

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

IN RE MERCK & CO., INC.  
VYTORIN/ZETIA SECURITIES  
LITIGATION

Civil Action No. 08-2177 (DMC) (JAD)

**NOTICE OF PENDENCY OF CLASS ACTION**

**To:** All persons and entities that purchased or acquired Merck & Co., Inc. (“Merck”) common stock, or call options, and/or sold Merck put options, during the period between December 6, 2006 through and including March 28, 2008 (the “Class Period”), and who did not sell their stock and/or options on or before January 14, 2008, and who were damaged thereby (the “Class”).

*A federal court has authorized this notice. This is not a solicitation from a lawyer.*

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.  
YOUR RIGHTS WILL BE AFFECTED BY A CLASS ACTION LAWSUIT  
PENDING IN THIS COURT.**

This Notice is being sent pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the District of New Jersey (the “Court”) to inform you (a) of a class action lawsuit that is now pending in the Court under the above caption (the “Action”) against (i) Merck; (ii) Merck/Schering-Plough Pharmaceuticals, MSP Distribution Services (C) LLP, and MSP Singapore Company LLC (collectively, “M/S-P”); and (iii) Richard T. Clark and Deepak Khanna (collectively, the “Individual Defendants” and, together with Merck and M/S-P, the “Defendants”), and (b) that the Action has been certified by the Court to proceed as a class action on behalf of the Class of certain purchasers and acquirors of Merck common stock or call options and certain sellers of Merck put options.

1. The “Class,” as certified by the Court, consists of:

All persons and entities that purchased or acquired Merck common stock, or call options, and/or sold Merck put options, during the period between December 6, 2006 through and including March 28, 2008, and who did not sell their stock and/or options on or before January 14, 2008, and who were damaged thereby.

Excluded from the Class by definition are:

(a) Defendants; (b) members of the immediate families of the Individual Defendants; (c) the subsidiaries and affiliates of Defendants, as these terms are defined by the federal securities laws, including the 401(k) plans of Merck and Schering-Plough Corporation (“Schering”); (d) any person or entity who was a partner, executive officer, director, or controlling person of Merck, M/S-P or Schering (including any of their subsidiaries or affiliates), or any other Defendants; (e) any entity in which any Defendant has a controlling interest; (f) Defendants’ directors’ and officers’ liability insurance carriers, and any affiliates or subsidiaries thereof; and (g) the legal representatives, heirs, successors and assigns of any such excluded party.

2. This Notice is directed to you because you may be a member of the Class. If you are a member of the Class, your rights will be affected by this Action. If you do not meet the Class definition, this Notice does not apply to you. If you are uncertain whether you are a member of the Class, contact Class Counsel listed in paragraph 24 below, or your own attorney.

3. This Notice is not an admission by Defendants or an expression of any opinion of the Court concerning the merits of the Action, or a finding by the Court that the claims asserted by Lead Plaintiffs (defined below in paragraph 7) in this case are valid. This Notice is intended solely to advise you of the pendency of the Action and of your rights in connection with it. There is no settlement or monetary recovery at this time. Defendants have denied Lead Plaintiffs’ claims and contend that they are not liable for the harm alleged by Lead Plaintiffs.

4. The Class definition may be subject to change by the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.

## OVERVIEW AND STATUS OF THIS ACTION

5. Vytorin is a cholesterol-lowering medication that is a combination of two drugs – Zocor (simvastatin), developed by Merck, and Zetia (ezetimibe), developed by Schering. During the Class Period, Vytorin was marketed by M/S-P, a joint venture of Merck and Schering. Beginning in 2004, Merck and Schering undertook a clinical trial, known as the ENHANCE study, to test whether the combination of Zocor and Zetia in Vytorin was more effective than Zocor alone in preventing the progression of atherosclerosis (plaque buildup in the arteries). In January 2008, M/S-P issued a news release announcing certain top-line results of the ENHANCE study. In March 2008, the complete ENHANCE results were published in the *New England Journal of Medicine* and presented at the American College of Cardiology conference.
6. In May 2008, two putative securities fraud class actions were filed against Merck and Richard T. Clark, its Chief Executive Officer, in the United States District Court for the District of New Jersey, entitled *Genesee County Employees' Retirement System v. Merck & Co., Inc.*, Civil Action No. 2:08-cv-2177 (DMC) and *Horowitz v. Merck & Co., Inc.*, Civil Action No. 2:08-cv-2260 (DMC), in connection with the ENHANCE study.<sup>1</sup>
7. On July 3, 2008, the Court entered an Order appointing Stichting Pensioenfonds ABP, International Fund Management, S.A. (Luxemburg), the Jacksonville Police and Fire Retirement System and the General Retirement System of the City of Detroit (collectively, “Lead Plaintiffs”) as Lead Plaintiffs for the Action pursuant to the Private Securities Litigation Reform Act of 1995. In the same Order, the Court approved Lead Plaintiffs’ selection of Bernstein Litowitz Berger & Grossmann LLP and Grant & Eisenhofer P.A. as Co-Lead Counsel for the Class and approved Lead Plaintiffs’ selection of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, PC and Seeger Weiss LLP as Liaison Counsel for the Class.
8. On October 6, 2008, Lead Plaintiffs filed their Consolidated Class Action Complaint for Violations of the Federal Securities Laws (the “Consolidated Complaint”), asserting claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder. The Consolidated Complaint alleges that Merck, M/S-P, and certain of Merck’s officers violated the federal securities laws by making false or misleading statements or omissions about the efficacy and commercial prospects of Vytorin and Zetia, including by intentionally withholding the results of the ENHANCE study. The Consolidated Complaint alleges that these false statements and omissions caused the price of Merck common stock and call options to be artificially inflated and the price of Merck put options to be artificially depressed during the Class Period and that the price of Merck stock and call options declined and the price of put options increased when the truth about the ENHANCE study was disclosed.
9. On October 22, 2008, the Court entered an Order consolidating the two pending securities actions into this Action, *In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation*, Civil Action No. 08-2177 (DMC), and ordering the consolidation of any subsequently filed or transferred securities fraud class actions against Merck relating to Vytorin and/or Zetia.
10. On December 12, 2008, the defendants moved to dismiss the Consolidated Complaint. On September 2, 2009, the Court issued an Opinion and entered an Order denying the motion to dismiss.
11. On October 19, 2009, Defendants filed their answer to the Consolidated Complaint.
12. On February 9, 2012, Lead Plaintiffs filed a Second Amended Consolidated Complaint for Violation of the Federal Securities Laws (the “Complaint”), which again asserts claims under Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5. The Complaint adds additional allegations concerning false statements and dropped all claims against two of Merck’s officers who had been named as defendants in the Consolidated Complaint.
13. Defendants have denied any violations of the securities laws and asserted affirmative defenses to Lead Plaintiffs’ allegations.
14. On February 7, 2011, Lead Plaintiffs filed their motion for class certification and, on September 16, 2011, filed an amended motion for class certification. Following class certification discovery, on September 25, 2012, the Court issued an Order and an Opinion granting Lead Plaintiffs’ motion certifying the Class, appointing Lead Plaintiffs as Class Representatives and appointing Lead Counsel as Class Counsel (the “Class Order”).

<sup>1</sup> Separate actions based on the same underlying factual allegations were also brought on behalf of purchasers of Schering securities against Schering, M/S-P, certain of Schering’s officers and directors and the underwriters of certain Schering security offerings. Those actions have been consolidated in *In re Schering-Plough Corp. / ENHANCE Securities Litigation*, Civil Action No. 08-397 (DMC) (JAD) (the “Schering Action”). The Schering Action has been certified as a class action on behalf of purchasers or acquirors of certain Schering securities and certain sellers of Schering put options and is the subject of a separate Notice of Pendency of Class Action being mailed to potential members of the class in that action.

15. On March 1, 2012, Defendants moved for summary judgment dismissing the Complaint, contending, among other things, that Merck's stock price did not fall significantly after Defendants disclosed the outcome of the ENHANCE study. The motion was fully briefed, and on September 25, 2012, the Court issued an Order denying the motion.
16. On October 9, 2012, Defendants filed a petition in the United States Court of Appeals for the Third Circuit (the "Third Circuit") seeking leave to appeal the Court's ruling on class certification. On January 7, 2013, the Third Circuit denied that petition.
17. The trial in this action has been scheduled by the Court to begin on March 4, 2013.

## YOUR RIGHTS AS A CLASS MEMBER

18. A class action is a type of lawsuit in which one or several individuals or entities prosecute claims on behalf of all members of a group of similarly-situated persons and entities to obtain monetary or other relief for the benefit of the entire group. Class actions avoid the necessity of each member of a class having to file his, her or its own separate lawsuit to obtain relief. Class actions are used to decide legal and factual issues that are common to all members of a class.
19. If you purchased or acquired Merck common stock or call options and/or sold Merck put options during the period between December 6, 2006 through and including March 28, 2008, did not sell all of these stocks and/or options on or before January 14, 2008, and were damaged thereby, and you are not excluded from the Class by definition, you are a member of the Class. If you are a member of the Class, you have the right to decide whether to remain a member of the Class. ***If you choose to remain a member of the Class, you do not need to do anything at this time other than to retain your documentation reflecting your transactions in Merck common stock and options on Merck common stock as discussed below in paragraph 20.*** If you are a member of the Class and wish to be excluded from the Class, you must request exclusion in accordance with the procedure set forth in paragraph 21, below. Your decision is important for the following reasons:
  - a. ***If you choose to remain a member of the Class,*** you will be bound by all past, present and future orders and judgments in the Action, whether favorable or unfavorable. If any money is awarded to the Class, either through a settlement with Defendants or a judgment of the Court, you will be eligible to receive a share of that award. However, if you remain a member of the Class, you may not pursue a lawsuit on your own behalf with regard to any of the issues in this Action. Pursuant to Rule 23(e)(4) of the Federal Rules of Civil Procedure, it is within the Court's discretion whether to allow a second opportunity to request exclusion from the Class if there is a settlement or judgment in the Action. Please note that if you remain a member of the Class, you will not be personally responsible for Class Counsel's attorneys' fees or costs. Class Counsel have agreed to represent the Class on a contingent fee basis, which means that they will be awarded fees and costs only if they succeed in obtaining a recovery from one or more Defendants. Any attorneys' fees for Class Counsel will be awarded by the Court from the settlement or judgment, if any, obtained on behalf of the Class. As a member of the Class you will be represented by Class Counsel. You may remain a member of the Class and elect to be represented by counsel of your own choosing. If you do retain separate counsel, you will be responsible for those attorneys' fees and expenses and such counsel must enter an appearance on your behalf by filing a Notice of Appearance with the Court and mailing it to Class Counsel at the addresses set forth in paragraph 24 below on or before March 1, 2013.
  - b. ***If you choose to be excluded from the Class,*** you will not be bound by any judgment in this Action, nor will you be eligible to share in any recovery that might be obtained in this Action. You will retain any right you have to individually pursue any legal rights that you may have against any Defendants with respect to the claims asserted in the Action. Please refer to paragraphs 21-23 below if you would like to be excluded from the Class.
20. Members of the Class will be eligible to participate in any recovery that might be obtained in the Action. While this Notice is not intended to suggest any likelihood that Lead Plaintiffs or members of the Class will recover any such damages, should there be a recovery, members of the Class will be required to support their requests to participate in the distribution of any such recovery by demonstrating their membership in the Class and documenting their purchases and sales of Merck common stock and options on Merck common stock, and their resulting damages. ***For this reason, please be sure to keep all records of your transactions in these securities.***

## HOW TO BE EXCLUDED FROM THE CLASS

21. If you wish to be excluded from the Class, you must specifically request exclusion in accordance with the following procedures. To exclude yourself from the Class, you must send a letter by first-class mail stating that you “request exclusion from the Class in *In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation*, Civil Action No. 08-2177 (DMC) (JAD).” Your request must (i) state the name, address and telephone number of the person or entity requesting exclusion; (ii) state the number of shares of Merck common stock and the number of call or put options on Merck common stock purchased, acquired, and/or sold during the Class Period as well as the dates and prices of each such purchase, acquisition and/or sale; and (iii) be signed by the person or entity requesting exclusion or an authorized representative. You must mail your exclusion request, postmarked by no later than **March 1, 2013**, to:

*In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation*  
P.O. Box 4178  
Portland, OR 97208-4178

You cannot exclude yourself from the Class by telephone or by e-mail and a request for exclusion shall not be effective unless it contains all the information called for by this paragraph and is postmarked by the date stated above, or is otherwise accepted by the Court.

22. If your request for exclusion complies with the requirements set forth above, you will not be bound by any judgment in this Action, nor will you be eligible to share in any recovery that might be obtained in this Action.
23. Do not request exclusion from the Class if you wish to participate in this Action as a member of the Class.

## CLASS COUNSEL

24. As a member of the Class, you will be represented by Class Counsel, who are:

Jay W. Eisenhofer  
Daniel L. Berger  
**GRANT & EISENHOFER P.A.**  
485 Lexington Avenue  
New York, NY 10017  
(646) 722-8500

Salvatore J. Graziano  
**BERNSTEIN LITOWITZ  
BERGER & GROSSMANN LLP**  
1285 Avenue of the Americas  
New York, NY 10019  
(800) 380-8496

25. As noted above, unless you elect to retain your own personal lawyer, by remaining in the Class, you will not subject yourself to any direct obligations to pay the costs of the litigation. In the event there is a recovery by the Class in this Action, all costs and expenses of the Action, including Class Counsel’s attorneys’ fees, will be paid from that recovery in an amount approved by the Court.

## PLEASE KEEP YOUR ADDRESS CURRENT

26. To assist the Court and the parties in maintaining accurate lists of Class members, you are requested to mail notice of any changes in your address to:

*In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation*  
P.O. Box 4178  
Portland, OR 97208-4178

27. If this Notice was forwarded to you by the postal service, or if it was otherwise sent to you at an address that is not current, you should immediately contact the Administrator, Epiq Systems, Inc., at the address above or by calling 877-866-5915 and provide them with your correct address. If the Administrator does not have your correct address, you may not receive notice of important developments in this Action.

**WHERE YOU CAN FIND ADDITIONAL INFORMATION**

28. This Notice gives only a summary of the lawsuit and the claims asserted by Lead Plaintiffs. For more detailed information regarding the Action, you may contact Class Counsel or visit [www.merckvytorinsecuritieslitigation.com](http://www.merckvytorinsecuritieslitigation.com).

PLEASE DO NOT CALL OR WRITE THE COURT.

**NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES**

29. If, for the beneficial interest of any person or entity other than yourself, you purchased or acquired Merck common stock or call options and/or sold Merck put options during the period between December 6, 2006 through and including March 28, 2008, you must either (a) within seven (7) calendar days of receipt of this Notice, request from the Administrator sufficient copies of the 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 this Notice, provide a list of the names and addresses of all such beneficial owners to the Administrator at *In re Merck & Co., Inc. Vytarin/Zetia Securities Litigation*, P.O. Box 4178, Portland OR 97208-4178 or via email to [info@merckvytorinsecuritieslitigation.com](mailto:info@merckvytorinsecuritieslitigation.com). If you choose the first option, you must send a statement to the Administrator confirming that the mailing was made and you must retain your mailing records for use in connection with any further notices that may be provided in the Action. If you choose the second option, the Administrator will send a copy of the Notice to the beneficial owners. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred by providing the Administrator with proper documentation supporting the expenses for which reimbursement is sought.

Dated: January 17, 2013

BY ORDER OF THE COURT:  
United States District Court  
for the District of New Jersey