

MERCK & CO INC
Form DEFA14A
March 23, 2009

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A
Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
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Merck & Co., Inc.
(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

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This filing consists of a letter to employees from Bruce Kuhlik, Executive Vice President and General Counsel, dated March 23, 2009.

Subject: An Update From Bruce Kuhlik on Previously Disclosed DOJ Investigation

Dear Colleagues,

Today we issued a news release saying Merck has received a letter from the U.S. Attorney's Office for the District of Massachusetts advising us that the company is a target of a previously disclosed U.S. Department of Justice (DOJ) grand jury investigation.

I want to provide some perspective on this topic, although I cannot comment extensively given that the investigation is ongoing and the grand jury process is confidential and run by the U.S. Attorney's office.

The letter we received is in connection with an ongoing investigation into Merck's activities related to VIOXX. This investigation began in 2004, and includes subpoenas for information and documents from the company and for witnesses to appear before a grand jury. The inquiry is continuing, and the letter does not represent a conclusion or resolution in the matter.

I also can tell you that Merck has responded and will continue to respond to requests from the U.S. Attorney's office in connection with this ongoing investigation. Lastly, we do not expect the investigation or receipt of the target letter to have any impact on the timing and financing of our recently announced merger with Schering-Plough. In fact, today we also provided an update on our financing plans for the merger. For more information, see the links to today's press releases below.

The commitment and dedication of Merck employees to the company's high ethical standards continues to be the foundation of our success. Please stay focused on your objectives, your customers and on applying Merck's values and standards to every aspect of your work so that we can continue to carry out Merck's mission of preserving and improving human life.

Sincerely,

Bruce Kuhlik
Executive Vice President and General Counsel

Press release: Merck Provides Update on Previously Disclosed U.S. Department of Justice Investigation Relating to Vioxx [\[link\]](#)

Press release: Merck Provides Update on Merger Financing [\[link\]](#)

Forward-Looking Statements

This communication contains “forward-looking statements” as that term is defined in the Private Securities Litigation Reform Act of 1995. These statements are based on Merck's and Schering-Plough's managements' current expectations and involve risks and uncertainties, which may cause results to differ materially from those set forth in the statements. The forward-looking statements may include statements regarding product development, product potential or financial performance. No forward-looking statement can be guaranteed, and actual results may differ materially from those projected. Merck and Schering-Plough undertake no obligation to publicly update any forward-looking statement, whether as a result of new information, future events or otherwise. Forward-looking statements in this communication should be evaluated together with the many uncertainties that affect either companies' business, particularly those mentioned in the risk factors and cautionary statements set forth in Item 1A of either companies' annual reports on

Form 10-K for the year ended December 31, 2008, in their respective quarterly reports on Form 10-Q and in their respective current reports on Form 8-K, including, the current report on Form 8-K filed by Merck on March 10, 2009, each of which is incorporated by reference.

These reports are available at www.merck.com and www.schering-plough.com.

Additional Information

In connection with the proposed transaction, Schering-Plough will file a registration statement, including a joint proxy statement of Merck and Schering-Plough, with the Securities and Exchange Commission (the "SEC"). Investors are urged to read the registration statement and joint proxy statement (including all amendments and supplements to it) because they will contain important information. Investors may obtain free copies of the registration statement and joint proxy statement when they become available, as well as other filings containing information about Merck and Schering-Plough, without charge, at the SEC's Internet web site (www.sec.gov). These documents may also be obtained for free from Schering-Plough's Investor Relations web site (www.schering-plough.com) or by directing a request to Schering-Plough's Investor Relations at (908) 298-7436. Copies of Merck's filings may be obtained for free from Merck's Investor Relations Web Site (www.merck.com) or by directing a request to Merck at Merck's Office of the Secretary, (908) 423-1000.

Merck and Schering-Plough and their respective directors and executive officers and other members of management and employees are potential participants in the solicitation of proxies from Merck and Schering-Plough shareholders in respect of the proposed transaction.

Information regarding Schering-Plough's directors and executive officers is available in Schering-Plough's proxy statement for its 2008 annual meeting of shareholders, filed with the SEC on April 23, 2008, and information regarding Merck's directors and executive officers is available in Merck's proxy statement for its 2009 annual meeting of stockholders, filed with the SEC on March 13, 2009. Additional information regarding the interests of such potential participants in the proposed transaction will be included in the registration statement and joint proxy statement filed with the SEC in connection with the proposed transaction.

Forward-Looking Statements

This communication includes “forward-looking statements” within the meaning of the safe harbor provisions of the United States Private Securities Litigation Reform Act of 1995. Such statements may include, but are not limited to, statements about the benefits of the proposed merger between Merck and Schering-Plough, including future financial and operating results, the combined company’s plans, objectives, expectations and intentions and other statements that are not historical facts. Such statements are based upon the current beliefs and expectations of Merck’s and Schering-Plough’s management and are subject to significant risks and uncertainties. Actual results may differ from those set forth in the forward-looking statements.

The following factors, among others, could cause actual results to differ from those set forth in the forward-looking statements: the possibility that the expected synergies from the proposed merger of Merck and Schering-Plough will not be realized, or will not be realized within the expected time period, due to, among other things, the impact of pharmaceutical industry regulation and pending legislation that could affect the pharmaceutical industry; the ability to obtain governmental and self-regulatory organization approvals of the merger on the proposed terms and schedule; the actual terms of the financing required for the merger and/or the failure to obtain such financing; the failure of Schering-Plough or Merck stockholders to approve the merger; the risk that the businesses will not be integrated successfully; disruption from the merger making it more difficult to maintain business and operational relationships; the possibility that the merger does not close, including, but not limited to, due to the failure to satisfy the closing conditions; Merck’s and Schering-Plough’s ability to accurately predict future market conditions; dependence on the effectiveness of Merck’s and Schering-Plough’s patents and other protections for innovative products; the risk of new and changing regulation and health policies in the U.S. and internationally and the exposure to litigation and/or regulatory actions. Merck and Schering-Plough undertake no obligation to publicly update any forward-looking statement, whether as a result of new information, future events or otherwise. Additional factors that could cause results to differ materially from those described in the forward-looking statements can be found in Merck’s 2008 Annual Report on Form 10-K, Schering-Plough’s 2008 Annual Report on Form 10-K and each company’s other filings with the Securities and Exchange Commission (the “SEC”) available at the SEC’s Internet site (www.sec.gov).

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