



January 13, 2023

**VIA E-MAIL**

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F Street, N.E.  
Washington, D.C. 20549

Re: *Merck & Co., Inc.*  
*Shareholder Proposal of Boston Common Asset Management*  
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that Merck & Co., Inc. (“Merck” or the “Company”) intends to omit from its proxy statement and form of proxy for its 2023 Annual Meeting of Shareholders (collectively, the “2023 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof (the “Supporting Statement”) received from Boston Common Asset Management (the “Proponent”).

Pursuant to Rule 14a-8(j), the Company has:

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2023 Proxy Materials with the Commission; and
- concurrently sent a copy of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, the Company is taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal (including correspondence regarding the status of any negotiations with the Company), a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

## **I. The Proposal**

The text of the resolution contained in the Proposal is set forth below:

Resolved, The shareholders of Merck & Co., Inc. (“Merck” or “Company”) ask the Company to adopt a policy requiring that any trade association, social welfare organization, or organization organized and operated primarily to engage in political activities that seeks financial support from Merck agree to report to [*sic*], at least annually, the organization’s expenditures for political activities, including the amount spent and the recipient, and that each such report be posted on Merck’s website.

For purposes of this proposal, “political activities” are (i) influencing or attempting to influence the selection, nomination, election, or appointment of any individual to a public office; or (ii) supporting a party, committee, association, fund, or other organization organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures to engage in the activities described in (i). This proposal does not encompass lobbying spending.

## **II. Basis for Exclusion**

The Company hereby respectfully requests that the Staff concur in the Company’s view that the Proposal may be excluded from the 2023 Proxy Materials pursuant to Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposal in the manner that the Proposal requests.

## **III. Background**

On November 22, 2022, the Company received the Proposal by email. The Proposal was accompanied by a letter from U.S. Bank verifying the Proponent’s stock ownership in the Company as of such date. Copies of the Proposal, Supporting Statement and related correspondence with the Proponent are attached hereto as Exhibit A.

## **IV. The Proposal May Be Excluded Under Rule 14a-8(i)(6) Because The Company Lacks The Power Or Authority To Implement The Proposal In The Manner That The Proposal Requests**

Rule 14a-8(i)(6) permits a company to exclude a shareholder proposal “[i]f the company would lack the power or authority to implement the proposal.” Notably, the Commission has stated that exclusion under Rule 14a-8(i)(6) “may be justified where *implementing the proposal would require intervening actions by independent third parties.*” Exchange Act Release No. 40018 at n.20 (May 21, 1998) (emphasis added).

The Proposal requests that the Company “adopt a policy requiring that any trade association, social welfare organization, or organization organized and operated primarily to engage in political activities that seeks financial support from Merck agree to report to [Merck],

at least annually, the organization's expenditures for political activities," and that the Company post publicly on its website "each such report" (such policy, the "Requested Policy"). Based on its express terms, the Requested Policy requires and depends upon action by independent third parties (*i.e.*, certain organizations agreeing to provide, and actually providing, the Company details pertaining to their political expenditures and consenting to the Company's public posting of such details), and it is not within the Company's power or authority to guarantee that "any" such organizations would comply with such a policy or request by the Company.

If implemented, the broadly-worded Requested Policy (i) would be triggered any time a third-party covered organization "seeks financial support from Merck," (ii) would apply to any kind of request to the Company for financial support (whether or not related to political expenditures) and (iii) would require the third-party covered organization to report the requested information. Thus, implementation of the Proposal is wholly dependent on the willingness of third-party organizations to comply with the Requested Policy, and the Company's dependence on those third parties renders the Requested Policy impossible to enforce. Said differently, the Company cannot compel third parties that only seek financial support from it, over which the Company exercises no control, to provide the Company with potentially confidential and proprietary information related to such third parties' political expenditures.

Moreover, because the Requested Policy broadly applies to organizations that merely "seek" financial support from the Company (as opposed to those organizations that actually receive financial support), the Company would be required to both request and then compel disclosure from third parties to whom it may choose not to contribute and with whom it may not have any relationship whatsoever, as the Company does not provide financial support to every organization that seeks financial support. In addition, the Proposal lacks a connection to political activity by the Company, and instead seeks to use the Company as a means for publishing certain political expenditure disclosure from third-party organizations, with respect to which the Proponent would not otherwise have access or recourse. The Requested Policy would apply even to organizations that seek a relationship with the Company that is unrelated to the Company's political activity (and where the sought form of financial support is not political in nature). For example, if the Company provides financial support to a community organization or an individual customer, the Requested Policy would require the Company to condition such support on detailed political expenditure reports by such organization or individual. The foregoing is not only impractical and inappropriate, but also beyond the Company's power to enforce. The Proposal, therefore, involves the very kind of situation envisioned by the Commission when it stated that exclusion would be appropriate, because implementing and applying the Requested Policy would require intervening actions by independent third parties.

The Staff has consistently concurred with the exclusion of proposals where it was not within the power of a company to guarantee compliance with the terms requested by the proposal. For example, in *The Goldman Sachs Group, Inc.* (avail Jan. 28, 2015) ("*Goldman 2015*"), a shareholder proposal requested that the company adopt a policy that its chairman be an independent director. The company argued that the proposal did not provide an opportunity or mechanism to cure a situation where the chairman failed to maintain his or her independence, and that it could not guarantee that an independent director would "(1) be elected to the [b]oard

by the [c]ompany's shareholders, (2) be elected as Chairman by the members of the board, (3) be willing to serve as Chairman, and (4) remain independent at all times while serving as Chairman." The Staff concurred with exclusion pursuant to Rule 14a-8(i)(6), noting that "it appears that the proposal is beyond the power of the board to implement" because "it does not appear to be within the power of the board of directors to ensure that its chairman retains his or her independence at all times." *See also The Goldman Sachs Group, Inc.* (avail. Mar. 25, 2010) (concurring with the exclusion of a proposal under Rule 14a-8(i)(6) because it did not "appear to be within the power of the board of directors to ensure that each member of the compensation committee meets the requested criteria at all times"); *Allegheny Technologies Incorporated* (avail. Mar. 1, 2010) (same); *Time Warner, Inc.* (avail. Feb. 22, 2010) (same); *Honeywell International Inc.* (avail. Feb. 18, 2010) (same). As in *Goldman 2015*, where the Staff concurred with the exclusion of a proposal because the company could not ensure compliance with the terms of the requested policy (*i.e.*, that the chairman would always be independent), the Company likewise lacks the power to implement the Proposal because the Company cannot guarantee compliance with the Requested Policy. The detailed disclosure required under the Requested Policy, which must include each third-party covered organization's "expenditures for political activities, including the amount spent and the recipient," can only be provided by third-party organizations. However, the Company has no control to compel action from such third-party organizations before the Company establishes a business relationship with such organizations and has no means of oversight to ensure that such organizations would provide complete and accurate disclosure. The Proposal, therefore, is excludable pursuant to Rule 14a-8(i)(6).

The Staff has also concurred with the exclusion of proposals requiring action by an entity over which the company to whom the proposal was submitted has no control. For example, in *eBay Inc.* (avail. Mar. 26, 2008), the Staff concurred that a proposal requesting that the company enact a policy prohibiting the sale of dogs and cats on the website of a joint venture owned by a wholly owned subsidiary of the company and TOM Online Inc. (an independent online portal and wireless internet company headquartered in China), in which the company had no role in day-to-day operations and over which it had no operating control, was excludable pursuant to Rule 14a-8(i)(6). The company argued that because of the nature of its joint venture-relationship, it lacked the power or authority to take the action that would be required by the proposal, and the Staff concurred that relief was merited. Similarly, the Staff concurred with exclusion of a proposal in *Beckman Coulter, Inc.* (avail. Dec. 23, 2008) requesting that the company implement a set of executive compensation reforms at The Bank of New York Mellon, an unaffiliated bank which served as a trustee for the company under an indenture agreement. The company argued that it was impossible for it to implement the reforms requested by the proposal because it did "not directly or indirectly control" the bank nor did it "have any direct or indirect interest" in the bank. The company further argued that while the bank served as a trustee for the company under an indenture, "this contractual relationship [did] not give the [c]ompany the power or the authority to implement or influence the executive compensation reforms raised in the [p]roposal," and the Staff concurred that relief was merited pursuant to Rule 14a-8(i)(6). *See also Catellus Development Corp.* (avail. Mar. 3, 2005) (concurring with the exclusion under Rule 14a-8(i)(6) of a proposal requesting that the company take certain actions related to property it managed but no longer owned); *Ford Motor Co.* (avail. Mar. 9, 1990) (concurring with the

exclusion of a proposal under the predecessor to Rule 14a-8(i)(6) because the proposal “relate[d] to the activities of companies other than the [c]ompany [to whom the proposal was submitted] and over whom the [c]ompany ha[d] no control”); *Harsco Corp.* (avail. Feb. 16, 1988) (concurring with the exclusion under the predecessor to Rule 14a-8(i)(6) of a proposal requesting that the board of directors sign and implement a statement of principles relating to employment in South Africa where the company’s only involvement with employees in South Africa was its ownership of 50% of the stock of a South African entity, and the owner of the remaining 50% interest had the right to appoint the entity’s chairman, who was empowered to cast the deciding vote in the event of a tie).

Similar to *eBay* and *Beckman Coulter*, the Company does not have the power or authority to unilaterally compel political expenditure disclosure from third-party organizations as would be required by the Requested Policy, let alone compel such disclosure annually or with the level of detail prescribed by the Proposal. The Company has no control over third-party organizations that merely seek its financial support nor is it involved in their day-to-day operations. Furthermore, the relationship between the Company and third-party organizations seeking its financial support appears to be even more attenuated than the relationships found in *eBay* and *Beckman Coulter*. Because the Proposal encompasses *any* covered organization merely *seeking* financial support from the Company, there would not necessarily exist contractual agreements of any sort between the Company and third-party organizations here unlike the joint venture in *eBay* or the indenture in *Beckman Coulter*. In fact, where the Company’s financial support is solicited but not given, the Company may not have any business relationship with the third-party organization. Any such disclosure would have to be voluntarily produced by the third-party organizations seeking financial support, and the Company lacks any power or authority to compel such action.

Additionally, the decision to publicly report on the information requested by the Proposal is a matter under the purview and control of the third-party organizations seeking financial support from the Company, not the Company itself. The Company has no power to direct or mandate that third-party organizations seeking financial support agree, simply as a condition of their request for financial support (which may be completely unsolicited by the Company), to provide annual disclosures to the Company that will subsequently be publicly disclosed by the Company.

Accordingly, for the reasons set forth above and consistent with the aforementioned precedents, the Proposal is excludable under Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposal.

## **V. Conclusion**

Based upon the foregoing analysis, the Company respectfully requests that the Staff concur that it will take no action if the Company excludes the Proposal from the 2023 Proxy Materials.

Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of the Company’s position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff’s

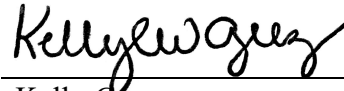
Office of Chief Counsel

January 13, 2023

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response. Any such communication regarding this letter should be directed to me at office.secretary@merck.com or (908) 246-3341.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kelly Grez", written over a horizontal line.

Kelly Grez

Enclosures

cc: Amy Orr, Boston Common Asset Management

**Exhibit A**

(Attached)

November 22, 2022

Merck & Co, Inc.  
Office of the Company Secretary  
2000 Galloping Hill Road, K1-4157  
Kenilworth, NJ 07033 U.S.A.

Attn: Corporate Secretary

Via Email: [office.secretary@merck.com](mailto:office.secretary@merck.com)

Dear Corporate Secretary,

Boston Common Asset Management is a global investment manager that specializes in sustainable and responsible global equity strategies. Boston Common urges the companies we invest in to improve their sustainable business practices and to promote transparency, accountability, and inclusivity in the way they conduct business with their employees, customers, suppliers, and other partners. The Boston Common ESG Impact US Equity Fund, a long-term investor, is currently the beneficial owner of shares of Merck & Co., Inc. Company (“the Company”, “Merck”).

As long-term Merck shareholders we support transparency and accountability in corporate electoral spending, including the indirect political spending that is the subject of this proposal. We appreciate Merck’s [Political Spending](#) disclosure to date, and its commitment to monitoring voluntary reporting of trade association dues used for political purposes. However, we believe Merck should mandate disclosure, rather than rely on voluntary reporting, to ensure that reporting is reliable and consistent in its coverage of affiliate organizations. We would also like to see the results of such mandated disclosure published on Merck’s political spending website.

Boston Common Asset Management is the lead filer for the enclosed proposal for inclusion in the 2023 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. The Boston Common ESG Impact US Equity Fund has been a shareholder continuously holding at least \$25,000 in market value for the last year and a day as of the filing date and will continue to invest in at least the requisite number of shares for proxy resolutions through the annual shareholders’ meeting. The verification of ownership by our custodian is attached as a separate file in this correspondence. One of the filers will attend the Annual Meeting to present the resolution as required by SEC rules.

We hope that Merck is open to setting some sort of commitments aligned with the resolution asks. We would be happy to schedule a call in the coming weeks to discuss this more. Per SEC requirements, we are available to meet with the company via teleconference at the following times: November 30<sup>th</sup> at 9 AM Eastern or December 2<sup>nd</sup> at 2 PM Eastern.



Amy Orr, Director of US Shareholder Engagement

[aorr@bostoncommonasset.com](mailto:aorr@bostoncommonasset.com)

Sincerely, Lauren Compere, Managing Director and Head of Stewardship & Engagement

[lcompere@bostoncommonasset.com](mailto:lcompere@bostoncommonasset.com)

## Shareholder Proposal – Indirect Political Spending Disclosure

**Resolved,** The shareholders of Merck & Co., Inc. (“Merck” or “Company”) ask the Company to adopt a policy requiring that any trade association, social welfare organization, or organization organized and operated primarily to engage in political activities that seeks financial support from Merck agree to report to , at least annually, the organization’s expenditures for political activities, including the amount spent and the recipient, and that each such report be posted on Merck’s website.

For purposes of this proposal, “political activities” are (i) influencing or attempting to influence the selection, nomination, election, or appointment of any individual to a public office; or (ii) supporting a party, committee, association, fund, or other organization organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures to engage in the activities described in (i). This proposal does not encompass lobbying spending.

### Supporting Statement

As long-term Merck shareholders we support transparency and accountability in corporate electoral spending, including the indirect political spending that is the subject of this proposal. Misaligned or non-transparent funding creates reputational risk that can harm shareholder value. It can also place a company in legal jeopardy. Unless a company knows which candidates and political causes its funds ultimately support, it cannot assure shareholders, employees, or other stakeholders that its spending aligns with core values, business objectives, and policy positions. Without the information requested by this resolution, none of the board, senior management, or shareowners can assess the risks associated with political spending.

The risks are especially serious when giving to trade associations, Super PACs, 527 committees, and “social welfare” organizations – groups that routinely pass money to or spend on behalf of candidates and political causes that a company might not otherwise wish to support. The Conference Board’s 2021 [“Under a Microscope” report](#) details these risks, discusses how to effectively manage them, and recommends the process suggested in this proposal.

Media coverage amplifies the risk a company’s blind spending can pose and contributions to third-party groups can also embroil companies in scandal. Public records show Merck has contributed at least \$1.3 million in corporate funds to third-party groups dating to the 2020 election cycle. Beneficiaries of this spending have been tied to attacks on voting rights, which we believe run counter to Merck’s stated values.

It is unclear whether the Company and its board received sufficient information from these groups to assess (a) the potential risks for Merck and stockholders, and (b) whether the groups’ expenditures aligned with Merck’s core values, business objectives, and policy positions.

Mandating reports from third-party groups receiving Merck’s political money would demonstrate the Company’s commitment to robust risk management and responsible civic engagement.

We urge a vote FOR the commonsense risk management measures contained in this proposal.



Global Fund Services

777 East Wisconsin Avenue  
Milwaukee, WI 53202

[usbank.com/globalfundservices](http://usbank.com/globalfundservices)

November 22, 2022

Office of the Secretary, Merck & Co., Inc.  
2000 Galloping Hill Road, K1-4157  
Kenilworth, NJ07033U.S.A.

Attn: Merck & Co., Inc Office of the Secretary

Via Email: [office.secretary@merck.com](mailto:office.secretary@merck.com)

Re: Shareholder proposal submitted by Boston Common Asset Management

Dear Corporate Secretary,

I write concerning a shareholder proposal (the “Proposal”) submitted to Merck & Co., Inc. (the “Company”) by Boston Common Asset Management.

As of November 22, 2022, Boston Common ESG Impact U.S. Equity Fund (BCAMX) beneficially owned, and had beneficially owned continuously for at least one year, shares of the Company’s common stock worth at least \$25,000 (the “Shares”).”

US Bank has acted as record holder of the Shares and is a DTC participant. If you require any additional information, please do not hesitate to contact me at [Jennifer.smith19@usbank.com](mailto:Jennifer.smith19@usbank.com).

Sincerely,

A handwritten signature in black ink, appearing to read "J. Smith".

Jennifer Smith  
Mutual Funds Administrator  
U.S. Bank Global Fund Services

Merck & Co., Inc.  
2000 Galloping Hill Road  
Kenilworth, NJ 07033  
Email: office.secretary@merck.com



**Via email** (aorr@bostoncommonasset.com)  
(lcompere@bostoncommonasset.com)

November 23, 2022

Amy Orr & Lauren Compere  
Boston Common Asset Management  
200 State Street, 7<sup>th</sup> Floor  
Boston, MA 02109

Re: Shareholder Proposal from Boston Common Asset Management ("BCAM")

Dear Ms. Orr & Ms. Compere:

This is to acknowledge receipt of your letter on behalf of BCAM to Merck & Co., Inc. ("Merck"), dated November 22, 2022, and the accompanying shareholder proposal regarding "Indirect Political Spending Disclosure" (the "Proposal") submitted for inclusion in the proxy materials for Merck's 2023 Annual Meeting of Shareholders.

Please note that notwithstanding this acknowledgement of receipt, Merck reserves the right and may seek to exclude the Proposal in accordance with SEC proxy rules.

We would welcome an opportunity to discuss the Proposal and will be in touch to try to schedule a call.

Thank you,

A handwritten signature in black ink that reads "Kelly Grez".

Kelly Grez  
Corporate Secretary