularly held meetings in Lawrenceville, New Jersey for his "Leadership Team" at which he instructed key Worldwide Medicines personnel that they must hit the BMS top-down budget targets.

46. Throughout 2000 and 2001, BMS and defendants **SCHIFF** and **LANE** caused BMS finance and operations staff to create packages of financial incentives to the wholesalers, to be used to spur wholesalers to buy product in excess of prescription

demand. The financial incentives included:

(a) pre-price increase buy-ins - allowing wholesalers to purchase product in advance of a BMS price increase for the product;

(b) "extended datings" of invoices - extending the due date for the wholesaler's payment to BMS beyond the usual thirty days;

(c) additional early payment discounts - discounts beyond those customarily offered to wholesalers for paying early for product; and

(d) "future file" purchases - allowing wholesalers to buy at an old, lower price, even after a BMS price increase had become effective.

47. As part of its financial incentives to wholesalers, BMS compensated its two largest wholesalers for the excess inventory they were holding, an arrangement that was known as providing the wholesalers with a "Return on Investment," or "ROI," on excess inventory.

48. As excess inventory at the wholesalers grew during 2000 to 2001, BMS, defendants **SCHIFF** and **LANE** and their co-conspirators made no systematic effort to work down excess inventory.

49. BMS ignored its own internal control mechanism, known as the "order monitoring system," which was created after a build-up of excess inventory in 1991-92 and was designed to

monitor and limit wholesaler purchasing.

50. Defendant **SCHIFF** and others acting at his direction maintained a "reserve schedule" showing available funds from BMS's improperly-padded and excess reserves, and distributed these reserve schedules to senior BMS executives, including defendant **LANE**.

51. BMS and defendants **SCHIFF** and **LANE** and their co-conspirators used channel stuffing, as well as reserve reversals and rebate under-accruals, to artificially inflate BMS sales and earnings by hundreds of millions of dollars, which enabled BMS to make its numbers and report results consistent with the Double-Double and Mega-Double goals.

52. Defendant **SCHIFF** and others acting at his direction employed accounting machinations so that BMS's financial statements and other indicators of business performance did not reveal the rise in excess inventory at the wholesalers, including:

(a) manipulating rebate accrual balances, in part by using an artificially short lag period when testing the reasonableness of the accrual balances; and

(b) factoring, or selling off, BMS receivables, to offset and thereby conceal the aging of Bristol's receivables caused by extended datings granted to wholesalers, even though such factoring was uneconomic.

53. Defendant **LANE** actively participated in the BMS analyst conference calls in 2000, and defendants **SCHIFF** and **LANE** actively participated in the BMS analyst conference calls in 2001 and early 2002.

54. Defendants **SCHIFF** and **LANE** and their co-conspirators made materially misleading statements and omissions of material fact regarding channel stuffing and excess inventory on quarterly analyst conference calls, in press releases and SEC filings, and at meetings with investors and other members of the public, including:

(a) failing to disclose BMS's use of channel stuffing and reserve reversals to make its numbers;

(b) failing to disclose excess inventory levels, and growth of excess inventory at the wholesalers quarter after quarter; and

(c) presenting sales and earnings figures as if they reflected demand for Bristol products, when in fact a significant portion of the sales and earnings was generated by channel stuffing.

55. Defendants **SCHIFF** and **LANE** made incomplete, inaccurate and misleading statements, publicly and within BMS, to mask, minimize and avoid detection of the sales incentives to the wholesalers and the corresponding growth of excess inventory.

56. By late 2001, BMS spent tens of millions of

dollars each quarter on sales incentives to the wholesalers to induce the wholesalers to take and hold product in excess of demand.

57. In 2000 and 2001, defendants **SCHIFF** and **LANE** and their co-conspirators brushed aside and ignored concerns expressed by BMS employees about the use of financial incentives to the wholesalers, the costs BMS was incurring from the sales incentives to the wholesalers, and the build-up in excess inventory at the wholesalers.

58. By the above means, defendants **SCHIFF** and **LANE** and their co-conspirators caused BMS shareholders to sustain hundreds of millions of dollars in losses after the nature and extent of BMS's channel stuffing and build-up of excess inventory was disclosed to the public beginning on or about April 1, 2002.

Overt Acts

59. In furtherance of the conspiracy and to effect the unlawful object thereof, defendants **SCHIFF** and **LANE** and their co-conspirators committed, and caused to be committed, the following overt acts in the District of New Jersey and elsewhere:

a. On or about January 29, 2000, upon being informed of an anticipated monthly sales shortfall of $70 million, defendant **LANE** wrote an e-mail to key Worldwide Medicines personnel, "This is a troubling performance. . . . We will make our 1Q BUC [i.e. pre-tax earnings]!!"

b. On or about January 30, 2000, defendant **LANE** e-mailed a finance employee that:

> I am very concerned about this start to the year. New York is very focused on the challenges 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 you are ready.

c. On or about February 9, 2000, defendant **LANE** forwarded defendant **SCHIFF** and others an e-mail which discussed obtaining "actual inventory data" for key products at the four largest wholesalers, so that BMS could "target monthly average purchase expectations."

d. On or about February 18, 2000, defendants **SCHIFF** and **LANE** approved sales incentives in the form of extended datings on $180 million of orders for BMS products, in order to push February sales closer to internal BMS sales projections.

e. On or about April 20, 2000, BMS issued a press release including quarterly sales and earnings figures that failed to disclose the positive effect of BMS's channel stuffing on those sales and earnings figures.

f. On or about May 15, 2000, BMS filed a Form 10-Q for the first quarter of 2000, signed by defendant **SCHIFF**, which contained omissions of material fact and materially misleading information regarding BMS's financial performance.

g. On or about May 19, 2000, defendant **LANE** wrote in an e-mail to key Worldwide Medicines personnel, "Sales continue to be concerningly weak. We need to make our May target! [W]hen will this start to happen??"

h. In or about June 2000, BMS declined to follow an outside consultant's recommendations that BMS reduce wholesaler excess inventory.

i. On or about July 20, 2000, in response to a question on the second quarter 2000 analyst conference call about build-up of excess inventory, defendant **LANE** stated "There was no change in our channel management."

j. On or about July 20, 2000, BMS issued a press release including quarterly sales and earnings figures that failed to disclose the positive effect of BMS's channel stuffing on those sales and earnings figures.

k. On or about August 15, 2000, BMS filed a Form 10-Q for the second quarter of 2000, signed by defendant **SCHIFF**, which contained omissions of material fact and materially misleading information regarding BMS's financial performance.

l. On or about September 28, 2000, BMS issued a press release announcing the "Strategy for Growth," which incorporated what became known as the Mega-Double goal.

m. On or about October 19, 2000, in response to a question on the third quarter 2000 analyst conference call about

"wholesaler inventory actions," defendant **LANE** stated "I don't think there was any significant wholesaler inventory activity in the quarter."

n. On or about October 19, 2000, BMS issued a press release including quarterly sales and earnings figures that failed to disclose the positive effect of BMS's channel stuffing on those sales and earnings figures.

o. On or about November 14, 2000, BMS filed a Form 10-Q for the third quarter of 2000, signed by defendant **SCHIFF**, which contained omissions of material fact and materially misleading information regarding BMS's financial performance.

p. In or about December 2000, in response to a BMS employee question on the Bristol website about BMS's declining stock price, **LANE** stated, "[T]he single most important element that has driven and will continue to drive our stock price and increase shareholder value is achieving consistent sales and earnings growth that meets or exceeds market expectations."

q. On or about December 6, 2000, defendant **LANE** e-mailed a senior BMS executive, and copied defendant **SCHIFF**, asking for approval "ASAP" of the price increases for U.S. Medicines, and noting that "finality is essential from a timing to implement as well as work with wholesalers."

r. On or about January 24, 2001, BMS issued a press release including quarterly and year-end sales and earnings

figures that failed to disclose the positive effect of BMS's channel stuffing on those sales and earnings figures.

s. On or about February 6, 2001, defendant **LANE** instructed Worldwide Medicines business unit heads, "Please be prepared to discuss what it would take to deliver an extra $100 million in sales in the first quarter" of 2001.

t. On or about April 2, 2001, BMS filed a Form 10-K for the year 2000, signed by defendant **SCHIFF**, which contained omissions of material fact and materially misleading information regarding BMS's financial performance.

u. On or about April 5, 2001, defendant **LANE** e-mailed his business unit heads regarding future BMS sales and earnings targets, "I expect each of you to present a base case which delivers growth in BUC [i.e. pre-tax earnings] in 2002 v. 2001. . . . A plan that shows declines in BUC year on year is not an option."

v. On or about the April 25, 2001 first quarter analyst conference call, in which defendant **LANE** actively participated, defendant **SCHIFF** stated in response to an inquiry about wholesaler inventory levels:

> We look at, very closely, the wholesaler stocking inventories, and we've looked at it very close this quarter as well as with all previously. There are no unusual items that we see at this quarter compared to year-end. Everything that we see is right on target, right consistent with our plans. So there are no unusual items that we see in the

inventory levels.

w. On or about April 25, 2001, BMS issued a press release including quarterly sales and earnings figures that failed to disclose the positive effect of BMS's channel stuffing on those sales and earnings figures.

x. On or about May 11, 2001, BMS filed a Form 10-Q for the first quarter of 2001, signed by defendant **SCHIFF**, which contained omissions of material fact and materially misleading information regarding BMS's financial performance.

y. On or about July 24, 2001, defendants **SCHIFF** and **LANE** and others met and discussed how to respond to questions about inventory on the third quarter analyst conference call.

z. On or about the July 25, 2001 second quarter analyst conference call, in which defendant **LANE** actively participated, defendant **SCHIFF** stated:

> [A] couple of questions now have come up on wholesale inventory. The way we look at it, we look at it overall for all our products. We look at it closely. And looking at the wholesaler inventories at the end of June, we compare them to March. We compare them to December 31, year-end. They are all about the same levels. So we don't see anything unusual. And we look at it on kind of a total basis.

aa. On or about July 25, 2001, BMS issued a press release including quarterly sales and earnings figures that failed to disclose the positive effect of BMS's channel stuffing on those sales and earnings figures.

bb. In or about late August 2001, defendants **SCHIFF** and **LANE** gave their written approval for a package of $47 million in sales incentives to wholesalers so BMS could hit its numbers for the third quarter 2001.

cc. On or about August 14, 2001, BMS filed a Form 10-Q for the second quarter of 2001, signed by defendant **SCHIFF**, which contained omissions of material fact and materially misleading information regarding BMS's financial performance.

dd. On or about October 5, 2001, defendant **LANE** held a Worldwide Medicines Leadership Team meeting in Lawrenceville, New Jersey at which he instructed key Worldwide Medicines personnel that they must hit the BMS top down budget targets.

ee. On or about October 16, 2001, defendants **SCHIFF** and **LANE** and others met in Lawrenceville, New Jersey and discussed how to respond to questions about inventory on the third quarter analyst conference call.

ff. On or about October 23, 2001, BMS issued a press release including quarterly sales and earnings figures that failed to disclose the positive effect of BMS's channel stuffing on those sales and earnings figures.

gg. On or about the October 23, 2001 third quarter analyst conference call, in which defendant **LANE** actively participated, defendant **SCHIFF** stated:

> We look at the inventory levels in total. We don't look at it really by specific products.

> We've always looked at it overall. Basis of looking at it overall, as I mentioned, is up a couple of weeks. We do expect it to be lower in the fourth quarter.

hh. On or about November 14, 2001, BMS filed a Form 10-Q for the third quarter of 2001 which contained omissions of material fact and materially misleading information regarding BMS's financial performance.

ii. On or about November 15, 2001, defendant **LANE** gave his written approval for a package of $85 million in sales incentives to wholesalers for the fourth quarter of 2001.

jj. On or about December 13, 2001, defendants **SCHIFF** and **LANE** participated in an analyst conference call that was outside the regular call cycle, and defendant **SCHIFF** stated, "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."

kk. On or about January 24, 2002, BMS issued a press release including quarterly and year-end sales and earnings figures that failed to disclose the positive effect of BMS's channel stuffing on those sales and earnings figures.

ll. On or about March 5, 2002, defendants **SCHIFF** and **LANE** told the BMS Board of Directors that the build-up in excess inventory was primarily due to the expiration of patents on BMS

products.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO

(Securities Fraud)

1. Paragraphs 1 through 24, 26 through 41, and 43 through 59 of Count 1 are realleged and incorporated by reference as if fully set forth herein.

2. From at least as early as the first quarter of 2000 to in or around April 2002, in the District of New Jersey and elsewhere, defendants **FREDERICK S. SCHIFF** and **RICHARD J. LANE** unlawfully, willfully and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, used and employed in connection with purchases and sales of securities, manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (i) employing devices, schemes, and artifices to defraud, (ii) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and (iii) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon other persons, as more fully described in paragraphs 1 through 24, 26 through 41, and 43 through 59 of Count 1.

In violation of Title 15, United States Code, Sections 78j(b) & 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

A TRUE BILL

Valeria Francisco
FOREPERSON

CHRISTOPHER J. CHRISTIE
UNITED STATES ATTORNEY

CASE NUMBER: _____

United States District Court
District of New Jersey

UNITED STATES OF AMERICA

v.

FREDERICK S. SCHIFF and
RICHARD J. LANE

INDICTMENT FOR

18 U.S.C. §§ 371 & 2
15 U.S.C. §§ 78j(b) & 78ff
17 C.F.R. § 240.10b-5

A True Bill,

Valeria Francisco

Foreperson

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