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Market Place; Bristol-Myers Chief Stays Cool Even After Lawsuits, the F.D.A. and the F.B.I.

By STEPHANIE SAUL

A day after the Federal Bureau of Investigation searched his office, Peter R. Dolan, boarded his company's jet for Houston, to keep a scheduled meeting with 52 pediatricians who are heading to Africa to treat AIDS through a Bristol-Myers Squibb program.

It was indicative of how Mr. Dolan, the chief executive of Bristol-Myers, has learned to carry on in the midst of a storm. An experienced warrior who has battled both government investigations and investor lawsuits aimed at his company, as well as setbacks from the Food and Drug Administration, Mr. Dolan is regarded as cool under fire.

Mr. Dolan's aplomb is being challenged by yet another investigation, just as the company appeared to have resolved its problems.

"He has clearly been at the helm through a lot of the difficult phase that his company has faced," said Chris Shibusani, an analyst for J. P. Morgan Equity Research. "The board has continued to be very supportive of him."

And in a statement issued through the company last night, the board chairman,

James D. Robinson III, voiced continued support for Mr. Dolan.

"Peter has done a superb job in turning around the company, from developing a new management team, to a pipeline considered to be one of the best in the industry, to the recent approvals which bring innovative new medicines to patients in need," Mr. Robinson's statement said.

"He has the full and complete confidence of the board. We believe the actions of all Bristol-Myers Squibb employees, including Peter, involved in this matter have been appropriate, and have been coordinated hand-in-hand with senior outside counsel at every step."

The "matter" to which Mr. Robinson referred is a federal criminal inquiry into a proposed patent settlement involving the company's biggest-selling product, the blood-thinning medication Plavix.

Bristol-Myers markets the drug with the French company Sanofi-Aventis.

Yesterday, a coalition of 56 state and territorial attorneys general rejected a proposed settlement, which was supposed to have ended the patent dispute with Apotex, a Canadian company that wants to market a generic copy of Plavix.

Among the options now, the companies could renegotiate the deal and seek approval again or take the patent dispute to trial. Before the settlement was announced, such a trial had originally been planned for last month.

In light of the criminal investigation, the rejection had been expected. But Apotex is owed its \$40 million, regardless, under terms of the deal.

The company said Mr. Dolan and other Bristol-Myers executives and board members, including Mr. Robinson, were not available for interviews yesterday to discuss the investigation.

The type of settlement Bristol-Myers and Sanofi had proposed with Apotex was of a sort -- in which big pharmaceutical companies make payments to generic companies as part of agreements that delay the sale of the generic drug -- that is coming under increasing scrutiny, with critics saying they stifle competition.

Still, financial analysts and antitrust experts said yesterday that it was unlikely that such a settlement would generate a criminal inquiry absent extenuating circumstances. They speculated that the investigation involved accusations either that the companies had misled the government about terms of the deal or had engaged in a bad faith settlement in an effort to simply delay a trial on the patent dispute. Any delay benefits the patent holders, who are scheduled to lose exclusivity, anyway, in 2012.

Critics of the company's management and board have said that the latest criminal investigation indicates that the corporate culture of Bristol-Myers has not changed since it was accused of a practice called channel stuffing that involves inflating sales through inventory manipulation, forcing Mr.

Dolan to restate earnings by \$2.5 billion for the period 1999 to 2001.

Thomas Dubbs, a Manhattan lawyer who sued the company over an aborted drug called Vanlev, called the newest investigation, "yet another example of the Bristol-Myers board apparently being asleep at the switch."

"One would think that after channel stuffing and the Vanlev debacles," Mr. Dubbs said, "they would be paying more attention to whether senior management is playing by the rules."

The lawsuit by Mr. Dubbs, which the company settled this year for \$185 million, contended that Bristol-Myers made unduly rosy statements about Vanlev, a drug for high blood pressure, stirring investor interest in the company even though officials knew it caused a dangerous swelling condition called angioedema.

Mr. Dolan, who had been an executive of Bristol, took over as its chief in 2001, after the Vanlev debacle and on the tail end of the channel stuffing problems. He has said he was not aware of the channel stuffing practice until he unearthed evidence of it, then took corrective action.

The company hoped it had put the inventory issues behind it when that case ended in June 2005 with an agreement by the company to make a \$300 million payment to a shareholder-restitution fund, part of \$839 million in total settlement and restitution payments made in connection with the channel stuffing accusations.

The payment was part of an unusual deferred prosecution agreement that meant Bristol-Myers would not be prosecuted criminally if the company remained an exemplary corporate citizen until June 2007. It is not yet clear whether the new investigation could jeopardize the

company's standing under last year's agreement.

Despite all the bad news, shares in Bristol-Myers yesterday regained some of the heavy losses of Thursday, closing up 43 cents at \$24.47. The stock had closed at \$25.99 Wednesday, before the company disclosed the criminal investigation.

Analysts also said that Bristol-Myer's core business is looking stronger into 2007 and 2008 -- years when Mr. Dolan has said he will return the company to sustained sales and earnings growth.

Dr. Shibutani, the analyst, called the recent developments at Bristol-Myers disappointing in light of the recent positive momentum at the company.

"There's a tragedy in a sense that this company is on the cusp of turning around its operations," said Dr. Shibutani, a medical doctor, who is enthusiastic about the Bristol-Myers pipeline for what he called "real scientific advances and legitimate potential blockbuster products."

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