

2003 BCSECCOM 225

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from the registration requirement for first trades in shares acquired under incentive plan, subject to certain conditions – relief from issuer bid requirements for acquisitions under incentive plan

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 105-108, 110, 114

Multilateral Instrument 45-102 *Resale of Securities*, s. 2.14(1)

IN THE MATTER OF THE SECURITIES LEGISLATION OF MANITOBA, SASKATCHEWAN, BRITISH COLUMBIA AND ALBERTA

AND IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND IN THE MATTER OF BRISTOL-MYERS SQUIBB COMPANY

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Alberta, British Columbia, Saskatchewan and Manitoba (the “Jurisdictions”) has received an application from Bristol-Myers Squibb Company (“BMS” or the “Company”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that (i) the requirement contained in the Legislation to be registered to trade in a security (the “Registration Requirement”) will not apply to first trades of Shares (as defined below) acquired under the Bristol-Myers Squibb Company 2002 Stock Incentive Plan (the “Plan”) made through an exchange or market outside of Canada or to a person or company outside of Canada and in Manitoba, to Award exercises by Former Participants (as defined below) and Permitted Transferees (as defined below) through the Agent (as defined below); and (ii) the requirements contained in the Legislation relating to the delivery of an offer and issuer bid circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up and payment for securities tendered to an issuer bid, disclosure, restrictions upon purchases of securities, financing, identical consideration, collateral benefits, together with the requirement to file a reporting form within ten (10) days of an exempt issuer bid and pay a related fee (the “Issuer Bid Requirements”) will not apply to certain acquisitions by the Company of Shares pursuant to the Plan in each of the Jurisdictions;

2003 BCSECCOM 225

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Manitoba Securities Commission is the principal regulator for this application;

AND WHEREAS BMS has represented to the Decision Makers as follows:

1. BMS is presently a corporation in good standing incorporated under the laws of the State of Delaware; the head office of BMS is located in New York, New York.
2. BMS and affiliates of BMS (the “BMS Affiliates”) (BMS and the BMS Affiliates are, collectively, the “BMS Companies”) manufacture pharmaceutical and related health care products.
3. BMS is registered with the SEC in the U.S. under the U.S. Securities Exchange Act of 1934 (the “Exchange Act”) and is not exempt from the reporting requirements of the Exchange Act pursuant to Rule 12g 3-2.
4. The authorized share capital of BMS consists of: 4,500,000,000 shares of common stock (“Shares”); and 10,000,000 shares of preferred stock (“Preferred Shares”). As of April 30, 2002 there were 1,938,390,754 Shares, and 8,609 Preferred Shares issued and outstanding.
5. The Shares are listed for trading on the New York Stock Exchange (the “NYSE”) and the Pacific Stock Exchange (collectively, the “Exchanges”).
6. BMS is not a reporting issuer in any of the Jurisdictions and has no present intention of becoming a reporting issuer in any of the Jurisdictions.
7. The purpose of the Plan is to secure for the Company and its stockholders the benefits of the incentive inherent in common stock ownership by the officers and key employees of the BMS Companies who will be largely responsible for the Company's future growth and continued financial success and by providing long-term incentives, in addition to current compensation, to certain key executives of the BMS Companies who contribute significantly to the long-term performance and growth of the BMS Companies. It is intended that the former purpose will be effected through the granting of Options (defined below), SARs (defined below), Dividend Equivalents (defined below) and/or Restricted Stock (defined below) under the Plan and that the latter purpose will be effected through an award conditionally granting Performance Units (defined below) or Performance Shares (defined below) under the Plan, either independently or in conjunction with and related to an Option grant under the Plan.

2003 BCSECCOM 225

8. With respect to each succeeding year, the amount of stock which may be made subject to grants of Options or awards of Performance Units under the Plan shall not exceed an amount equal to (i) 0.9% of the outstanding Shares on January 1 of such year plus, subject to the provisions of this paragraph 3.10, (ii) in any year the number of Shares equal to the number of Shares that were available for grants and awards in the prior year but were not made subject to a grant or award in such prior year, (iii) the number of Shares that were subject to Options or Performance Units granted hereunder or under the Prior Plan (as defined in the Plan), which Options or Performance Units terminated, were cancelled or forfeited or expired in the prior year without being exercised, or were forfeited and returned to the Company after exercise (iv) the number of Shares Participants tendered in the prior year to pay the purchase price of Options in accordance with the terms of the Plan, and (v) the number of Shares the Company retained or caused Participants to surrender in the prior year to satisfy withholding tax requirements in accordance with the terms of the Plan. For 2002, the maximum number of Shares is 39.8 million (based on carry over from the Prior Plan).

9. All necessary securities filings have been made in the U.S. in order to offer the Plan to Participants resident in the U.S.

10. The Plan permits grants of: options on Shares (“Options”); stock appreciation rights (“SARs”), restricted shares (“Restricted Shares”), performance units (“Performance Units”), performance shares (“Performance Shares”) and dividend equivalents (“Dividend Equivalents”); (Shares, Options, SARs, Restricted Shares, Performance Shares, Performance Units and Dividend Equivalents are collectively, “Awards”) to present or future officers and key employees of the BMS Companies (“Participants”).

11. As of July 1, 2002, there were 92 persons in Canada eligible to receive Awards under or participate in the Plan: 2 persons resident in British Columbia, 2 persons resident in Alberta, 1 persons resident in Manitoba, 1 persons resident in Saskatchewan, 15 persons resident in Ontario; 2 persons resident in Nova Scotia and 69 persons resident in Quebec.

12. BMS intends to use the services of one or more agents/brokers in connection with the Plan (each an “Agent”). Mellon Investor Services LLC and FutureShare Financial LLC have been appointed as Agents under the Plan. Mellon Investor Services LLC and FutureShare Financial LLC are not registered to conduct retail trades in securities in any of the Jurisdictions. FutureShare Financial LLC is registered under applicable U.S. securities or banking legislation and any other Agent appointed to take on a broker type role in connection with the Plan, in addition to, or in replacement of, FutureShare Financial LLC will be a registrant in the Jurisdictions or a corporation registered under applicable U.S. securities or

2003 BCSECCOM 225

banking legislation and will be authorized by BMS to provide services as an Agent under the Plan.

13. The role of the Agent may include: (a) disseminating information and materials to Participants in connection with the Plan; (b) assisting with the administration of and general record keeping for the Plan; (c) holding Shares on behalf of Participants, Former Participants and Permitted Transferees in limited purpose brokerage accounts; (d) facilitating Awards exercises (including cashless exercises and Stock Swap Exercises) under the Plan; (e) facilitating the payment of withholding taxes, if any, by cash or the tendering or withholding of Shares; (f) facilitating the reacquisition of Shares under the terms of the Plan; and (g) facilitating the resale of Shares issued in connection with the Plan.

14. Employees of the BMS Companies who participate in the Plan will not be induced to purchase Shares or to exercise Awards by expectation of employment or continued employment.

15. Officers of the BMS Companies who participate in the Plan will not be induced to purchase Shares or to exercise Awards by expectation of appointment or employment or continued appointment or employment as an officer.

16. The Plan is administered by a committee (the "Committee") appointed by the board of directors of BMS (the "Board").

17. No Option or SAR granted under the Plan shall be transferable by the holder otherwise than by will or by the laws of intestacy, and such Option or SAR shall be exercisable, during the optionee's lifetime, only by the optionee. Notwithstanding the foregoing, the Committee may set forth in the Option agreement at the time of grant or thereafter, that the Options may be transferred to members of the optionee's immediate family, to trusts solely for the benefit of such immediate family members and to partnerships in which such family members and/or trusts are the only partners. For this purpose, immediate family means the optionee's spouse, parents, children, stepchildren, grandchildren and legal dependants.

18. No Performance Shares and Performance Units issued under the Plan shall be transferable by the Participant other than by will or by the laws of intestacy, except that a Participant may designate a beneficiary to receive any payment of an Award to which the Participant may be entitled under the Plan in the event of the Participant's death. If no designated beneficiary is living on the date on which any payment becomes payable to a Participant's beneficiary, or if no beneficiary has been specified by the Participant, such payment will be payable to the person or persons on the basis of successive preference.

2003 BCSECCOM 225

19. During the Restriction Period (as such term is defined in the Plan), the Participant will not be permitted to sell, transfer, pledge or assign Restricted Stock awarded under the Plan. The Committee may, however, adopt rules which would permit a gift by a Participant of restricted shares to members of his/her immediate family (spouse, parents, children, stepchildren, grandchildren or legal dependants) or to a Trust (as such term is defined in the Plan) whose beneficiary or beneficiaries shall be either such a person or persons or the Participant.

20. Following the termination of a Participant's relationship with the BMS Companies for reasons of disability, retirement, termination, change of control or any other reason (such Participants being "Former Participants"), and on the death of a Participant where Awards have been transferred by will or in accordance with paragraphs 17, 18 or 19 herein pursuant to a beneficiary designation or the laws of intestacy or otherwise as permitted under the Plan (such beneficiaries being "Permitted Transferees"), the Former Participants and Permitted Transferees will continue to have rights in respect of the Plan ("Post-Termination Rights").

21. Post-Termination Rights may include, among other things: (a) the right to exercise Awards for a period determined in accordance with the Plan; (b) the payment or the transfer of an Award in accordance with the Plan, and (c) the right to sell Shares acquired under the Plan through the Agent.

22. Post-Termination Rights will only be effective where such rights accrued while the Participant had a relationship with the BMS Companies.

23. Among other payment methods, the Plan provides that payment for Shares acquired pursuant to the Plan may be made: (a) in cash; (b) by the surrender of Shares owned by the Participant to the Company for cancellation ("Stock-Swap Exercises") or to the Agent for resale; (c) in the case of Option exercise, by the retention of a number of Shares by the Company from the total number of Shares into which the Option is exercised; or (d) by a combination of the foregoing.

24. BMS shall have the right to deduct applicable taxes from any payment under the Plan by withholding, at the time of delivery or vesting of cash or Shares under the Plan, an appropriate amount of cash or Shares ("Share Withholding Exercises"; collectively, Share Withholding Exercises and Stock Swap Exercises are "Share Acquisitions") or a combination thereof for a payment of taxes required by law or to take such other action as may be necessary in the opinion of BMS or the Committee to satisfy all obligations for the withholding of such taxes.

25. A prospectus prepared according to U.S. securities laws describing the terms and conditions of the Plan will be delivered to each Participant who is granted an

2003 BCSECCOM 225

Award under the Plan. The annual reports, proxy materials and other materials BMS is required to file with the SEC will be provided to Canadian Participants at the same time and in the same manner as the documents are provided or made available to U.S. Participants.

26. Canadian shareholders do not own, directly or indirectly, more than 10% of the issued and outstanding Shares and do not represent in number more than 10% of the shareholders of BMS. If at any time during the currency of the Plan Canadian shareholders of BMS hold, in aggregate, greater than 10% of the total number of issued and outstanding Shares or if such shareholders constitute more than 10% of all shareholders of BMS, BMS will apply to the relevant Jurisdiction for an order with respect to further trades to any by Participants, Former Participants and Permitted Transferees in that Jurisdiction in respect of Shares acquired under the Plan.

27. Participants, Former Participants or Permitted Transferees may exercise Awards and sell Shares acquired under the Plan through an Agent.

28. Because there is no market for the Shares in Canada and none is expected to develop, any resale of the Shares acquired under the Plan will be effected through an exchange or market outside Canada or to a person or company outside Canada.

29. The Legislation of Manitoba does not contain exemptions from the Registration Requirement for Award exercises by Former Participants or Permitted Transferees through the Agent where the Agent is not a registrant.

30. Where the Agent sells Shares on behalf of Participants, Former Participants or Permitted Transferees, the Participants, Former Participants, Permitted Transferees or the Agent may not be able to rely on the exemptions from the Registration Requirement contained in the Legislation.

31. The acquisition by BMS of Shares pursuant to the Share Acquisitions may be an issuer bid as defined in the Legislation. The exemptions in the Legislation from the Issuer Bid Requirements may not be available for these acquisitions by the Company of its Shares from Participants, Former Participants or Permitted Transferees in accordance with the terms of the Plan, since these acquisitions may occur at a price that is not calculated in accordance with the "market price," as that term is defined in the Legislation and may be made from persons other than Employees or former Employees.

AND WHEREAS pursuant to the System, this Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

2003 BCSECCOM 225

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is that:

- (a) that the first trade by Participants, Former Participants and Permitted Transferees effected through the Agents in Shares acquired under the Plan will not be subject to the Registration Requirement, provided that such first trade is executed in accordance with section 2.14 of Multilateral Instrument 45-102 "Resale of Securities;"
- (b) in Manitoba, the Registration Requirement will not apply to Award exercises by Former Participants and Permitted Transferees effected through the Agent; and
- (c) the Issuer Bid Requirements shall not apply to the acquisition by BMS of Shares from Participants, Former Participants or Permitted Transferees in connection with the Plan provided such acquisitions are made in accordance with the provisions of the Plan.

DATED at Winnipeg, this 20th day of March, 2003.

Chris Besko