August 26, 2013

Russell G. Golden, Chairman
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, Connecticut 06856-5116

Re: Revenue Recognition Project – July 24, 2013 Joint FASB / IASB Board Decision on Variable Consideration in a Transaction

Dear Chairman Golden:

We are writing this letter in response to the conclusions reached at the joint meeting between the U.S. Financial Accounting Standards Board and the International Accounting Standards Board (hereafter “the Boards”), on July 24, 2013 with regard to constraints on recognition of variable consideration. During this meeting the Boards tentatively agreed:

➢ To specify that for all contracts an entity should include a minimum amount of variable consideration in the estimate of the transaction price, when including that amount would not result in a significant revenue reversal; and

➢ Not to specify the circumstances when that minimum amount would be zero, nor to specify an exception for sales-based royalties on licenses of intellectual property.

Previously in the Revenue Recognition Standard Exposure Draft dated January 4, 2012, language was included that an entity should exercise judgment and evaluate the facts and circumstances in estimating variable consideration. The Exposure Draft directed that variable consideration should be constrained when it was not certain that “an entity is reasonably assured to be entitled.” Additionally, this Exposure Draft expressly included an exception that sales-based royalties should not be recognized until 3rd party’s subsequent sales of the product actually occur. Based on the recent tentative decision from the July 24, 2013 joint meeting by the Boards, it appears as though this language may not be part of the Final Standard. We believe it is imperative that the language from the previous Exposure Drafts regarding the constraint on the ability to recognize revenue and the exception that sales-based royalties should not be recognized until the 3rd party’s subsequent sales of the product is completed should both be included in the Final Standard.

Similar to other entities in the life sciences industry, Bristol–Myers Squibb is subject to significant constraints from government regulators in the research, development and ultimate commercialization of our product portfolio. Bristol–Myers Squibb is actively engaged in licensing transactions of intellectual property through collaborative agreements with a number of other life science entities. Upon commencement of these collaborations, there are numerous impediments to estimating a minimum amount of variable consideration as revenue prior to commercialization of the product including potential delays with clinical trials, success of competitor clinical trials and obtaining regulatory approvals. Additionally, impediments often exist even in the
case that the intellectual property has already been approved for commercialization. These additional impediments include, among other things, product safety concerns, manufacturing issues, potential product recalls, the introduction of competitor products, and possible sales and distribution channel issues.

Furthermore, sales based royalty arrangements and other at – risk contingent revenue arrangements (which are common place in the life sciences industry), exist to alleviate inherent uncertainties related to future product sales. To recognize revenue in advance of the removal of these inherent uncertainties and contingencies conflicts with the fundamental economics of license transactions and implies a higher degree of certainty regarding future events which is in contrast to reality.

Additionally, we believe that if conclusions achieved by the Boards at the July 24, 2013 meeting are left unchanged, the following unintended consequences could manifest themselves for Bristol–Myers Squibb and other entities in the life sciences industry:

- Licensor of intellectual property would be dependent on 3rd party licensee product sales estimates to determine the appropriate minimums and to validate the amount of royalties to be recorded related to future sales of the product by the licensee. Therefore, the licensor would be required to rely on assumptions that the licensee will meet future performance obligations for product sales of the licensed product to generate the future royalties for the licensor. Furthermore, licensee’s may be reluctant to provide the necessary product sales estimates to licensors and licensors would also need a mechanism to properly validate the accuracy and reliability of the information received.

- The reliability of financial reporting results related to royalty revenues could potentially be tainted as entities would be recording current period royalty income based solely on forecasts of future transactions, which are inherently subject to uncertainty. Subsequent periods financial results could include significant adjustments based on the licensee’s actual sales and updated forecasts of future sales.

- There is the potential that users of financial statements would simply reverse out minimum royalty figures from their assessments causing additional growth in the use of non – GAAP measures. Analysts are focused on the quality and sustainability of sales figures (including royalty income), and including a minimum royalty requirement would only increase the scrutiny around these financial statement captions. The initial recording of a minimum royalty income amount followed by a subsequent reversal in a future period would lead to bias in viewing the royalty income figures recorded and disclosed by entities.

We urge the Boards to reconsider their conclusions reached at the July 24, 2013 meeting. We believe the language from the previous Exposure Drafts describing the constraints for recognizing revenue is significantly useful to the preparers and users of the financial statements.

Sincerely,

Robert Owens
Vice President & Assistant Controller

Tim Kocses
Director, Corporate Technical Accounting