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Bristol Says U.S. Inquiry Is Settled

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Bristol-Myers Squibb has reached a tentative agreement to pay \$499 million to settle a federal investigation into illegal sales and marketing activities from the late 1990s through 2005, the company said yesterday.

That settlement, and separate special charges the company also announced yesterday, would wipe out Bristol-Myers fourth-quarter profit. But its shares rose on the indication that the company was resolving a big legal issue and tidying up its books, making it a more viable takeover candidate. The United States attorney's office in Boston, which first subpoenaed the records of Bristol-Myers in the matter in 2003, declined to confirm the announcement, saying it did not comment on such negotiations unless a final settlement has been signed.

Bristol-Myers, based in New York, declined to disclose which years, which drugs and which practices the tentative agreement covers. But Jeff Macdonald, a company spokesman, confirmed previous reports that one product involved was the antipsychotic drug Abilify, one of the company's best sellers.

A settlement on the terms described by Bristol-Myers would be the latest in a string of large payments the Justice Department has extracted from drug makers. Federal prosecutors have delved into practices like failing to tell the government about price discounts offered to other major customers. As a result, Medicare and other government health plans that are entitled to the lowest available price have frequently been overcharged.

Reserves that Bristol-Myers plans to set aside for the settlement, along with \$220 million in estimated pretax charges that the company announced separately yesterday and are related to previously announced debt restructuring, could leave the company with no net profit for the fourth quarter.

But Bristol-Myers also signaled that its business was doing well by accounting measures that exclude special charges. On that basis, the company said it

expected to finish the year at the "high end" of the range of \$1.02 to \$1.07 a share it had previously forecast to Wall Street.

Shares of Bristol-Myers rose 28 cents, to \$26.05.

Analysts said the charges reflected an effort to record the expenses in a year when earnings were already expected to be relatively weak, which could make future performance look stronger. In addition, some said, Bristol-Myers may be driving to eliminate legal uncertainties that hang over the company. Both actions could make the company more attractive to potential suitors.

"Legal issues tend to be really unknown quantities," said Seamus Fernandez, who follows the industry for Leerink Swann in Boston. Thus, he said, legal settlements make assessing the value of Bristol-Myers easier.

Takeover speculation has surged since the ouster of Peter R. Dolan as chief executive in September. A director, James M. Cornelius, was named interim chief executive.

As with previously negotiated Justice Department financial settlements with companies like GlaxoSmithKline, Schering Plough, and TAP Pharmaceuticals, Bristol-Myers said it also expected to sign a corporate integrity agreement with regulators in the Health and Human Services Department who monitor industry compliance with federal insurance programs.

Such agreements typically require companies to run employee training programs, set up hot lines to report rule violations and follow other practices listed in government compliance guidelines, according to Scot T. Hasselman, a health care lawyer at Reed Smith in Washington who is not involved in the Bristol-Myers case. They generally run for five years and often require the company to hire an independent auditor of compliance practices, Mr. Hasselman said.

The antipsychotic drug Abilify covered in the settlement has become the company's best-selling product outside of its flagship cardiovascular group, whose sales are led by Plavix, an anticlotting drug, and Pravachol, which lowers cholesterol.

Sales of Abilify totaled \$920 million in the first nine months of 2006, up 28 percent on the year.

Settlement of the Boston investigation would not clear Bristol-Myers's legal slate. The company faces, among other legal challenges, possible federal criminal securities fraud charges in connection with a scheme to record as sales products that it paid customers to store in their warehouses. According to a settlement agreement signed in July 2005, those charges will be dropped next summer if Bristol-Myers completes two years without further violations of practices specified in the agreement.

But Wall Street's bigger concern is the legal morass that has grown out of Bristol-Myers's efforts to delay competition for Plavix from a generic version of the drug manufactured in Canada by Apotex. The litigation sprawls across antitrust and patent disagreements, and the Justice Department is investigating whether Bristol-Myers violated criminal statutes in its dealings with Apotex and Sanofi-Aventis, the French company that invented the drug.

After negotiations between Apotex and Bristol-Myers broke down this year, Apotex began shipping the generic drug in August in huge quantities. A federal court in New York ordered a halt to further shipments in September but some supplies are still in the market. Bristol-Myers suffered as much as \$600 million in lost sales in the third quarter, according to filings with the Securities and Exchange Commission.

The companies' dispute is scheduled to go to trial in January.