

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

IN RE MERCK & CO., INC. SECURITIES,  
DERIVATIVE & “ERISA” LITIGATION

MDL No. 1658 (SRC)  
Civil Action No. 05-1151 (SRC) (CLW)  
Civil Action No. 05-2367 (SRC) (CLW)

THIS DOCUMENT RELATES TO:  
THE SECURITIES CLASS ACTION

**NOTICE OF (I) PROPOSED SETTLEMENT AND PLAN OF ALLOCATION;  
(II) SETTLEMENT FAIRNESS HEARING; AND (III) MOTION FOR AN AWARD OF  
ATTORNEYS’ FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

**TO:** All persons and entities who, from May 21, 1999, through October 29, 2004, inclusive (the “Settlement Class Period”), purchased or otherwise acquired the common stock of Merck & Co., Inc. (“Merck Common Stock”) or call options on Merck Common Stock, or sold put options on Merck Common Stock (the “Settlement Class”).<sup>1</sup>

*A federal court authorized this Settlement Notice. This is not a solicitation from a lawyer.*

**PLEASE READ THIS NOTICE CAREFULLY. This Settlement Notice explains important rights you may have, including the possible receipt of cash from the Settlement. If you are a member of the Settlement Class, your legal rights will be affected whether or not you act.**

**If you have any questions about this Settlement Notice, the proposed Settlement, or your eligibility to participate in the Settlement, please DO NOT contact Merck<sup>2</sup>, any other Defendants in the Action, or their counsel. All questions should be directed to Co-Lead Counsel or the Claims Administrator (as set forth in response to Question 30 below).**

- This notice relates to the above-captioned securities class action (the “Action”) brought by investors who claim that the prices of Merck Common Stock and Merck Call Options were artificially inflated and the prices of Merck Put Options were artificially depressed as a result of allegedly false statements and non-disclosures concerning Vioxx, a prescription pain-killer once sold by Merck, in violation of the federal securities laws.
- Lead Plaintiffs, the Public Employees’ Retirement System of Mississippi, Steven LeVan, Jerome Haber, and Richard Reynolds (collectively, “Lead Plaintiffs”), have reached a proposed settlement that, if approved, will resolve all claims in the Action on behalf of Lead Plaintiffs and the other members of the Settlement Class (as defined in the response to Question 5 below) against Merck and defendants Edward M. Scolnick and Alise S. Reicin (collectively, the “Individual Defendants,” and, together with Merck, the “Defendants”).
- The Settlement provides for a payment of \$830 million (the “Settlement Class Fund”) for the benefit of the Settlement Class, and another \$232 million (the “Fee/Expense Fund”) to be used to pay court-awarded Lead Plaintiffs’ attorneys’ fees and Litigation Expenses and the fees of the Special Master appointed by the Court regarding the award of attorneys’ fees and expenses. To the extent the Court awards attorneys’ fees and Litigation Expenses in an amount less than \$232 million, any amount remaining in the Fee/Expense Fund, after the payment of the Special Master’s fees and any Taxes owed by the Fee/Expense Fund, will be credited to the Settlement Class Fund and will not revert back to any of the Defendants or their insurers.
- If the Settlement is approved, the Net Settlement Fund<sup>3</sup> will be distributed to Settlement Class Members who submit Claim Forms that are valid and approved for payment by the Court in accordance with a plan of allocation that is approved by the Court. The plan of allocation that is being proposed by Lead Plaintiffs (the “Plan of Allocation”) is set forth on pages 9-15 below.

<sup>1</sup> Any capitalized terms used in this Settlement Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated February 8, 2016 (the “Stipulation”), which is available at [www.MerckVioxxSecuritiesLitigation.com](http://www.MerckVioxxSecuritiesLitigation.com).

<sup>2</sup> As used herein, “Merck” means Merck Sharp & Dohme Corp. and Merck & Co., Inc., the named defendant in this action, together with any of their subsidiaries and affiliates.

<sup>3</sup> The “Net Settlement Fund” means the Settlement Class Fund less (i) any Taxes owed by the Settlement Class Fund and (ii) any Notice and Administration Costs, plus any amount credited from the Fee/Expense Fund after the Court’s award of attorneys’ fees and Litigation Expenses and after payment of the Special Master’s fees and any Taxes owed by the Fee/Expense Fund.

- Lead Plaintiffs' damages expert estimates that approximately 2.28 billion shares of Merck Common Stock and 84 million Merck Call Options<sup>4</sup> purchased, and 65 million Merck Put Options sold, during the Settlement Class Period may have been affected by the conduct at issue in the Action. If all eligible Settlement Class Members elect to participate in the Settlement, the estimated average recovery would be approximately \$0.36 per affected share of common stock, \$0.03 per affected call option, and \$0.21 per affected put option, before the costs of providing notice and administering the Settlement. Settlement Class Members should note, however, that these are only estimates based on the overall number of potentially affected shares and options. Some Settlement Class Members may recover more or less than these estimated amounts.
- During the litigation, the Court certified a class consisting of all persons and entities who, from May 21, 1999 to September 29, 2004, inclusive (the "Certified Class Period"), purchased or otherwise acquired Merck Common Stock or Merck Call Options, or sold Merck Put Options (the "Certified Class"). The Certified Class Period was shorter than, and is encompassed by, the Settlement Class Period. The Notice of Pendency of Class Action ("Certified Class Notice") mailed in September 2013 provided members of the Certified Class with an opportunity to request exclusion from the Certified Class. If you previously submitted a request for exclusion and you wish to remain excluded, no further action is required, you will be excluded from the Settlement Class, and you will not be eligible to share in the proceeds of the Settlement. Persons who previously submitted a request for exclusion may, however, opt back into the Settlement Class for the purpose of being eligible to receive a payment from the Settlement if they fulfill the requirements set forth in the response to Question 18 below.
- Lead Plaintiffs and Defendants disagree as to both liability and damages, and do not agree on the average amount of damages per share, call option, and put option that would be recoverable if Lead Plaintiffs were to have prevailed on each claim alleged. Defendants have denied and continue to deny any liability or wrongdoing with respect to each and every claim alleged in the Action, and have denied and continue to deny, any allegation that Lead Plaintiffs or other Settlement Class Members have suffered damages as a result of any of the alleged acts or omissions. The issues on which the Parties disagree include, among others: (i) whether Defendants engaged in conduct that would give rise to liability under the federal securities laws; (ii) whether Defendants have valid defenses to any of the claims against them; (iii) the amount, if any, by which the prices of Merck's common stock and call options were artificially inflated and the amount, if any, that the price of Merck's put options was artificially depressed, as a result of Defendants' alleged violations of the federal securities laws; (iv) the appropriate economic model for measuring damages; and (v) the extent to which allegedly confounding news influenced the trading price of Merck's common stock or options at various times during the Settlement Class Period.
- Plaintiffs' Counsel, which collectively is Co-Lead Counsel, Liaison Counsel, and all other legal counsel who, at the direction and under the supervision of Co-Lead Counsel, performed services on behalf of, or for the benefit of, the Settlement Class in this Action, have prosecuted this Action on a wholly contingent basis since its inception in 2003. Co-Lead Counsel (defined below), on behalf of Plaintiffs' Counsel, will apply to the Court for a collective award of attorneys' fees to Plaintiffs' Counsel in an amount not to exceed 20% of the Settlement Funds<sup>5</sup> (which includes accrued interest). In addition, Co-Lead Counsel will apply for reimbursement of Litigation Expenses paid or incurred in connection with the prosecution and resolution of the Action in an amount not to exceed \$19 million, plus accrued interest, which will include reimbursement of the reasonable costs and expenses incurred by Lead Plaintiffs directly related to their representation of the Settlement Class. Any attorneys' fees and Litigation Expenses awarded by the Court will be paid from the Fee/Expense Fund. If the Court approves Co-Lead Counsel's fee and expense application, the estimated average amount of fees and expenses, assuming claims are filed for all affected shares, call options, and put options will be approximately \$0.10 per affected share of Merck Common Stock, \$0.01 per affected call option, and \$0.06 per affected put option.
- Lead Plaintiffs and the Settlement Class are being represented by Salvatore J. Graziano, Esq., of Bernstein Litowitz Berger & Grossmann LLP, 1251 Avenue of the Americas, New York, NY 10020, (800) 380-8496, blbg@blbglaw.com; Robert A. Wallner, Esq., of Milberg LLP, One Pennsylvania Plaza, New York, NY 10119, (212) 594-5300, rwallner@milberg.com; David A.P. Brower, Esq., of Brower Piven, A Professional Corporation, 475 Park Avenue South, 33rd Floor, New York, NY 10016, (212) 501-9000, brower@browerpiven.com; and Mark Levine, Esq. of Stull, Stull & Brody, 6 East 45th Street, New York, NY 10017, (800) 337-4983, ssb@ssbny.com, the Court-appointed Lead Counsel ("Co-Lead Counsel").
- **If you are a member of the Settlement Class and the Settlement is approved, your legal rights will be affected whether you act or not. Read this notice carefully and in its entirety to see what your options are in connection with the Settlement.**

<sup>4</sup> All options-related amounts in this paragraph are per share of the underlying security (*i.e.*, 1/100 of a contract).

<sup>5</sup> "Settlement Funds" means the aggregate of the Settlement Class Fund and the Fee/Expense Fund.

## YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT

<p><b>Submit a Claim Form postmarked no later than September 12, 2016.</b></p>	<p>This is the only way to be eligible to receive a payment from the Settlement.</p>
<p><b>Opt back into the Settlement Class by submitting a written request to withdraw your previously submitted request for exclusion so that it is <i>received</i> no later than June 23, 2016.</b></p>	<p>If you previously submitted a request for exclusion from the Certified Class in connection with the Certified Class Notice mailed in 2013 and now want to be part of the Settlement Class in order to be eligible to receive a payment from the Settlement, you must follow the steps for “Opting Back Into the Settlement Class” as set forth in the response to Question 18 below. If you previously submitted a request for exclusion in connection with the Certified Class Notice and wish to remain excluded from the Settlement Class, no further action is necessary.</p>
<p><b>If eligible, exclude yourself from the Settlement Class by submitting a written request for exclusion so that it is <i>received</i> no later than May 14, 2016.</b></p>	<p>Members of the Certified Class, who were previously afforded an opportunity to request exclusion, do not have a second opportunity to request exclusion at this time. However, if your <i>only</i> purchases of Merck Common Stock or Merck Call Options or sales of Merck Put Options during the Settlement Class Period occurred from September 30, 2004, through October 29, 2004, inclusive, you may request exclusion from the Settlement Class. If you fit these criteria and wish to exclude yourself from the Settlement Class, you must submit a request for exclusion as set forth in the response to Question 17 below. If you properly exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court in the Action and you will not be eligible to share in the Settlement.</p>
<p><b>Object to the Settlement by submitting a written objection so that it is <i>received</i> no later than May 14, 2016.</b></p>	<p>If you do not like the proposed Settlement, the proposed Plan of Allocation, and/or the request for attorneys’ fees and reimbursement of Litigation Expenses, you may write to the Court and explain why you do not like them. You cannot object to the Settlement, the Plan of Allocation, and/or the fee and expense request if you have excluded yourself from the Settlement Class.</p>
<p><b>File a Notice of Intention to Appear so that it is <i>received</i> no later than June 23, 2016, and go to the Settlement Hearing on June 28, 2016 at 10:00 a.m.</b></p>	<p>Filing a written objection by May 14, 2016 and a notice of intention to appear by June 23, 2016 allows you to speak in Court at the discretion of the Court about the fairness of the proposed Settlement, the Plan of Allocation, and/or the request for attorneys’ fees and reimbursement of Litigation Expenses. If you submit a written objection, you may (but do not have to) attend the hearing and speak to the Court about your objection.</p>
<p><b>Do nothing.</b></p>	<p>If you are a member of the Settlement Class and you do not submit a Claim Form postmarked on or before September 12, 2016, you will not be eligible to receive any payment from the Settlement. You will, however, remain a member of the Settlement Class, which means that you gave up your right to sue about the claims that are resolved by the Settlement, and you are bound by any judgments or orders entered by the Court in the Action.</p>

- These rights and options — **and the deadlines to exercise them** — are explained in this Settlement Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. The Net Settlement Fund will be available for distribution only if the Settlement is approved and that approval is upheld following any appeals.

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## **BASIC INFORMATION**

### **1. Why did I get this Settlement Notice?**

You received this Settlement Notice because you or someone in your family or an investment account for which you serve as a custodian may have purchased or acquired Merck Common Stock or call options on Merck Common Stock (“Merck Call Options”), or sold put options on Merck Common Stock (“Merck Put Options”) during the period from May 21, 1999, through October 29, 2004, inclusive. The Court ordered that this Settlement Notice be sent to you because, as a potential Settlement Class Member, you have a right to know about the proposed Settlement and about all of your options before the Court decides whether to approve the Settlement.

This Settlement Notice informs you of the existence of this case, that it is a class action, how you might be affected, and how to submit a Claim Form or exclude yourself from the Settlement Class if you are eligible and wish to do so. It is also being sent to inform you of the terms of the proposed Settlement, and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation and the motion by Co-Lead Counsel for an award of attorneys’ fees and reimbursement of Litigation Expenses (the “Settlement Hearing”). See Question 25 below for details about the Settlement Hearing, including the date and location of the hearing.

### **2. What is a class action?**

In a class action, one or more persons, called “plaintiffs,” sue on behalf of people who have similar claims. The court must certify the action to proceed as a class action and it will appoint the “class representatives.” All of the individuals and entities on whose behalf the class representatives are suing are known as class members. One court resolves the issues in the case for all class members, except for those who choose to exclude themselves from the class if exclusion is permitted by applicable rules of procedure. In this Action, the Court has appointed Lead Plaintiffs to serve as the class representatives and has appointed Co-Lead Counsel to serve as class counsel.

### **3. What is this lawsuit about?**

This is a securities class action concerning alleged misrepresentations and omissions in public statements by Merck and the Individual Defendants concerning Merck’s prescription pain-killer, Vioxx. Vioxx was manufactured and sold by Merck from May 21, 1999, following its approval by the U.S. Food and Drug Administration for marketing in accordance with FDA-approved labeling, until September 30, 2004, when Merck voluntarily withdrew Vioxx from the market. In late 2003 and in 2004 numerous putative securities fraud class actions concerning statements made by one or more of the Defendants about Vioxx were filed in various federal courts across the country.

By Order dated February 23, 2005, the Judicial Panel on Multi-District Litigation transferred the pending securities fraud cases to the U.S. District Court for the District of New Jersey (the “Court” or “District Court”) for coordinated pretrial proceedings, and the Court subsequently consolidated the securities class action cases into this action (the “Action”). On January 25, 2007, the Court entered an order finalizing the leadership structure as the Public Employees’ Retirement System of Mississippi, Richard Reynolds, Steven LeVan, and Jerome Haber as Lead Plaintiffs, and the law firms of Bernstein Litowitz Berger & Grossmann LLP, Brower Piven, A Professional Corporation, Stull, Stull & Brody, and Milberg LLP as Co-Lead Counsel for Lead Plaintiffs and the putative class.

In the current operative complaint, the Corrected Consolidated Sixth Amended Complaint (the “Sixth Amended Complaint”), Lead Plaintiffs allege that Merck and the Individual Defendants knowingly or recklessly made materially false and misleading statements to the public about the cardiovascular safety profile of Vioxx, and knowingly or recklessly omitted material facts about Vioxx’s safety that rendered certain of their statements materially false and misleading. Lead Plaintiffs further allege that when the truth emerged, the price of Merck securities declined significantly. The Sixth Amended Complaint asserts claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder, as well as a claim under Section 20A of the Exchange Act.

On April 12, 2007, the Court granted the motion of Defendants and other previously-named defendants to dismiss an earlier amended complaint on statute of limitations grounds and dismissed the case in its entirety as time-barred. On May 9, 2007, Lead Plaintiffs appealed the dismissal to the U.S. Court of Appeals for the Third Circuit. On September 9, 2008, following briefing and oral argument by the Parties, the U.S. Court of Appeals for the Third Circuit reversed the Court’s dismissal of the Action in a 2-1 decision. The defendants appealed that decision to the U.S. Supreme Court. On April 27, 2010, following briefing and oral argument by the Parties, the U.S. Supreme Court unanimously affirmed the decision of the U.S. Court of Appeals and returned the Action to the District Court.



On June 18, 2010, Defendants and other previously-named defendants again moved to dismiss the Action, on grounds other than the statute of limitations, which the Court had not previously considered. Following full briefing, on August 8, 2011, the Court granted in part, and denied in part, the motion. Thereafter, full fact discovery commenced. Over the course of the litigation, counsel for Lead Plaintiffs and Defendants completed extensive fact, class and expert discovery, which included fifty-nine (59) depositions, including fourteen (14) expert depositions, the production and review of more than thirty-five (35) million pages of documents, and dozens of interrogatories. Over the course of the litigation the Parties retained and presented experts in the disciplines of biostatistics, cardiology, regulatory oversight of Vioxx, gastroenterology, and damages, among other areas.

On May 3, 2012, Defendants and other previously-named defendants filed a motion for judgment on the pleadings, arguing that: (a) certain of the alleged misrepresentations were not actionable under the securities laws; and (b) Lead Plaintiffs did not state a claim under Section 20(a) of the Exchange Act for control person liability with respect to certain current and former Merck officers who had previously been dismissed from the Section 10(b) claims. Lead Plaintiffs opposed that motion, and on August 29, 2012, the Court granted in part and denied in part Defendants' motion.

On April 10, 2012, Lead Plaintiffs filed their motion to certify the Action as a class action. Following full briefing, on January 30, 2013, the Court issued an Order granting Lead Plaintiffs' motion and certified a class consisting of all persons and entities who, from May 21, 1999 to September 29, 2004, inclusive (the "Certified Class Period"), purchased or otherwise acquired Merck Common Stock or Merck Call Options, or sold Merck Put Options (the "Certified Class"), and appointing Lead Plaintiffs as Class Representatives and Co-Lead Counsel as Class Counsel.

On August 6, 2013, the Court entered an Order directing that notice be sent to potential members of the Certified Class ("Certified Class Notice"). Among other things, the Court found that the Certified Class Notice met the requirements of Rule 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled to receive notice. The Certified Class Notice was sent to putative Certified Class Members beginning on September 4, 2013. Pursuant to the Court's August 6, 2013 Order, the Certified Class Notice provided putative members of the Certified Class with the opportunity to request exclusion from the Certified Class. The Certified Class Notice explained Certified Class Members' right to request exclusion from the Certified Class, set forth the procedure for doing so, stated that it is within the Court's discretion whether to permit a second opportunity to request exclusion if there is a settlement, and provided a deadline of November 3, 2013 for the submission of requests for exclusion. The Certified Class Notice further stated that Certified Class Members who choose to remain a member of the class "will be bound by all past, present and future orders and judgments in the Action, whether favorable or unfavorable." More than 1.5 million copies of the Certified Class Notice were mailed to potential members of the Certified Class, some of whom exercised their right to request exclusion from the Certified Class. *See* Appendix 1 to the Stipulation.

On January 17, 2014, Defendants moved for summary judgment. Lead Plaintiffs filed their opposition papers on March 14, 2014, and, on April 11, 2014, Defendants filed their reply papers. On May 13, 2015, the Court entered an Order granting in part and denying in part the motions for summary judgment. Specifically, the Court granted summary judgment with respect to: (i) statements made by Merck between May 21, 1999 and March 26, 2000, *i.e.*, the alleged misstatements prior to public announcement of the results of a Merck Vioxx study called "VIGOR" on March 27, 2000; and (ii) a December 2001 statement by Individual Defendant Dr. Scolnick in a *Bloomberg News* article. The Court denied summary judgment as to the remaining statements.

Trial of the Action was scheduled by the Court to begin on March 1, 2016. By the date the agreement in principle to settle was reached (December 17, 2015), Lead Plaintiffs and Defendants were substantially engaged in trial preparations. Thus, for example, the Parties had submitted to the Court the proposed Joint Pre-Trial Order, which included the Parties' stipulated and contested facts, deposition transcript designations, witness lists, and exhibit lists; and multiple motions concerning the admissibility of expert witness testimony at trial had been filed, fully briefed, and were before the Court.

Defendants continue to deny any allegations of fault, wrongdoing or liability with respect to the allegations in the Sixth Amended Complaint, and the Court has not ruled on the merits of the allegations.

#### **4. What should I do if my address changes, or if this notice was sent to the wrong address?**

If this Settlement Notice was sent to you at the wrong address, or if your address changes in the future, please send prompt written notification of your correct address to the Claims Administrator at the following address: *In re Merck & Co., Inc. Vioxx Securities Litigation*; c/o Epiq Systems; P.O. Box 6659; Portland, OR 97228-6659.

## **WHO IS IN THE SETTLEMENT CLASS**

### **5. How do I know whether I am part of the Settlement Class?**

The Court previously certified a class consisting of all persons and entities who, from May 21, 1999, to September 29, 2004, inclusive (the “Certified Class Period”), purchased or otherwise acquired Merck Common Stock or Merck Call options, or sold Merck Put Options (the “Certified Class”). In granting preliminary approval of the Settlement, the Court certified a new “Settlement Class,” which covers a longer time period. The Settlement Class, subject to certain exceptions identified below, includes:

All persons and entities who, from May 21, 1999 through October 29, 2004, inclusive (the “Settlement Class Period”), purchased or otherwise acquired Merck Common Stock or Merck Call options, or sold Merck Put Options.

Please note that the Settlement Class Period, which runs from May 21, 1999, through October 29, 2004, inclusive, encompasses the Certified Class Period.

### **6. Are there exceptions to being included?**

Even if a person or entity falls within the Settlement Class, they may be excluded from the Settlement Class by definition. Persons and entities excluded from the Settlement Class by definition are Defendants; the officers and directors of Merck at all relevant times; members of the Immediate Family of any excluded person; the legal representatives, heirs, successors, and assigns of any excluded person or entity; any entity in which any excluded person or entity has or had a controlling interest; and the Merck & Co., Inc. Employee Savings & Security Plan (now known as the Merck U.S. Savings Plan), the Merck and Co., Inc. Employee Stock Purchase & Savings Plan (now known as the MSD Employee Stock Purchase & Savings Plan), the Merck Puerto Rico Employee Savings & Security Plan (now known as the MSD Puerto Rico Employee Savings & Security Plan), and the Merck-Medco Managed Care, LLC 401(k) Savings Plan (and any successor or successors thereto).

Also excluded from the Settlement Class are: (i) any persons or entities whose only purchases of Merck Common Stock or Merck Call Options or sales of Merck Put Options during the Settlement Class Period occurred from September 30, 2004 through October 29, 2004, inclusive, who would otherwise fall into the definition of Settlement Class Member, and who submit a request for exclusion from the Settlement Class in accordance with the requirements set forth in this notice (*see* response to Question 17 below); and (ii) any person or entity listed in Appendix 1 to the Stipulation (available at [www.MerckVioxxSecuritiesLitigation.com](http://www.MerckVioxxSecuritiesLitigation.com)) who does not opt back into the Settlement Class (*see* response to Question 18 below).

**PLEASE NOTE: RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE A SETTLEMENT CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT. IF YOU ARE A SETTLEMENT CLASS MEMBER AND YOU WISH TO BE ELIGIBLE TO PARTICIPATE IN THE DISTRIBUTION OF PROCEEDS FROM THE SETTLEMENT, YOU ARE REQUIRED TO SUBMIT THE CLAIM FORM THAT IS BEING DISTRIBUTED WITH THIS NOTICE AND THE REQUIRED SUPPORTING DOCUMENTATION AS SET FORTH THEREIN POSTMARKED NO LATER THAN SEPTEMBER 12, 2016.**

### **7. What should I do if I am still not sure whether I am included?**

If you are still not sure whether you are included, you can ask for help, which will be provided to you at no cost. You can call the Claims Administrator toll free at (866) 752-0067, or write to the Claims Administrator at the address stated in the answer to Question 4 above. Please note that the Claims Administrator does not have access to your trading records, but will be happy to explain the requirements for membership in the Settlement Class.

## **SUMMARY OF THE SETTLEMENT**

### **8. How and when was the Settlement reached?**

The Parties reached an agreement-in-principle to settle the Action on December 17, 2015, following extensive arm’s-length negotiations, including significant mediation efforts conducted by the Court and by the Court-appointed mediator, former United States District Judge Layn Phillips. The agreement was the result of all Parties accepting a mediator’s proposal by Judge Phillips.

## **9. What does the Settlement provide?**

The Settlement provides for a payment of \$830 million (the “Settlement Class Fund”) for the benefit of the Settlement Class, and another \$232 million (the “Fee/Expense Fund”) to be used to pay court-awarded Lead Plaintiffs’ attorneys’ fees and Litigation Expenses and the fees of the Special Master appointed by the Court regarding the award of attorneys’ fees and expenses. To the extent the Court awards attorneys’ fees and Litigation Expenses in an amount less than \$232 million, any amount remaining in the Fee/Expense Fund, after the payment of the Special Master’s fees and any Taxes owed by the Fee/Expense Fund, will be credited to the Settlement Class Fund and will not revert back to any of the Defendants or their insurers. If the Settlement is approved by the Court, then as of the Effective Date, all members of the Settlement Class will be deemed to have released all Released Plaintiffs’ Claims (as defined in the response to Question 16 below) against Defendants and the other Defendants’ Releasees (as defined in the response to Question 16 below). This means, among other things, that, upon the Effective Date, all Settlement Class Members will be permanently barred from asserting any of the Released Plaintiffs’ Claims against Defendants and other Defendants’ Releasees. In addition, upon the Effective Date, Defendants will be precluded from suing Lead Plaintiffs, the other members of the Settlement Class, or Plaintiffs’ Counsel in connection with the institution, prosecution, or resolution of the Action.

If the Settlement is approved by the Court and becomes effective, the Action will be over.

## **10. What are the reasons for the Settlement?**

Lead Plaintiffs agreed to the Settlement because of the certain, substantial, and immediate monetary benefit it will provide to the Settlement Class, compared to the risk that a lesser or no recovery might be achieved after a contested trial and likely appeals, possibly years into the future.

Although Co-Lead Counsel believe that the Lead Plaintiffs have a strong case for liability – and negotiated the Settlement on this basis – the claims against the Defendants presented unique challenges given, among other things, the highly disputed nature of the alleged fraud. For example, to prove their case, Lead Plaintiffs needed to establish, among other things, that Defendants were in possession of material information evidencing an undisclosed cardiovascular risk of Vioxx, and that, to hide that risk, Defendants falsely attributed a difference in the number of heart attacks observed in the VIGOR study patients to a purported cardiovascular benefit of the comparator drug, naproxen. These complex scientific arguments, and the statistical concepts that underlie them, might not have been easily understood by a jury and were vigorously disputed by Defendants. As a result, Lead Plaintiffs faced the very real risk that a jury would conclude that statements alleged to be materially false and misleading were not and that the Defendants did not act with the requisite culpable mental state (which requires intent to defraud or recklessness).

Defendants also argued that any information about Vioxx’s cardiovascular risk was in the public domain during the Settlement Class Period, and that Defendants were engaged in, and cannot be held liable simply for being part of, a public “scientific debate” over the risks of Vioxx. The difficulty of establishing Defendants’ liability was further compounded by the fact that Defendants would be able to cite to the fact that the FDA scrutinized certain of the underlying Vioxx data yet repeatedly approved the drug for sale. Even after conducting an extensive investigation and completing fact and expert discovery, Lead Plaintiffs recognize that risks remain with respect to establishing Defendants’ liability. Additionally, Lead Plaintiffs are confident that even if they were to prevail at trial, Defendants would appeal such a verdict and this could lead to further delays at best, and at worst, no recovery at all.

Defendants deny any wrongdoing, maintain that the claims in the Action are without merit, and believe that they would ultimately prevail. Nevertheless, Defendants also recognize the uncertainty, risks, and costs of complex securities litigation. Defendants agreed to resolve the matter solely to eliminate the burden and expense of further litigation, including imminent trial.

## **11. What is the potential outcome of the lawsuit without the Settlement?**

If there were no Settlement and Lead Plaintiffs failed to establish any essential legal or factual element of their claims, neither Lead Plaintiffs nor the other members of the Settlement Class would recover anything from Defendants. Also, if Defendants were successful in proving any of their defenses, the members of the Settlement Class likely would recover substantially less than the amount provided in the Settlement, or nothing at all.



## **THE BENEFITS OF THE SETTLEMENT– WHAT YOU GET**

### **12. How much will be distributed to investors?**

The Settlement will create a Settlement Class Fund of \$830 million, and another \$232 million Fee/Expense Fund to be used to pay Court-awarded Lead Plaintiffs' attorneys' fees and Litigation Expenses and the fees of the Special Master appointed by the Court regarding the award of attorneys' fees and expenses. To the extent the Court awards attorneys' fees and Litigation Expenses in an amount less than \$232 million, any amount remaining in the Fee/Expense Fund, after the payment of the Special Master's fees and any Taxes owed by the Fee/Expense Fund, will be credited to the Settlement Class Fund and will not revert back to any of the Defendants or their insurers. Thus, if the Settlement is approved by the Court and the Effective Date occurs, the Settlement Class Fund less any Taxes owed by the Settlement Class Fund and any Notice and Administration Costs, plus any amount credited from the Fee/Expense Fund after the Court's award of attorneys' fees and Litigation Expenses and the deduction of the Special Master's fees and any Taxes owed by the Fee/Expense Fund – the Net Settlement Fund – will be available for distribution to members of the Settlement Class.

Settlement Class Members who submit timely and valid Claim Forms will be eligible to receive a distribution from the Net Settlement Fund.

### **13. How much will my payment be?**

At this time, it is not possible to make a determination as to how much any individual Settlement Class Member may receive from the Settlement. The amounts to be distributed to individual Settlement Class Members will depend on a variety of factors, including: the number of other Settlement Class Members who submit valid Claim Forms; the number of shares of common stock or number of call options purchased or put options sold by those claimants; the prices and dates of those purchases; and the prices and dates of any sales of the stock or options. The Net Settlement Fund will be distributed in accordance with the proposed Plan of Allocation or such other plan of allocation as the Court may approve.

No entity that paid any portion of the \$830 million Settlement Class Fund, or the \$232 million Fee/Expense Fund, is entitled to get back any money if the Court approves the Settlement and the Court's order or judgment approving the Settlement becomes Final.

### **PROPOSED PLAN OF ALLOCATION**

1. The objective of the Plan of Allocation is to equitably distribute the Net Settlement Fund to those Settlement Class Members who suffered economic losses as a proximate result of the alleged wrongdoing. The calculations made pursuant to the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. Nor are the calculations pursuant to the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlement. The computations under the Plan of Allocation are only a method to weigh the claims of Authorized Claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Fund.

2. In developing the Plan of Allocation, Lead Plaintiffs consulted with their damages expert who had reviewed publicly available information regarding Merck and performed statistical analyses of the price movements of Merck Common Stock ("Common Stock") and of Merck Put Options and Merck Call Options (collectively "Options"; Merck Common Stock and Options are collectively referred to as "Merck Securities") and the price performance of relevant market and peer indices during the Settlement Class Period. The damages expert isolated the losses in Merck Securities that resulted from the alleged violations of the federal securities laws, eliminating losses attributable to market factors, industry factors, or Company-specific factors unrelated to the alleged violations of law, and adjusting for the strength of the claims asserted in the Action. The Plan of Allocation, however, is not a formal damage analysis.

3. For losses to be compensable damages under the federal securities laws, the disclosure of the allegedly misrepresented information must be the cause of the decline in the price or value of the security. Lead Plaintiffs' damages expert has determined that allegedly corrective information released to the market before the opening of trading on two separate days – September 30, 2004, and November 1, 2004 – had a statistically significant impact on the market prices of Merck Securities. In order to have a "Recognized Loss Amount" under the Plan of Allocation, with respect to Common Stock and Call Options, the stock or call options must have been purchased or acquired during the Settlement Class Period and held through at least one of the dates of the two alleged corrective disclosures and, with respect to Put Options, those options must have been sold (written) during the Settlement Class Period and not closed through at least one of the alleged corrective disclosures.

4. Recognized Loss Amounts are based primarily on the difference in the amount of alleged artificial inflation (or deflation in the case of Put Options) in the respective prices of the Merck Securities at the time of purchase or acquisition and at the time of sale. Accordingly, in order to have a Recognized Loss Amount, a Settlement Class Member who purchased or acquired Merck Securities (or wrote Put Options) from May 21, 1999, through and including September 29, 2004, must have held those Merck Securities through at least the close of trading on September 29, 2004. With respect to Common Stock or Call Options contracts purchased/acquired and Put Options contracts sold (written) from September 30, 2004, through and including October 29, 2004, those securities must have been held through at least the close of trading on October 29, 2004.

5. The Plan of Allocation includes two adjustments to reflect the relative weakness of certain claims that were dismissed by the Court, but that are nevertheless being compensated under the Settlement in accordance with the proposed Plan of Allocation set forth herein. First, to account for the Court's dismissal of all claims arising from the November 1, 2004 corrective disclosure, the artificial inflation amounts set forth in Table 1 include 10% of the total artificial inflation attributable to the November 1, 2004 corrective disclosure. Second, as discussed in paragraph 9 and footnote 7 below, to account for the Court's dismissal of claims related to alleged false statements made by Defendants before March 27, 2000, the Recognized Loss or Gain Amount for Common Stock purchased or acquired from May 21, 1999 through March 26, 2000 is 10% of the Recognized Loss or Gain Amount that would otherwise be calculated for those transactions.

### **Calculation of Recognized Loss Amounts**

6. For purposes of determining whether a Claimant has a Recognized Claim, purchases, acquisitions, and sales of like securities will first be matched on a First In/First Out basis as set forth in paragraph 15 below.

7. With respect to shares of Merck Common Stock and Call and Put Options, a "Recognized Loss Amount" or a "Recognized Gain Amount" will be calculated as set forth below for each purchase or acquisition of Merck Common Stock and Call Option contracts and each writing of Merck Put Option contracts from May 21, 1999 through and including October 29, 2004, that is listed in the Claim Form and for which adequate documentation is provided. To the extent that a calculation of a Recognized Loss Amount or a Recognized Gain Amount results in zero or a negative number, that number shall be set to zero.

### **Common Stock Calculations**

8. Subject to paragraph 9 below, for each share of Merck Common Stock purchased or acquired from May 21, 1999, through and including the close of trading on October 29, 2004, and:

- A. sold before the close of trading on September 29, 2004,
  - (i) the Recognized Loss Amount for each such share shall be zero; and
  - (ii) the Recognized Gain Amount for each such share shall be the dollar amount of artificial inflation applicable to each such share on the date of sale as set forth in Table 1 below *minus* the dollar amount of artificial inflation applicable to each such share on the date of purchase as set forth in Table 1 below.
- B. sold from September 30, 2004, through and including the close of trading on October 29, 2004,
  - (i) the Recognized Loss Amount for each such share shall be the dollar amount of artificial inflation applicable to each such share on the date of purchase as set forth in Table 1 below *minus* \$0.54 (which was the dollar amount of artificial inflation from September 30, 2004 through October 29, 2004); and
  - (ii) the Recognized Gain Amount for each such share shall be zero.
- C. sold from November 1, 2004, through and including the close of trading on January 28, 2005,
  - (i) the Recognized Loss Amount for each such share shall be ***the lesser of:***
    - (a) the dollar amount of artificial inflation applicable to each such share on the date of purchase as set forth in Table 1 below; or
    - (b) the actual purchase price of each such share (excluding all fees, taxes and commissions) *minus* the average closing price from November 1, 2004 up to the date of sale as set forth in Table 2 below; and

(ii) the Recognized Gain Amount for each such share shall be zero.

D. held as of the close of trading on January 28, 2005,

(i) the Recognized Loss Amount for each such share shall be ***the lesser of:***

(a) the dollar amount of artificial inflation applicable to each such share on the date of purchase as set forth in Table 1 below; or

(b) the actual purchase price of each such share (excluding all fees, taxes and commissions) ***minus*** \$29.42<sup>6</sup>; and

(ii) the Recognized Gain Amount for each such share shall be zero.

9. For each share of Merck Common Stock purchased or acquired from May 21, 1999, through and including the close of trading on March 26, 2000, the Recognized Loss or Gain Amount shall be 10% of the Recognized Loss or Gain Amount calculated under paragraph 8 above.<sup>7</sup>

**For examples of how to calculate your Recognized Loss Amounts for common stock transactions under the Plan of Allocation, please visit [www.MerckVioxxSecuritiesLitigation.com](http://www.MerckVioxxSecuritiesLitigation.com).**

### **Call and Put Option Calculations**

10. Exchange-traded options are traded in units called “contracts” which entitle the holder to buy (in the case of a call) or sell (in the case of a put) 100 shares of the underlying security, which in this case is Merck Common Stock.<sup>8</sup> Throughout this Plan of Allocation, all price quotations are *per share of the underlying security* (*i.e.*, 1/100 of a contract).

11. Each option contract specifies a strike price and an expiration date. Contracts with the same strike price, expiration date and option class symbol are referred to as a “series” and each series represents a different security that trades in the market and has its own market price (and thus artificial inflation or deflation). Under the Plan of Allocation, the dollar amount of artificial inflation per share (*i.e.*, 1/100 of a contract) for each series of Merck Call Options and the dollar amount of artificial deflation per share (*i.e.*, 1/100 of a contract) for each series of Merck Put Options has been calculated by Lead Plaintiffs’ damages expert. Table 3 sets forth the dollar amount of artificial inflation per share in Merck Call Options during the Settlement Class Period, except for certain Merck Call Options as discussed in footnote 9. Table 4 sets forth the dollar amount of artificial deflation per share in Merck Put Options during the Settlement Class Period, except for certain Merck Put Options as discussed in footnote 10. **Table 3 and Table 4 are available at [www.MerckVioxxSecuritiesLitigation.com](http://www.MerckVioxxSecuritiesLitigation.com).**

12. For each Merck Call Option purchased or acquired from May 21, 1999, through and including the close of trading on October 29, 2004, and:

A. closed (through sale, exercise or expiration) before the close of trading on September 29, 2004,

(i) the Recognized Loss Amount for each such Option shall be zero; and

<sup>6</sup> Under Section 21(D)(e)(1) of the Exchange Act, “in any private action arising under this Act in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market.” Consistent with the requirements of the statute, Recognized Loss Amounts are reduced to an appropriate extent by taking into account the closing prices of Merck Common Stock during the 90-day look-back period. The mean (average) closing price for Merck Common Stock during this 90-day look-back period was \$29.42.

<sup>7</sup> At the summary judgment stage, the Court dismissed all claims arising from the purchase of Merck securities during the time period from May 21, 1999, through and including the close of trading on March 26, 2000. To account for the relative weakness of these claims due to their dismissal by the Court, the Recognized Loss or Gain Amount for shares of Merck Common Stock purchased or acquired during that time period is 10% of the Recognized Loss or Gain Amount calculated under paragraph 8 above.

<sup>8</sup> Due to the spinoff of Medco Health Services from Merck on August 20, 2003, some Merck option contracts have both Merck Common Stock and Medco common stock as underlying securities. The number of underlying securities for these options is 100 shares of Merck Common Stock, 12 shares of Medco common stock, and cash in lieu of 0.06 fractional shares of Medco common stock.

- (ii) the Recognized Gain Amount for each such Option shall be the dollar amount of artificial inflation applicable to each such Option on the date of close as set forth in Table 3 *minus* the dollar amount of artificial inflation applicable to each such Option on the date of purchase as set forth in Table 3.<sup>9</sup>
    - B. closed (through sale, exercise or expiration) from September 30, 2004, through and including the close of trading on October 29, 2004,
      - (i) the Recognized Loss Amount for each such Option shall be the dollar amount of artificial inflation applicable to each such Option on the date of purchase as set forth in Table 3 *minus* the dollar amount of artificial inflation applicable to each such Option on the date of close as set forth in Table 3; and
      - (ii) the Recognized Gain Amount for each such Option shall be zero.
    - C. open as of the close of trading on October 29, 2004,
      - (i) the Recognized Loss Amount for each such Option shall be ***the lesser of:***
        - (a) the dollar amount of artificial inflation applicable to each such Option on the date of purchase as set forth in Table 3; or
        - (b) the actual purchase price of each such Option (excluding all fees, taxes and commissions) *minus* the closing price on November 1, 2004, for each such Option (*i.e.*, the “Holding Price”) as set forth on Table 3; and
      - (ii) the Recognized Gain Amount for each such Option shall be zero.
13. For each Merck Put Option sold (written) from May 21, 1999, through and including the close of trading on October 29, 2004, and:
- A. closed (through purchase, exercise or expiration) before the close of trading on September 29, 2004,
    - (i) the Recognized Loss Amount for each such Option shall be zero; and
    - (ii) the Recognized Gain Amount for each such Option shall be the dollar amount of artificial deflation applicable to each such Option on the date of close as set forth in Table 4 *minus* the dollar amount of artificial deflation applicable to each such Option on the date of sale as set forth in Table 4.<sup>10</sup>
  - B. closed (through purchase, exercise or expiration) from September 30, 2004, through and including the close of trading on October 29, 2004,
    - (i) the Recognized Loss Amount for each such Option shall be the dollar amount of artificial deflation applicable to each such Option on the date of sale as set forth in Table 4 *minus* the dollar amount of artificial deflation applicable to each such Option on the date of close as set forth in Table 4; and
    - (ii) the Recognized Gain Amount for each such Option shall be zero.
  - C. open as of the close of trading on October 29, 2004,
    - (i) the Recognized Loss Amount for each such Option shall be ***the lesser of:***
      - (a) the dollar amount of artificial deflation applicable to each such Option on the date of sale as set forth in Table 4; or
      - (b) the closing price on November 1, 2004 for each such Option (*i.e.*, the “Holding Price”) as set forth on Table 4 *minus* the actual sale price of each such Option (excluding all fees, taxes and commissions); and

<sup>9</sup> Purchases or acquisitions of Merck Call Options with either (1) an expiration date before the first corrective disclosure on September 30, 2004 or (2) zero open interest (no open option contracts) on September 30, 2004 and November 1, 2004, have a Recognized Loss Amount and Recognized Gain Amount of zero and these Merck Call Options are not listed on Table 3.

<sup>10</sup> Sales (writings) of Merck Put Options with either (1) an expiration date before the first corrective disclosure on September 30, 2004 or (2) zero open interest (no open options contracts) on September 30, 2004 and November 1, 2004, have a Recognized Loss Amount and Recognized Gain Amount of zero and these Merck Put Options are not listed on Table 4.



(ii) the Recognized Gain Amount for each such Option shall be zero.

14. **Maximum Recovery for Options:** The Settlement proceeds available for Merck Call Options purchased during the Settlement Class Period and Merck Put Options sold (written) during the Settlement Class Period shall be limited to an amount equal to two percent (2%) of the Net Settlement Fund.

#### **Additional Provisions**

15. **FIFO Matching:** If a Settlement Class Member made more than one purchase/acquisition or sale of any Merck Security during the Settlement Class Period, all purchases/acquisitions and sales of the like security shall be matched on a First In, First Out (“FIFO”) basis. With respect to Merck Common Stock and Call Options, Settlement Class Period sales will be matched first against any holdings at the beginning of the Settlement Class Period, and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Settlement Class Period. For Merck Put Options, Settlement Class Period purchases will be matched first to close out positions open at the beginning of the Settlement Class Period, and then against Put Options sold (written) during the Settlement Class Period in chronological order.

16. **“Purchase/Sale” Dates:** Purchases or acquisitions and sales of Merck Securities shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date. The receipt or grant by gift, inheritance or operation of law of Merck Securities during the Settlement Class Period shall not be deemed a purchase, acquisition or sale of these Merck Securities for the calculation of a Claimant’s Recognized Loss or Gain Amounts, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition of such Merck Securities unless (i) the donor or decedent purchased or otherwise acquired such Merck Securities during the Settlement Class Period; (ii) the instrument of gift or assignment specifically provides that it is intended to transfer such rights; and (iii) no Claim Form was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such Merck Securities.

17. **Short Sales:** With respect to Merck Common Stock, the date of covering a “short sale” is deemed to be the date of purchase or acquisition of the Common Stock. The date of a “short sale” is deemed to be the date of sale of the Merck Common Stock. In accordance with the Plan of Allocation, however, the Recognized Loss and Gain Amounts on “short sales” is zero.

18. In the event that a Claimant has an opening short position in Merck Common Stock, the earliest purchases or acquisitions during the Settlement Class Period shall be matched against such opening short position, and not be entitled to a recovery, until that short position is fully covered.

19. If a Settlement Class Member has “written” Call Options, thereby having a short position in the Call Options, the date of covering such a written position is deemed to be the date of purchase or acquisition of the Call Option. The date on which the Call Option was written is deemed to be the date of sale of the Call Option. In accordance with the Plan of Allocation, however, the Recognized Loss and Gain Amounts on “written” Call Options is zero. In the event that a Claimant has an opening written position in Call Options, the earliest purchases or acquisitions of like Call Options during the Settlement Class Period shall be matched against such opening written position, and not be entitled to a recovery, until that written position is fully covered.

20. If a Settlement Class Member has purchased or acquired Put Options, thereby having a long position in the Put Options, the date of purchase/acquisition is deemed to be the date of purchase/acquisition of the Put Option. The date on which the Put Option was sold, exercised, or expired is deemed to be the date of sale of the Put Option. In accordance with the Plan of Allocation, however, the Recognized Loss and Gain Amounts on purchased/acquired Put Options is zero. In the event that a Claimant has an opening long position in Put Options, the earliest sales or dispositions of like Put Options during the Settlement Class Period shall be matched against such opening position, and not be entitled to a recovery, until that long position is fully covered.

21. **Common Stock Acquired/Sold Through the Exercise of Options:** With respect to Merck Common Stock purchased or sold through the exercise of an option, the purchase/sale date of the Common Stock is the exercise date of the option and the purchase/sale price is the exercise price of the option.

22. **Netting Gains and Losses:** Gains and losses in Merck Securities trades will be netted for purposes of calculating whether a Claimant had an overall gain or loss on his, her or its transactions. The netting will occur both with respect to the Claimant’s calculated Recognized Gain and Loss Amounts as set forth in ¶¶ 6-13 above as well as with respect to the Claimant’s gains or losses based on his, her or its market transactions.

(a) **Netting of Calculated Gains and Loss Amounts:** The Claimant’s Recognized Loss Amounts for Common Stock and Options will be totaled (the “Total Loss Amount”) and the Claimant’s Recognized Gain Amounts for Common Stock and Options will be totaled (the “Total Gain

Amount”). If the Claimant’s Total Loss Amount *minus* the Claimant’s Total Gain Amount is a positive number, that will be the Claimant’s Net Recognized Loss Amount; if the number is a negative number or zero, that will be the Claimant’s Net Recognized Gain Amount.

- (b) **Netting of Market Gains and Losses:** With respect to all Merck Common Stock and Call Options purchased or acquired or Put Options sold during the Settlement Class Period, the Claims Administrator will also determine if the Claimant had a Market Gain or a Market Loss with respect to his, her or its overall transactions during the Settlement Class Period in those shares and options. For purposes of making this calculation, with respect to Merck Common Stock and Call Options, the Claims Administrator shall determine the difference between (i) the Claimant’s Total Purchase Amount<sup>11</sup> and (ii) the sum of the Claimant’s Sales Proceeds<sup>12</sup> and the Claimant’s Holding Value.<sup>13</sup> For Merck Common Stock and Call Options, if the Claimant’s Total Purchase Amount *minus* the sum of the Claimant’s Sales Proceeds and the Holding Value is a positive number, that number will be the Claimant’s Market Loss; if the number is a negative number or zero, that number will be the Claimant’s Market Gain. With respect to Merck Put Options, the Claims Administrator shall determine the difference between (i) the sum of the Claimant’s Total Purchase Amount<sup>14</sup> and the Claimant’s Holding Value;<sup>15</sup> and (ii) the Claimant’s Sale Proceeds.<sup>16</sup> For Merck Put Options, if the sum of the Claimant’s Total Purchase Amount and the Claimant’s Holding Value *minus* the Claimant’s Sales Proceeds is a positive number, that number will be the Claimant’s Market Loss; if the number is a negative number or zero, that number will be the Claimant’s Market Gain.

23. **Calculation of Claimant’s “Recognized Claim”:** If a Claimant has a Net Recognized Gain Amount *or* a Market Gain, the Claimant’s “Recognized Claim” will be zero. If the Claimant has a Net Recognized Loss Amount *and* a Market Loss, the Claimant’s “Recognized Claim” will be the lesser of those two amounts.

24. **Determination of Distribution Amount:** If the sum total of Recognized Claims of all Authorized Claimants who are entitled to receive payment out of the Net Settlement Fund is greater than the Net Settlement Fund, each Authorized Claimant shall receive his, her, or its *pro rata* share of the Net Settlement Fund. The *pro rata* share shall be the Authorized Claimant’s Recognized Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.

25. If the Net Settlement Fund exceeds the sum total amount of the Recognized Claims of all Authorized Claimants entitled to receive payment out of the Net Settlement Fund, the excess amount in the Net Settlement Fund shall be distributed *pro rata* to all Authorized Claimants entitled to receive payment.

26. The Net Settlement Fund will be allocated among all Authorized Claimants whose prorated payment is \$10.00 or greater. If the prorated payment to any Authorized Claimant calculates to less than \$10.00, it will not be included in the calculation (*i.e.*, the Recognized Claim will be deemed to be zero) and no distribution will be made to that Authorized Claimant. Any prorated amounts of less than \$10.00 will be included in the pool distributed to those whose prorated payments are \$10.00 or greater.

27. After the initial distribution of the Net Settlement Fund, the Claims Administrator will make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. To the extent any monies remain in the Net Settlement Fund nine (9) months after the initial distribution, if Co-Lead Counsel, in consultation with the Claims Administrator, determine that it is cost-effective to do so, the Claims Administrator will conduct a

<sup>11</sup> For Merck Common Stock and Call Options, the “Total Purchase Amount” is the total amount the Claimant paid (excluding all fees, taxes and commissions) for all such Merck securities purchased or acquired during the Settlement Class Period.

<sup>12</sup> For Merck Common Stock and Call Options, the Claims Administrator shall match any sales of such Merck Securities during the Settlement Class Period first against the Claimant’s opening position in the like Merck Securities (the proceeds of those sales will not be considered for purposes of calculating market gains or losses). The total amount received for sales of the remaining like Merck Securities sold during the Settlement Class Period is the “Sales Proceeds.”

<sup>13</sup> The Claims Administrator shall ascribe a “Holding Value” of \$28.28 to each share of Merck Common Stock purchased or acquired during the Settlement Class Period that was still held as of the close of trading on October 29, 2004. For each Merck Call Option purchased or acquired during the Settlement Class Period that was still held as of the close of trading on October 29, 2004, the Claims Administrator shall ascribe a “Holding Value” for that option which shall be the Holding Price set forth on Table 3.

<sup>14</sup> For Merck Put Options, the Claims Administrator shall match any purchases during the Settlement Class Period to close out positions in Put Options first against the Claimant’s opening position in Put Options (the total amount paid with respect to those purchases will not be considered for purposes of calculating market gains or losses). The total amount paid for the remaining purchases during the Settlement Class Period to close out positions in Put Options is the “Total Purchase Amount.”

<sup>15</sup> For each Merck Put Option sold (written) during the Settlement Class Period that was still outstanding as of the close of trading on October 29, 2004, the Claims Administrator shall ascribe a “Holding Value” for that option which shall be the Holding Price set forth on Table 4.

<sup>16</sup> For Merck Put Options, the total amount received for Put Options sold (written) during the Settlement Class Period is the “Sales Proceeds.”

re-distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such re-distribution, to Authorized Claimants who have cashed their initial distributions and who would receive at least \$10.00 from such re-distribution. Additional re-distributions to Authorized Claimants who have cashed their prior checks and who would receive at least \$10.00 on such additional re-distributions may occur thereafter if Co-Lead Counsel, in consultation with the Claims Administrator, determine that additional re-distributions, after the deduction of any additional fees and expenses incurred in administering the Settlement, including for such re-distributions, would be cost-effective. At such time as it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance shall be contributed to non-sectarian, not-for-profit organization(s), to be recommended by Co-Lead Counsel and approved by the Court.

28. Payment pursuant to the Plan of Allocation, or such other plan of allocation as may be approved by the Court, shall be conclusive against all Authorized Claimants. No person shall have any claim against Lead Plaintiffs, Plaintiffs' Counsel, Lead Plaintiffs' damages expert, Defendants, Defendants' Counsel, or any of the other Plaintiffs' Releasees or Defendants' Releasees, or the Claims Administrator or other agent designated by Co-Lead Counsel arising from distributions made substantially in accordance with the Stipulation, the plan of allocation approved by the Court, or further Orders of the Court. Lead Plaintiffs, Defendants and their respective counsel, and all other Defendants' Releasees, shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund; the plan of allocation; the determination, administration, calculation, or payment of any Claim Form or nonperformance of the Claims Administrator; the payment or withholding of Taxes; or any losses incurred in connection therewith.

29. The Plan of Allocation set forth herein is the plan that is being proposed to the Court for its approval by Lead Plaintiffs after consultation with their damages expert. The Court may approve this plan as proposed or it may modify the Plan of Allocation without further notice to the Settlement Class. Any Orders regarding any modification of the Plan of Allocation will be posted on the settlement website, [www.MerckVioxxSecuritiesLitigation.com](http://www.MerckVioxxSecuritiesLitigation.com).

## **HOW TO GET A PAYMENT**

### **14. What do I have to do to receive a share of the Settlement?**

To be eligible for a payment from the proceeds of the Settlement, you must be a member of the Settlement Class and timely complete and return a valid Claim Form with adequate supporting documentation **postmarked no later than September 12, 2016**. A Claim Form is included with this Notice, or you may obtain one on the Internet at [www.MerckVioxxSecuritiesLitigation.com](http://www.MerckVioxxSecuritiesLitigation.com) or by calling the Claims Administrator, Epiq Systems ("Epiq") at (866) 752-0067. Please retain all records of your transactions in Merck Common Stock, Merck Call Options and Merck Put Options, as they may be needed to document your Claim.

Unless the Court otherwise orders, any Settlement Class Member who fails to submit a Claim Form postmarked on or before September 12, 2016 shall be fully and forever barred from receiving payments pursuant to the Settlement, but will in all other respects remain a Settlement Class Member and be subject to the provisions of the Stipulation, including the terms of any Judgment entered and the releases given. This means that each Settlement Class Member releases the Released Plaintiffs' Claims (as defined in the response to Question 16 below) against the Defendants and the other Defendants' Releasees (as defined in the response to Question 16 below) and will be enjoined and prohibited from filing, prosecuting, or pursuing any of the Released Plaintiffs' Claims against any of the Defendants or any of the other Defendants' Releasees, whether or not such Settlement Class Member submits a Claim Form.

The Court has reserved jurisdiction to allow, disallow, or adjust on equitable grounds the Claim of any Settlement Class Member. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her, or its Claim Form.

Persons and entities that either are excluded from the Settlement Class by definition, or (a) whose names appear on Appendix 1 to the Stipulation because they previously submitted a request for exclusion in connection with the Certified Class Notice and who do not elect to opt back into the Settlement Class (*see* response to Question 18 below) or (b) who submit a valid request for exclusion from the Settlement Class in response to this notice (*see* response to Question 17 below), will not be eligible to receive a distribution from the Net Settlement Fund and should not submit Claim Forms.

## 15. When will I receive my payment?

Lead Plaintiffs cannot, at this time, say when they will be able to distribute the proceeds of the Settlement to Settlement Class Members. Any payments from the Settlement proceeds are contingent upon the Court approving the Settlement and on such approval becoming final and no longer subject to any appeals. Even if the Court approves the Settlement, there still might be appeals, which can take more than a year to resolve. Distribution of the Net Settlement Fund can also not be made until the total completion of processing of claims, which may take many months, and permission from the Court to distribute the Net Settlement Fund to Authorized Claimants is received.

The Settlement Amount will be kept in an escrow account until it is ready for distribution, and any accrued interest will be added to the funds available for distribution to the Settlement Class.

## 16. As a Settlement Class Member what am I giving up in the Settlement?

If you are a member of the Settlement Class, you will be bound by the orders and judgments entered by the Court in the Action, whether or not you submit a Claim Form. If the Settlement is approved, the Court will enter a judgment (the “Judgment”). The Judgment will dismiss with prejudice the claims against Defendants and will provide that, upon the Effective Date of the Settlement, Lead Plaintiffs and each of the other Settlement Class Members, on behalf of themselves, their heirs, executors, administrators, predecessors, successors, affiliates and assigns shall release and forever discharge each and every one of the Defendants and the other Defendants’ Releasees (as defined below) from any and all of the Released Plaintiffs’ Claims (as defined below) and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs’ Claims against any of the Defendants’ Releasees. This means that Settlement Class Members will not be able to sue, continue to sue, or be part of any other lawsuit involving any claims released in the Settlement. Settlement Class Members will be bound by the orders of the Court whether or not they submit a Claim Form and/or receive a payment.

“Defendants’ Releasees” means the Defendants and their respective present and former parents, subsidiaries, divisions, joint ventures and affiliates, and each of their respective present and former officers, directors, employees (including but not limited to Raymond V. Gilmartin, Dr. Peter S. Kim, Judy C. Lewent, Kenneth C. Frazier, Richard C. Henriques, David Anstice, Per Wold-Olsen, Richard T. Clark, Bernard J. Kelley, Lawrence A. Bossidy, William G. Bowen, Johnnetta B. Cole, Niall FitzGerald, William B. Harrison, William N. Kelley, Heidi G. Miller, Thomas Shenk, Anne M. Tatlock, and Samuel O. Thier), members, partners, principals, Immediate Family members, attorneys, advisors, accountants, auditors, and insurers and reinsurers (but only in their capacity as insurers and reinsurers of the foregoing); and the predecessors, successors, estates, heirs, executors, trusts, trustees, administrators, agents, fiduciaries, consultants, representatives and assigns of each of them, in their capacity as such.

“Released Plaintiffs’ Claims” means any and all claims, actions, causes of action, controversies, demands, duties, debts, damages, obligations, contracts, agreements, promises, issues, judgments, liabilities, losses, sums of money, matters, suits, proceedings, and rights of every nature and description, whether known claims or Unknown Claims, suspected or unsuspected, concealed or unconcealed, foreseen or unforeseen, fixed or contingent, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, whether based on federal, state, local or foreign statutory law, rule, regulation, common law, or equity, and whether direct, representative, class, or individual, to the fullest extent permitted by law, that Lead Plaintiffs or any other member of the Settlement Class: (i) asserted in the Action, including in the Sixth Amended Complaint or in any prior complaint in the Action; or (ii) could have asserted in any forum arising out of, related to, or based in whole or in part upon, in connection with, or in any way involving any of the occurrences, alleged causes, alleged breaches of duty, alleged neglect, alleged error, alleged misstatements, alleged misleading statements, representations, alleged omissions, acts, or facts, circumstances, situations, events, or transactions alleged, involved, set forth, contained, or referred to in the Action, including in any pleading and including any claim relating in any way to the subject matter of any prior complaint in the Action, and arise out of the purchase or acquisition of Merck Common Stock or Merck Call Options, or sale of Merck Put Options during the Settlement Class Period. Released Plaintiffs’ Claims do not include: (i) any claims of New Opt Outs; or (ii) any claims of any Person listed in Appendix 1 of the Stipulation who does not opt back into the Settlement Class (collectively, the “Excluded Claims”). Additionally, Released Plaintiffs’ Claims do not include claims relating to the enforcement of, or compliance with, the Settlement or the Stipulation.

“Unknown Claims” means any Released Claims which any Lead Plaintiff, any other Settlement Class Member, or each of the Defendants or any of the other Releasees, does not know or suspect to exist in his, her or its favor at the time of the release of each or any of the other Releasees, which, if known by him, her or it, might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Lead Plaintiffs and each of the Defendants expressly waive, and each of the other Settlement Class Members and each of the other Releasees shall be deemed to have waived,



and by operation of the Judgment, or, if applicable, the Alternative Judgment, shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Lead Plaintiffs, any other Settlement Class Member, Defendants, and their respective Releasees may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims, but the Parties stipulate and agree that, upon the Effective Date of the Settlement, Lead Plaintiffs and each of the Defendants shall expressly waive, and each of the other Settlement Class Members and Releasees shall be deemed to have waived, and by operation of the Judgment, or if applicable, the Alternative Judgment, shall have expressly waived any and all Released Claims without regard to the subsequent discovery or existence of such different or additional facts. Lead Plaintiffs and each of the Defendants acknowledge, and each of the other Settlement Class Members and each of the other Releasees shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and is a material term of the Settlement.

### **REQUESTING EXCLUSION FROM THE SETTLEMENT CLASS**

#### **17. May I now request exclusion from the Settlement Class?**

As set forth in the Certified Class Notice, the Court-ordered deadline to request exclusion from the Certified Class expired on November 3, 2013. The Certified Class Notice also advised you that it was within the Court's discretion as to whether a second opportunity to opt out would be permitted if there were a settlement in the Action. The Court has exercised its discretion and ruled that members of the Certified Class, who were previously afforded an opportunity to request exclusion, do not have a second opportunity to request exclusion. Thus, if you had any purchases of Merck Common Stock or Merck Call Options or sales of Merck Put Options from May 21, 1999, through September 29, 2004, you may not request exclusion from the Settlement Class at this time.

However, if your *only* purchases of Merck Common Stock or Merck Call Options or sales of Merck Put Options during the Settlement Class Period occurred from September 30, 2004, through October 29, 2004, inclusive, you may request exclusion from the Settlement Class. If you fit these criteria and wish to exclude yourself from the Settlement Class, you must mail or deliver a written Request for Exclusion from the Settlement Class, addressed to *In re Merck & Co., Inc. Vioxx Securities Litigation*, EXCLUSIONS, c/o Epiq Systems, P.O. Box 6659, Portland, OR 97228-6659. The exclusion request must be **received no later than May 14, 2016**. You will not be able to exclude yourself from the Settlement Class after that date. Each Request for Exclusion must: (a) state the name, address and telephone number of the person or entity requesting exclusion, and in the case of entities, the name and telephone number of the appropriate contact person; (b) state that such person or entity "requests exclusion from the Settlement Class in *In re Merck & Co., Inc. Vioxx Securities Litigation*"; (c) state the number of shares of Merck Common Stock, Merck Call Options, and/or Merck Put Options that the person or entity requesting exclusion purchased, acquired and sold from September 30, 2004 through October 29, 2004, as well as the dates and prices of each such purchase/acquisition and sale; (d) **expressly state** that the person or entity requesting exclusion had no purchases of Merck Common Stock or Merck Call Options or sales of Merck Put Options from May 21, 1999 through September 29, 2004; and (e) be signed by the person or entity requesting exclusion or an authorized representative. A Request for Exclusion shall not be valid and effective unless it provides all the information called for in this paragraph and is received within the time stated above, or is otherwise accepted by the Court.

If you fit the criteria discussed above and do not want to be part of the Settlement Class, you must follow these instructions for exclusion even if you have pending, or later file, another lawsuit, arbitration, or other proceeding relating to any Released Plaintiffs' Claim against any of the Defendants' Releasees. If you ask to be excluded from the Settlement Class, you will not be eligible to receive any payment out of the Net Settlement Fund. **Please note**, if you decide to exclude yourself from the Settlement Class, you may be time-barred from asserting the claims covered by the Action by a statute of repose.

Merck has the right to terminate the Settlement if the amount of valid requests for exclusion from the Settlement Class received following dissemination of this Settlement Notice exceeds an amount agreed to by Lead Plaintiffs and Defendants.

## **“OPTING BACK” INTO THE SETTLEMENT CLASS**

### **18. What if I previously requested exclusion from the Certified Class and now want to be eligible to receive a payment from the Settlement Fund? How do I opt back into the Settlement Class?**

If you previously submitted a request for exclusion from the Certified Class in connection with the Certified Class Notice your name should appear on Appendix 1 to the Stipulation, which is available online at [www.MerckVioxxSecuritiesLitigation.com](http://www.MerckVioxxSecuritiesLitigation.com). Persons and entities whose names appear on Appendix 1 are excluded from the Settlement Class. (If you believe that you previously submitted a request for exclusion but your name does not appear on Appendix 1, you can contact the Claims Administrator, Epiq Systems, at (866) 752-0067 for assistance.)

Persons and entities whose names appear on Appendix 1 to the Stipulation, and those who submit a request for exclusion from the Settlement Class pursuant to the response to Question 17 above, may elect to opt back into the Settlement Class and be eligible to receive a payment from the Settlement.

In order to opt back into the Settlement Class, you, individually or through counsel, must submit a written Request to Opt Back Into the Settlement Class addressed as follows: *In re Merck & Co., Inc. Vioxx Securities Litigation*, “Opt-In Request”, c/o Epiq Systems, P.O. Box 6659, Portland, OR 97228-6659. This request must be **received no later than June 23, 2016**. Your Request to Opt Back Into the Settlement Class must (a) state the name, address and telephone number of the person or entity requesting to opt back into the Class; (b) state that such person or entity “requests to opt back into the Settlement Class in the *In re Merck & Co., Inc. Vioxx Securities Litigation*”; and (c) be signed by the person or entity requesting to opt back into the Settlement Class or an authorized representative.

If you opt back into the Settlement Class this means that you will be bound by all orders and judgments in this Action and will release all Released Plaintiffs’ Claims against Defendants and the other Defendants’ Releasees. This means that you will no longer be able to bring or continue to prosecute any individual action relating to any of the Released Plaintiffs’ Claims.

**PLEASE NOTE: OPTING BACK INTO THE SETTLEMENT CLASS IN ACCORDANCE WITH THE REQUIREMENTS SET FORTH ABOVE DOES NOT MEAN THAT YOU WILL AUTOMATICALLY BE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT. IF YOU OPT BACK INTO THE SETTLEMENT CLASS AND YOU WISH TO BE ELIGIBLE TO PARTICIPATE IN THE DISTRIBUTION OF PROCEEDS FROM THE SETTLEMENT, YOU ARE ALSO REQUIRED TO SUBMIT THE CLAIM FORM THAT IS BEING DISTRIBUTED WITH THIS NOTICE AND THE REQUIRED SUPPORTING DOCUMENTATION AS SET FORTH THEREIN POSTMARKED NO LATER THAN SEPTEMBER 12, 2016. TO RECEIVE A PAYMENT YOUR CLAIM MUST BE ELIGIBLE FOR PAYMENT UNDER THE PLAN OF ALLOCATION.**

### **19. Can Settlement Class Members sue Defendants or the other Defendants’ Releasees for the same thing later if they don’t exclude themselves?**

No. Unless you previously requested exclusion or you validly exclude yourself from the Settlement Class in response to this notice, you may not sue Defendants or the other Defendants’ Releasees for the claims that the Settlement resolves. If you have a pending lawsuit against any of the Defendants or any of the other Defendants’ Releasees, speak to your lawyer in that case immediately. Only those persons or entities that are excluded from the Settlement Class may continue their own lawsuit against the Defendants or other Defendants’ Releasees.

### **20. If I exclude or excluded myself, can I get money from the Settlement?**

No. You must be a Settlement Class Member to be eligible to recover money in the Settlement. Please see the response to Question 18 above if you wish to opt back into the Settlement Class.

## **THE LAWYERS REPRESENTING YOU**

### **21. Do I have a lawyer in this case?**

The Court has appointed the law firms of Bernstein Litowitz Berger & Grossmann LLP; Milberg LLP; Brower Piven, A Professional Corporation; and Stull, Stull & Brody to represent Lead Plaintiffs and all other Settlement Class Members in the Action. If you have any questions about the proposed Settlement, you may contact Co-Lead

Counsel as follows: Salvatore J. Graziano, Esq., of Bernstein Litowitz Berger & Grossmann LLP, 1251 Avenue of the Americas, New York, NY 10020, (800) 380-8496, blbg@blbglaw.com; Robert A. Wallner, Esq., of Milberg LLP, One Pennsylvania Plaza, New York, NY 10119, (212) 594-5300, rwallner@milberg.com; David A.P. Brower, Esq., of Brower Piven, A Professional Corporation, 475 Park Avenue South, 33rd Floor, New York, NY 10016, (212) 501-9000, brower@browerpiven.com; and Mark Levine, Esq. of Stull, Stull & Brody, 6 East 45th Street, New York, NY 10017, (800) 337-4983, ssb@ssbny.com.

If you want to be represented by your own lawyer, you may hire one at your own expense.

## 22. How will the lawyers be paid?

You will be not charged directly for the fees or expenses of Plaintiffs' Counsel. Instead, Co-Lead Counsel will apply to the Court for payment of Plaintiffs' Counsel's fees and expenses out of the proceeds of the recovery achieved in the Action.

Plaintiffs' Counsel have not received any payment for their services in pursuing claims against the Defendants on behalf of the Settlement Class for more than ten years, nor have they been reimbursed for their Litigation Expenses. Before final approval of the Settlement, Co-Lead Counsel will apply to the Court for an award of attorneys' fees on behalf of Plaintiffs' Counsel solely from the Fee/Expense Fund in an amount not to exceed 20% of the Settlement Funds. At the same time, Co-Lead Counsel also intend to apply for reimbursement of Litigation Expenses from the Fee/Expense Fund in an amount not to exceed \$19 million, plus accrued interest, which will include reimbursement of the reasonable costs and expense incurred by Lead Plaintiffs directly related to their representation of the Settlement Class. The Court will determine the amount of any award of attorneys' fees and reimbursement of expenses.

### **OBJECTING TO THE SETTLEMENT, THE PLAN OF ALLOCATION OR THE FEE AND EXPENSE APPLICATION**

## 23. How do I tell the Court that I don't like the Settlement?

Any Settlement Class Member who has not requested exclusion from the Settlement Class can object to the Settlement or any part of it, the proposed Plan of Allocation and/or Co-Lead Counsel's application for attorneys' fees and reimbursement of Litigation Expenses, and give reasons why the Court should not approve them. To object, you must send a letter or other filing saying that you object to the proposed Settlement, the Plan of Allocation, and/or Co-Lead Counsel's application for attorneys' fees and reimbursement of Litigation Expenses in *In re Merck & Co., Inc. Sec., Derivative & "ERISA" Litigation*, MDL No. 1658 (SRC), Case No. 2:05-CV-01151-SRC-CLW (D.N.J.), Case No. 2:05-CV-02367-SRC-CLW (D.N.J.). Any objection must: (a) provide the name, address, telephone number, and signature of the objector; (b) state the objection(s), and the specific reasons for each objection, including any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention; and (c) include documents sufficient to prove the objector's membership in the Settlement Class, such as the number of shares of Merck Common Stock, Merck Call Options, and/or Merck Put Options purchased, acquired and sold during the Settlement Class Period, as well as the dates and prices of each such purchase, acquisition, and sale. The written objection must be filed with the Clerk of the United States District Court for the District of New Jersey and sent to Co-Lead Counsel and representative Defendants' Counsel at the addresses set forth below so that the papers are **received** by the Clerk of the Court and counsel **no later than May 14, 2016**:

<u>Clerk of the Court</u>	<u>Co-Lead Counsel</u>	<u>Representative Defendants' Counsel</u>
Clerk of the U.S. District Court for the District of New Jersey Martin Luther King Building & U.S. Courthouse 50 Walnut Street, Room 4015 Newark, NJ 07101	Salvatore J. Graziano Bernstein Litowitz Berger & Grossmann LLP 1251 Avenue of the Americas New York, NY 10020 -and- David A.P. Brower, Esq. Brower Piven, A Professional Corporation 475 Park Avenue South, 33rd Floor New York, NY 10016 -and- Robert A. Wallner, Esq. Milberg LLP One Pennsylvania Plaza New York, NY 10119 -and- Mark Levine, Esq. Stull, Stull & Brody 6 East 45th Street New York, NY 10017	Daniel J. Kramer, Esq. Paul, Weiss, Rifkind, Wharton & Garrison, LLP 1285 Avenue of the Americas New York, NY 10019 -and- Karin A. DeMasi, Esq. Cravath, Swaine & Moore LLP Worldwide Plaza 825 Eighth Avenue New York, NY 10019 -and- William H. Gussman, Jr., Esq. Schulte, Roth & Zabel LLP 919 Third Avenue New York, NY 10022

Persons who intend to object and present evidence at the Settlement Hearing must include in their written objection the identity of any witnesses they may call to testify, and any exhibits they intend to introduce into evidence at the hearing.

You may file a written objection without having to appear at the Settlement Hearing. You may not, however, appear at the Settlement Hearing to present your objection unless you have first filed and served a written objection in accordance with the procedures described above, unless the Court orders otherwise.

Any Settlement Class Member who does not object in the manner provided above will be deemed to have waived all objections to the Settlement, the Plan of Allocation, and Co-Lead Counsel's application for attorneys' fees and reimbursement of Litigation Expenses.

**24. What is the difference between objecting and requesting exclusion?**

Objecting is simply telling the Court that you do not like something about the Settlement, the Plan of Allocation and/or Co-Lead Counsel's application for attorneys' fees and reimbursement of Litigation Expenses. You can object only if you are a Settlement Class Member.

Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude or excluded yourself, you have no basis to object, because the case no longer affects you. If you do not exclude yourself, you will be bound by the Settlement and all orders and judgments entered by the Court regarding the Settlement, regardless of whether the Court accepts or denies your objection.

**25. When and where will the Court decide whether to approve the Settlement?**

The Court has scheduled a hearing on the proposed Settlement for June 28, 2016 at 10:00 a.m., before the Honorable Stanley R. Chesler, U.S.D.J., in Courtroom 2 of the U.S. Courthouse and Post Office Building, 2 Federal Square, Newark, NJ 07102. At the Settlement Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, whether the proposed Plan of Allocation is fair and reasonable, and whether Co-Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses should be approved. If there are objections, the Court will consider them. At or after the Settlement Hearing, the Court will decide whether to approve the Settlement, the Plan of Allocation, and the motion for attorneys' fees and reimbursement of Litigation Expenses.



Please note that the date of the Settlement Hearing is subject to change without further notice. If you plan to attend the hearing, you should check with Co-Lead Counsel to be sure that no change to the date and time of the hearing has been made.

## 26. Do I have to come to the Settlement Hearing?

No. Co-Lead Counsel will answer any questions the Court might have. But you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection so that it was received by the deadline, it will be before the Court when the Court considers whether to approve the Settlement, the Plan of Allocation, and Co-Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses. You may also pay your own lawyer to attend the hearing, but attendance is not necessary.

## 27. May I speak at the Settlement Hearing?

If you are a Settlement Class Member, you may ask the Court for permission to speak at the Settlement Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *In re Merck & Co., Inc. Sec., Derivative & "ERISA" Litig.*, MDL No. 1658 (SRC), Case No. 2:05-CV-01151-SRC-CLW (D.N.J.), Case No. 2:05-CV-02367-SRC-CLW (D.N.J)." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be filed with the Clerk of the Court and sent to the counsel listed above in the answer to Question 23 so it is **received** by the Court and counsel **no later than June 23, 2016**. You cannot speak at the hearing if you have asked to be excluded from the Settlement Class.

### **IF YOU DO NOTHING**

## 28. What happens if I do nothing at all?

If you are a member of the Settlement Class and do nothing in response to this Settlement Notice, you will not be eligible to participate in the distribution of the proceeds of the Settlement, if it is approved, but you will be bound by the Settlement which means that you will not be able to start, continue, or be part of any other lawsuit or arbitration against Defendants or the other Defendants' Releasees based on the Released Plaintiffs' Claims in the Action.

In order for a Settlement Class Member to be eligible to receive a payment from the Settlement, a properly completed and documented Claim Form postmarked on or before September 12, 2016, must be submitted.

### **GETTING MORE INFORMATION**

## 29. Are there more details about the Settlement?

This Settlement Notice contains only a summary of the proposed Settlement. The complete terms of the Settlement are set out in the Stipulation and Agreement of Settlement dated February 8, 2016. Copies of the Stipulation may also be obtained at [www.MerckVioxxSecuritiesLitigation.com](http://www.MerckVioxxSecuritiesLitigation.com). You may also request a copy of the Stipulation by writing to *In re Merck & Co., Inc. Vioxx Securities Litigation*, c/o Epiq Systems, P.O. Box 6659, Portland, OR 97228-6659 or by email to [info@MerckVioxxSecuritiesLitigation.com](mailto:info@MerckVioxxSecuritiesLitigation.com).

## 30. How do I get more information?

You can also call the Claims Administrator toll free at (866) 752-0067, write to the Claims Administrator at the above address, or visit the website at [www.MerckVioxxSecuritiesLitigation.com](http://www.MerckVioxxSecuritiesLitigation.com), where you will find copies of the Stipulation, the Sixth Amended Complaint, and certain other documents relating to the Action and the Settlement. Anyone interested in more detail regarding the Action is invited to visit the Office of the Clerk of the United States District Court for the District of New Jersey at the Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Room 4015, Newark, NJ 07101, during regular business hours, to inspect the Stipulation, the pleadings, and the other papers maintained there in *In re Merck & Co., Inc. Sec., Derivative & "ERISA" Litig.*, MDL No. 1658 (SRC), Case No. 2:05-CV-01151-SRC-CLW (D.N.J.), Case No. 2:05-CV-02367-SRC-CLW (D.N.J.).

**PLEASE DO NOT CALL OR WRITE THE COURT OR  
THE OFFICE OF THE CLERK OF COURT REGARDING THIS NOTICE.**

## **SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES**

The Certified Class Notice mailed in 2013 advised brokers and other nominees (“Nominees”) that if, for the beneficial interest of any person or entity other than yourself, you purchased or otherwise acquired Merck Common Stock or Merck Call Options, and/or sold Merck Put Options during the period from May 21, 1999, to September 29, 2004, inclusive (“Certified Class Period”), you must either (a) within seven (7) calendar days of receipt of the Certified Class Notice, request from the Certified Class Notice Administrator<sup>17</sup> sufficient copies of the Certified Class Notice to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notices forward them to all such beneficial owners; or (b) within seven (7) calendar days of receipt of the Certified Class Notice, provide a list of the names and addresses of all such beneficial owners to the Certified Class Notice Administrator, in which event the Certified Class Notice Administrator would mail the Certified Class Notice to such beneficial owners.

If you chose the first option (*i.e.*, you elected to mail the Certified Class Notice directly to beneficial owners), you were advised that you must retain the mailing records for use in connection with any further notices that may be provided in the Action. If you elected that option, the Claims Administrator, Epiq, will forward the same number of this Settlement Notice and Claim Form (together, the “Notice Packet”) to you to send to the beneficial owners. If you require more copies than you previously requested, please contact Epiq toll-free at (866) 752-0067 and let them know how many additional Notice Packets you require. You must mail the Notice Packets to the beneficial owners within seven (7) calendar days of your receipt of the packets.

If you chose the second option (*i.e.*, provided a list of names and addresses of beneficial holders to the Certified Class Notice Administrator), Epiq will send a copy of the Notice Packet to the beneficial owners whose names and addresses you previously supplied.

All Nominees ***MUST ALSO DETERMINE*** whether they purchased or acquired Merck Common Stock or Merck Call Options and/or sold Merck Put Options for beneficial owners during the period from September 30, 2004, through October 29, 2004, inclusive (***this time period was not included in the initial request***), or if they purchased or acquired Merck Common Stock or Merck Call Options and/or sold Merck Put Options for beneficial owners during the Certified Class Period from May 21, 1999, through September 29, 2004, inclusive, ***whose names and addresses were not previously provided to the Class Notice Administrator***. Such Nominees shall within seven (7) calendar days of receipt of the Notice Packet, provide a list of the names and addresses of all such beneficial owners to Epiq, or shall request from Epiq sufficient copies of the Notice Packet to forward to all such beneficial owners which the Nominee shall, within seven (7) calendar days of receipt of the Notice Packets from Epiq, mail to the beneficial owners.

Upon full compliance with these directions, Nominees may seek reimbursement of their reasonable expenses actually incurred, by providing Epiq with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Settlement Notice and the Claim Form may also be obtained from [www.MerckVioxxSecuritiesLitigation.com](http://www.MerckVioxxSecuritiesLitigation.com), or by calling Epiq toll-free at 1-866-752-0067.

Dated: March 18, 2016

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

<sup>17</sup> The Certified Class Notice Administrator was The Garden City Group, Inc.

**TABLE 1****Merck Common Stock Daily Artificial Inflation<sup>18</sup>**

Date	Daily Artificial Inflation
05/21/99 - 07/23/99	\$6.08
07/26/99 - 10/21/99	\$6.09
10/22/99 - 12/09/99	\$6.25
12/10/99 - 01/26/00	\$7.62
01/27/00 - 02/11/00	\$9.02
02/14/00 - 02/25/00	\$8.08
02/28/00 - 04/24/00	\$8.71
04/25/00 - 12/29/00	\$9.02
01/02/01 - 03/30/01	\$9.06
04/02/01 - 06/29/01	\$9.11
07/02/01 - 09/28/01	\$9.22
10/01/01 - 12/28/01	\$9.38
12/31/01 - 03/28/02	\$9.58
04/01/02 - 06/28/02	\$9.83
07/01/02 - 09/27/02	\$10.13
09/30/02 - 12/30/02	\$10.33

Date	Daily Artificial Inflation
12/31/02 - 03/28/03	\$10.63
03/31/03 - 06/27/03	\$10.97
06/30/03 - 09/29/03	\$11.20
09/30/03 - 12/02/03	\$11.48
12/03/03 - 12/30/03	\$11.32
12/31/03 - 01/09/04	\$11.68
01/12/04 - 01/26/04	\$11.59
01/27/04 - 01/27/04	\$11.54
01/28/04 - 03/30/04	\$11.72
03/31/04 - 04/22/04	\$12.06
04/23/04 - 06/17/04	\$11.98
06/18/04 - 06/29/04	\$11.87
06/30/04 - 07/20/04	\$12.05
07/21/04 - 09/29/04	\$12.35
09/30/04 - 10/29/04	\$0.54

<sup>18</sup> At the motion to dismiss stage, the Court dismissed all claims arising from the November 1, 2004 corrective disclosure. To account for the relative weakness of these claims due to the Court's dismissal of them, the artificial inflation amounts set forth in Table 1 include 10% of the total artificial inflation attributable to the November 1, 2004 corrective disclosure.

**TABLE 2**

**Merck Common Stock Closing Price and Average Closing Price  
from November 1, 2004 through January 28, 2005**

Date	Common Stock Closing Price	Average Closing Price from November 1, 2004 through Date Shown
11/1/2004	\$28.28	\$28.28
11/2/2004	\$26.80	\$27.54
11/3/2004	\$27.87	\$27.65
11/4/2004	\$27.02	\$27.49
11/5/2004	\$26.21	\$27.24
11/8/2004	\$26.57	\$27.13
11/9/2004	\$26.00	\$26.96
11/10/2004	\$26.41	\$26.90
11/11/2004	\$26.15	\$26.81
11/12/2004	\$26.45	\$26.78
11/15/2004	\$27.09	\$26.80
11/16/2004	\$27.48	\$26.86
11/17/2004	\$27.34	\$26.90
11/18/2004	\$27.36	\$26.93
11/19/2004	\$27.12	\$26.94
11/22/2004	\$27.13	\$26.96
11/23/2004	\$27.14	\$26.97
11/24/2004	\$27.22	\$26.98
11/26/2004	\$27.70	\$27.02
11/29/2004	\$27.67	\$27.05
11/30/2004	\$28.02	\$27.10
12/1/2004	\$27.72	\$27.13
12/2/2004	\$28.60	\$27.19
12/3/2004	\$28.68	\$27.25
12/6/2004	\$28.12	\$27.29
12/7/2004	\$27.89	\$27.31
12/8/2004	\$28.69	\$27.36
12/9/2004	\$28.73	\$27.41
12/10/2004	\$28.74	\$27.46
12/13/2004	\$29.05	\$27.51
12/14/2004	\$29.62	\$27.58

Date	Common Stock Closing Price	Average Closing Price from November 1, 2004 through Date Shown
12/15/2004	\$30.48	\$27.67
12/16/2004	\$31.79	\$27.79
12/17/2004	\$31.59	\$27.90
12/20/2004	\$31.51	\$28.01
12/21/2004	\$31.98	\$28.12
12/22/2004	\$32.22	\$28.23
12/23/2004	\$32.30	\$28.34
12/27/2004	\$31.95	\$28.43
12/28/2004	\$32.20	\$28.52
12/29/2004	\$32.24	\$28.61
12/30/2004	\$32.22	\$28.70
12/31/2004	\$32.14	\$28.78
1/3/2005	\$31.26	\$28.84
1/4/2005	\$31.13	\$28.89
1/5/2005	\$31.34	\$28.94
1/6/2005	\$31.53	\$28.99
1/7/2005	\$31.13	\$29.04
1/10/2005	\$31.50	\$29.09
1/11/2005	\$31.17	\$29.13
1/12/2005	\$31.08	\$29.17
1/13/2005	\$30.65	\$29.20
1/14/2005	\$30.87	\$29.23
1/18/2005	\$31.30	\$29.27
1/19/2005	\$31.02	\$29.30
1/20/2005	\$30.73	\$29.33
1/21/2005	\$30.36	\$29.34
1/24/2005	\$29.85	\$29.35
1/25/2005	\$30.95	\$29.38
1/26/2005	\$31.17	\$29.41
1/27/2005	\$31.18	\$29.44
1/28/2005	\$28.02	\$29.42

**Tables 3 and 4 to the Plan of Allocation are available at  
[www.MerckVioxxSecuritiesLitigation.com](http://www.MerckVioxxSecuritiesLitigation.com).  
Copies of these Tables may also be obtained by calling (866) 752-0067.**