

NEWS RELEASE

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Pharmaceutical Companies, Investor Coalition Develop Industry Standard-Setting Principles for Recoupment Policies Covering Major Compliance Failures

DETROIT—Amgen Inc. (NASDAQ: AMGN), Bristol-Myers Squibb Company (NYSE: BMY), Eli Lilly and Company (NYSE: LLY), Johnson & Johnson (NYSE: JNJ), Merck & Co., Inc. (NYSE: MRK) and Pfizer Inc. (NYSE: PFE) today joined thirteen institutional investors in endorsing a set of principles aimed at deterring violations of health care laws. The principles, *Principal Elements of a Leading Recoupment Policy*, were jointly developed by the companies and the investor coalition as a best practice corporate governance strategy that seeks to strengthen board risk oversight and preserve long-term shareholder value.

“Properly designed, compensation policies can be effective antidotes to compliance violations by affirming accountability that has real consequences,” said Meredith Miller, Chief Corporate Governance Officer, UAW Retiree Medical Benefits Trust.

The members of the working group, facilitated by Johnson & Johnson and the UAW Retiree Medical Benefits Trust, believe that the principles will help deter unethical and inappropriate behavior and that the collaborative process that led to these principles can serve as a model to apply to other corporate-shareholder engagements going forward.

Many top companies have clawback policies but these policies are only triggered when there is a financial restatement and seek to recover compensation that has already been paid. The agreed-upon recoupment principles also contemplate the recoupment of compensation that has not yet been awarded or vested. A 2012 Equilar study of Fortune 100 companies found that while 85% of the companies surveyed had clawback policies, only 25% of these policies contain an ethical misconduct trigger not associated with a financial restatement.

“We believe these principles strengthen the alignment between shareholders and management by providing potent but balanced disincentives for bad behavior,” said New York State Comptroller Thomas P. DiNapoli.

Among the key agreed-upon principles of a company’s recoupment policy are:

- Full discretion of the board compensation committee to determine if a material violation of company policy related to the sale, manufacture or marketing of health care services, has caused significant financial harm to the company and should therefore trigger consideration of a possible recoupment of incentive compensation.
- Application of the principles extending beyond the individuals responsible for the compliance failures to potentially include supervisors who failed to appropriately manage or monitor the risk.

- Decisions by the board compensation committee including whether to “clawback” incentive-based compensation already paid or otherwise recoup or reduce compensation that has not yet vested or has not yet been paid.
- Public disclosure concerning decisions to recoup compensation in compliance with SEC rules and, where appropriate, board compensation committees may choose to provide additional information.

The development of these principles was a collaborative effort. Companies in the working group are adapting the principles to suit their compensation programs.

“These clawback principles give boards a mechanism to hold executives accountable for misconduct and compliance violations, which is especially important in highly regulated industries such as health care,” New York City Comptroller John C. Liu said. “Other companies should look to these principles as a model for advancing the highest levels of ethics in the workplace.”

Investor participants included the UAW Retiree Medical Benefits Trust, the AFL-CIO Office of Investment, Amalgamated Bank Longview Funds, Connecticut Retirement Plans & Trust Funds, F&C Asset Management UK, HERMES Fund Managers, Illinois State Board of Investment, International Brotherhood of Teamsters, Laborers International Union of North America, New York City Pension Funds, New York State Common Retirement Fund, the United Steelworkers and Wespath Investment Management. The working group was facilitated by Alan L. Beller and Arthur H. Kohn, Partners, Cleary Gottlieb Steen & Hamilton LLP. Aaron Boyd, Director of Research, Equilar, James Reda, Managing Director, James F. Reda & Associates, and Lynn Shapiro Snyder, Senior Member, Epstein Becker Green, served as subject matter experts.

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