

Merck & Co. Inc.
Form S-8 POS
November 04, 2009

As filed with the Securities and Exchange Commission on November 4, 2009

Registration No. 333-121089

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

POST-EFFECTIVE AMENDMENT NO. 1
TO
FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Merck & Co., Inc.

(Exact name of registrant as specified in its charter)

New Jersey
(State or other jurisdiction of
incorporation or organization)

22-1918501
(IRS Employer
Identification Number)

One Merck Drive

Whitehouse Station, New Jersey 08889-0100

(908) 423-1000

(Address of principal executive offices, including zip code)

SCHERING-PLOUGH CORPORATION SAVINGS ADVANTAGE PLAN

Celia A. Colbert

Senior Vice President, Secretary & Assistant General Counsel

Merck & Co., Inc.

One Merck Drive

Whitehouse Station, New Jersey 08889-0100

(Name, address, including zip code, of agent for service)

(908) 423-1000

(Telephone number, including area code, of agent for service)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Accelerated filer

Smaller reporting company

EXPLANATORY NOTE

Merck & Co., Inc. (formerly Schering-Plough Corporation) (the Registrant or the Company) is the continuing public company resulting from the mergers (together, the Transactions) completed on November 3, 2009 of Merck & Co., Inc. a New Jersey corporation (Old Merck) and Schering-Plough Corporation, a New Jersey corporation (Schering-Plough). In the Transactions, Old Merck was merged into a subsidiary of Schering-Plough, Schering-Plough changed its name to Merck & Co., Inc. and Old Merck changed its name to Merck Sharp & Dohme Corp. The Registrant hereby amends on this Post-Effective Amendment No. 1 on Form S-8 (the Post-Effective Amendment) the Registration Statement on Form S-8 with respect to unsecured obligations of Schering-Plough that was registered by the Registrant with the Securities and Exchange Commission (SEC) before the Transactions in connection with the Schering-Plough Corporation Savings Advantage Plan (the Plan), including Registration Statement on Form S-8 (Registration No. 333-121089), which was declared effective on December 8, 2004 (the Previous Registration Statement). In connection with the Previous Registration Statement, the Registrant has registered \$250,000,000 Schering-Plough Corporation Savings Advantage Plan Obligations to pay deferred compensation in the future, and has paid the applicable filing fee with the Previous Registration Statement. The purpose of this Post-Effective Amendment is to update information included in the Previous Registration Statement in Part II, Items 3, 4, and 6 to reflect the new corporate structure resulting from the Transactions.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Registrant with the SEC pursuant to the Securities and Exchange Act of 1934, as amended (the Exchange Act) are incorporated by reference herein:

- (a) The description of the Registrant's Common Stock, contained in Item 8.01 of the Registrant's Current Report on Form 8-K dated November 4, 2009, and any amendment or report filed for the purpose of updating such description;
- (b) The Registrant's Annual Report on Form 10-K for the year ended December 31, 2008;
- (c) The Registrant's Quarterly Report on Form 10-Q for the quarterly periods ended March 31, 2009, June 30, 2009, and September 30, 2009;
- (d) The Registrant's Current Reports on Form 8-K filed on January 20, 2009, February 3, 2009, March 9, 2009, March 11, 2009, April 21, 2009, July 21, 2009, July 24, 2009, September 3, 2009, October 22, 2009, and November 4, 2009; and

(e) The information contained in the Registrant's Proxy Statement dated April 24, 2009 for its Annual Meeting of Shareholders held on May 18, 2009.

The following documents filed by Old Merck (IRS Employer Identification Number 22-1109110) with the SEC pursuant to the Exchange Act are incorporated by reference herein:

(a) Old Merck's Current Report on Form 8-K filed by Old Merck on May 20, 2009;

(b) Old Merck's Annual Report on Form 10-K for the fiscal year ended December 31, 2008, excluding Items 6, 7, 8 and the Notes to the Consolidated Financial Statements which are all superseded by information included in the Form 8-K filed by Old Merck on May 20, 2009;

(c) Old Merck's Quarterly Reports on Form 10-Q for the quarterly period ended March 31, 2009, June 30, 2009, and September 30, 2009;

(d) Old Merck's Current Reports on Form 8-K filed on February 11, 2009, February 24, 2009 (as amended on May 4, 2009), March 2, 2009, March 9, 2009, March 10, 2009, May 12, 2009, May 20, 2009, June 22, 2009, June 25, 2009, July 1, 2009, July 31, 2009, September 21, 2009 and October 22, 2009; and

(e) The information contained in Old Merck's Proxy Statement dated March 13, 2009 for its annual meeting of shareholders held on April 28, 2009.

All documents filed by the Registrant with the SEC pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act (other than any information that is furnished but that is deemed not to have been filed) prior to the filing of a post-effective amendment hereto that either indicates that all securities offered hereby have been sold or deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document that also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute part of this Registration Statement.

Item 4. Description of Securities.

Prior to the Transactions, under the Plan, certain management and highly compensated employees of Schering-Plough Corporation and certain of its subsidiaries were eligible to defer a portion of their base salary and bonus compensation. In connection with the Transactions, only employees of Schering Corporation and certain of its subsidiaries may participate in the Plan.

Amounts deferred by a participant under the Plan, as well as Company contributions, will be credited to the participant's Plan account. In addition, benefits payable under certain other Company-sponsored nonqualified plans will be deferred under the Plan, either automatically or at the election of the participant depending on the transferor plan. The value of a participant's account will be based on the performance of benchmark investment funds selected by the participant under the Plan for purposes of accounting (as if the deferred compensation had been

so invested) and not for actual investment. Since no participant deferrals or contributions by the Company actually will be invested in any investment fund, participants will not have any ownership interest in any investment fund. The Schering-Plough Corporation Investment Committee has the sole discretion to determine the alternative benchmark investment funds available under the Plan as the measurement mechanism to determine the rate of return on amounts deemed invested in accordance with the terms of the Plan.

The obligations of the Company under the Plan (the Obligations) are unsecured general obligations to pay in the future the value of the deferred compensation accounts adjusted to reflect the performance of the selected measurement investment funds in accordance with the terms of the Plan. The Obligations will rank without preference with other unsecured and unsubordinated indebtedness of the Company from time to time outstanding and are, therefore, subject to the risks of the Company's insolvency. The Company is not required to fund or otherwise segregate assets to be used for the payment of the Obligations.

Obligations are generally payable under the Plan (i) after termination of employment, (ii) at the election of the participant, the first day of any month designated by the participant which is at least three years after the date the participant makes the election, (iii) in the event of an unforeseeable financial emergency as determined by the Schering-Plough Corporation Global Benefits and Compensation Oversight Committee, and (iv) at the advance election of the participant, following a change of control of the Company.

The Obligations cannot be assigned, alienated, pledged or encumbered. The Obligations are not convertible into any security of the Company.

The Board of Directors of the Company or its delegate may amend the Plan at any time, except that no amendment may adversely affect the accounts of participants without their prior written consent.

Item 5. Interests of Named Experts and Counsel.

The validity of the securities being registered with the Previous Registration Statement were passed upon for the Registrant by Susan Ellen Wolf, Secretary, Associate General Counsel and Staff Vice President of the Registrant. At the time of the Previous Registration Statement, Ms. Wolf was an officer of the Registrant and beneficially owned shares of common stock of the Registrant and held options to purchase additional shares of common stock of the Registrant. Ms. Wolf participated in the Transactions in the same manner as other shareholders and equity award holders. Ms. Wolf was eligible to participate in the Plan at the time of the Previous Registration Statement and may receive benefits under the Plan.

Item 6. Indemnification of Directors and Other Officers.

The New Jersey Business Corporation Act provides that a New Jersey corporation has the power to indemnify a director or officer against his or her expenses and liabilities in connection with any proceeding involving the director or officer by reason of his or her being or having been such a director or officer, other than a proceeding by or in the right of the corporation, if such a

director or officer acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation; and with respect to any criminal proceeding, such director or officer had no reasonable cause to believe his or her conduct was unlawful.

The indemnification and advancement of expenses shall not exclude any other rights, including the right to be indemnified against liabilities and expenses incurred in proceedings by or in the right of the corporation, to which a director or officer may be entitled under a certificate of incorporation, bylaw, agreement, vote of stockholders, or otherwise; provided that no indemnification shall be made to or on behalf of a director or officer if a judgment or other final adjudication adverse to the director or officer establishes that his or her acts or omissions (a) were in breach of his or her duty of loyalty to the corporation or its stockholders, (b) were not in good faith or involved in a knowing violation of law or (c) resulted in receipt by the director or officer of an improper personal benefit.

The Company's Restated Certificate of Incorporation provides that, to the fullest extent permitted by the laws of the State of New Jersey, directors and officers of the Company shall not be personally liable to the Company or its stockholders for damages for breach of any duty owed to the Company or its stockholders, except that a director or officer shall not be relieved from liability for any breach of duty based upon an act or omission (a) in breach of such person's duty of loyalty to the Company or its stockholders, (b) not in good faith or involving a knowing violation of law or (c) resulting in receipt by such person of an improper personal benefit.

The By-Laws of the Company provide that a former, present or future director, officer or employee of the Company or the legal representative of any such director, officer or employee shall be indemnified by the Company:

(a) against reasonable costs, disbursements and counsel fees paid or incurred where such person has been successful in the defense on the merits or otherwise of any pending, threatened or completed civil, criminal, administrative or arbitral action, suit or proceeding, and any appeal therein and any inquiry or investigation which could lead to such action, suit or proceeding or in defense of any claim, issue or matter therein, brought by reason of such person's being or having been such director, officer or employee, and

(b) with respect to the defense of any such action, suit, proceeding, inquiry or investigation for which indemnification is not made under (a) above, against reasonable costs, disbursements (which shall include amounts paid in satisfaction of settlements, judgments, fines and penalties, exclusive, however, of any amount paid or payable to the Company) and counsel fees if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Company, and in connection with any criminal proceedings such person also had no reasonable cause to believe the conduct was unlawful, with the determination as to whether the applicable standard of conduct was met to be made by a majority of the members of the Board of Directors (sitting as a Committee of the Board) who were not parties to such inquiry, investigation, action, suit or proceeding or by any one or more disinterested counsel to whom the question may be referred by the Board of Directors; provided, however, in connection with any proceeding by or in the right of the Company, no indemnification shall be provided as to any person adjudged by any court to be liable to the Company except as and to the extent determined by such court.

The Company enters into indemnification agreements with its directors and officers and enters into insurance agreements on its own behalf. The indemnification agreements provide that the Company agrees to hold harmless and indemnify its directors and officers to the fullest extent authorized or permitted by the Business Corporation Act of the State of New Jersey, or any other applicable law, or by any amendment thereof or other statutory provisions authorizing or permitting such indemnification that is adopted after the date hereof. Without limiting the generality of the foregoing, the Company agrees to hold harmless and indemnify its directors and officers to the fullest extent permitted by applicable law against any and all expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by its directors and officers in connection with the defense of any present or future threatened, pending or completed claim, action, suit or proceeding by reason of the fact that they were, are, shall be or shall have been a director or officer of the Company, or are or were serving, shall serve or shall have served, at the request of the Company, as director or officer of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

Item 8. Exhibits.

Exhibit Number	Description
5.1	Opinion of Legal Counsel, filed as Exhibit 5 with the Previous Registration Statement, dated December 7, 2004.
15.1*	Awareness Letter of Deloitte & Touche LLP, independent registered public accounting firm for Schering-Plough Corporation.
23.1*	Consent of Deloitte & Touche LLP, independent registered public accounting firm for Schering-Plough Corporation.
23.2*	Consent of Deloitte & Touche LLP, independent auditors for the Merck/Schering-Plough Cholesterol Partnership.
23.3*	Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm for the Registrant.
24.1*	Certified Resolution of Board of Directors.
24.2*	Powers of Attorney (granted by officers Clark, Kellogg, and Canan and directors Brun, Cech, Clark, Jacobson, Kelley, Kidder, Represas, Russo, Shenk, Thier, Thompson and Wendell).
24.3*	Powers of Attorney (granted by directors Glocer, Goldstone, Harrison, Lazarus, Tatlock, and Weeks).

* Filed herewith.

Item 9. Undertakings.

The undersigned registrant hereby undertakes:

1. (a) To file, during any period in which offers or sales are being made, a post-effective amendment to the registration statement to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

(b) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

2. That, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

3. Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel, the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the issuer certifies that it has reasonable grounds to believe that it meets all the requirements for filing on Form S-8, and has duly caused this Post-Effective Amendment No. 1 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Whitehouse Station, State of New Jersey on the 3rd day of November, 2009.

MERCK & CO., INC.

By: *
Richard T. Clark

Chairman, President and Chief Executive Officer

By: /s/ **CELIA A. COLBERT**
Celia A. Colbert

**Senior Vice President, Secretary and Assistant
General Counsel**

(Attorney-in-Fact)

* Celia A. Colbert, by signing her name hereto, does hereby sign this document pursuant to powers of attorney duly executed by the person named, filed with the Securities and Exchange Commission as an exhibit to this document, on behalf of such person on the date stated.

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Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons in the capacities and on the date indicated.

Signature	Title	Date
*	Chief Executive Officer and President; Principle Executive Officer; Director	November 3, 2009
Richard T. Clark		
*	Executive Vice President and Chief Financial Officer	November 3, 2009
Peter N. Kellogg		
*	Executive Vice President and Controller	November 3, 2009
John Canan		
*	Director	November 3, 2009
Leslie A. Brun		
*	Director	November 3, 2009
Thomas R. Cech, Ph.D.		
*	Director	November 3, 2009
Thomas H. Glocer		
*	Director	November 3, 2009
Steven F. Goldstone		
*	Director	November 3, 2009
William B. Harrison, Jr.		
*	Director	November 3, 2009
Harry R. Jacobson, M.D.		
*	Director	November 3, 2009
William N. Kelley, M.D.		

*	Director	November 3, 2009
C. Robert Kidder		
*	Director	November 3, 2009
Rochelle B. Lazarus		
*	Director	November 3, 2009
Carlos E. Represas		
*	Director	November 3, 2009
Patricia F. Russo		
*	Director	November 3, 2009
Thomas E. Shenk, Ph.D.		
*	Director	November 3, 2009
Anne M. Tatlock		
*	Director	November 3, 2009
Samuel O. Thier, M.D.		
*	Director	November 3, 2009
Craig B. Thompson, M.D.		
*	Director	November 3, 2009
Wendell P. Weeks		
*	Director	November 3, 2009
Peter C. Wendell		

* Celia A. Colbert, by signing her name hereto, does hereby sign this document pursuant to powers of attorney duly executed by the person named, filed with the Securities and Exchange Commission as an exhibit to this document, on behalf of such person on the date stated.

EXHIBIT INDEX

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