NEW YORK, NY, THURSDAY, JUNE 8TH, 2023 – Shareholders of Merck & Co (SMRK) responded to the news that the company had filed a lawsuit in the DC District Court against the Department of Health and Human Services. The lawsuit cites as “unconstitutional” a key provision of the Inflation Reduction Act that going forward will give Medicare the ability to negotiate better prices for certain high-cost drugs.

The investors are members of the Interfaith Center on Corporate Responsibility that have been engaging the company for decades calling for a change in policies and practices that would increase the access and affordability of medicines. ICCR members see escalating drug prices as a systemic risk to the systems undergirding our society and economy.

The U.S. is the only country where the government does not have the power to negotiate drug prices with pharmaceutical manufacturers, a fact many see as a key contributor to out-of-control drug prices in the U.S. Other government agencies such as Medicaid and the Department of Veteran Affairs have had negotiating power for years.

The Inflation Reduction Act passed in 2022, reverses a 20-year ban on Medicare’s ability to negotiate drug prices and would also impose penalties on manufacturers that increase drug prices faster than the rate of inflation, something ICCR members have long advocated. The new law also sets an annual out-of-pocket cap of $2,000 on what Medicare recipients will pay for prescription medicines.

Merck markets two drugs that likely will be impacted by the new law: Keytruda, a cancer drug, and Januvia, a diabetes medicine. According to a statement from Patients for Affordable Drugs, “Januvia, which is taken by nearly 1 million people on Medicare, has been on the market since 2006 without any competitors. Since 2017 Medicare Part D has spent more than $17 billion on the drug, which is priced at $547 for a month’s supply.”

Said Christina Dorett of Seventh Generation Interfaith Coalition, “This commonsense legislation, with considerable bipartisan support, has long been needed to bring balance to the way drug prices are set in the U.S. Until now, the pricing strategies of drug makers have largely been one-sided with the drug
companies setting the prices with no consideration for the benefit of patients. The IRA seeks to install fair and transparent guardrails around the process that will dismantle monopolies and make drugs more affordable for our seniors. We find it rich that Merck’s lawsuit characterizes these provisions as “unconstitutional and extortionist” – a great example of the pot calling the kettle black.”

The investors note that in Merck’s Access to Health Principles, the company states that it “develops, tests and implements innovative solutions that address barriers to access and affordability of our medicines and vaccines.” Similarly, in Merck’s Our Approach statement it claims that “Operating responsibly is at the heart of our ability to deliver sustainable impact – driving long-term value for our company and society.”

Said Lauren Compere of Boston Common Asset Management, “If Merck truly puts its patients and society first, then the company should align its statements with its actions. This action suggests that Merck is willing to protect profits even if it comes at the expense of patients. Needless to say, the inappropriate use of corporate resources and misuse of the U.S. legal system to file this lawsuit against HHS is not what we would expect from a company espousing the values of greater access and affordability.”

Investors say they will ask Merck to reconsider its position and focus on the company's stated mission of “using the power of leading-edge science to save and improve lives around the world.”

Said Meg Jones Monteiro who directs ICCR’s health equity program, “If people are unable to afford the drugs these companies develop, there is no market and therefore no profit and no long-term value creation for shareholders. The company is not acting as a responsible steward in “driving long-term value for our company and society.”

About the Interfaith Center on Corporate Responsibility (ICCR)
The Interfaith Center on Corporate Responsibility (ICCR) is a broad coalition of more than 300 institutional investors collectively representing over $4 trillion in invested capital. ICCR members, a cross-section of faith-based investors, asset managers, pension funds, foundations, and other long-term institutional investors, have over 50 years of experience engaging with companies on environmental, social, and governance (“ESG”) issues that are critical to long-term value creation. ICCR members engage hundreds of corporations annually in an effort to foster greater corporate accountability. Visit our website www.iccr.org and follow us on Twitter, LinkedIn, and Facebook.

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