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Fresenius SE

Change of the Legal Form into a Partnership Limited by Shares

Conversion Report of the Management Board

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1. Introduction

The Management Board and the Supervisory Board of Fresenius SE (hereinafter also referred to as the “Company” and together with its subsidiaries “Fresenius” or the “Business”) have decided to propose to the Ordinary General Meeting of Fresenius SE to be held on May 12, 2010 the change of the legal form of the Company from a European Company (*Societas Europaea*, SE) into a partnership limited by shares (*Kommanditgesellschaft auf Aktien*, KGaA). For such a conversion involving a change of the legal form (hereinafter also referred to as the “change of the legal form”), the consent of the General Meeting of Fresenius SE is required according to the German Conversion Act (*Umwandlungsgesetz* – “UmwG”). According to the provisions of Council Regulation (EC) No 2157/2001 of October 8, 2001 on the Statute for a European Company (SE) (“SE Regulation”), the change of the legal form further requires an approving special resolution of the preference shareholders. The agenda of the ordinary General Meeting of the company to be held on May 12, 2010 is attached as **Annex 1** to this report.

As a part of the change of the legal form, it is intended to convert all non-voting preference shares of Fresenius SE (the “preference shares”) into voting ordinary shares (the change of the legal form together with the related conversion of the preference shares into ordinary shares hereinafter also referred to as the “transaction”). The unification of the share structure – in combination with the change of the legal form into a partnership limited by shares – should strengthen the position of Fresenius on the capital market and facilitate potential future capital measures and thus the further development of the Business. Furthermore, the highly limited liquidity of the ordinary shares of the Company (the “ordinary shares”) will be significantly increased. The unification of the share structure should also have a positive effect on the weighting in the German equity index (*Deutscher Aktienindex* – “DAX”). The DAX currently includes only the preference shares of the Company. In the future, the inclusion of all (ordinary) shares of the Company can be expected. The overall goal is to significantly increase the attractiveness of the Fresenius share for all investors.

In the course of the change of the legal form, Fresenius Management SE will accede to the Company as General Partner and assume, through its Management Board, the management and the representation of the Company. The choice of an SE as General Partner is intended to establish a link to the present European legal form of Fresenius SE. This emphasizes the importance of the international business, especially the European business, for the Fresenius Group, which will in the future also be reflected in the corporate name of the Company, “Fresenius SE & Co. KGaA”. All shares in Fresenius Management SE are held by the Else Kröner-Fresenius-Foundation (hereinafter also referred to as the “Foundation”) which can thereby uphold its present influence over the Company, in spite of the conversion of the preference shares into ordinary shares.

The following are the main considerations in favor of the transaction:

- **Strengthening of the position on the capital market.** The free float will no longer be split between preference shares and ordinary shares as before, but will be consolidated in a single class of shares. As a result, the transaction is expected to increase the liquidity of the Fresenius share and to improve the position of the Company on the DAX. Ultimately, the position of Fresenius on the capital market will be strengthened and the operative and financial maneuverability of the Business will be increased.
- **Maintenance of the existing corporate governance standards.** The proposed change of the legal form of the Company will maintain and continue today's corporate governance and transparency standards. The long-term strategic policy of the Company endorsed by the majority shareholder will be preserved.

The present situation of the Company is characterized by the fact that the Else Kröner-Fresenius-Foundation holds the majority of the voting ordinary shares. The most part of the remaining ordinary shares and all the preference shares are in free float. This means that within the existing legal form of an SE, the Foundation may pass resolutions which require a simple majority, at any time by means of its voting majority of approx. 58% in the General Meeting. This affects, in particular, the election of the members of the Supervisory Board and the auditors. Through the possibility to appoint the Supervisory Board, the Foundation exerts an influence on the appointment of the Management Board of Fresenius SE. Upon the change of the legal form taking effect, this de facto allocation of influence will turn into a structural allocation of influence. In the partnership limited by shares, the General Partner is responsible for the management and representation of the company. With respect to the relationship between the Else Kröner-Fresenius-Foundation and the outside shareholders, this means: On the one hand, the Foundation can retain its present influence via the General Partner. Through the appointment of the Supervisory Board of Fresenius Management SE, it can exert an influence on the appointment of its Management Board. On the other hand, following the change of the legal form and the related conversion of preference shares into ordinary shares, the percentage of the Foundation in the ordinary shares will be reduced by half from approx. 58% to approx. 29%. The possibilities of the Foundation to exert influence in the General Meeting of the partnership limited by shares are therefore reduced. Correspondingly, the weight of the outside shareholders in the General Meeting increases. In addition, the Foundation is subject to a voting prohibition inter alia regarding the election of the Supervisory Board of the partnership limited by shares and the auditors, so that the outside shareholders alone will be able to decide these issues.

In connection with the change of the legal form of Fresenius SE into a partnership limited by shares, it is intended to merge the Dutch Calea Nederland N.V., in which the Company has a 100 % stake, into the Company by way of a cross-border merger (hereinafter also referred to as

the “cross-border merger”). The cross-border merger is to become effective immediately upon the change of the legal form taking effect and serves the purpose of clearing up and simplifying the group structure. As a result of the cross-border merger, the Company will be able to maintain its well-tried governance structure with a Supervisory Board consisting of twelve members including employee representatives (so-called employee bench) with an international composition.

This conversion report of the Management Board of Fresenius SE contains information in accordance with sec. 192 of the German Conversion Act intended to serve as a basis for the process of opinion-forming and decision-making by the shareholders on the change of the legal form into the form of a partnership limited by shares. In the report, in particular, the legal and financial significance of the change of the legal form as well as its effects on the legal position of the shareholders and the corporate governance of the Company are explained and substantiated. In doing so, the report will particularly deal with the intended conversion of preference shares into ordinary shares which is to take place in the course of the change of the legal form.

2. Fresenius SE

2.1 General Information on Fresenius SE

Fresenius SE is a European Company (SE) and has existed as such since July 13, 2007. It is registered with the commercial register of the local court of Bad Homburg vor der Höhe, Germany, under HRB 10660. The registered office of Fresenius SE is Bad Homburg vor der Höhe, Germany. The business address is Else-Kröner-Straße 1, 61352 Bad Homburg vor der Höhe, Germany, telephone +49-6172-608-0.

Pursuant to its statutes, the corporate purpose of Fresenius SE are

- development, manufacture and distribution of, and trading with, products, systems and processes of the health care sector,
- construction, development and operation of medical and curative facilities as well as of hospitals,
- planning and construction of production plants, in particular for the manufacture of pharmaceutical, dietary and medical devices products,
- consulting in the medical and pharmaceutical field as well as scientific information and documentation.

Fresenius SE operates in Germany and abroad either directly or through associated companies (*Beteiligungsgesellschaften*). Fresenius SE is entitled to enter into all business transactions and to take all measures which are deemed necessary or useful to accomplish the corporate purpose, in particular, to acquire interests in other companies of the same or a related kind, to take over their management and/or representation, to transfer company divisions, including major company divisions, to other enterprises, provided that the Company owns at least the majority of their voting capital and/or holds a controlling interest, and to establish branches in Germany and abroad.

2.2 History and Development

Fresenius AG was created in 1981 by the conversion of the pharmaceutical company Dr. E. Fresenius, which was founded in 1912, into a stock corporation under German law. Fresenius AG (today's Fresenius SE) has been a listed company since 1986.

In 1996, Fresenius Medical Care AG (today's Fresenius Medical Care AG & Co. KGaA) was created as a result of the merger of the worldwide dialysis business of Fresenius AG and of National Medical Care. Today, Fresenius Medical Care is the worldwide leading supplier of

products and services for the treatment of patients with chronic kidney failure. With the acquisition of the Renal Care Group in the USA in 2006, Fresenius Medical Care expanded its position as the market leader.

Also in 1996, with the acquisition of a majority participation in VAMED AG, Fresenius Medical Care entered the hospital project and services business.

In 1998, Fresenius AG acquired the international infusion and nutrition business from Pharmacia & Upjohn. The combination of this business with the Fresenius business segment Pharma led to the creation of Fresenius Kabi in 1999. Fresenius Kabi and Fresenius ProServe, in which the services business is centralized, became independent business segments in 1999.

Fresenius AG was converted in 1999 into an operative holding company with the legally independent business segments Fresenius Medical Care, Fresenius Kabi and Fresenius ProServe.

In 2001, Fresenius AG acquired Wittgensteiner Kliniken AG, a private hospital owner operating nationwide. In 2005, Fresenius AG acquired the HELIOS Kliniken Group, which ranks among the leading hospital operators in Germany.

The conversion of Fresenius AG into a European Company (SE) became effective on July 13, 2007 upon registration in the commercial register of the local court of Bad Homburg vor der Höhe.

At the beginning of 2008, Fresenius ProServe was divided into the business segments Fresenius Helios and Fresenius Vamed. Thus, since January 1, 2008, the Fresenius Group comprises the four business segments Fresenius Medical Care, Fresenius Kabi, Fresenius Helios and Fresenius Vamed. The segment Corporate/Other comprises inter alia Fresenius Netcare, which offers services in the field of information technology, and Fresenius Biotech, which operates in research and development in the field of antibody therapies.

Also in the year 2008, APP Pharmaceuticals, Inc. was acquired by Fresenius Kabi. By acquiring APP Pharmaceuticals, Fresenius Kabi has not only attained a leading position in the worldwide business with generic drugs that are intravenously administered (“I.V. drugs”) but has also gained access to the market in North America with attractive growth potential for the existing product range of Fresenius Kabi.

2.3 Business Activities of Fresenius

Fresenius is a global health care group offering products and services for dialysis, hospitals and outpatient medical care for patients at home. The operative business of the Company is divided into the business segments Fresenius Medical Care, Fresenius Kabi, Fresenius Helios and

Fresenius Vamed, which are managed by Fresenius SE as the parent company of the group with top management functions. The segment Corporate/Other comprises inter alia Fresenius Netcare and Fresenius Biotech. As of December 31, 2009, the Fresenius Group had a total of 130,510 employees worldwide (December 31, 2008: 122,217), of which 46% were employed in the Member States of the European Union (EU) and in the states party to the Agreement on the European Economic Area (EEA).

In the financial year 2009, the sales of the Fresenius Group increased by 13% in constant currency and by 15% at actual rates to Euro 14,164 mn. (2008: Euro 12,336 mn.; unless expressly indicated otherwise, all statements regarding financial data in this conversion report are made in accordance with US GAAP). Organic growth was 8%, acquisitions contributed 5% to the increase in sales. Currency translation effects had a positive impact of 2%.

In the financial year 2009, the Group sales were attributable to the following business segments: Fresenius Medical Care 57% (2008: 59%), Fresenius Kabi 22% (2008: 20%), Fresenius Helios 17% (2008: 17%) and Fresenius Vamed 4% (2008: 4%).

In the financial year 2009, the group EBIT increased by 17% in constant currency and by 19% at actual rates to Euro 2,054 mn. (2008 adjusted: Euro 1,727 mn.). In the financial year 2009, there were no special items on the group EBIT. In order to facilitate comparison, the figures for the year 2008 contained in this conversion report are adjusted figures; they contain various special items resulting from the acquisition of APP Pharmaceuticals. In the financial year 2009, the adjusted group net income (net income attributable to the shareholders of Fresenius SE, adjusted for the effects of mark-to-market accounting of the Mandatory Exchangeable Bond (MEB) and the Contingent Value Rights (CVR) relating to the acquisition of APP Pharmaceuticals; these effects are not cash relevant) increased by 14 % to Euro 514 mn. The group net income including the special items (net income attributable to the shareholders of Fresenius SE) amounted to Euro 494 mn. in the financial year 2009.

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The following table shows the business development and the key financial figures of the Fresenius Group in the financial years 2009, 2008, 2007 and 2006:

in mn. EUR	2009 US GAAP	2008 US GAAP	2007 US GAAP	2006 US GAAP
Sales and Earnings				
Sales	14,164	12,336	11,358	10,777
EBIT	2,054	1,727 ¹⁾	1,609	1,444
Group net income ²⁾	514 ¹⁾	450 ¹⁾	410	330
Depreciation and amortization	562	783	421	399
Earnings per ordinary share in Euro	3.18 ¹⁾	2.85 ¹⁾	2.64	2.15 ⁹⁾
Earnings per preference share in Euro	3.19 ¹⁾	2.86 ¹⁾	2.65	2.16 ⁹⁾
Cash flow and Balance sheet				
Operating cash flow	1,553	1,074	1,296	1,052
Operating cash flow in % of sales	11.0%	8.7%	11.4%	9.8%
Total assets	20,882	20,544	15,324	15,024
Non-current assets	15,519	15,466	11,033	10,918
Equity ³⁾	7,652	6,943	6,059	5,728
Net debt	7,879	8,417	5,338	5,611
Net debt/EBITDA ^{6), 10)}	3.0	3.6	2.6	3.0
Equity ratio ³⁾ in %	37%	34%	40%	38%
Investments ⁴⁾	931	4,617	1,318	4,314
Profitability				
EBIT margin in %	14.5%	14.0% ¹⁾	14.2%	13.4%
Return on equity after taxes (ROE) in % ^{5), 7), 10), 11)}	12.0%	10.5%	12.0%	10.4%
Return on operating assets (ROOA) in % ^{5), 6), 10)}	10.5%	9.8%	11.4%	10.4%
Return on invested capital (ROIC) in % ^{5), 6), 10)}	8.2%	7.3%	8.4%	7.4%
Dividend per ordinary share in Euro	0.75 ⁸⁾	0.70	0.66	0.57
Dividend per preference share in Euro	0.76 ⁸⁾	0.71	0.67	0.58
Employees (December 31)	130,510	122,217	114,181	104,872

¹⁾ 2008 excluding special items from the APP acquisition.
2009 excluding special items from mark-to-market accounting of the Mandatory Exchangeable Bond (MEB) and the Contingent Value Rights (CVR).

²⁾ Net income attributable to the shareholders of Fresenius SE.

³⁾ Equity including non-controlling interests.

⁴⁾ Investments in property, plant and equipment, intangible assets, acquisitions.

⁵⁾ 2005 balance sheet adjusted for acquisition of HELIOS Kliniken.

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- 6) 2006 pro forma Renal Care Group, excluding sales proceeds of the US dialysis clinics and their net income in the first quarter 2006.
- 7) 2006 pro forma Renal Care Group, excluding net income in the first quarter 2006 of the sold US dialysis clinics.
- 8) Proposal.
- 9) Adjusted for the share split in February 2007.
- 10) 2008 pro forma APP, excluding special items from APP acquisition.
- 11) 2009 adjusted for the effects of the mark-to-market accounting of the Mandatory Exchangeable Bonds and the Contingent Value Rights.

2.3.1 The Strategy of the Fresenius Group

The objective of Fresenius is to become a globally leading provider of products and therapies for the critically and chronically ill. The Business focuses with its segments on few selected areas of the health care sector. Fresenius intends to

- provide best-in-class treatment,
- grow with new products and services,
- expand in growth markets,
- increase profitability on a sustainable basis.

The key elements of the Fresenius Group's strategy and goals are as follows:

- **To expand the market position:** Fresenius' goal is to ensure the long-term future of Fresenius as a leading international provider of products and services in the health care industry and to improve its market position. Fresenius Medical Care is the largest dialysis company in the world, with a strong market position in the USA. Perspectives in dialysis will in the future arise in the area of dialysis services and products from further international expansion as well as from a further development of the dialysis pharmaceuticals segment. Fresenius Kabi is the market leader in infusion therapy and clinical nutrition both in Europe and in the most significant countries of the Asia-Pacific region and in Latin America. In the USA, Fresenius Kabi is one of the leading players in the market for generic I.V. drugs through APP Pharmaceuticals. To strengthen its position, Fresenius Kabi plans to roll out more products from its portfolio to growth markets. Furthermore, the company intends to expand its market share by launching new products in the field of generic I.V. drugs and in the field of new medical devices for infusion therapy and clinical nutrition. In addition, products from the existing portfolio are to be launched in the USA, and products of APP Pharmaceuticals are to be introduced outside the USA. Fresenius Helios is in a strong position to take advantage of the further growth opportunities offered by the continuing privatization process in the German hospital market. In this context, investment decisions are based on the continued existence and the long-term potential of the clinics to be acquired.

Fresenius Vamed will further strengthen its position as a specialist provider of engineering and services for hospitals and other health care facilities.

- **To extend the global presence:** In addition to a sustained organic growth in markets where Fresenius is already established, the strategy is to develop new growth markets worldwide, especially in Asia-Pacific and Latin America. In this context, the Group focuses – with its brand, product portfolio and existing infrastructure – on markets that offer attractive growth potential. In addition to organic growth, Fresenius plans, in particular, to make further small to mid-sized selective acquisitions to improve its market position and to diversify its business geographically.
- **To strengthen innovation in the development of new products and technologies:** Fresenius' strategy is to continue building on its strength in technology, its competence and quality in patient care, and its ability to manufacture cost-effectively. Fresenius is convinced that it can leverage on its competence in research and development in its operations to develop products and systems that provide a higher level of safety and user-friendliness and enable tailoring to individual patient needs. Fresenius intends to continue to meet the requirements of best-in-class medical standards by developing and producing more effective products and treatment methods for the critically and chronically ill. It is the goal of Fresenius Helios to establish its health care products and services and its innovative therapies as brands and to increase brand recognition.
- **To enhance profitability:** The goal of Fresenius is to continue to improve group profitability. With respect to costs, Fresenius is concentrating particularly on making its production plants more efficient, using economies of scale and distribution channels more intensively, and generally imposing cost discipline. The focus on its operating cash flow by way of an efficient working capital management shall improve Fresenius's investment flexibility and improve its balance sheet ratios. Another goal is to optimize the weighted average cost of capital (WACC) by way of a balanced mix of equity and debt funding. The net debt/EBITDA figure was 3.0 on December 31, 2009, after rising to 3.6 at the end of 2008 as a result of the financing of the acquisition of APP Pharmaceuticals.

2.3.2 Overview of the Business Segments

The Fresenius Group consists of four business segments which operate and act independently worldwide: Fresenius Medical Care, Fresenius Kabi, Fresenius Helios and Fresenius Vamed.

Fresenius Medical Care is the world's leading provider of dialysis products and dialysis services for the vital medical treatment of patients with chronic kidney failure.

Fresenius Kabi is a globally active provider of infusion therapies, generic I.V. drugs, clinical nutrition and the related medical devices. The products are used for hospital and outpatient medical care of the chronically and critically ill.

Fresenius Helios is one of the largest German private hospital operators.

The range of services of Fresenius Vamed comprises engineering and other services for hospitals and other health care facilities.

The segment Corporate/Other comprises, inter alia, the holding functions of Fresenius SE, Fresenius Netcare, which offers services in the field of information technology, and Fresenius Biotech, which specializes in research and development in the field of antibody therapies.

2.3.3 Fresenius Medical Care

Overview

The business segment Fresenius Medical Care consists of Fresenius Medical Care AG & Co. KGaA and its subsidiaries. Fresenius Medical Care is the world's leading supplier of products and services for the treatment of patients with chronic kidney failure. Currently, the number of dialysis patients worldwide amounts to 1.9 mn. In 2,533 dialysis clinics in North America, Europe, Asia, Latin America and Africa, Fresenius Medical Care provides treatment and care for 195,651 dialysis patients (figures as of December 31, 2009). Furthermore, Fresenius Medical Care is the world's leading provider of dialysis products such as hemodialysis machines, dialyzers and related single-use products.

In the financial year 2009, Fresenius Medical Care achieved sales of USD 11,247 mn. (2008: USD 10,612 mn.). Organic growth was at 8%, acquisitions accounted for 1%. Currency translation had an impact of -3%. The EBIT of Fresenius Medical Care increased by 5% to USD 1,756 mn. (2008: USD 1,672 mn.). The group net income (net income attributable to the shareholders of Fresenius Medical Care AG & Co. KGaA) rose by 9% to USD 891 mn. (2008: USD 818 mn.).

As of December 31, 2009, Fresenius Medical Care had 71,617 employees (December 31, 2008: 68,050), of which 13,396 were employed in the Member States of the EU and the states party to the EEA Agreement. The 5% increase as compared to the previous year results from the growth of the Business in all business segments.

Dialysis services

As of December 31, 2009, Fresenius Medical Care provided dialysis services in 2,553 dialysis clinics. Of such clinics, 1,784 are located in North America, 435 in Europe, 191 in Latin America and 143 in the Asia-Pacific region. While the contribution to sales of dialysis services

in North America was approx. 89% in 2009, dialysis products were dominant on the international level outside North America with a share in sales of 57%.

In the USA, the market for dialysis services is already highly consolidated: Fresenius Medical Care and the second largest provider of dialysis services – DaVita – together treat approx. 64 % of all patients in the USA. In 2009, Fresenius Medical Care maintained its market-leading position of approx. 33%. Outside the USA, the dialysis services market is considerably more fragmented: Here, Fresenius Medical Care particularly competes with independent clinics and clinics that are affiliated with hospitals. Outside the USA, Fresenius Medical Care operates 769 dialysis clinics in 35 countries and treats over 63,000 patients. This means that Fresenius Medical Care has established by far the largest and most international dialysis network. In the countries of Central Europe, Fresenius Medical Care mostly sells dialysis products, while in many other European countries, e.g. France, Great Britain, Italy, Poland, Portugal, Slovenia, Spain, Czech Republic, Turkey and Hungary, it also acts as provider of dialysis services. Fresenius Medical Care has established a worldwide network of production facilities in order to be able to supply the demand for dialysis products.

The number of patients treated in clinics of Fresenius Medical Care increased by 6% to 195,651 as compared to the previous year (figures as of December 31, 2009).

Dialysis products

On the basis of publicly available information, Fresenius Medical Care is the world's leading company in the dialysis product business with a market share of 32 %. Fresenius Medical Care offers a comprehensive portfolio for hemodialysis and peritoneal dialysis in order to cover all aspects of the dialysis treatment and to optimize therapeutic success. Dialyzers, hemodialysis machines, concentrates and dialysis solutions as well as products for peritoneal dialysis count among the most important products in the dialysis product market.

Dialyzers and dialysis machines count among the products creating the highest sales volume. In 2009, dialyzers had a market volume of approx. 190 mn. units of which approx. 85 mn. units were manufactured by Fresenius Medical Care. Of the approx. 65,000 new hemodialysis machines brought on the market, about 55% were produced by Fresenius Medical Care.

In 2009, the number of peritoneal dialysis patients globally increased by more than 6% to approx. 203,000. Fresenius Medical Care provides approx. 36,000 patients, i.e. approx. 17% of all patients, with peritoneal dialysis products. In the USA, such share amounts to 31%.

Dialysis drugs

A core element of the growth strategy of Fresenius Medical Care is to expand the portfolio of dialysis drugs. In this context, dialysis drugs are combined with the products and therapies in connection with the treatment of patients. It is the objective of Fresenius Medical Care to pursue a more holistic therapy approach in order to achieve better treatment effects in the long term.

2.3.4 Fresenius Kabi

Overview

The range of services of Fresenius Kabi comprises the provision of therapy, treatment and care to the chronically and critically ill. The products are used in all areas of medical care: in emergency medicine, during operations, in intensive care and regular hospital wards as well as in outpatient care. Fresenius Kabi is the market leader for infusion therapies and clinical nutrition in Europe and holds leading positions in major countries of Latin America and the Asia-Pacific region. In the field of generic I.V. drugs, Fresenius Kabi is one of the leading companies in the US market. Europe and the USA are the largest markets of Fresenius Kabi. Medical progress and the demographic development will continue to be growth factors. Moreover, in Eastern Europe and particularly in the Asia-Pacific region and in Latin America, the demand for better primary health care in hospitals and, thus, the demand for medical products will increase. These regions offer a high future growth potential for Fresenius Kabi.

In the financial year 2009, Fresenius Kabi increased its sales by 24% to Euro 3,086 mn. (2008: Euro 2,495 mn.). The company achieved an organic growth of 8%. Net acquisitions had an influence of 18 %, including the acquisitions of APP Pharmaceuticals and Fresenius Kabi Oncology (formerly Dabur Pharma). Currency translation effects influenced sales by -2%. Fresenius Kabi increased the EBIT by 37% to Euro 607 mn. (2008: 443 mn.). The group net income (net income attributable to the shareholders of Fresenius Kabi AG) amounted to Euro 200 mn. (2008: Euro 200 mn.).

As of December 31, 2009, Fresenius Kabi had 21,872 employees (December 31, 2008: 20,457), of which 9,991 were employed in the Member States of the EU and the states party to the EEA Agreement, and has established a worldwide network of more than 40 production facilities.

Infusion therapy

Fresenius Kabi offers a comprehensive product portfolio of infusion solutions in bags and bottles. Infusion solutions are used in everyday medical routine. They are administered, inter alia, to compensate fluid loss or electrolyte deficiencies and serve as carrier solutions for

intravenously administered drugs. For blood volume substitution, Fresenius Kabi offers artificial colloids which, inter alia, are used in surgery and emergency medicine.

I.V. drugs

Fresenius Kabi's product portfolio in the field of generic I.V. drugs comprises antibiotics, anesthetics, analgesics, anti-infectives as well as drugs for the treatment of oncological and other critical diseases.

In 2008, by acquiring APP Pharmaceuticals and Fresenius Kabi Oncology (formerly Dabur Pharma), Fresenius Kabi further pursued its growth strategy in the field of generic I.V. drugs.

Clinical nutrition

Fresenius Kabi is one of the few companies worldwide offering both parenteral and enteral nutrition including the related medical devices. Parenteral nutrition is administered intravenously (via the vein) and enteral nutrition is administered via sip and tube feeds using the gastrointestinal tract. Both forms of clinical nutrition are designed for patients who cannot eat any or sufficient normal food. The patients concerned are especially intensive care patients, patients with critical and chronic diseases as well as undernourished patients. Fresenius Kabi also offers products for the follow-up outpatient care of patients after their hospital stay.

For the administration of the products, Fresenius Kabi offers infusion pumps, infusion management systems, nutrition pumps and single-use products.

2.3.5 Fresenius Helios

Fresenius Helios is one of the largest private providers of inpatient and outpatient care in Germany and provides high quality medical treatment in all areas of patient care. Its main focus is the medical acute care of patients complemented by medical rehabilitation. The HELIOS Kliniken Group comprises 61 own clinics, including 42 acute care hospitals with maximum care clinics in Berlin-Buch, Erfurt, Krefeld, Schwerin and Wuppertal, as well as 19 post-acute care clinics. Fresenius Helios treats approx. 600,000 inpatients and more than 1.6 mn. outpatients annually. The HELIOS clinic group has more than 18,500 beds.

The goal of Fresenius Helios is to offer the highest standards of medicine and care. The HELIOS Kliniken Group boasts first-class quality medical care which represents state-of-the-art science and considerably contributes to its further development.

Fresenius Helios has successfully continued its expansion on the German hospital market in the past four years by acquiring a total of 17 clinics.

In the financial year 2009, Fresenius Helios increased its sales by 14% to Euro 2,416 mn. (2008: Euro 2,123 mn.). The organic growth achieved was 7%. The reason for this development is primarily the considerable rise in the number of patient admissions as compared to the previous year. Due to the acquisition of a total of five hospitals in Saxony-Anhalt and Lower Saxony, net acquisitions accounted for 7% of the growth in sales. This business segment closed the financial year 2009 with an EBIT of Euro 205 mn. (2008: Euro 175 mn.). In the financial year 2009, the group net income (net income attributable to the shareholders of HELIOS Kliniken GmbH) amounted to Euro 107 mn. (2008: Euro 80 mn.).

As of December 31, 2009, the business segment Fresenius Helios had a total of 33,364 employees (December 31, 2008: 30,088), of which 33,061 were employed in the Member States of the EU and the states party to the EEA Agreement.

2.3.6 Fresenius Vamed

Overview

Fresenius Vamed is one of the world's leading providers of a full line of services for health care facilities and has a comprehensive portfolio of services. So far, the company has successfully completed approx. 500 projects in over 50 countries.

Fresenius Vamed specializes in international projects and services for hospitals and health care facilities. The portfolio ranges along the entire value chain in the health care area: from consulting and project development, engineering and turnkey construction, via maintenance to management and total operational management. Through its extensive expertise, Fresenius Vamed is able to provide efficient and effective support to complex health care facilities over their entire life cycle. Moreover, Fresenius Vamed is a pioneer in the field of public private partnership models for hospitals in Central Europe.

In the financial year 2009, the sales of Fresenius Vamed increased by 18% to Euro 618 mn. (2008: Euro 524 mn.). The organic growth achieved was 15%. The clinics in the Czech Republic acquired by Fresenius Helios contributed 3% of the growth in sales. 68% of sales were attributable to the project business (2008: 64 %), the services business accounted for 32% (2008: 36%). The EBIT of Fresenius Vamed increased by 20% to Euro 36 mn. (2008: Euro 30 mn.). In the financial year 2009, the group net income (net income attributable to the shareholders of Vamed AG) amounted to Euro 27 mn. (2008: Euro 26 mn.). Moreover, in 2009, Fresenius Vamed generated sales in the amount of approx. Euro 490 mn. in connection with management mandates.

In the financial year 2009, the order intake in the project business increased by 27% to Euro 539 mn. (2008: Euro 425 mn.). The order backlog rose by 19% to Euro 679 mn. (December 31, 2008: Euro 571 mn.).

As of December 31, 2009, the company with registered office in Vienna, Austria, had 2,849 employees (December 31, 2008: 2,802), of which 2,849 were employed in the Member States of the EU and the states party to the EEA Agreement.

Project business

The project business comprises the consulting, project development, planning, turnkey construction and financing management of a project. In this context, Fresenius Vamed responds flexibly to the needs of its local clients and provides custom-tailored solutions from a single source. Moreover, Fresenius Vamed carries out projects within the framework of cooperation models. Especially public clients show an increasing interest in public private partnerships. In such business models, public and private partners jointly plan, construct, finance and operate hospitals and other health care facilities under the joint project company established for this purpose.

Services business

Fresenius Vamed offers the full range of facility management services for health care facilities. The modular service concept covers all fields of technical, commercial and infrastructural facility management, ranging from the building and equipment maintenance, medical technical management, waste and energy management as well as cleaning of inside and outside facilities and security services through technical management to general operational management of health care facilities. This integrated concept allows for the best possible management and administration of an object over its entire life cycle – from the construction of the buildings to the end of their primary use or their modernization or renewal, respectively. In addition to facility management and operational management, Fresenius Vamed also provides logistics services in the health care sector.

2.3.7 Segment Corporate/Other

The segment Corporate/Other, existing in addition to the four business segments, comprises the holding activities and participations of Fresenius SE in companies which conduct the holding functions in respect of real estate, financing and insurance, Fresenius Netcare, which offers services in the field of information technology, as well as Fresenius Biotech. Fresenius Biotech is a biotechnology company specializing in the development and marketing of biopharmaceutical therapies. The focal point of its activities is the use of immunotherapeutic products based on innovative antibody technologies. In the financial year 2009, the trifunctional antibody

Removab was approved as cancer therapeutic agent in the EU. With ATG-Fresenius S, a polyclonal antibody, Fresenius Biotech has developed an immunosuppressive drug with which the rejection of transplanted organs can be prevented and treated; this drug has been successfully used in the treatment of patients for many years.

2.4 Corporate Bodies

The corporate bodies of the Company are the Management Board, the Supervisory Board and the General Meeting. The competences of these corporate bodies are stipulated in Council Regulation (EC) No. 2157/2001 of October 8, 2001 on the Statute for a European Company (SE) (SE Regulation) and in the Law for the Implementation of Council Regulation (EC) No. 2157/2001 of October 8, 2001 on the Statute for a European Company (SE) (SE Implementation Act – SEAG), in the German Stock Corporation Act, the statutes of Fresenius SE and in the rules of procedure for the Management Board and the Supervisory Board and its committees. In its statutes, Fresenius SE has opted for a dualistic management and supervisory system which consists of a Management Board and a Supervisory Board. The two corporate bodies work independently from each other and one person cannot be a member of both corporate bodies at the same time. Pursuant to its statutes, Fresenius SE is represented by two members of the Management Board or by one Member of the Management Board acting jointly with a holder of a general power of attorney (*Prokurist*).

2.4.1 Management Board

The Management Board manages the business of the Company and represents the Company vis-à-vis third parties. The Management Board of Fresenius SE comprises seven members. In accordance with the rules of procedure of the Management Board, each member is responsible for its area of competence. However, the members of the Management Board have a joint responsibility for the management of the Group. The Management Board must report to the Supervisory Board on a regular basis, in particular on the intended business policy and strategy, the profitability of the business, the ongoing operations of the business and all other transactions that may be of significant importance for the profitability and liquidity.

The members of the Management Board are:

Name	Age in Years	Year of first Appointment	Responsibility/ Task	Board Memberships
Dr. Ulf M. Schneider	44	2003	Chairman	<p>Memberships on supervisory boards:</p> <p>(a) Fresenius Medical Care Management AG (Chairman) Fresenius Kabi AG (Chairman) HELIOS Kliniken GmbH (Chairman)</p> <p>(b) Fresenius Kabi Austria GmbH, Austria Fresenius Kabi Espana S.A., Spain Fresenius Medical Care Groupe France S.A.S., France (Chairman) Fresenius HemoCare Netherlands B.V., Netherlands FHC (Holdings), Ltd., Great Britain APP Pharmaceuticals, Inc., USA (Chairman) Fresenius Kabi Pharmaceuticals Holding, Inc., USA</p>
Rainer Baule	61	1997	Business segment Fresenius Kabi	<p>Memberships on supervisory boards:</p> <p>(b) Fresenius Kabi Austria GmbH, Austria (Chairman) Fresenius HemoCare Netherlands B.V., Netherlands (Chairman) Fresenius Kabi Espana S.A., Spain Labesfal-Laboratórios Almiro, S.A., Portugal APP Pharmaceuticals, Inc., USA Dabur Pharma (Thailand) Co. Ltd., Thailand FHC (Holdings), Ltd., Great Britain Fresenius Kabi Asia Pacific Ltd., Hong Kong Fresenius Kabi Oncology Inc., USA Fresenius Kabi Oncology Plc., Great Britain Fresenius Kabi Pharmaceuticals Holding, Inc., USA Fresenius Kabi (Singapore) Pte Ltd., Singapore Fresenius Kabi Groupe France S.A., France (Chairman) Fresenius Kabi Italia S.p.A., Italy</p>
Dr. Francesco de Meo	46	2008	Business segment Fresenius Helios	<p>Memberships on supervisory boards:</p> <p>(a) HELIOS Klinikum Bad Saarow GmbH (Chairman) HELIOS Klinikum Emil von Behring GmbH (Chairman) HELIOS Klinikum Erfurt GmbH HELIOS Kliniken Krefeld GmbH HELIOS Klinikum Leipziger Land GmbH HELIOS Kliniken Schwerin GmbH (Chairman) HELIOS Spital Überlingen GmbH (Chairman) Allianz Private Krankenversicherungs-AG</p>

Name	Age in Years	Year of first Appointment	Responsibility/ Task	Board Memberships
Dr. Jürgen Götz	46	2007	Legal, Compliance, Personnel	Memberships on supervisory boards: (a) HELIOS Kliniken GmbH Wittgensteiner Kliniken GmbH (Chairman)
Dr. Ben J. Lipps	69	2004	Business segment Fresenius Medical Care	Membership on management boards: Fresenius Medical Care Management AG (Chairman)
Stephan Sturm	46	2005	Finance	Memberships on supervisory boards: (a) Fresenius Kabi AG (Deputy Chairman) HELIOS Kliniken GmbH Wittgensteiner Kliniken GmbH (b) Fresenius Kabi Espana S.A., Spain Fresenius HemoCare Netherlands B.V., Netherlands Labesfal-Laboratórios Almiro, S.A., Portugal VAMED AG, Austria (Deputy Chairman) FHC (Holdings), Ltd., Great Britain Fresenius Kabi Groupe France S.A., France
Dr. Ernst Wastler	51	2008	Business segment Fresenius Vamed	Memberships on supervisory boards: (a) Charité CFM Facility Management GmbH (Deputy Chairman) (b) VAMED-KMB Krankenhausmanagement und Betriebsführungsges. m.b.H., Austria (Chairman)

(a) Memberships on supervisory boards which must be established pursuant to statutory law

(b) Memberships on similar supervisory bodies of foreign companies

2.4.2 Supervisory Board

The Supervisory Board appoints the members of the Management Board and advises and supervises the Management Board with regard to the management of the Business. As a matter of principle, the Supervisory Board must not assume any management functions. However, the statutes of Fresenius SE and the rules of procedure of the Management Board provide that the Management Board may not carry out certain transactions without the consent of the Supervisory Board.

The composition of the Supervisory Board of Fresenius SE is governed by the Act on the participation of employees in a European Company (SE Employee Participation Act – “SEBG”) and the agreement regarding the participation of employees in Fresenius SE concluded on July 13, 2007 between the Management Board of Fresenius SE and the special negotiating body

on this basis. According to such agreement, the Supervisory Board of Fresenius SE is to be constituted on a basis of parity with shareholder representatives and employee representatives. Currently, the Supervisory Board of the Company comprises twelve members (six shareholder representatives and six employee representatives). The shareholder representatives are appointed by the General Meeting. The employee representatives are also appointed by the General Meeting; however, in this context, the General Meeting is bound to the proposals of the SE works council.

The following persons are members of the Supervisory Board:

Name (Principal profession)	Position	Membership since	Other Memberships
Dr. Gerd Krick (former Chairman of the Management Board of Fresenius AG)	Chairman	2003	<p>Committees: Chairman of the Nomination Committee Chairman of the Personnel Committee Member of the Audit Committee</p> <p>Supervisory Boards: Fresenius Medical Care AG & Co. KGaA (Chairman) Fresenius Medical Care Management AG VAMED AG, Austria (Chairman)</p>
Dr. Dieter Schenk (attorney-at-law and tax adviser, Law Firm Noerr LLP, Munich)	Deputy Chairman	1998	<p>Committee: Member of the Nomination Committee</p> <p>Supervisory Boards: Fresenius Medical Care AG & Co. KGaA (Deputy Chairman) Fresenius Medical Care Management AG (Deputy Chairman) Gabor Shoes AG (Chairman) Greiffenberger AG (Deputy Chairman) TOPTICA Photonics AG (Chairman)</p> <p>Board of Directors: Else Kröner-Fresenius-Foundation (Chairman)</p>
Niko Stumpfögger (secretary (<i>Gewerkschaftssekretär</i>) of the trade union ver.di, corporate and industry policy in the area of health care and social matters)	Deputy Chairman	2007	<p>Supervisory Board: HELIOS Kliniken GmbH (Deputy Chairman)</p>

Name (Principal profession)	Position	Membership since	Other Memberships
Prof. Dr. h. c. Roland Berger (management consultant, Roland Berger Strategy Consultants)		2008	<p>Committee: Chairman of the Audit Committee</p> <p>Supervisory Boards: Life Holding AG (Chairman) Prime Office AG (Chairman) Roland Berger Strategy Consultants Holding GmbH (Chairman) Schuler AG Senator Entertainment AG Wilhelm von Finck AG (Deputy Chairman) WMP EuroCom AG (Chairman)</p> <p>Boards of Directors: Fiat S.p.A., Italy Loyalty Partner Holdings S.A., Luxembourg Special Purpose Acquisition Company (S.P.A.C.) Germany 1 Acquisition Limited, Guernsey (Co-Chairman) Telecom Italia S.p.A., Italy</p> <p>Administrative Board: Wittelsbacher Ausgleichsfonds</p>
Dario Iossi (Italy) (secretary (<i>Gewerkschaftssekretär</i>) of FEMCA Cisl – energy, fashion and chemical industry)		2007	<p>Committee: Member of the Audit Committee</p> <p>Supervisory Board: VAMED-KMB Krankenhausmanagement und Betriebsführungsges. m.b.H., Austria</p>
Konrad Kölbl (Austria) (full-time works council member, Member of the manual workers' works council of VAMED-KMB Krankenhausmanagement und Betriebsführungsges. m.b.H., Chairman of the group works council of VAMED AG, Member of the SE works council of Fresenius SE)		2007	<p>Supervisory Boards: Commerzbank AG (Chairman) Fraport AG Linde AG</p> <p>Board of Directors: Parker Hannifin Corporation, USA</p> <p>Administrative Boards: Assecurazioni Generali S.p.A., Italy Landwirtschaftliche Rentenbank</p>

Name (Principal profession)	Position	Membership since	Other Memberships
Dr. Gerhard Rupprecht (Member of the management board of Allianz SE, Chairman of the management board of Allianz Deutschland AG)		2004	Supervisory Boards: Allianz Beratungs- und Vertriebs-AG (Chairman) Allianz Elementar Lebensversicherungs-AG (Chairman) Allianz Elementar Versicherungs-AG (Chairman) Allianz Investmentbank AG (Deputy Chairman) Allianz Lebensversicherungs-AG (Chairman) Allianz Private Krankenversicherungs-AG (Chairman) Allianz Suisse Lebensversicherungs-AG, Switzerland Allianz Suisse Versicherungs-AG, Switzerland Allianz Versicherungs-AG (Chairman) Heidelberger Druckmaschinen AG
Wilhelm Sachs (full-time works council member, Deputy Chairman of the works council Friedberg site, Member of the joint works council of Fresenius SE/ Friedberg plant, Chairman of the general works council of Fresenius SE, Member of the SE works council of Fresenius SE)		2004	Committee: Member of the Personnel Committee
Dr. Karl Schneider (former Spokesman of the management board of Südzucker AG)		1991	Committees: Member of the Nomination Committee Member of the Personnel Committee Member of the Audit Committee Board of Directors: Else Kröner-Fresenius-Foundation (Deputy Chairman)
Stefan Schubert (hospital nurse and full-time works council member, Chairman of the works council of HELIOS Klinik Bad Schwalbach and HELIOS Klinik Idstein, Chairman of the group works council of Wittgensteiner Kliniken GmbH, Member of the SE works council of Fresenius SE)		2007	Supervisory Board: Wittgensteiner Kliniken GmbH
Rainer Stein (full-time works council member, Chairman of the group works council of HELIOS Kliniken GmbH, Chairman of the SE works council of Fresenius SE)		2007	Committee: Member of the Audit Committee Supervisory Board: HELIOS Kliniken GmbH

From among its members, the Supervisory Board of Fresenius SE has established three permanent committees: the Audit Committee consisting of five members as well as the Personnel Committee and the Nomination Committee consisting of three members each.

The Audit Committee is, *inter alia*, responsible for the preparation of the decisions of the Supervisory Board on the approval of the annual financial statements and the consolidated financial statements as well as the proposal of the Supervisory Board to the General Meeting on the election of the auditor, and for conducting the preliminary examination of the proposal for the appropriation of profits. Furthermore, it is the task of the audit committee to review the quarterly reports prior to their publication and – after consultation with the Management Board – to mandate the auditors (and to conclude a fee agreement), to determine the key elements of the audit and to stipulate the auditor’s obligations to report to the Supervisory Board. Moreover, the Audit Committee deals, in particular, with risk management and compliance issues. The position of the chairman of the Audit Committee has been filled in accordance with the provisions of clause 5.3.2 of the German Corporate Governance Code. Prof. Dr. Roland Berger as chairman of the Audit Committee satisfies the qualification requirements for a financial expert in the Supervisory Board of Fresenius SE pursuant to sec. 100 para. 5 German Stock Corporation Act.

The Personnel Committee makes proposals to the Supervisory Board regarding the remuneration system for the Management Board and for the remuneration of the individual members of the Management Board. Regarding the agreements with the members of the Management Board, the Personnel Committee decides on those terms and conditions which do not concern remuneration. The chairman of the Supervisory Board is the chairman of the Personnel Committee.

The Nomination Committee suggests appropriate candidates to the Supervisory Board for its election proposals to the General Meeting regarding the appointment of the shareholder representatives in the Supervisory Board. The Nomination Committee is composed exclusively of shareholder representatives. The Nomination Committee makes its election proposals in line with the provisions of the German Corporate Governance Code.

In 2009, the Supervisory Board of Fresenius SE has dealt in two of its meetings with the evaluation of its own efficiency pursuant to clause 5.6 of the German Corporate Governance Code. It evaluates the efficiency of its activities by way of an open plenary discussion. In this context, a company-specific questionnaire covering the major aspects relevant for a self-evaluation serves as a basis for discussion. Such major aspects include *inter alia* the process and structuring of the meetings, the scope of presented documents and the provision of information. The evaluations conducted by the Supervisory Board have shown that the Supervisory Board is organized efficiently and that there is a very good cooperation between the Management Board and the Supervisory Board.

The term of office of the acting members of the Supervisory Board ends at the close of the General Meeting which decides on the ratification of the actions of the Supervisory Board for the financial year 2012, i.e. presumably in 2013.

2.5 Employees and Co-Determination

As of December 31, 2009 the Fresenius Group had 130,510 employees worldwide (December 31, 2008: 122,217) of which 60,098 were employed in the Member States of the EU and the states party to the EEA Agreement.

The six employee representatives in the Supervisory Board of Fresenius SE, which is composed on a parity basis, have been appointed by the General Meeting upon proposal of the SE works council in accordance with the agreement regarding the participation of employees in Fresenius SE of July 13, 2007. For the preparation of the proposal for the appointment of the employee representatives, the SE works council must first allocate the number of seats of the employee representatives to the Member States of the EU and the states party to the EEA Agreement in accordance with the principle of proportionality. The selection of the employee representatives to be proposed for the individual countries is made by election of the members of the SE works council. From among the German members of the SE works council generally a number of employee representatives is elected which corresponds to the number of seats allocated to Germany on a pro-rata basis. For the election it must be taken into account that every third German employee representative must be a trade union representative. As long as no country other than Germany employs more than 10% of the total number of employees – as is presently the case – the employee representatives for the remaining seats are generally elected from among the remaining members of the SE works council. In this context, the SE works council is not bound by any rules and may elect representatives from countries to which no seat has been allocated in connection with the principle of proportionality.

In addition to the Supervisory Board of Fresenius SE, there are other supervisory boards in other companies of the Fresenius Group in which the employees have co-determination rights. Furthermore, employee representations exist within the Fresenius Group in accordance with national laws.

For Germany, the Management Board of Fresenius AG (now Fresenius SE), the Management Board of Fresenius Medical Care AG (now Fresenius Medical Care AG & Co. KGaA), the Management Board of Fresenius Kabi AG, the management of Fresenius ProServe GmbH and the general works council of Fresenius AG (now Fresenius SE) as well as the industrial union Industriegewerkschaft Bergbau, Chemie, Energie (IGBCE), represented by its principal Management Board, have entered into an agreement regarding the works council structure on December 15, 2005, and waived the establishment of a group works council while maintaining

the general works council structure. The agreement stipulates that at the locations of joint operational Units of several companies of the Fresenius Group in Germany uniform works councils for the entire location are to be established (so-called location works councils). The employee representations of Wittgensteiner Kliniken and HELIOS Kliniken are not subject of this agreement since they have their own group works councils.

On the basis of the SE Employee Participation Act and the agreement regarding the participation of employees in Fresenius SE of July 13, 2007, an SE works council was established in connection with the conversion of Fresenius AG into an SE in 2007. Such SE works council enables all employees in the Member States of the EU and the states party to the EEA Agreement to participate, through their representatives, in the passing of resolutions on cross-border issues in Fresenius SE. Each Member State of the EU or each state party to the EEA Agreement in which the Fresenius Group has employees should be represented in the SE works council at least by one member. The election of the members of the SE works council is governed by the statutory provisions of and/or practices in the individual countries and the agreement regarding the participation of employees in Fresenius SE of July 13, 2007.

2.6 Capital

2.6.1 General

According to the statutes (as of March 12, 2010), the share capital of Fresenius SE amounts to Euro 161,315,376.00. It is divided into 80,657,688 ordinary bearer shares and 80,657,688 non-voting preference bearer shares. The shares have been issued as no-par value shares. Each share represents a pro-rata amount of the share capital of Euro 1.00. The shares are represented in the form of global certificates. The right of the shareholders to have individual share certificates issued for their shares is excluded, unless the issuance of such certificates is required under the rules of a stock exchange on which the shares are admitted to trading.

The preference shares receive a dividend from the annual distributable profit which is Euro 0.01 higher than the dividend for the ordinary shares; however, the dividend amounts to at least Euro 0.02 per preference share. The minimum dividend of Euro 0.02 per preference share has priority over the distribution of a dividend on the ordinary shares. If the distributable profit in one or more financial years is not sufficient to enable a dividend payment of Euro 0.02 per preference share, the deficits will be paid subsequently, without interest, from the distributable profits of the following financial years, in each case after distribution of the minimum dividend on the preference shares for those financial years and before distributing a dividend on the ordinary shares. The right to the payment of arrears is part of the participation in profits for the financial year, out of the distributable profit of which the payment of arrears on the preference shares is made.

2.6.2 Authorized Capital

Pursuant to Art. 4 para. 4 of the statutes of Fresenius SE, the Management Board is authorized, with the approval of the Supervisory Board, to increase until May 7, 2014, the share capital of the Company by a total amount of up to Euro 12,800,000.00 by a single or multiple issuance of new ordinary bearer shares and/or non-voting preference bearer shares against cash contributions (Authorized Capital I). The number of shares will have to be increased in the same proportion as the share capital. The shareholders must be granted a subscription right; the subscription right may also be granted in such manner that the new shares are taken up by a bank or a syndicate of banks under an obligation to offer them for subscription to shareholders of Fresenius SE. The Management Board is, however, authorized, to exclude fractional amounts from the shareholders' subscription right and, if ordinary shares and preference shares are issued at the same time, to exclude rights of the holders of one class of shares to subscribe to the shares of the other class, provided that the subscription ratio is set to be the same for both classes.

The authorization also includes the right to issue additional preference shares which are equal to the previously issued non-voting preference shares in respect of the distribution of the Company's profits or assets. This authorization may only be exercised to the extent that when utilizing the entire authorized capitals registered in the commercial register pursuant to the resolutions in the General Meeting on May 8, 2009, the number of ordinary shares issued does not exceed the number of non-voting preference shares issued.

Pursuant to Art. 4 para. 5 of the statutes, the Management Board is authorized, with the approval of the Supervisory Board, to increase until May 7, 2014 the share capital of the Company by a total amount of up to Euro 6,400,000.00 by a single or multiple issuance of new ordinary bearer shares and/or non-voting preference bearer shares against cash contributions and/or contributions in kind (Authorized Capital II). The number of shares will have to be increased in the same proportion as the share capital. The Management Board is authorized to exclude fractional amounts from the shareholders' subscription right and, if ordinary shares and preference shares are issued at the same time, to exclude rights of the holders of one class of shares to subscribe to shares of the other class if the subscription ratio is set the same for both share classes. The Management Board is further authorized to decide on the exclusion of the shareholders' subscription rights, in each case with the approval of the Supervisory Board. The exclusion of subscription rights is only permissible, however, if in case of a capital increase against cash contributions, the issue price is not significantly lower than the stock exchange price. In case of a capital increase against contributions in kind, the exclusion of subscription rights is only permissible for the acquisition of a company or parts of a company, or a participation in a company.

The authorization also includes the right to issue further preference shares which are equal to the previously issued non-voting preference shares in the distribution of the Company's profits or assets. This authorization may only be exercised to the extent that when utilizing the entire authorized capitals registered in the commercial register pursuant to the resolutions in the General Meeting on May 8, 2009, the number of ordinary shares issued does not exceed the number of non-voting preference shares issued.

Two actions to set aside the resolutions of the General Meeting of May 8, 2009 on the creation of the Authorized Capitals I and II have been filed. By judgment of February 2, 2010, the regional court of Frankfurt am Main sustained one of the actions and dismissed the other action. The judgment of the regional court of Frankfurt am Main has not become effective. On February 23, 2010, the Company filed an appeal against the judgment. The Authorized Capitals I and II were entered in the commercial register on July 15, 2009. The release procedure initiated by the Company pursuant to sec. 246a German Stock Corporation Act in order to secure the Authorized Capitals I and II already entered in the commercial register was decided by the higher regional court of Frankfurt am Main in favor of the Company on March 30, 2010. Therewith, the entry of the Authorized Capitals I and II into the commercial register is final and conclusive.

2.6.3 Conditional Capital

Pursuant to Art. 4 para. 6 of the statutes (as of March 12, 2010), the share capital of the Company is conditionally increased by up to Euro 656,550.00, divided into 656,550 shares, through the issuance of new ordinary bearer shares (Conditional Capital I Ordinary Shares). The conditional capital increase will only be implemented to the extent that subscription rights to ordinary bearer shares have been issued in accordance with the Stock Option Plan pursuant to the resolution of the General Meeting of Fresenius AG of June 18, 1998 and taking into account the amendment resolution of the General Meeting of December 4, 2006, required due to the new division of the share capital, and the holders of these subscription rights exercise these rights. The new ordinary bearer shares are entitled to profit participation starting from the beginning of the financial year in which they are issued.

The share capital of the Company is conditionally increased by up to Euro 656,550.00, divided into 656,550 shares, through the issuance of new non-voting preference bearer shares (Conditional Capital I Preference Shares). The conditional capital increase will only be implemented to the extent that subscription rights to ordinary bearer shares have been issued in accordance with the Stock Option Plan pursuant to the resolution of the General Meeting of Fresenius AG of June 18, 1998 and taking into account the amendment resolution of the General Meeting of December 4, 2006, required due to the new division of the share capital, and the holders of these subscription rights exercise these rights. The new non-voting preference bearer shares are

entitled to profit participation starting from the beginning of the financial year in which they are issued.

Pursuant to Art. 4 para. 7 of the statutes (as of March 12, 2010), the share capital of the Company is conditionally increased by up to Euro 2,149,221.00, divided into up to 2,149,221 shares, through the issuance of new ordinary bearer shares (Conditional Capital II Ordinary Shares). The conditional capital increase will only be implemented to the extent that convertible bonds for ordinary bearer shares have been issued in accordance with the Stock Option Plan pursuant to the resolution of the General Meeting of Fresenius AG of May 28, 2003 and taking into account the amendment resolution of the General Meeting of December 4, 2006, required due to the new division of the share capital, and the holders of these convertible bonds exercise their conversion right. The new ordinary bearer shares are entitled to profit participation starting from the beginning of the financial year in which they are issued.

The share capital of the Company is conditionally increased by up to Euro 2,149,221.00, divided into up to 2,149,221 shares, through the issuance of new non-voting preference bearer shares (Conditional Capital II Preference Shares). The conditional capital increase will only be implemented to the extent that convertible bonds for ordinary bearer shares have been issued in accordance with the Stock Option Plan pursuant to the resolution of the General Meeting of Fresenius AG of May 28, 2003 and taking into account the amendment resolution of the General Meeting of December 4, 2006, required due to the new division of the share capital, and the holders of these convertible bonds exercise their conversion right. The new non-voting preference bearer shares are entitled to profit participation starting from the beginning of the financial year in which they are issued.

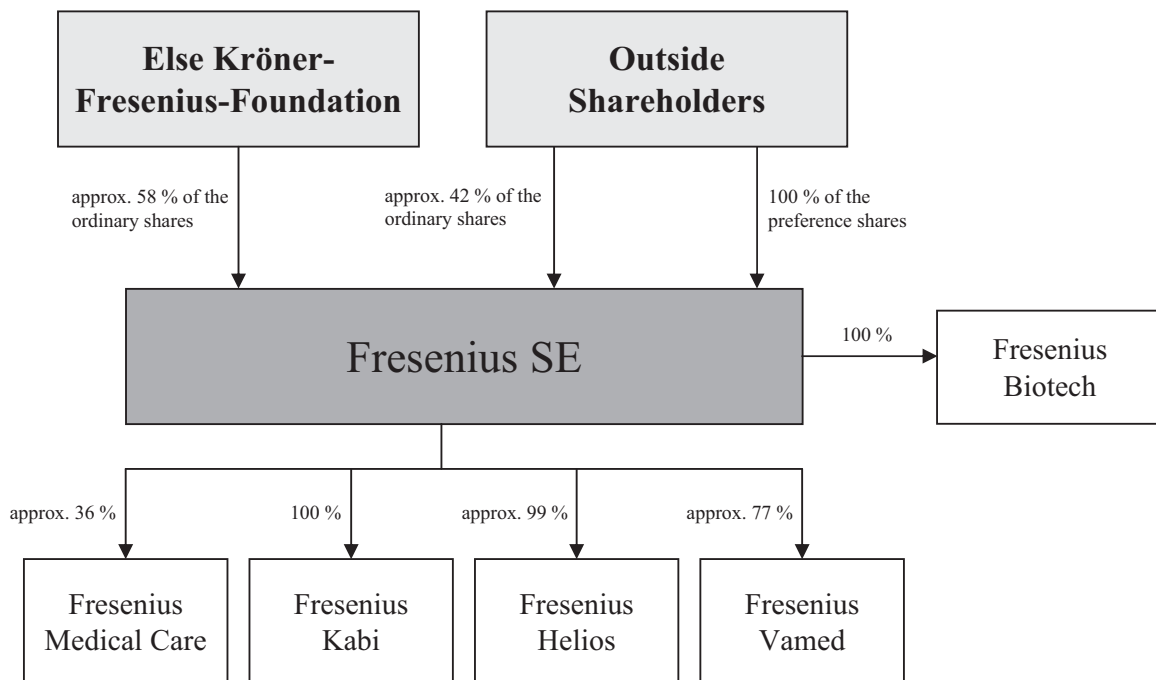
Pursuant to Art. 4 para. 8 of the statutes (as of March 12, 2010), the share capital of the Company is conditionally increased by up to Euro 3,100,000.00, divided into up to 3,100,000 shares, through the issuance of new ordinary bearer shares (Conditional Capital III Ordinary Shares). The conditional capital increase will only be implemented to the extent that subscription rights are issued in accordance with the Stock Option Plan 2008 pursuant to the resolution of the General Meeting of May 21, 2008, and the holders of these subscription rights exercise their rights and the Company does not grant any shares of its own to satisfy the subscription rights or utilize its right to a cash settlement, whereby the Supervisory Board alone shall be responsible for granting subscription rights to the members of the Management Board of the Company and for handling such subscription rights. The new ordinary bearer shares are entitled to profit participation starting from the beginning of the financial year in which they are issued.

The share capital of the Company is conditionally increased by up to Euro 3,100,000.00, divided into up to 3,100,000 shares, through the issuance of new preference bearer shares (Conditional Capital III Preference Shares). The conditional capital increase will only be implemented to the

extent that subscription rights are issued in accordance with the Stock Option Plan 2008 pursuant to the resolution of the General Meeting of May 21, 2008, and the holders of these subscription rights exercise their rights and the Company does not grant any shares of its own to satisfy the subscription rights or utilize its right to a cash settlement, whereby the Supervisory Board alone shall be responsible for granting subscription rights to members of the Management Board of the Company and for handling such subscription rights. The new preference bearer shares are entitled to profit participation starting from the beginning of the financial year in which they are issued.

2.7 Group Structure and Participations

The group and shareholder structure of Fresenius SE is as follows:



2.7.1 Group Structure

Fresenius SE is a holding company. The operative business is carried out by subsidiaries. Fresenius SE has numerous subsidiaries in the countries in which it operates. A list of significant affiliates is attached as **Annex 2** to this conversion report. The following table shows the most significant participations of Fresenius SE:

Name	Registered Office	Business	Share
Fresenius Medical Care AG & Co. KGaA	Hof an der Saale, Germany	Provider of products and services for patients with chronic kidney failure	approx. 36%
Fresenius Kabi AG	Frankfurt am Main, Germany	Provider of infusion therapies, intravenously administered generic drugs as well as clinical nutrition for the chronically and critically ill in hospital and outpatient care; also provider of medical devices and products in the field of transfusion technology	100%
HELIOS Kliniken GmbH	Berlin, Germany	Operation of hospitals, in particular medical acute care of patients complemented by medical rehabilitation	approx. 99%
VAMED AG	Vienna, Austria	Engineering and services for hospitals and health care facilities	approx. 77%

2.7.2 Shareholder Structure

The share capital of Fresenius SE consists of no-par value ordinary bearer shares and non-voting preference bearer shares. Accordingly, Fresenius SE has generally no possibility of determining who its shareholders are and how many shares are held by a particular shareholder. However, the following figures are available:

The Else Kröner-Fresenius-Foundation is the holder of the largest share in the voting capital of Fresenius SE. On December 23, 2009, the Foundation informed Fresenius SE that it holds unchanged 46,871,154 ordinary shares in Fresenius SE. This corresponds to a holding of voting rights of about 58%. The Else Kröner-Fresenius-Foundation promotes medical science, in particular in the field of research and treatment of diseases as well as development of technical devices and formulations. It may only support such research projects whose results are generally available to the public. In addition, the Foundation promotes the training of doctors and other persons providing treatment and care to patients, in particular those persons who work in the field of dialysis. The Foundation also promotes the education and training of particularly gifted pupils and students. In addition, the Else Kröner-Fresenius-Foundation also pursues charitable purposes through the support of accident victims and their care in elderly age as well as the support of persons who, as a consequence of their mental, physical or emotional condition, or as a result of economic distress, are dependent on the help of others, in particular with respect to their medical care.

According to its own statements, Allianz Lebensversicherungs-AG holds an interest ranging between 5 and 10% of the voting capital of Fresenius SE. No relationship under corporate law exists between the two largest shareholders in the voting capital. The remaining shares of Fresenius SE are in free float.

In a survey on the shareholder structure conducted at the beginning of 2010 in which 97% of the share capital were covered, the ownership of 99% of the ordinary shares and 94% of the preference shares could be identified. The survey showed that 329 institutional investors held approx. 91 mn. shares (i.e. 56% of the share capital) which could be divided in 23.2 mn. ordinary shares (i.e. 30 % of the ordinary shares) and 66.6 mn. preference shares (i.e. 83% of the preference shares). Retail investors held 2.8 mn. ordinary shares and 8.9 mn. preference shares. The top 10 investors hold approx. 9% of the ordinary share capital and approx. 30% of the preference share capital.

According to the above survey, the geographic distribution of the Fresenius shares is as follows: Approx. 12% of the preference shares and approx. 9% of the ordinary shares were held by US investors (2008: 20% and 11%, respectively). Investors from Great Britain held approx. 27% of the preference shares and approx. 7% of the ordinary shares (2008: 26% and 8%, respectively). Approx. 17% of the preference shares and approx. 3% of the ordinary shares (without taking into account the ordinary shares held by the Else Kröner-Fresenius-Foundation) were held by German investors (2008: 15% and 4%, respectively).

3. Overview of the Transaction and Financial and Legal Grounds for the Change of the Legal Form and the Related Conversion of all Preference Shares into Ordinary Shares

The Management Board and the Supervisory Board of Fresenius SE have decided to propose to the General Meeting the change of the legal form of the Company from a European Company (SE) into a partnership limited by shares (KGaA). In connection with such change of the legal form into a partnership limited by shares, it is intended to convert all preference shares of the Company into ordinary shares. The conversion of the preference shares into ordinary shares will be implemented by means of the cancellation of the preference previously attached, by providing only for ordinary shares in the articles of association of the entity in its new legal form. Under the terms of the conversion resolution, upon the change of the legal form taking effect, the preference shareholders will receive one ordinary share in Fresenius SE & Co. KGaA for each preference share in Fresenius SE.

The unification of the share structure – in combination with the change of the legal form into a partnership limited by shares – should strengthen the position of Fresenius on the capital market and facilitate potential future capital measures and thus the further development of the Business. Furthermore, the highly limited liquidity of the ordinary shares will be significantly increased. The unification of the share structure should also have a positive effect on the weighting in the German equity index (*Deutscher Aktienindex – DAX*). The DAX currently includes only the preference shares of the Company. In the future, the inclusion of all (ordinary) shares of the Company can be expected. The overall goal is to significantly increase the attractiveness of the Fresenius share for all investors.

The following sections explain firstly the conversion of the preference shares into ordinary shares proposed as a part of the change of the legal form and the consequences related thereto in the view of the Company. Subsequently, the effects associated with the change of the legal form to that of a partnership limited by shares will be described.

3.1 Conversion of Preference Shares into Ordinary Shares

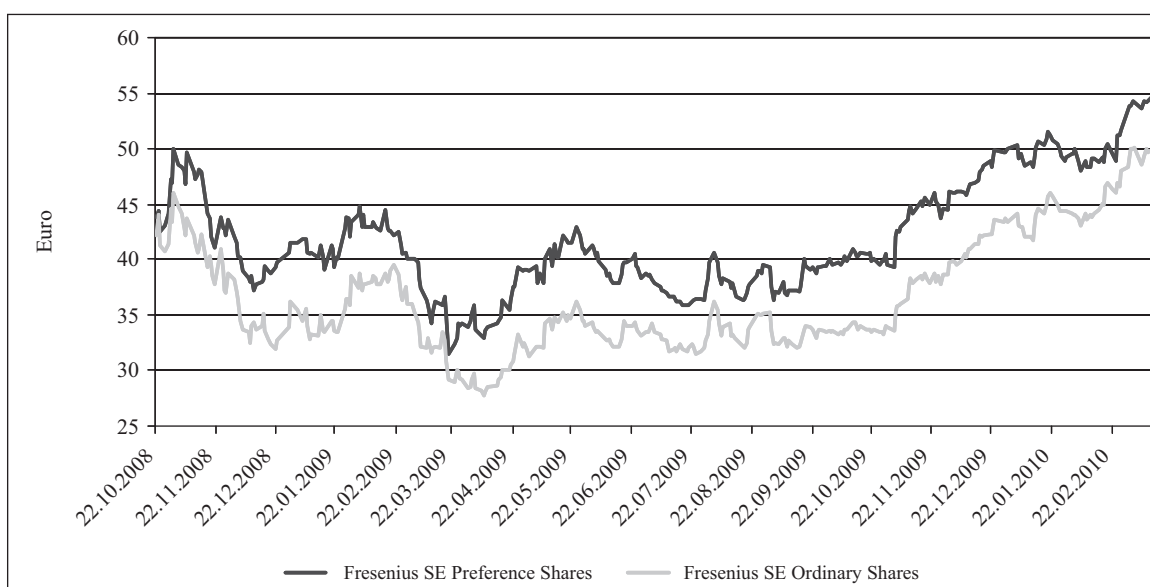
3.1.1 Description of Preference and Ordinary Shares

According to the statutes (as of March 12, 2010), the share capital of Fresenius SE amounts to Euro 161,315,376.00. It is divided into 80,657,688 voting ordinary bearer shares and 80,657,688 non-voting preference bearer shares. Thus, the proportion of preference shares in the total share capital is 50%. Both classes of shares are presently listed on the regulated market of the Frankfurt Stock Exchange, sub-segment with additional post-admission obligations (Prime Standard), and on the regulated markets of the Dusseldorf and the Munich Stock Exchanges. In

addition, the shares are included in the electronic trading system XETRA. The preference shares of the Company are listed on the DAX.

In the past, the prices of the ordinary shares of the Company have been quoted, from time to time, both lower and higher than those of the preference shares of the Company. Since October 22, 2008, the ordinary shares of the Company have been continuously listed at a discount compared to the preference shares (XETRA closing prices). This discount ranged between 6.10% and 19.67% in 2009 and between 5.97% and 13.88% in the period from January 4, 2010 to March 19, 2010 (all information on stock exchange prices and trading volumes in this Section 3.1.1 is based on data provided by the data provider Bloomberg Finance L.P., New York, USA). On March 19, 2010, the XETRA closing price of the ordinary shares was 9.81% below that of the preference shares (Euro 49.30 as compared to Euro 54.66). The weighted average stock exchange price on the XETRA trading system in the three months preceding March 19, 2010 was Euro 50.60 for preference shares and Euro 45.70 for ordinary shares. In addition, the average XETRA trading volume of the preference shares is considerably higher than that of the ordinary shares. In the year 2009, the average trading volume was approx. 500,509 shares per trading day in the case of preference shares and only approx. 72,012 shares per trading day in the case of the ordinary shares. In the period from January 4, 2010 to March 19, 2010, the average trading volume of the preference shares was approx. 394,867 shares per trading day, while the average trading volume of the ordinary shares was approx. 50,933 shares per trading day.

The following illustration shows the price changes for preference and ordinary shares from October 22, 2008 to March 19, 2010 (XETRA closing prices):



The main features of the preference and ordinary shares are shown in the following table:

	Preference Shares	Ordinary Shares
Number of shares (units as of March 19, 2010)	80,657,688	80,657,688
Weighted average stock exchange price in the three months preceding March 19, 2010 (XETRA)	€ 50.60	€ 45.70
Stock exchange price (XETRA closing price March 19, 2010)	€ 54.66	€ 49.30
Market capitalization (March 19, 2010)	approx. € 4,409 mn.	approx. € 3,976 mn.
Free float (units as of March 19, 2010; without ordinary shares of the Else Kröner-Fresenius-Foundation (46.871.154 ordinary shares) and of Allianz Lebensversicherungs-AG ^{*)})	80,657,688	25,930,475 ^{*)}
Free float in % (March 19, 2010)	100%	32.15% ^{*)}
Market capitalization free float (March 19, 2010)	approx. € 4,409 mn.	approx. € 1,278 mn. ^{*)}
Average trading volume per trading day from January 4, 2010 to March 19, 2010 on the XETRA trading system (units)	394,867	50,933
Average trading volume per trading day from January 4, 2010 to March 19, 2010 on the XETRA trading system (share of total free float)	approx. 0.49%	approx. 0.20% ^{*)}
Dividend for financial year 2009 (proposal)	€ 0.76	€ 0.75

^{*)} As the Company does not know the actual percentage holding of Allianz Lebensversicherungs-AG, the last value reported in the amount of 9.74% was used for the calculation in accordance with the method used by Deutsche Börse AG when determining the free float.

The main reason for the difference in the stock exchange price between the preference and the ordinary shares can probably be found in the higher free float share of the preference shares and the resulting increased liquidity as well as in the fact that only the preference shares are included in the DAX. The stock exchange price difference however cannot be reasonably explained by the fact that the preference shares receive a higher dividend from the annual distributable profits of Fresenius SE than the ordinary shares, i.e. a dividend which exceeds that of the ordinary shares by Euro 0.01 per preference share (at least, however, a dividend of Euro 0.02 per preference share). This is especially true considering that preference shares are usually traded with a discount.

3.1.2 Consolidation of Classes of Shares

By the elimination of the preference attached to the existing preference shares, the voting right of such shares is reinstated, which makes them ordinary shares. A separate resolution of the General Meeting is not required for the conversion of preference shares into ordinary shares. Instead, the conversion resolution, which is to be submitted to the General Meeting on May 12, 2010 for adoption, will determine that the holders of preference shares will participate in the share capital of Fresenius SE & Co. KGaA with the number of voting ordinary shares which corresponds to the number of non-voting preference shares with which they participated in the share capital of Fresenius SE. The notional proportion of each no-par value share in the share capital remains unchanged. Neither the existing preference shareholders nor the existing ordinary shareholders of Fresenius SE are required to make an additional payment.

The conversion of preference shares into ordinary shares requires that the articles of association of the Company be amended in Art. 4 para. 1 regarding the division of the shares into ordinary and preference shares. The articles of association of the Company in the legal form of a partnership limited by shares will provide that the share capital of the Company exclusively consists of (voting) ordinary bearer shares. Since as a result of an issuance of shares out of conditional capital for the servicing of the existing employee participation programs in the meantime, the amount of share capital and the amounts of the conditional capitals may still be subject to change, the Supervisory Board is authorized by virtue of the proposed resolution to amend, as appropriate, the version of the articles of association prior to the registration of the conversion resolution in the commercial register.

3.1.3 Reasons for the Conversion of Preference Shares into Ordinary Shares

The conversion of all preference shares into ordinary shares is both in the interest of the Company and in the interest of its preference and ordinary shareholders. The unification of the share structure – in combination with the change of the legal form into a partnership limited by shares – is intended to strengthen the position of Fresenius on the capital market and facilitate potential future capital measures and thus the further development of the Business. In addition, the possibilities for an equity financing for strategic purposes are to be improved.

Currently, both the ordinary shares (except for the vast majority of the ordinary shares held by Else Kröner-Fresenius-Foundation) and the preference shares of the Company are listed. Hence, the free float, which is important for the liquidity of the shares, is split between both classes of shares. Through a unification of the share structure, the free float will no longer be split between preference shares and ordinary shares, but rather be consolidated in a single class of shares. Thereby, only one class of shares will be available for stock exchange trading. Due to the bundling of investor interests the liquidity of the ordinary shares should significantly increase. As the liquidity of a security is an important investment criterion for institutional investors, the attractiveness of the Fresenius share should be further increased.

In addition, the position of the Company on the German equity index (DAX) can be strengthened by the consolidation of the classes of shares. In case of a perpetuation of the current status with two classes of shares, DAX membership would not be permanently secured. The composition and weighting of the DAX is regulated by the “Leitfaden zu den Aktienindizes der Deutschen Börse” (Guide to the Equity Indices of Deutsche Börse) which, in the version of January 2010, is available on the internet at www.deutsche-boerse.com. For its indices Deutsche Börse only takes into account one class of shares. In case multiple classes of shares exist, it only takes into account the larger or more liquid share class. Therefore, in the case of Fresenius SE, only the preference shares are relevant in that context. For the inclusion or exclusion of an index company, the free float market capitalization and the order book volume are decisive. As described above, both the

market capitalization of the free float (of the then exclusively existing ordinary shares) and, most likely, the order book volume will be correspondingly increased as a result of the consolidation of the classes of shares. Thereby, the Company will be able to consolidate its position on the DAX and to improve the weighting. After the change of the legal form takes effect, the ordinary shares of the Company will presumably be included in the DAX in lieu of the preference shares.

The following overview shows companies on the DAX, MDAX or TecDAX comparable with Fresenius SE in terms of the free float market capitalization. It can be concluded from the overview that the inclusion of Fresenius SE in the DAX, i.e. its ranking among the 30 largest companies in terms of free float market capitalization and order book volume, is not secured in the long term. In addition, the overview shows how the intended consolidation of the classes of shares could improve the position of the Company with regard to the free float market capitalization.

Issuer	Index	Position Market cap.	Market cap. (in mn. Euro)	Position Sales	Sales in mn. Euro (12 months)
Volkswagen AG VZ	DAX	20	6,246	22	10.874
K+S AG	DAX	21	6,188	16	18.218
HeidelbergCement AG	MDAX	22	5,779	26	8.747
Fresenius SE & Co. KGaA ST + VZ*)		23 ^{*)}	5,508 ^{*)}		
EADS NV	MDAX	23	5,161	82	660
Lufthansa AG	DAX	24	5,112	21	11.081
MAN SE ST	DAX	25	5,079	19	13.828
Metro AG ST	DAX	26	4,986	24	10.116
Infineon Technologies AG	DAX	27	4,414	17	15.768
Beiersdorf AG	DAX	28	4,272	31	5.882
Commerzbank AG	DAX	29	4,196	15	18.573
Merck KGaA	DAX	30	4,054	27	8.325
Fresenius SE VZ	DAX	31	3,988	34	5,252
Henkel AG & Co. KGaA ST			3,860		1.123
Qiagen NV	TecDAX	32	3,627	41	3.192
Salzgitter AG	DAX	33	2,496	25	9.692
Hochtief AG	MDAX	34	2,420	32	5.591
GEA Group AG	MDAX	35	2,386	40	3.333

*) Market capitalisation of the ordinary shares together with the preference shares being held in 100% free float; includes the by 9.74% increased free float of today's ordinary shares due to the participation of Allianz-Lebensversicherungs AG being attributable after the conversion Source: Deutsche Börse of February 28, 2010 (addition of Fresenius SE a Co. KGaA by the Company)

Both the Company and its shareholders profit from an inclusion in the DAX and a strengthened weighting. For many institutional investors the inclusion in a selection index is a key investment criterion. A strongly growing number of funds replicate a select index. Many other funds use the DAX as a reference measure for their development and therefore deviate only slightly from the index composition. Structured securities refer for the most part to indices or index values and thus generate additional demand. For many investment banks, the inclusion in an index is a condition for the preparation of share research or the holding of trading positions.

The increased liquidity and a consolidated DAX position should facilitate potential future capital measures and thus the further development of the Business, since the market will be more receptive to new shares of the Company. With the creation of a single class of shares the Company follows the example of modern governance structures committed to the principle “one share – one vote”. Such were also successfully implemented and exercised by other companies such as SAP, Henkel and Fresenius Medical Care in recent years.

The preference shareholders as well as the ordinary shareholders will benefit from the increased free float market capitalization following the consolidation of the classes of shares and the expected higher liquidity of the Fresenius share.

In addition, with respect to the preference shareholders, they will receive voting ordinary shares in the future partnership limited by shares. They thus acquire the general managing right to participate with their vote in the passing of resolutions of the General Meeting and thus to influence their content, which right they lacked until now. Against this it must be considered that the preference shares lose with the transaction their entitlement to a higher dividend (*Mehrdividende*) as well as to an (advance) minimum dividend. However, the higher dividend, amounts to merely Euro 0.01 per preference share. Compared to the dividend distributed for each ordinary share in the amount of Euro 0.70 for the financial year 2008 and Euro 0.66 for the financial year 2007, this resulted in a dividend per preference share that was only 1.4% or 1.5% higher, respectively. The same is true for the proposed dividend per preference share for the financial year 2009, which lies 1.3% above the proposed dividend per ordinary share (Euro 0.76 as opposed to Euro 0.75). The minimum dividend in the amount of Euro 0.02 has until now had almost no relevance. Against this background, the loss of the dividend preference appears on the balance as a minor disadvantage for the preference shareholders, especially since the stock exchange price difference between the preference and ordinary shares cannot be reasonably explained by their dividend endowment.

For the ordinary shareholders, the situation was until now characterized by the fact that the ordinary shares were not included in the DAX and that these were, also due to the lesser liquidity, quoted from time to time below the preference shares. Since October 22, 2008, the ordinary shares of the Company have been continuously listed at a discount compared to the preference

shares (XETRA closing prices). The correspondingly higher free float share resulting from the consolidation of the share classes, the expected higher liquidity of the ordinary shares as well as the expected inclusion in the DAX will therefore increase the attractiveness of the ordinary shares. These advantages, as well as the further fact that the dividend preference of the preference shares will be cancelled upon the taking effect of the change of the legal form, should adequately compensate the dilution of the ordinary shareholders' voting rights resulting from the reinstatement of voting rights attached to the former preference shares.

3.1.4 Amendments to the Articles of Association Arising from the Conversion

The conversion of preference shares into ordinary shares involves a simultaneous conversion of the authorized capitals and the employee participation programs (including the related conditional capitals) into ordinary shares only. These are the consequences of the intended elimination of the preference shares. Details are provided in Sections 6.2 and 6.3.

3.2 Change of the Legal Form to a Partnership Limited by Shares (*Kommanditgesellschaft auf Aktien*)

The advantages of a conversion of preference shares into ordinary shares can be achieved only with the simultaneous change of the legal form of the Company into a partnership limited by shares. Such change of the legal form will compensate the unfavorable consequences for the Else Kröner-Fresenius-Foundation resulting from the loss of the voting majority at the General Meeting of Fresenius SE due to the consolidation of the share classes. Through the change of the legal form, the intended simplification of the capital structure and the strengthening of the capital market position of the Company can be achieved, with the rights of the outside shareholders remaining largely unchanged while observing the current standards of corporate governance and transparency. The long-term strategic policy of the Company endorsed by the majority shareholder will be preserved.

3.2.1 Interests of the Else Kröner-Fresenius-Foundation

The Else Kröner-Fresenius-Foundation currently holds approx. 58% of the ordinary shares and thereby the majority of the voting capital of the Company. Thereby, the Foundation is in a position to determine the outcome of General Meeting resolutions that require only a simple majority. This applies, for instance, to the election of the members of the Supervisory Board and the appointment of the auditors. Through its capacity to appoint the members of the Supervisory Board, the Foundation also exerts an influence on the appointment of the members of the Management Board of Fresenius SE.

If only the conversion of preference shares into ordinary shares were implemented, without the change of the legal form, this would result in the loss of the voting majority of the Else Kröner-

Fresenius-Foundation in the General Meeting of the Company. As a consequence, the Foundation would lose most of its former influence. The Foundation would then be affected by the dilution of voting rights as a result of the consolidation of the classes of shares in a manner different in quality from that of the other ordinary shareholders in the Company, since only the Foundation would lose a position through which it is currently enabled to exert the special influence described above. In this context, the potential positive effects on the stock exchange price and the cancelation of the preferential dividend do not constitute an adequate compensation, especially since the Foundation has informed the Company that it does not presently intend to reduce its participation.

The charitable Else Kröner-Fresenius-Foundation, into which the interest in the Fresenius Group was incorporated by inheritance, is obliged by the testamentary disposition of the founder, according to which the companies of the Fresenius Group should as far as possible remain united and be continued as a whole. For this reason, the Foundation as the majority holder of the ordinary shares in Fresenius SE has an interest in substantially maintaining its current influence on the Company. Against this background, it is – according to the Else Kröner-Fresenius-Foundation – only acceptable for it to vote for the proposed conversion of preference shares into ordinary shares if the Else Kröner-Fresenius-Foundation continues to be in a position to exercise an influence which substantially corresponds to the current influence. This is possible in the legal form of a partnership limited by shares in which the Foundation exercises a controlling influence on the General Partner, who in turn exercises the management of the KGaA via its Management Board.

The Company will also benefit from the interests of the Else Kröner-Fresenius-Foundation. With the Foundation, the Company has a reliable shareholder which acts in the long-term interest of the Company and which contributes to the stabilization of the group of shareholders of the Company.

3.2.2 Interests of Outside Shareholders

The intended change of the legal form from a European Company (SE) into a partnership limited by shares (KGaA) will change the legal position of the shareholders and affect their interests. Such changes particularly affect the outside shareholders, i.e., all shareholders apart from the Else Kröner-Fresenius-Foundation. The changes will be set out and explained in detail in Section 7. One significant change for the outside shareholders consists in the fact that the Supervisory Board of Fresenius SE & Co. KGaA will be exclusively elected by the outside shareholders. However, the supervisory board of a partnership limited by shares has no competence for the appointment and removal of the management of the company, i.e., in the present case the members of the Management Board of the General Partner (Fresenius Management SE). The General Partner's Management Board is appointed by its Supervisory

Board, which in turn is determined by the Foundation. However, it has to be taken into account that the Else Kröner-Fresenius-Foundation presently holds the voting majority in the General Meeting and is therefore able to appoint the Supervisory Board. Thereby, it can influence the composition of the Management Board of Fresenius SE. This situation would presumably not have changed anyway in the foreseeable future. Upon the change of the legal form taking effect, this de facto allocation of influence will turn into a structural allocation of influence.

The Management Board has worked towards a formulation of the articles of association of Fresenius SE & Co. KGaA and its General Partner which ensures standards of corporate governance and transparency that are almost identical with the existing corporate structure. The other changes for the shareholders associated with the change of the legal form will be set out and explained in detail in Section 7.

3.2.3 Effect of the Change of the Legal Form on the Stock Exchange Price

It cannot be excluded that the change of the legal form from an SE to a KGaA could itself have negative effects on the stock exchange price. On the one hand, this could be due to the fact that the partnership limited by shares is less common on the capital market and has a more complex organizational structure. On the other hand, the lack of influence on the part of the limited liability KGaA shareholders on the appointment of the members of management could dampen the optimism in respect of rising stock exchange prices. Therefore, in the case of a partnership limited by shares, a stock exchange price discount based on the legal form itself cannot, in principle, be excluded, even though other companies such as Henkel AG & Co. KGaA, Merck KGaA and, last but not least, Fresenius Medical Care AG & Co. KGaA have been successfully represented on the capital market in this legal form for years.

In the present case of the change of the legal form of Fresenius SE into a partnership limited by shares, there are good reasons to believe that the described potential discount due to legal form will either not arise at all or may be compensated in the medium term. The structuring of the partnership limited by shares as proposed in the conversion resolution ensures standards of corporate governance and transparency that are almost identical with the existing corporate structure. In addition, the existing influence the Else Kröner-Fresenius-Foundation may exercise on the business and personnel policy due to its consolidated majority position with the ordinary shares is merely perpetuated, namely by the structural possibility of influence on the General Partner of the KGaA. In addition, a takeover of the Company against the will of the Foundation is ruled out both before and after the change of the legal form takes effect. However, it is probably decisive that the change of the legal form does not constitute an isolated measure. It is important for the acceptance on the capital market that the change of the legal form involves the consolidation of the share classes and therefore the consolidation of the former free float of ordinary and preference shares. The consequence is an increased free float and a presumably

increased liquidity of the Fresenius share resulting thereof. The simplified capital structure is also expected to have a positive effect on the weighting in the DAX.

Based on the aforementioned reasons, it can be assumed that the capital market will recognize the change of the legal form as a necessary part of an overall transaction and will generally welcome such change. The Company intends to promote the acceptance of the transaction in the capital market by taking the appropriate measures, in particular in the fields of investor and public relations.

3.2.4 Advantages of the Transaction for the Company and its Shareholders

The unification of the share structure – in combination with the change of the legal form into a partnership limited by shares – should strengthen the position of Fresenius on the capital market. Furthermore, the highly limited liquidity of the ordinary shares is to be significantly increased. The simplified capital structure is also expected to have a positive effect on the weighting in the DAX. The DAX currently includes only the preference shares of the Company. In the future, the inclusion of all (ordinary) shares of the Company can be expected. The overall goal will be to significantly increase the attractiveness of the Fresenius share for all investors.

In addition, potential future capital measures will be facilitated. The present capital structure of the Company is characterized by the majority of the Else Kröner-Fresenius-Foundation in the voting ordinary shares (approx. 58%). Further capital increases would entail a dilution of voting rights on the part of the Foundation if it is not prepared or not in a position to participate proportionately in the capital increases. In such case, presuming the current shareholding of approx. 58% of the voting ordinary shares, the Else Kröner-Fresenius-Foundation would lose its majority if the share capital of Fresenius SE were to increase by more than 16%. As long as the Foundation is not prepared to give up its voting majority and unwilling or unable to participate proportionately in any capital increases, the feasibility of a further equity financing through the issuance of new ordinary shares is rather limited. This could have a negative impact on the equity raising.

This limiting factor no longer applies in the case of a change of the legal form into a partnership limited by shares, since a dilution in respect of the ordinary shares (up to the limit set forth in Section 7.3.1) would no longer mean a loss of the controlling influence over the Company on the part of the Else Kröner-Fresenius-Foundation and becomes therefore acceptable to the Foundation. This increases flexibility and facilitates financing for the Company.

In the course of the change of the legal form, Fresenius Management SE will accede to the Company as General Partner and assume, through its Management Board, the management and the representation of the Company. All shares in Fresenius Management SE will be held by the Else Kröner-Fresenius-Foundation, which can thereby retain its present influence over the

Company, in spite of the conversion of the preference shares into ordinary shares. Thus, the change of the legal form will cause no significant change in the position of the outside shareholders with respect to corporate governance.

The following are the main considerations in favor of the transaction:

- **Strengthening of the position on the capital market.** The free float will no longer be split between preference shares and ordinary shares as before, but will be consolidated in a single class of shares. As a result, the transaction is expected to increase the liquidity of the Fresenius share and to improve the position of the Company on the DAX. Ultimately, the position of Fresenius on the capital market will be strengthened and the operative and financial maneuverability of the Business will be increased.
- **Maintenance of the existing corporate governance standards.** The proposed change of the legal form of Fresenius SE will maintain and continue today's corporate governance and transparency standards. The long-term strategic policy of the Company endorsed by the majority shareholder will be preserved.

3.3 Appropriateness of the Ownership Structure

The shareholders that participate in Fresenius SE at the time of entering the change of the legal form in the commercial register will become shareholders in Fresenius SE & Co. KGaA to the same extent and with the same number of shares in Fresenius SE & Co. KGaA as they did in Fresenius SE prior to the change of the legal form taking effect. Both the ordinary shareholders and the preference shareholders of Fresenius SE will receive ordinary shares in Fresenius SE & Co. KGaA in the proportion of 1 : 1. This means that both the ordinary shareholders and the preference shareholders of Fresenius SE will receive one ordinary share in Fresenius SE & Co. KGaA for each ordinary or preference share in Fresenius SE. The shares of Fresenius SE & Co. KGaA will – as the shares of Fresenius SE – be structured as no-par value shares. The pro-rata share that is represented by a no-par value share in the share capital is not changed.

The ownership structure (*Beteiligungsverhältnis*) in the entity in its new legal form, under which both the ordinary shareholders and the preference shareholders receive ordinary shares in Fresenius SE & Co. KGaA for their ordinary or preference shares held in Fresenius SE in the proportion 1 : 1, is deemed appropriate. The proportional participation of each individual shareholder in the share capital of the Company remains unchanged. In the course of the change of the legal form, the present preference will be cancelled with the finalization of the articles of association of Fresenius SE & Co. KGaA, which in turn leads to a reinstatement of the voting right of the former preference shares. The unification of the share structure related to the change of the legal form thus constitutes in effect a cancellation of the preference by means of an amendment of the statutes.

A consideration of the advantages and disadvantages arising from the unification of the share structure for the ordinary and the preference shareholders of Fresenius SE leads to the result that the ordinary and preference shares are to be considered to have the same value and therefore participate in the share capital of the Company in its new legal form in the proportion of 1 : 1. Upon the change of the legal form taking effect, the preference shareholders lose their entitlement to a higher dividend as well as to an (advance) minimum dividend; however, they obtain in the voting right with respect to their shares. In this context it should be taken into account that the higher dividend amounts to only Euro 0.01 per preference share and the minimum dividend in the amount of Euro 0.02 has until now had almost no relevance (see Section 3.1.3). The ordinary shareholders are on the one hand affected by a dilution of their voting right, since the number of ordinary shares and thus of the voting rights will be twice as much upon the change of the legal form taking effect. On the other hand, they will benefit not only from the (marginally) increased relative participation in profits as a result of the cancellation of the preference, but also from the increase in the free float share and the expected higher liquidity of the ordinary shares as well as the expected inclusion of the ordinary shares in the DAX.

A numerical determination of the exact value of the rights and restrictions of both share classes as compared with one another is not possible. Therefore, a comprehensive consideration that takes account of the advantages and disadvantages described above arising from the unification of the share structure for the respective share class is proper. Against this background, the preservation of the current ownership structure is deemed to fairly accommodate the interests of the shareholders and appears appropriate. Any and each betterment of one share class would have meant a worsening in the situation of the other share class. An exchange ratio of 1 : 1 is most likely to obtain the approval of the ordinary shareholders as well as the preference shareholders. The fact that the ordinary shares have been listed since October 22, 2008 at a discount compared to the preference shares does not contradict this estimate (cf. Section 3.1.3). On the one hand, it must be taken into account that in the time from October 22, 2008 the ordinary shares have from time to time been quoted above the preference shares. On the other hand, the main reason for the stock exchange price discount for the ordinary shares is to be found in the fact that the free float share of the preference shares is higher and that only these are included in the DAX. Upon the change of the legal form taking effect, the free float will be consolidated in one single class of shares (ordinary shares), so that precisely the free float share of the current ordinary shares is increased; in addition, it is expected that the ordinary shares of Fresenius SE & Co. KGaA will be included in the DAX in lieu of the current preference shares of Fresenius SE.

3.4 Cross-Border Merger

In connection with the change of the legal form of Fresenius SE into a partnership limited by shares, it is intended to merge the Dutch Calea Nederland N.V, in which the Company has a 100% stake, into the Company by way of a cross-border merger. The cross-border merger is to become effective immediately upon the change of the legal form taking effect. The cross-border merger serves the purpose of clearing-up and simplifying the group structure. As a result of the cross-border merger, the Company will be able to maintain its well-trying governance structure with a Supervisory Board consisting of twelve members including employee representatives (so-called employee bench) with an international composition.

3.4.1 Reasons in favor of the Cross-Border Merger

The Company has a 100% stake in Calea Nederland N.V. Calea Nederland N.V. is a stock corporation under Dutch law (*Naamloze Vennootschap*) with registered office in 's-Hertogenbosch, The Netherlands, registered in the commercial register of the chamber of commerce Midden-Nederland under No. 30110255. Its business address is Demkaweg 11, 3555 HW Utrecht, The Netherlands. According to (a corresponding translation from the Dutch language of) its articles of association, the corporate purpose of Calea Nederland N.V. is the offering of services relating to, and the trading with and supply of, pharmaceutical products, as well as the provision of training courses and professional education and advanced training in the field of medical health care. However, Calea Nederland N.V. no longer pursues the above purpose since, in 2008, it sold and transferred its entire business to Tefa-Portanje B.V. Since then, it no longer has any own business. As Calea Nederland N.V. has no more functions within the Fresenius Group, it is to be merged into the Company in the process of clearing-up and simplifying the group structure. Upon the merger taking effect, Calea Nederland N.V. will cease to exist.

As a result of the cross-border merger of Calea Nederland N.V. into the Company, the Company will be able to maintain its well-trying governance structure. The Supervisory Board of Fresenius SE is composed on a parity basis and consists of six shareholder representatives and six employee representatives. The employee bench consists of four employee representatives from Germany and two employee representatives from other EU Member States or, respectively, states party to the EEA Agreement (Italy and Austria). The corporate co-determination at Fresenius SE is governed by the provisions of the SE Employee Participation Act (*SE-Beteiligungsgesetz – SEBG*) and the agreement regarding the participation of employees in Fresenius SE of July 13, 2007. A prerequisite for the applicability of the SE Employee Participation Act and the agreement regarding the participation of employees in Fresenius SE is the existence of an SE. Therefore, the change of the legal form into a partnership limited by shares will also change the legal basis of corporate co-determination. As more than 20,000

employees work for the Company and its group companies in Germany, a co-determined supervisory board constituted on a parity basis would have to be established in the case of Fresenius SE & Co. KGaA under the provisions of the German Co-Determination Act (*Mitbestimmungsgesetz* – “MitbestG”), such supervisory board to consist of ten shareholder representatives and ten employee representatives (sec. 7 para. 1 no. 3 German Co-Determination Act). Employees from other EU Member States or states party to the EEA Agreement would neither have a right to vote nor a right to be elected. Therefore, the employee representatives would be exclusively elected by the employees of the Fresenius Group working in Germany.

As a result of the cross-border merger, the German Co-Determination Act does not apply and the expansion of the Supervisory Board is no longer mandatory. Instead, the cross-border merger of a company from another EU member state or state party to the EEA Agreement into Fresenius SE & Co. KGaA is subject to the German Act on Employee Co-Determination in case of Cross-Border Mergers (*Gesetz über die Mitbestimmung der Arbeitnehmer bei einer grenzüberschreitenden Verschmelzung* – “MgVG”). Under the MgVG, the size of the Supervisory Board is determined by the person or entity providing the articles of association. The size of the Supervisory Board does not depend on the number of employees of a group of companies. In the case of Fresenius SE & Co. KGaA, the articles of association can therefore continue to provide for a Supervisory Board which consists of twelve members. Under the MgVG, the composition of the Supervisory Board will continue to be subject to the principle of equal representation. Consequently, the proposed articles of association of Fresenius SE & Co. KGaA already provide for a Supervisory Board with equal representation consisting of twelve members unless another number of members is prescribed under mandatory statutory provisions. One half of the members of the Supervisory Board is elected by the General Meeting in accordance with the provisions of the German Stock Corporation Act, the other half of the members of the Supervisory Board is elected by the employees.

The appointment of twelve members to the Supervisory Board at Fresenius SE has proven efficient for the functioning of the Supervisory Board. Since an efficient functioning of the Supervisory Board is of major importance for the interests of the Company and an effective corporate governance, the size of the Supervisory Board shall remain unchanged. Furthermore, under the MgVG, employee representatives from other EU Member States or states party to the EEA Agreement continue to be eligible members of the Supervisory Board. On this basis, the internationalization of the employees’ representation in the Supervisory Board of the Company achieved by the change of the legal form into an SE may be maintained. Since the change of the legal form into an SE, all employees of the Fresenius Group in the EU Member States and the states party to the EEA Agreement participate in the appointment of the employee representatives on the Supervisory Board. This takes account of the fact that the revenues of the Fresenius Group generated in the other EU Member States and the states party to the EEA Agreement is

comparable to the revenues generated in Germany. In this way, a greater identification of the employees with Fresenius is made possible.

3.4.2 Steps and Procedures of the Cross-Border Merger

The cross-border merger of Calea Nederland N.V. into the Company will be structured in the form of a merger by absorption. Upon the merger becoming effective by means of its registration in the commercial register of the acquiring company (Fresenius SE & Co. KGaA) (i.e., the commercial register of the local court of Bad Homburg vor der Höhe), Calea Nederland N.V. will cease to exist and Fresenius SE & Co. KGaA will become its universal successor. The legal basis of the merger are the common terms of merger prepared by the Management Board of the Company and the management of Calea Nederland N.V.

In order for the MgVG to become applicable, the common terms of merger provide that the application for registration of the merger in the commercial register must be made in such a way that the merger will not become effective until after the effective date of the change of the legal form of Fresenius SE into a partnership limited by shares. The fact that the terms of merger were prepared by the Management Board of Fresenius SE does not preclude the registration of the merger only after the change of the legal form has taken effect. As Fresenius SE and – after the change of the legal form takes effect – Fresenius SE & Co. KGaA are the same legal entity, the legal acts undertaken by Fresenius SE will continue to be in effect for Fresenius SE & Co. KGaA. The details of the process of the cross-border merger are described in Section 9.2.

The change of the legal form of Fresenius SE into a partnership limited by shares is legally independent of the cross-border merger. This means that the change of the legal form would remain effective even if the cross-border merger were not registered. The consequences of a change of the legal form without a subsequent cross-border merger are set out in Section 9.4.

3.5 Costs of the Transaction

According to current estimates, the costs of the change of the legal form into the partnership limited by shares will be approximately Euro 7 mn. in total. This estimate includes, in particular, the costs for the formation audit (*Gründungsprüfung*), the necessary publications, the notary and court fees, the costs for the stock exchange admission of the shares of the Company, and the fees of external advisers.

The costs mentioned do not include the costs of the cross-border merger, which are estimated at approximately additional Euro 0.5 mn. This estimate includes, in particular, the fees of external advisers, the costs of the necessary notarization of the terms of merger as well as the costs of the audit of the financial statements of Calea Nederland N.V.

4. The Method of Change of the Legal Form and Explanation of the Conversion Resolution

4.1 Procedure for the Change of the Legal Form

The change of the legal form of the Company is intended to be by conversion in accordance with the provisions of the German Conversion Act (sec. 190 et seq. German Conversion Act). The provisions of the German Conversion Act also apply for a change of the legal form from an SE into a KGaA. Upon entering the change of the legal form in the commercial register of the Company the conversion will be effective. The Company continues to exist after the registration in the legal form of a partnership limited by shares (*Kommanditgesellschaft auf Aktien*) as specified in the conversion resolution. The details of the conversion are contained in the conversion resolution which will be presented for decision to the Ordinary General Meeting to be held on May 12, 2010, and further explained hereunder in Section 4.3 of this conversion report.

4.2 Significant Legal Steps in the Conversion

The legal basis for the conversion is the conversion resolution which will be presented for decision to the Ordinary General Meeting to be held on May 12, 2010. The draft conversion resolution will be forwarded to the competent works councils and executives' committees at least one month prior to the General Meeting (cf. sec. 194 para. 2 German Conversion Act). This will ensure that the workers' representatives can take notice of the description of the consequences of the change of the legal form for the employees and their representatives contained in the conversion resolution.

For its effectiveness, the conversion resolution requires notarization (sec. 193 para. 3 sentence 1 German Conversion Act) as well as a majority of three quarters of the votes cast (secs. 240 para. 1 sentence 1 German Conversion Act, Article 57 SE Regulation). In addition, as the change of the legal form is connected with a conversion of the preference shares into ordinary shares, a special consent resolution of the preference shareholders is also required (Art. 60 para. 1 SE Regulation). Such special resolution requires a majority of three quarters of the votes cast (Art. 60 para. 2 in conjunction with Art. 59 para. 1 SE Regulation, secs. 240 para. 1 sentence 1 German Conversion Act, 141 para. 3 sentence 2 German Stock Corporation Act). Furthermore, the change of the legal form requires the approval of the new General Partner Fresenius Management SE, currently still having the corporate name Asion SE (sec. 240 para. 2 sentence 1 German Conversion Act. Fresenius Management SE takes the position of incorporator of the entity in the new legal form in accordance with sec. 245 para. 2 German Conversion Act). It is a further condition for the effectiveness of the conversion that the General Partner explicitly approves the new articles of association of the KGaA (secs 240 para. 2 sentence 2, 221 sentence 2 German Conversion Act). The declaration of approval of the General Partner must be notarized (secs. 240

para. 2 sentence 2, 221 sentence 1 German Conversion Act). It is also intended to be made at the Ordinary General Meeting to be held on May 12, 2010.

According to Art. 66 para. 1 sentence 2 SE Regulation, a resolution for a re-conversion of an SE into a stock corporation may only be passed two years after the SE has been registered or the first two annual financial statements have been approved. This rule shall, according to one view, also apply *mutatis mutandis* to a change of the legal form from an SE into another legal form than a stock corporation under the German Conversion Act. This requirement would here be fulfilled as the change of the legal form of the Company into an SE was already registered with the commercial register of the local court of Bad Homburg vor der Höhe on July 13, 2007. No further requirements result from Art. 66 SE Regulation for the change of the legal form of the Company into a KGaA, as secs. 190 et seq. German Conversion Act provide for an independent and equivalent procedure that meets the interests of the shareholders and the creditors of the Company and its employees and employee representations in an equal way. No audit of the share capital cover *mutatis mutandis* to Art. 66 para. 5 SE Regulation is required as the mandatory formation audit under sec. 245 para. 2 sentence 2 German Conversion Act together with sec. 220 para. 3 sentence 1 German Conversion Act provides for an equivalent audit for the protection of the creditors.

Pursuant to sec. 197 German Conversion Act, the rules of incorporation (*Gründungsvorschriften*) for the legal entity in the new legal form are applicable with regard to the change of the legal form, meaning in this case the rules for the incorporation of a KGaA. Hereby, the raising of the capital will be achieved by way of the change of the legal form itself; the shareholders are not obliged to make a payment to the Company or another contribution to the assets of the Company. This means that the incorporator, in this case Fresenius Management SE (cf. sec. 245 para. 2 German Conversion Act), has to prepare a written incorporation report (*Gründungsbericht*), in which the course of events of the conversion will be reported in detail (sec. 32 German Stock Corporation Act). The incorporation report contains, among others, information on the conversion resolution, the approval of the new articles of association, the amount of the share capital, the shareholdings, the appointment of the members of the Supervisory Board and the entering of the General Partner. Furthermore, the incorporation report has to lay down the circumstances that show that the share capital is covered by the net assets of the Company. Thereafter, a formation audit (*Gründungsprüfung*) will be conducted by Fresenius Management SE as General Partner and by the Supervisory Board of the Company. Furthermore, an audit will be conducted by an external auditor (sec. 33 German Stock Corporation Act). The formation audit by the Supervisory Board will be conducted by the Supervisory Board to be newly elected under item 9 of the agenda for the Ordinary General Meeting of the Company to be held on May 12, 2010. At such time, the Supervisory Board will probably consist only of representatives of the shareholders (cf. sec. 197 sentence 3 German

Conversion Act in conjunction with sec. 31 para. 1 German Stock Corporation Act). The external auditor for the formation audit will be appointed by the competent register court for the Company in Bad Homburg vor der Höhe. As external auditor a public auditor or an auditing firm shall be appointed. The formation audit will cover in particular the coverage of the share capital by the net assets of the Company. About the formation audit a written report has to be prepared. The audit reports to be issued in connection with the formation audit as well as the incorporation report will be submitted to the commercial register together with the filing for registration of the change of the legal form.

After the approval of the General Meeting of the Company (including the approving special resolution of the preference shareholders) and the conclusion of the formation audit, the Management Board will apply for the registration of the change of the legal form in the Company's commercial register. In connection with the filing, the Management Board has to declare that an action against the validity of the conversion resolution has not been filed or has not been filed within the applicable period or that any such action has been finally dismissed or withdrawn (so-called negative declaration (*Negativklärung*), cf. secs. 198 para. 3, 16 para. 2 German Conversion Act). Without such declaration, the conversion may not be registered (so-called register block (*Register-sperre*)). The ownership structure (*Beteiligungsverhältnis*) will not be judicial reviewed in an action contesting the validity of the conversion (cf. sec. 195 para. 2 German Conversion Act); for this purpose a judicial legal challenge procedure (*Spruchverfahren*) according to the provisions of the German Act on Legal Challenge Procedures is available (sec. 196 sentence 1 German Conversion Act). In the event of an action contesting the validity of the conversion resolution of the General Meeting of Fresenius SE, a clearance procedure (*Freigabeverfahren*) pursuant to secs. 198 para. 3, 16 para. 3 German Conversion Act may be conducted. Then, upon an application by Fresenius SE, the register block may be overcome if (i) the action filed is inadmissible or evidently unfounded, (ii) the plaintiff does not demonstrate by submission of deeds within one week following the service of the application that he holds a minimum pro-rata amount of Euro 1,000 since publication of the convening notice, or (iii) in the unbiased opinion of the court, an early effectiveness of the change of the legal form is deemed to have priority because the alleged material disadvantages for the legal entity changing its legal form and its shareholders, as stated by the applicant, outweigh the disadvantages for the respondent, unless there is a case of exceptional gravity of the violation (cf. sec. 16 para. 3 sentence 3 German Conversion Act).

Upon registration, the change of the legal form of Fresenius SE to Fresenius SE & Co. KGaA will become effective.

4.3 Explanation of the Conversion Resolution

The draft conversion resolution as item 7 forms part of the agenda of the Ordinary General Meeting of the Company to be held on May 12, 2010 and is attached as **Annex 1** to this report. The conversion resolution is explained as follows:

4.3.1 Conversion into a Partnership Limited by Shares (*Kommanditgesellschaft auf Aktien*)

Pursuant to sec. 194 para. 1 no. 1 German Conversion Act, the conversion resolution must state the legal form which the legal entity is intended to acquire by the change of the legal form. Accordingly, No. 1 of the draft conversion resolution provides that the Company will be converted by way of a change of the legal form in accordance with the provisions of the German Conversion Act into a partnership limited by shares. Sec. 191 para. 1 no. 2 in conjunction with sec. 3 para. 1 no. 2 German Conversion Act does not explicitly mention the SE as an entity changing its legal form. However, pursuant to Art. 9 para. 1 lit. c) ii) SE Regulation, the SE is governed by the provisions of Member States' laws that apply to a stock corporation formed in accordance with the law of the Member State in which the SE has its registered office. Therefore, Fresenius SE is to be basically treated like a German stock corporation. The same applies in respect of the provisions of the German Conversion Act.

Pursuant to sec. 202 German Conversion Act, the conversion of the Company into a partnership limited by shares will become effective upon entering in the competent commercial register for the Company, the commercial register of the local court (*Amtsgericht*) of Bad Homburg vor der Höhe. Upon registration, the Company will continue to exist in the form of a partnership limited by shares (KGaA). Only the legal form changes, but not the identity of the Company (principle of the identity of the legal entity). The entity in a new legal form acquires a new name because of the conversion (cf. Section 4.3.2) as well as new articles of association (cf. Section 4.3.6). In contrast, the legal relationships existing between the Company and third parties remain unchanged. There is no "transfer" of assets of the Company. If public registers become inaccurate due to the change of name (cf. Section 4.3.2) they will be corrected on the application of the entity in its new legal form. The appointment of the Management Board as a corporate body and the term of office of the present members of the Supervisory Board end (cf. Section 7.3.2).

The service agreements of the members of the Management Board remain in force after the change of the legal form takes effect. The members of the Management Board, however, declare their consent that their service agreements will be rescinded by agreement without compensation. The members of the Management Board will, subject to the corporate law competence of the Supervisory Board of Fresenius Management SE, become exclusively members of the Management Board of the General Partner, Fresenius Management SE (currently still bearing

the corporate name Asion SE) upon the conversion taking effect (cf. Section 7.3.2) and will enter into new service agreements with it on the same terms. The service agreements of the members of the Management Board will thereby in effect pass to Fresenius Management SE on the same conditions and for the same term.

The differences between the legal form SE and the legal form KGaA and the resulting effects for the shareholders are explained in Section 7. The tax effects for the Company and its shareholders are explained in Sections 5.3 and 5.4.

4.3.2 The Corporate Name of the Entity in its new Legal Form

Pursuant to sec. 194 para. 1 no. 2 German Conversion Act, the conversion resolution must contain the corporate name of the entity in its new legal form. Accordingly, No. 2 of the draft conversion resolution provides that the entity in its new legal form will bear the corporate name “Fresenius SE & Co. KGaA”. The only change occurring to the name of the entity in its new legal form as compared with its existing name is the adjustment in accordance with the change of the legal form that will take effect upon registration of the conversion. The legal form suffix contains not only a reference to the legal form of the entity, namely “KGaA”, but rather the complete suffix “SE & Co. KGaA”. This takes account of the fact that with Fresenius Management SE, a legal person is the sole General Partner in the entity in its new legal form. The German Stock Corporation Act provides in this case under sec. 279 para. 2 that the corporate name must contain a designation that indicates the limited liability of the General Partner. This is observed by the addition “SE & Co.”.

4.3.3 Participation of the Shareholders in the Entity in its new Legal Form

In No. 3 of the draft conversion resolution, implementing the provisions of sec. 194 para. 1 no. 3 German Conversion Act, it is stated how the shareholders of the Company will participate in the entity in its new legal form in accordance with the relevant applicable provisions. It is specified that the share capital of the Company is not modified by the change of the legal form, but rather will become the share capital of the entity in its new legal form in accordance with the articles of association. The shareholders who are shareholders of Fresenius SE at the time of entering the change of the legal form in the commercial register will become shareholders (so called limited liability shareholders) in Fresenius SE & Co. KGaA.

They will participate to the same extent and with the same number of shares in Fresenius SE & Co. KGaA as they did in Fresenius SE prior to the change of the legal form taking effect (principle of the continuity of the shareholders). In the process, however, the preference shareholders will not be granted preference shares in the entity of new legal form, but – as the ordinary shareholders – be granted only voting ordinary shares. The preference shares will be converted into ordinary shares in the proportion of 1 : 1. This means that the ordinary

shareholders will receive the same number of voting ordinary shares which they held in Fresenius SE prior to the change of the legal form taking effect. The preference shareholders will receive the same number of voting ordinary shares in lieu of the non-voting preference shares held by them in Fresenius SE. The pro-rata share that is represented by a no-par value share in the share capital is not changed. Pursuant to sec. 202 para. 1 no. 2 German Conversion Act, third party rights in the shares (such as liens) continue to apply to the ordinary shares of the Fresenius SE & Co. KGaA issued in place of such shares; it is not necessary that such rights be re-constituted.

4.3.4 Accession of the General Partner Fresenius Management SE

Pursuant to sec. 194 para. 1 no. 4 German Conversion Act, the conversion resolution must specify to which extent shares or participations in the entity in its new legal form will be granted to the acceding General Partner. No. 4 of the draft conversion resolution specifies in this respect that Fresenius Management SE (currently still bearing the corporate name Asion SE) is to accede as General Partner. Letter b) of the agenda item 7 of the Ordinary General Meeting on May 12, 2010, under which item the vote on the change of the legal form is to be taken, provides that Fresenius Management SE declares its consent to its accession as General Partner and approves the articles of association of Fresenius SE & Co. KGaA. Asion SE was established on May 12, 2009 and registered with the commercial register of the local court of Düsseldorf under HRB 61386 on July 14, 2009 with a share capital of Euro 120,000.00. The Else Kröner-Fresenius-Foundation is the sole shareholder of Asion SE. Following the Ordinary General Meeting of the Company to be held on May 12, 2010, the corporate name of Asion SE is to be changed to “Fresenius Management SE”, its registered office is to be relocated to Bad Homburg vor der Höhe, the share capital is to be increased to Euro 1,500,000.00 and the articles of association are to be adjusted to its then to be taken position as General Partner of Fresenius SE & Co. KGaA. The legal and de facto relationships of Fresenius Management SE are explained in Section 7.3.2.

Furthermore, the share of the capital which Fresenius Management SE will receive in the entity in its new legal form as a result of the change of the legal form is specified under No. 4 of the draft conversion resolution, in accordance with the statutory requirements. It is specified that Fresenius Management SE will not take any participation in the share capital and will therefore not participate in the assets, profit and loss of Fresenius SE & Co. KGaA. This means that Fresenius Management SE does not, upon its accession to the Company, have to make any contribution; correspondingly, however, it does not have the right to participate in profits. This is a usual provision applicable to General Partners that exercise exclusively management functions. For the shareholders, this means as a corollary that their rights to dividends are not diluted or otherwise adversely affected by the accession of Fresenius Management SE to the Company.

The rights and duties of the General Partner are specified in Sections 7.3.1 and 7.3.2.

4.3.5 Special Rights and Benefits

The draft conversion resolution describes under No. 5 the rights which will be granted to shareholders and the holders of special rights, i.e., the holders of preference shares and the holders of convertible bonds and stock options out of the employee participation programs in the entity in its new legal form. This is in conformity with the provisions of sec. 194 para. 1 no. 5 as well as secs. 204, 23 German Conversion Act.

With regard to non-voting preference shares, it is stated that the holders of non-voting preference shares will receive ordinary shares in the entity in its new legal form which are equivalent in value to the preference shares within the meaning of sec. 23 German Conversion Act.

The intended adjustment of the employee participation programs in connection with the planned conversion of all preference shares into ordinary shares is described in Section 6.2. In the draft conversion resolution, it is specified that the holders of convertible bonds and stock options out of the employee participation programs of 1998, 2003 and 2008 need not expect any change in their legal position due to the change of the legal form. It is clarified that holders of convertible bonds and stock options in respect of which the conversion right or option refers to preference shares will have the conversion right or option with respect to ordinary shares in the entity in its new legal form. To secure the claims of holders of convertible bonds or stock options, the conditional capital existing in Fresenius SE will continue in the entity in its new legal form and will be adjusted with respect to the restructuring of the entire share capital to voting ordinary bearer shares. In addition, the creation of authorized capitals is planned, which may alternatively be used for the servicing of the conversion or option rights, respectively. Furthermore, the conversion resolution contains the clarification that the success targets provided for in the employee participation programs will not be affected by the change of the legal form. Merely an adjustment of the success target of the Stock Option Plan 2003 is intended (see in this respect the explanations set forth in Sections 4.3.7 and 6.2).

As a legal precaution, it is pointed out in No. 5 of the draft conversion resolution that Fresenius Management SE (currently still bearing the corporate name Asion SE), in which the Else Kröner-Fresenius-Foundation has a 100% participation, will accede to the Company as General Partner and will take over the management of the business of Fresenius SE & Co. KGaA.

Furthermore, as a legal precaution it is stated under No. 5 of the draft conversion resolution that (without prejudice to the legal decision making authority of the Supervisory Board of Fresenius Management SE) it should be assumed that all members of the Management Board of Fresenius SE shall be appointed as members of the Management Board of Fresenius Management SE. In addition, certain shareholder representatives in the Supervisory Board of Fresenius SE, namely Dr. Gerd Krick, Prof. Dr. h.c. Roland Berger, Mr. Klaus-Peter Müller and Dr. Gerhard

Rupprecht, shall be appointed as members of the Supervisory Board of Fresenius SE & Co. KGaA. Dr. Dieter Schenk and Dr. Karl Schneider shall not be appointed as members of the Supervisory Board of Fresenius SE & Co. KGaA. It should further be noted that all shareholder representatives in the Supervisory Board of Fresenius SE shall be appointed as members of the Supervisory Board of Fresenius Management SE.

4.3.6 Approval of the new Articles of Association of Fresenius SE & Co. KGaA

Under No. 6 of the draft conversion resolution, the new articles of association of the entity in its new legal form are to be approved in the form attached as **Annex 3**. The articles of association of the entity in its new legal form are explained in Section 7.3.3.

Upon adoption of the new articles of association of Fresenius SE & Co. KGaA, the Authorized Capitals I and II will be adjusted with respect to the change of the legal form of Fresenius SE into a partnership limited by shares and the corresponding restructuring of the entire share capital to voting ordinary bearer shares. They are given the wording provided in Art. 4 para. 4 (Authorized Capital I) and Art. 4 para. 5 (Authorized Capital II), respectively, of the proposed articles of association of Fresenius SE & Co. KGaA. The General Partner is authorized with respect to the Authorized Capital I to exclude fractional amounts from the shareholders' subscription right. With respect to the Authorized Capital II, the General Partner is authorized, pursuant to the wording of Art. 4 para. 5 of the proposed articles of association of Fresenius SE & Co. KGaA, to exclude the shareholders' subscription right with the consent of the Supervisory Board of the Company. Regarding the adjustment of the Authorized Capitals I and II, see also the explanations set forth in Section 6.3.

Moreover, upon adoption of the new articles of association of Fresenius SE & Co. KGaA, the Authorized Capitals III to V are newly created for the time as of the taking of effect of the change of the legal form (Art. 4 paras. 6 to 8 of the proposed articles of association of Fresenius SE & Co. KGaA). The subscription right of the shareholders is excluded with regard to the Authorized Capitals III to V. The Authorized Capitals III to V are used exclusively for the servicing of the existing employee participation programs of the Company and are designed as an alternative to the conditional capitals created for such purpose. Due to the exclusion of the subscription right, the Management Board has prepared a detailed separate report to the General Meeting, which was published together with the invitation to the Ordinary General Meeting to be held on May 12, 2010. Reference is made to the content of such report. The details regarding the Authorized Capitals III to V are described in Section 6.2.1.

As a result of an issuance of shares out of conditional capital for the servicing of the existing employee participation programs in the meantime, the amount of the share capital and the amounts of the conditional capitals may still be subject to change. The Supervisory Board is

therefore authorized at the end of No. 6 of the draft conversion resolution to amend the articles of association of the entity in its new legal form approved in the course of the change of the legal form as may be necessary because of the issuance of shares out of conditional capital in the meantime. This includes the adjustment of the amount of the share capital of Fresenius SE & Co. KGaA in Art. 4 para. 1 of the articles of association of Fresenius SE & Co. KGaA.

4.3.7 Employee Participation Programs and Conditional Capital

In No. 7, the draft conversion resolution provides for adjustments to be made to the existing employee participation programs of the Company and the corresponding conditional capitals. The adjustments are necessary with regard to the conversion of the entire share capital of the Company into ordinary shares, as the employee participation programs to date provide for both the granting of subscription rights to voting ordinary shares and the granting of subscription rights to non-voting preference shares.

The Stock Option Plan 1998 is to be adjusted to the effect that all subscription rights that were issued under the Stock Option Plan 1998 and that are still outstanding are to be serviced upon exercise by voting ordinary bearer shares. Accordingly, the Stock Option Plan 2003 is also to be adjusted to the effect that all subscription rights associated with the convertible bonds issued under the Stock Option Plan 2003 are to be serviced by ordinary bearer shares, to the extent that the holders of such convertible bonds exercise their rights. No new subscription rights will be granted under the Stock Option Plan 1998 and under the Stock Option Plan 2003, so that no adjustment is required in this respect.

Furthermore, in case of the Stock Option Plan 2003, an adjustment of the success target is required in connection with the conversion of the entire share capital of the Company into ordinary shares, as such target is based on the increase of the joint average stock exchange price of ordinary shares and preference shares. The success target of the Stock Option Plan 2003 is to be adjusted so that it is deemed achieved if the price increase of 25% provided for in the Stock Option Plan 2003 is achieved by the fact that the sum of the following price increases amounts to at least 25%: (i) increase of the joint average stock exchange price of ordinary shares and preference shares from the day of the issuance until the day when the change of the legal form takes effect; (ii) increase of the stock exchange price of the ordinary shares since the taking of effect of the change of the legal form. To the extent that the success target is or has already been achieved prior to the change of the legal form taking effect, the success target is deemed achieved also after the change of the legal form.

The current Stock Option Plan 2008, under which subscription rights can still be granted, is to be adjusted to the effect that those entitled can only be granted subscription rights to voting ordinary bearer shares upon the taking of effect of the change of the legal form. As of the change of the

legal form taking effect, subscription rights already granted are to be serviced exclusively by voting ordinary bearer shares. As a result of the different corporate body structure of a KGaA, an adjustment of the circle of beneficiaries will also be necessary. The circle of beneficiaries is to be adjusted so that, as of the change of the legal form taking effect, instead of the members of the then no longer existing Management Board of the Company, the members of the Management Board of the General Partner (of Fresenius Management SE) are to be beneficiaries under the Stock Option Plan 2008. A further adjustment of the Stock Option Plan 2008 is provided so that the General Partner (with respect to subscription rights for executive staff members) or its Supervisory Board (with respect to subscription rights for members of the Management Board of the General Partner) is authorized to grant subscription rights regarding voting ordinary bearer shares, to the extent that the existing authorization of the Management Board (with respect to subscription rights for executive staff members) or the Supervisory Board (with respect to subscription rights for members of the Management Board) for the granting of subscription rights has not yet been used at the time of the change of the legal form taking effect.

Moreover, in No. 7 of the draft conversion resolution, it is clarified for each of the Stock Option Plans 1998, 2003 and 2008 that the rights under the options will remain unaffected by the change of an employment relationship of a beneficiary with Fresenius SE into an employment relationship with Fresenius SE & Co. KGaA or Fresenius Management SE (the General Partner of Fresenius SE & Co. KGaA, currently still bearing the corporate name Asion SE), as the case may be.

The Conditional Capitals I, II and III of the Company intended for the servicing of the Stock Option Plans 1998, 2003 and 2008 (Art. 4 paras. 6, 7 and 8 of the statutes of Fresenius SE) will be adjusted pursuant to No. 7 of the draft conversion resolution upon the adoption of the new articles of association of Fresenius SE & Co. KGaA to the described amendments to the Stock Option Plans 1998, 2003 and 2008. Upon taking of effect of the change of the legal form of Fresenius SE into a partnership limited by shares, they will be given the form as provided for in Art. 4 paras. 9, 10 and 11 of the proposed articles of association of Fresenius SE & Co. KGaA (**Annex 3** to this conversion report).

The details of the amendment of the employee participation programs are described in Section 6.2.

4.3.8 No Offer of Compensation to the Shareholders

In accordance with the statutory provisions of sec. 250 German Conversion Act, no offer of compensation under sec. 207 German Conversion Act needs to be made to shareholders in case of a change of the legal form of an SE into a partnership limited by shares as in the present case. As a result of such provision, the Company is not entitled to grant the shareholders the possibility

of leaving the Company in return for compensation. This is referred to in No. 8 of the draft conversion resolution.

4.3.9 Consequences of the Change of the Legal Form for the Employees and their Representations

As prescribed in sec. 194 para. 1 no. 7 German Conversion Act, No. 9 of the draft conversion resolution states the consequences of the change of the legal form for the employees and their representations. The draft conversion resolution will be forwarded to the general works council of Fresenius SE, the SE works council, the group works councils of the HELIOS clinics and the Wittgensteiner clinics, the location works councils Bad Homburg, St. Wendel and Friedberg as well as the executives' committee of the Company and the executives' committee of the HELIOS clinic in Schwerin no later than one month prior to the General Meeting (cf. sec. 194 para. 2 German Conversion Act), so that the employee representatives can take notice of these statements. In accordance with statutory regulations, the conversion resolution contains the following details:

The change of the legal form has no effects for the employees and their employment relationships. The change of the legal form does not involve a change of employer; the employment contracts of the employees continue to apply unchanged. The employer's right to issue instructions will be exercised after the change of the legal form and the subsequent cross-border merger of Calea Nederland N.V. into Fresenius SE & Co. KGaA by Fresenius SE & Co. KGaA, represented by the Management Board of the General Partner, Asion SE (which will in the future bear the corporate name Fresenius Management SE). This does not involve any changes for the employees.

The change of the legal form and the subsequent cross-border merger of Calea Nederland N.V. into Fresenius SE & Co. KGaA have the following impacts on the employees' representations and the co-determination of employees in the Supervisory Board:

The existing SE works council of Fresenius SE is linked to the legal form of the SE, so that it will cease to exist upon the change of the legal form taking effect. As the Fresenius Group is a group of companies with business activities all over the European Union, the controlling company of which has its registered office in Germany, a European works council can be established instead of the former SE works council in accordance with the provisions of the European Works Councils Act (*Europäisches Betriebsräte-Gesetz – "EBRG"*). Other than that, the existence and composition of the works councils, the executives' committees (*Sprecherausschüsse*) and other employee representations as well as their rights and powers will not be changed by the change of the legal form and the subsequent cross-border merger of Calea Nederland N.V. into Fresenius SE & Co. KGaA. All works agreements remain in effect unchanged in their present form. The

binding character of collective bargaining agreements for the Company and its subsidiaries remains likewise unaffected by the change of the legal form.

The change of the legal form changes the corporate co-determination. The corporate co-determination in the Supervisory Board of Fresenius SE is governed by the provisions of the SE Participation Act and the agreement regarding the participation of employees in Fresenius SE of July 13, 2007. The Supervisory Board of Fresenius SE maintains equal representation and consists of six Supervisory Board members of the shareholders and six of the employees. At the moment, four of the employee representatives in the Supervisory Board of Fresenius SE are from Germany and one each from Italy and Austria. The change of the legal form of Fresenius SE into a partnership limited by shares would, in principle, lead to the corporate co-determination being governed by the provisions of the German Co-Determination Act. Based on the number of employees working for the Company and its group companies in Germany, a Supervisory Board with equal representation, consisting of ten members of the Supervisory Board of the shareholders and ten of the employees, would have to be established pursuant to the provisions of the German Co-Determination Act. With respect to the employee representatives in the Supervisory Board of Fresenius SE & Co. KGaA, out of the employees of the Fresenius Group, only the employees working in Germany would have a right to vote and a right to be elected in accordance with the German Co-Determination Act.

It is planned to implement a cross-border merger of the Dutch Calea Nederland N.V. into the Company in connection with the change of the legal form of the Company into a partnership limited by shares. The Company has a 100% stake in Calea Nederland N.V. In 2008, Calea Nederland N.V. sold and transferred its entire business to Tefa-Portanje B.V. Since then, it no longer has any own business or any employees. The cross-border merger is to become effective immediately upon the change of the legal form taking effect. As a result of the cross-border merger, the corporate co-determination at Fresenius SE & Co. KGaA will not be governed by the provisions of the German Co-Determination Act, but rather by the provisions of the German Act on Employee Co-Determination in case of Cross-Border Mergers (“MgVG”). If the cross-border merger becomes effective, as planned, immediately after the change of the legal form takes effect, the provisions of the German Co-Determination Act do not apply. Accordingly, the Supervisory Board of the Company for the time after the change of the legal form takes effect will be established not in accordance with the provisions of the German Co-Determination Act, but in accordance with the provisions of the MgVG. The MgVG governs the co-determination of employees in the corporate bodies of a company resulting from a cross-border merger. The Act aims at safeguarding the co-determination rights of employees in the companies involved in the merger.

In connection with a cross-border merger, in principle, a procedure regarding the participation of employees must be conducted. Such procedure would aim at the conclusion of an agreement

among the managements of the companies involved in the merger and a special negotiating body representing the interests of the employees on the co-determination of employees in the supervisory board of the company. For the purpose set out above, co-determination means the influence of employees on the matters of a company by exercising the right to elect or appoint part of the members of the supervisory or administrative body of the company, or the exercise of the right to recommend or reject the appointment of some or all members of the supervisory or administrative body of the company (sec. 2 para. 7 MgVG). If no agreement can be reached until the end of the negotiation period provided for in the MgVG, the statutory subsidiary regulation of the MgVG applies, which secures the co-determination of the employees by operation of law (“co-determination by operation of law”).

Under the provisions of the MgVG, the managements of the companies involved in the merger, i.e., the Management Board of the Company and the management of Calea Nederland N.V., may decide to apply the regulations on the co-determination by operation of law without prior negotiations with a special negotiating body immediately as of the time of the registration of the company resulting from the cross-border merger (sec. 23 para. 1 sentence 1 no. 3 MgVG). The further requirement that at least one third of all employees of the Company, of Calea Nederland N.V. and of the concerned subsidiaries was entitled to co-determination rights prior to the registration of the company resulting from the cross-border merger (sec. 23 para. 1 sentence 2 no. 1 MgVG), is fulfilled in this case. With respect to the co-determination by operation of law, the corporate co-determination is governed by the provisions of secs. 23 et seq. MgVG. These contain, in particular, regulations on the scope of the co-determination, the allocation of seats within the employees’ representation (so-called employee bench), the removal of employee representatives and the contesting of the election of employee representatives as well as on the legal position of the employee representatives.

The Management Board of the Company and the management of Calea Nederland N.V. decided on March 30, 2010 pursuant to sec. 23 para. 1 sentence 1 no. 3 MgVG that the regulations on the co-determination by operation of law without prior negotiations shall apply to the company resulting from the merger immediately as of the time of the registration of the merger. For this reason, negotiations with a special negotiating body need not be initiated.

Pursuant to sec. 24 para. 1 MgVG, within the framework of the statutory subsidiary regulation, the number of employee representatives in the supervisory body of the company resulting from the cross-border merger is assessed on the basis of the highest number of employee representatives existing in one of the bodies of the companies involved in the merger prior to such merger. As Calea Nederland N.V. is not subject to any corporate co-determination, the proportionate allocation of the seats of the Supervisory Board between shareholders and employees of the acquiring company following the merger is based on the number of employee representatives existing in the acquiring company prior to the merger taking effect.

As the Supervisory Board of Fresenius SE maintains equal representation and the change of the legal form of the Company into a partnership limited by shares without the cross-border merger would, in principle, lead to the corporate co-determination being governed by the provisions of the German Co-Determination Act and thus, a Supervisory Board would have to be established with equal representation, half of the Supervisory Board of the company resulting from the merger will consist of employee representatives. Thus, the principle of equal representation applied in Fresenius SE is continued in effect in the Supervisory Board of Fresenius SE & Co. KGaA.

The size of the Supervisory Board of the company resulting from the cross-border merger will be determined within the limits of sec. 95 German Stock Corporation Act in the articles of association of Fresenius SE & Co. KGaA. The articles of association of Fresenius SE & Co. KGaA to be adopted in the context of the conversion resolution provide that the Supervisory Board is to consist of twelve members unless another number of members is prescribed under mandatory statutory provisions; one half of the members of the Supervisory Board is elected by the General Meeting in accordance with the provisions of the German Stock Corporation Act, the other half of the members of the Supervisory Board is elected by the employees.

The MgVG provides that a special negotiating body is to allocate the number of seats for employee representatives in the Supervisory Board to the Member States of the EU or the states party to the EEA Agreement, in which members are to be elected or appointed (sec. 25 para. 1 sentence 1 MgVG). The allocation is based on the respective number of employees of the company resulting from the cross-border merger, its subsidiaries and operational units who are employed in the individual Member States of the EU or the states party to the EEA Agreement (sec. 25 para. 1 sentence 2 MgVG). In the event that the employees from one or several Member States of the EU or the states party to the EEA Agreement cannot obtain a seat in such pro-rata allocation, the last seat to be allocated is to be assigned to a Member State of the EU or a state party to the EEA Agreement that has not yet been allocated any seats (sec. 25 para. 1 sentence 3 MgVG). As the Management Board of the Company and the management of Calea Nederland N.V. have decided that the regulations on the co-determination by operation of law without prior negotiations are to be applied immediately as of the time of registration of the company resulting from the cross-border merger, a special negotiating body would have to be established merely for the purpose of the allocation of seats. The Management Board of the Company and the management of Calea Nederland N.V. are of the opinion that the creation of a special negotiating body merely for the purpose of the allocation of seats can be dispensed with, since Calea Nederland N.V. has no employees and within Fresenius SE with the SE works council a body with a composition similar to the special negotiating body to be established pursuant to the MgVG already exists, which has the function to look after the interests of the employees of the Fresenius Group from the Member States of the EU and from the states party to the EEA

Agreement. For this reason, the SE works council shall allocate the seats, following the consent of the SE works council of Fresenius SE, in accordance with sec. 25 para. 1 MgVG. Since the SE works council will cease to exist upon the change of the legal form taking effect, the seat allocation shall be carried out before the change of the legal form takes effect.

The determination of the employee representatives to be allocated to a Member State of the EU or a state party to the EEA Agreement in the Supervisory Board of Fresenius SE & Co. KGaA is based on the national regulations of the relevant Member State concerned. The election of the employee representatives in the Supervisory Board of Fresenius SE & Co. KGaA to be allocated to Germany is made by an electoral body consisting of the employees' representations of the Company, its subsidiaries and operational units (sec. 25 para. 3 sentence 1 MgVG). Pursuant to secs. 25 para. 3 sentence 2, 8 paras. 2 and 3 MgVG, employees of the German companies and operational units of the Fresenius Group as well as trade union representatives may be elected. Men and women are to be elected in accordance with their numerical proportion. For each member, a substitute member is to be elected. Every third German employee representative must be a representative of a trade union which is represented in a company involved in the merger, the concerned subsidiaries or a concerned operational unit. Consequently, since it is expected that, as was the case in Fresenius SE, four seats for employee representatives will be allocated to Germany also in the Supervisory Board of the converted Fresenius SE & Co. KGaA, one German trade union representative would have to be elected to the Supervisory Board.

The regulations under the MgVG regarding co-determination by operation of law apply as of the time of registration of the merger.

Irrespective of the fact that the size of the Supervisory Board and the composition of equal representation will not change because of the cross-border merger compared to the situation at Fresenius SE, as a result of the change of the legal form all previous Supervisory Board mandates will cease to exist. All members of the Supervisory Board, i.e., also the employee representatives, will have to be newly elected. The election of the shareholder representatives is provided for in item 9 of the agenda of the Ordinary General Meeting of the Company to be held on May 12, 2010. In the event that the procedure for the election of the employee representatives has not been completed upon the change of the legal form taking effect, the employee representatives in the Supervisory Board of Fresenius SE & Co. KGaA are to be initially appointed by the court.

With regard to the change of the legal form or the cross-border merger, no other measures are proposed or planned which would affect the situation of the employees.

4.4 Supervisory Board of the Entity in its new Legal Form

The term of office of the current members of the Supervisory Board ends in principle by operation of law upon a change of the legal form taking effect. This also applies if the Supervisory Board is mandatory due to the legal form or by operation of the co-determination law both prior to and after the taking of effect of the change of the legal form. Pursuant to sec. 203 sentence 1 German Conversion Act, in case of a change of the legal form, the members of the Supervisory Board, as an exception, remain in office for the remainder of their term of office as members of the Supervisory Board of the entity in its new legal form only if the Supervisory Board in the entity in its new legal form is formed in the same way and has the same composition. This applies on the condition that the Supervisory Board of the entity in its new legal form does not only consist of the same number of members and the same persons, but is also constituted in accordance with the same co-determination provisions. This prerequisite is not fulfilled in the case of the change of the legal form of Fresenius SE into a partnership limited by shares. The co-determination in the Supervisory Board of Fresenius SE is governed by the SE Participation Act and the agreement regarding the participation of employees in Fresenius SE of July 13, 2007. Upon the change of the legal form taking effect, the co-determination in the Supervisory Board of Fresenius SE & Co. KGaA would, in principle, be governed by the provisions of the German Co-Determination Act. Upon the planned cross-border merger taking effect (see in this respect Section 9), the co-determination in the Supervisory Board of Fresenius SE & Co. KGaA will be governed by the provisions of the German Act on Employee Co-Determination in case of Cross-Border Mergers (MgVG). As, therefore, the applicable co-determination provisions will change in any event, the applicability of sec. 203 sentence 1 German Conversion Act, which would lead to the continuity of the Supervisory Board mandates, can be excluded in this case.

Since sec. 203 sentence 1 German Conversion Act is not applicable, the members of the Supervisory Board of Fresenius SE & Co. KGaA will have to be newly appointed. Item 9 of the agenda of the Ordinary General Meeting of the Company to be held on May 12, 2010 therefore provides for a new election of the shareholder representatives for the time as of the taking of effect of the change of the legal form. The employee representatives in the KGaA, as opposed to the SE, are not appointed by the General Meeting. Rather, the employee representatives are elected in an election procedure pursuant to the provisions of the MgVG (in case of employee representatives from other Member States of the EU or states party to the EEA Agreement as supplemented by the provisions applicable under the law of the respective Member State or party state). As such procedure requires a certain amount of time, the employee representatives in the Supervisory Board of Fresenius SE & Co. KGaA are initially to be appointed by the court, to the extent that the procedure has not been concluded at such time.

In case of a change of the legal form of a legal entity into a partnership limited by shares, it is mandatory to initiate a so-called status proceeding (*Statusverfahren*). For this purpose, the General Partner must announce on which statutory provisions the composition of the Supervisory Board of Fresenius SE & Co. KGaA should be based in its opinion (sec. 197 sentence 3 German Conversion Act in conjunction with sec. 31 para. 3 sentence 1 German Stock Corporation Act). If no motion is made to the competent court pursuant to sec. 98 para. 2 German Stock Corporation Act by one of the petitioners legitimated under sec. 98 para. 1 German Stock Corporation Act within one month after the announcement, the composition of the new Supervisory Board shall be based on the provisions stated in the announcement (sec. 197 sentence 3 German Conversion Act in conjunction with secs. 31 para. 3 sentence 2, 97 para. 2 sentence 1 German Stock Corporation Act). If a motion is made to the competent court pursuant to sec. 98 German Stock Corporation Act within the one-month period, such court will decide on the composition of the Supervisory Board. If the outcome of the status proceeding is that the composition of the Supervisory Board is to be based on the provisions deemed applicable by the incorporators (i.e., in this case, the General Partner), the members of the Supervisory Board of Fresenius SE & Co. KGaA newly appointed on the occasion of the change of the legal form may take office (sec. 197 sentence 3 German Conversion Act in conjunction with sec. 31 para. 3 sentence 3 German Stock Corporation Act). Otherwise, their office would terminate at the end of the first General Meeting convened after the expiry of a period of one month following the announcement, and at the latest six months after the expiry of such period (sec. 197 sentence 3 German Conversion Act in conjunction with secs 31 para. 3 sentence 2, 97 para. 2 sentence 3 German Stock Corporation Act). If the competent court pursuant to sec. 98 German Stock Corporation Act decides on the composition, the time period of six months begins upon the court decision taking effect (sec. 197 sentence 3 German Conversion Act in conjunction with secs. 31 para. 3 sentence 2, 98 para. 2 sentence 3 German Stock Corporation Act). Should the office of the members of the Supervisory Board terminate as a result of the status proceeding, a new election would be required.

4.5 Reasons for the Change of the Legal Form and Alternatives

The legal and financial reasons for the change of the legal form are explained in Section 3.2. The Management Board extensively considered possible alternatives to the proposed measures in advance of the change of the legal form. After careful consideration of the arguments for and against, it has come to the conclusion that there is no alternative to the proposed measure which would take account of the interests of the Company and its shareholders to the same extent. In detail:

- **No implementation of the transaction:** It was considered desisting from the transaction altogether without an alternative. The Company would then, however, not be able to achieve the goals pursued with the transaction (see in this respect in particular

Sections 3.1.3 and 3.2). The Company would thereby lose the opportunity to unify its share classes and thereby attain a more attractive share structure. By way of the transaction, the liquidity of the Fresenius share is to be increased. The free float will no longer be split between preference shares and ordinary shares as is the case presently, but will rather be consolidated in a single share class. The consolidated capital structure is also expected to have a positive effect on the weighting in the DAX and facilitate potential future capital measures and thus the further development of the Business. Currently, only the preference shares of the Company are included in the DAX. After the conclusion of the transaction, the inclusion of all (ordinary) shares of the Company can be expected. These results, which are important to the Company and its shareholders, could not be obtained in case of desisting from the transaction without an alternative. Therefore, the option to desist from the entire transaction is no viable alternative

- **Conversion of Preference Shares into Ordinary Shares without a Change of the Legal Form:** It would be possible to implement the conversion of all preference shares into ordinary shares and the corresponding amendments of the articles of association without the conversion of the Company into a partnership limited by shares. This would have the effect that the Else Kröner-Fresenius-Foundation, due to the increase in the number of voting ordinary shares as a result of the conversion, would lose its voting majority at the General Meeting of the Company. It would then no longer be in a position to appoint the Supervisory Board of the Company and thereby indirectly influence the appointment of the Management Board of the Company. For this reason, the Else Kröner-Fresenius-Foundation indicated that it would not be prepared to consent to such an isolated unification of the share classes. This theoretically available alternative therefore was in fact at no time available because the necessary majority at the General Meeting would not have been obtainable.

Aside from these alternatives, the Management Board has also considered alternative ways to reach the proposed target structure. In this respect, too, no preferable alternative has been available. In detail:

- **Merger with a KGaA Founded for this Purpose by the Else Kröner-Fresenius-Foundation:** It would have been possible that instead of a change of the legal form, a merger of the Company with a KGaA, founded for that purpose by the Else Kröner-Fresenius-Foundation, the articles of association of which would provide merely for ordinary shares and the General Partner of which would be 100% owned by the Foundation, would be proposed to the General Meeting (sec. 2 para. 1 no. 1 German Conversion Act). In the course of this merger, the shareholders of the Company would have become shareholders of the acquiring KGaA, so that ultimately a similar result would have been achieved as with the proposed change of the legal form into a partnership limited by shares. However, a merger would be significantly more complex. The

Company would, for example, have had to undergo a valuation, unlike in the case of a change of the legal form, in order to ascertain an adequate merger value ratio in respect of the acquiring KGaA. In addition, the result thus ascertained would have had to be audited by an independent merger auditor. Both measures would – in addition to the increased costs – have rendered the entire transaction considerably more complicated. These disadvantages, compared to the transaction now planned, would have brought about no commensurate advantages for the Company or its shareholders. For this reason this alternative has also been rejected.

- **Prior Voluntary Exchange Offer and Subsequent Merger with a KGaA Founded for this Purpose by the Else Kröner-Fresenius-Foundation:** It would also have been conceivable that a KGaA established by the Else Kröner-Fresenius-Foundation, the articles of association of which only provide for ordinary shares and the General Partner of which would be 100% owned by the Foundation, could have submitted an exchange offer to the shareholders of Fresenius SE pursuant to the provisions of the German Securities Acquisition and Takeover Act. Such exchange offer would have aimed at exchanging the ordinary shares and the preference shares in Fresenius SE in each case in the proportion of 1 : 1 into ordinary shares of the newly established KGaA. However, such exchange offer would have had the disadvantage that it would presumably not have been accepted by all shareholders of Fresenius SE. As the shares of the newly established KGaA would have had to be admitted to stock exchange trading, this would have led to the existence of two listed companies, Fresenius SE and the newly established KGaA, concerning the same business. In order to remedy such situation, a merger of Fresenius SE into the newly established KGaA would have been necessary. Such course of action would, thus, have required significant additional work and expenses compared to the proposed transaction. Therefore, a voluntary exchange offer in combination with a subsequent merger does not constitute a preferable alternative.

5. Operative, Financial, Accounting and Tax Effects

5.1 Operative Effects

Neither the change of the legal form into a partnership limited by shares nor the related conversion of preference shares into ordinary shares will have any effects on the business of Fresenius. Fresenius SE & Co. KGaA will also be a holding company; the relationship to the operative subsidiaries will not change as a result of the change of the legal form. The effects of the change of the legal form are exclusively limited to the change of the capital structure and the legal form and do not affect the operative business of the Company. The other anticipated financial effects, in particular the facilitating of potential future capital measures, are described in detail in Sections 3.1.3 and 3.2.

5.2 Financial and Accounting Effects

5.2.1 Change of the Legal Form

The change of the legal form of Fresenius SE into a partnership limited by shares (KGaA) does not affect the equity capital of the Company. This applies, in particular, to the subscribed capital and the capital and profit reserves.

Neither a closing financial statement nor an opening financial statement is required for the implementation of the change of the legal form. Due to the continuation of book values, the change of the legal form is neutral as far as the Company's results are concerned. The expenses incurred due to the change of the legal form in the amount of approx. Euro 7 mn. (cf. Section 3.5) are to be entered as valid expenses. The change of the legal form cannot be backdated to any date earlier than the day of the registration in the commercial register.

After the change of the legal form, the shareholders who include their shareholding in the Company in their balance sheets will continue to use the same value for their shareholding in Fresenius SE & Co. KGaA.

5.2.2 Conversion of Preference Shares into Ordinary Shares

Neither the preference shareholders nor the ordinary shareholders must make additional payments for the conversion of preference shares into ordinary shares in connection with the change of the legal form. All preference shares will be converted into ordinary shares in the proportion of 1 : 1. The amount of the subscribed capital of Fresenius SE will not be affected by the conversion; the total number of shares issued will remain unchanged.

5.3 Tax Effects for the Company

5.3.1 Change of the Legal Form

Income Taxes

Due to the absence of a transfer of assets, the change of the legal form does not result in a realization of profits for the Company; therefore, tax neutrality is ensured.

Since, in the course of the change of the legal form, the existing shareholders of Fresenius SE become limited shareholders of Fresenius SE & Co. KGaA and do not take the position of a General Partner, their shareholding will not be treated differently for tax purposes. Like the SE, the partnership limited by shares is a corporation for tax purposes.

Transaction Taxes

The change of the legal form of Fresenius SE into a partnership limited by shares does not involve a transfer of assets and is therefore not subject to turnover tax.

Since there is no change of legal entity, the change of the legal form does not trigger any property acquisition tax.

5.3.2 Conversion of Preference Shares into Ordinary Shares

In the case of Fresenius SE, the conversion of preference shares into ordinary shares is income tax neutral.

5.4 Tax Effects for the Shareholders

The following description of the tax effects for the shareholders resulting from the change of the legal form and the related conversion of preference shares into ordinary shares constitutes only an overview and does not take into account the individual situation of each individual shareholder. Moreover, the description only deals with the tax situation under German law. Tax implications for shareholders under foreign tax laws and the applicable double taxation treaties will not be explained. The following description does not replace personal tax advice given to shareholders taking into account their individual situation. All shareholders are advised to consult their tax advisers. This applies in particular to all shareholders resident abroad or subject to foreign tax legislation.

5.4.1 Change of the Legal Form

For shareholders with unlimited tax liability in Germany, the change of the legal form of Fresenius SE into a partnership limited by shares does, as such, not constitute a sales transaction so that no taxable profit is realized at the level of the shareholders.

5.4.2 Conversion of Preference Shares into Ordinary Shares

The fiscal authorities hold the view that the conversion of preference shares into ordinary shares only results in the modification of the existing participation rights of the shareholders. In particular, the conversion of preference shares into ordinary shares is not to be considered as an exchange, and is therefore neither deemed to be a sale of preference shares nor a purchase of ordinary shares.

The sale of preference shares which were acquired prior to January 1, 2009 and are held in private property would, in any event, be taxable if such sale were to occur within one year of purchase (private disposal). However, such period will already have expired at the time of the conversion, which means that a tax liability for a private disposal can be excluded. As the fiscal authorities do not consider the conversion of preference shares into ordinary shares as an exchange, the conversion of the preference shares cannot be deemed to constitute an acquisition due to which the ordinary shares would become subject to the provisions applicable to shares acquired as of January 1, 2009.

In the case of preference shares which were acquired prior to January 1, 2009 and are held in private property, an exchange of the shares could trigger a tax liability only if the shareholder, at any time during the last five years preceding the transfer, directly or indirectly held at least 1% of the capital of the Company (in the case of an acquisition without consideration, the holding time and the proportion of the shareholding of a legal predecessor would have to be taken into account). As no exchange is deemed to exist in such cases, the conversion does, again, not result in any tax liability.

In the case of preference shares which were acquired on or after January 1, 2009, a profit from the sale of shares held in private property would be generally taxable as of that date and not only in the event of a sale within one year of purchase. In the view of the fiscal authorities, the conversion of preference shares into ordinary shares merely constitutes a modification of the existing participation rights of the shareholders and not an exchange of the shares. Therefore, even under the new law, the conversion does not constitute a sale.

In the case of preference shares held as business property, the conversion into ordinary shares does not constitute a taxable transaction either, since such conversion is not deemed to be an exchange transaction.

6. Description of the Conversion of Preference Shares into Ordinary Shares

6.1 Consolidation of the Classes of Shares

6.1.1 Cancellation of the Preferential Dividend

The proposed resolution of the Management Board and the Supervisory Board provides that all preference shareholders of the Company will receive voting ordinary shares of the entity in its new legal form in exchange for their preference shares in the proportion of 1 : 1. The conversion of all preference shares into ordinary shares is part of the conversion resolution which will be submitted to the General Meeting on May 12, 2010 for adoption. The passing of a separate resolution on the conversion of the preference shares into ordinary shares is neither planned nor necessary.

The conversion of the preference shares into ordinary shares will be implemented by cancellation of the preference attached to the shares by providing only voting ordinary shares in the articles of association of the entity in its new legal form. The preference shareholders will, in the course of the change of the legal form, receive ordinary shares in Fresenius SE & Co. KGaA without any action or any declaration on their part being required. In particular, no additional payment has to be made by the preference shareholders for obtaining the voting right.

The technical details of the conversion of the preference shares into ordinary shares are described in Section 8.1.

6.1.2 Effects on the Shareholders

Effects on the Ordinary Shareholders

As a result of the complete conversion of the existing preference shares into ordinary shares, there will be only one class of shares remaining, which means that the number of voting ordinary shares will double. As far as the ordinary shareholders are concerned this causes a corresponding dilution of their voting rights. For this reason, it is intended that the resolution of the General Meeting on the conversion, which requires a majority of at least three quarters of the votes cast, is at the same time a special resolution of the ordinary shareholders in accordance with Art. 60 SE Regulation.

Effects on the Preference Shareholders

The particular rights of the preference shareholders will be affected by the consolidation of the classes of shares in the context of the change of the legal form insofar as the preference attached to their shares will be canceled. For this reason, a special resolution of the preference shareholders is required for the change of the legal form pursuant to Art. 60 para. 1 SE

Regulation. Such special resolution requires a majority of at least three quarters of the votes cast (Art. 60 para. 2 in conjunction with Art. 59 para. 1 SE Regulation, secs. 240 para. 1 sentence 1 German Conversion Act, 141 para. 3 sentence 2 German Stock Corporation Act). Such special resolution is to be adopted by a separate vote in the context of the Ordinary General Meeting of the Company to be held on May 12, 2010.

6.2 Amendment of the Employee Participation Programs

6.2.1 Subject Matter and Process of Amendment

Amendment of the Employee Participation Programs

In various employee participation programs (Stock Option Plans 1998, 2003 and 2008), the Company has issued stock options and convertible bonds (hereinafter both referred to as “Options”) to employees and members of the Management Board of the Company as well as to employees and members of the Management Board or the management of affiliates (hereinafter together referred to as “beneficiaries”), entitling them to subscribe ordinary shares and preference shares under certain prerequisites. According to the employee participation programs, it is intended that, where the prerequisites are met, Options on ordinary shares may be exercised only in congruity with the exercise of Options on preference shares. This means that an Option on an ordinary share can only be exercised if at the same time an Option on a preference share is exercised (and *vice versa*).

The articles of association of Fresenius SE & Co. KGaA only provide for voting ordinary shares. Thus, with the implementation of the conversion of all preference shares into ordinary shares in the context of the proposed change of the legal form, the employee participation programs are to be amended to the effect that all Options refer exclusively to the right to subscribe ordinary shares. The number of Options and the exercise price for the Options remain unchanged. The rights under the Options will remain unaffected by the change of an employment relationship of a beneficiary with Fresenius SE into an employment relationship with Fresenius SE & Co. KGaA or with Fresenius Management SE (presently bearing the corporate name Asion SE) which will be acceding to the Company as General Partner.

No. 6 of the draft conversion resolution provides that the Stock Option Plans 1998, 2003 and 2008 are to be amended to the effect that in the case of an exercise of any of the subscription rights still outstanding under the respective Stock Option Plan, such subscription rights are to be serviced with voting ordinary bearer shares. Since under the Stock Option Plan 2008 (as opposed to the Stock Option Plans 1998 and 2003) subscription rights may be issued also in the future, the draft conversion resolution provides for an additional amendment to the effect that the beneficiaries under the Stock Option Plan 2008, upon the change of the legal form taking effect, are exclusively granted subscription rights to voting ordinary bearer shares.

The employee participation programs also provide that the Management Board or – where the rights of the Management Board are concerned – the Supervisory Board may amend the programs at any given time. This also applies to the settlement of Options already issued to the extent that the economic value of the Options is not affected or a corresponding economic compensation is paid. An economic compensation only for the conversion into ordinary shares should not be necessary since the amendment of the Options in the context of the change of the legal form from non-voting preference shares to ordinary shares does not affect the value of the Options.

The conversion of the entire share capital into voting ordinary shares requires an adjustment of the success target of the Stock Option Plan 2003. Under the present regulations, the success target is deemed achieved if, prior to the conversion of the convertible bonds issued under the Stock Option Plan 2003, there was an increase of the joint average stock exchange price of ordinary shares and preference shares compared to the average stock exchange price of ordinary shares and preference shares on the day such convertible bonds were granted (“initial value”) that amounted to a minimum of 25% on at least one day. The initial value is determined based on the joint average stock exchange price of preference shares and ordinary shares during the last 30 days preceding the day on which the respective convertible bond has been granted. An average stock exchange price of ordinary shares and preference shares will cease to exist after the change of the legal form takes effect in the course of the conversion of the entire share capital into ordinary shares. This is taken into account by a modification of the success target of the Stock Option Plan 2003. Accordingly, the success target is deemed achieved if the price increase of 25% provided for in the Stock Option Plan 2003 is achieved by the fact that the sum of the following price increases amounts to at least 25%: (i) increase of the joint average stock exchange price of ordinary shares and preference shares from the day of the issuance until the day of the taking of effect of the change of the legal form; (ii) increase of the stock exchange price of the ordinary shares since the taking of effect of the change of the legal form. To the extent that the success target is or has already been achieved prior to the taking of effect of the change of the legal form, the success target is deemed achieved also after the change of the legal form. No. 6 of the draft conversion resolution provides for the corresponding adjustment.

Since, under the Stock Option Plan 2008, subscription rights may also be issued in the future, the draft conversion resolution provides for two further amendments which are required due to the organic structure of Fresenius SE & Co. KGaA: On the one hand, the circle of beneficiaries will be amended so that, as of the change of the legal form taking effect, instead of the members of the then no longer existing Management Board of the Company, the members of the Management Board of the General Partner will be entitled. It is intended that the members of the Management Board of the General Partner (unless the Supervisory Board of the General Partner is competent) are to be identical with the current members of the Management Board of

Fresenius SE. On the other hand, upon the change of the legal form taking effect, the General Partner (with respect to subscription rights for executive staff members) or its Supervisory Board (with respect to subscription rights for members of the Management Board of the General Partner) is authorized to grant subscription rights to voting ordinary bearer shares, to the extent that the authorization of the Management Board (with respect to subscription rights for executive staff members) or the Supervisory Board (with respect to subscription rights for members of the Management Board) existing under the Stock Option Plan for the granting of subscription rights has not yet been used at the time of the change of the legal form taking effect.

Amendment of the Conditional Capitals

The conditional capitals (Art. 4 paras. 6, 7 and 8 of the statutes of Fresenius SE), which were established to secure servicing of the subscription or conversion rights under the Stock Option Plans 1998, 2003 and 2008, shall continue to exist correspondingly in the proposed articles of association of Fresenius SE & Co. KGaA. Given the conversion of the entire share capital into ordinary shares in the context of the change of the legal form of Fresenius SE into Fresenius SE & Co. KGaA, the conditional capitals will be amended in particular to the effect that the conditional capitals will be exclusively directed at the issuance of voting ordinary bearer shares. The conditional capitals will no longer be aimed at the issuance of ordinary shares and preference shares in an amount of 50% each. The total volume of the conditional capitals remains unchanged. The amounts of the conditional capitals provided for in the proposed articles of association of Fresenius SE & Co. KGaA (now in Art. 4 paras. 9, 10 and 11) result from the addition of the amounts previously determined for ordinary shares and preference shares.

The complete conversion of the conditional capitals into ordinary shares leads, in case of their utilization, to an increase in the number of ordinary shares. Since currently only half of the exercised Options are serviced with ordinary shares, the dilution effect on the ordinary shareholders in connection with the exercise of Options will in future be more substantial. The rights of the ordinary shareholders will be preserved by the fact that the consent to the change of the legal form is at the same time qualified as a special resolution pursuant to Art. 60 SE Regulation.

Creation of Authorized Capitals

In addition to the conditional capitals, the proposed articles of association of the entity in its new legal form provide in Art. 4 paras. 6 to 8 three authorized capitals to be newly created which are exclusively intended to service Options under the existing employee participation programs. They are designed as an alternative to the conditional capitals. To the extent that the Options are

serviced under the conditional capitals, the authorized capitals to be newly created shall be of no relevance.

The new creation of the authorized capitals provided for in Art. 4 paras. 6 to 8 of the proposed articles of association of Fresenius SE & Co. KGaA is to be effected as a mere precautionary measure in light of the change of sec. 193 para. 2 no. 4 German Stock Corporation Act by the German Act on the Appropriateness of Executive Board Compensation (VorstAG) of July 31, 2009. Sec. 193 para. 2 no. 4 German Stock Corporation Act now provides that the vesting period prior to the first exercise of stock options must amount to four (instead of previously two) years. The provision also applies to conversion rights and is to be applied to resolutions passed in general meetings convened after August 5, 2009. The existing employee participation programs provide, in accordance with the former legal situation, vesting periods of less than four years, which means that a new employee participation program in such form could no longer be adopted by the General Meeting. Since in the course of the change of the legal form of Fresenius SE into a partnership limited by shares the articles of association have to be newly adopted, it cannot be excluded altogether that sec. 193 para. 2 no. 4 German Stock Corporation Act in the version of the German Act on the Appropriateness of Executive Board Compensation will apply to the conditional capitals amended in the context of the conversion of all preference shares into ordinary shares. This would mean that although the employee participation programs would continue to be in force, conditional capitals for servicing the stock options and convertible bonds would no longer be available, since they could not be incorporated in the new articles of association with the present conditions. If interpreted correctly, sec. 193 para. 2 no. 4 German Stock Corporation Act, in the version of the German Act on the Appropriateness of Executive Board Compensation, cannot be applicable to the inclusion of the existing conditional capitals in the articles of association of the entity in its new legal form – irrespective of the necessary amendments in the context of the conversion of preference shares into ordinary shares. Firstly, in the present case there is merely a continuation of existing conditional capitals, the total volume of which remains unchanged. Solely an adjustment to the conversion of the entire share capital into ordinary shares takes place. Secondly, with the German Act on the Appropriateness of Executive Board Compensation, the legislator precisely did not intend to intervene in existing employee participation programs. Such goal would be thwarted if, while the employee participation programs were continuing, the conditional capitals adopted for such programs would cease to exist. This applies both to the issue of new stock options under the current Stock Option Plan 2008 as well as – and even more so – to the servicing of Options already issued under this or another employee participation program which is still running. In addition, it has to be taken into account that the holders of Options already issued are to be granted, pursuant to sec. 23 German Conversion Act, equivalent rights in the entity in its new legal form. This also requires that the existing conditional capitals can be included in the articles of association of the entity in its new legal form. Correspondingly, it can be assumed that the conditional capitals will

be validly included in the articles of association of Fresenius SE & Co. KGaA. The new creation of Authorized Capitals III to V is implemented as a mere precautionary measure.

Within the framework of the Authorized Capital III, the General Partner shall be authorized, in the period until May 11, 2015, with the approval of the Supervisory Board, to increase the share capital of the Company by up to Euro 1,313,100.00 through a single or multiple issuance of new ordinary bearer shares against cash contributions. The General Partner may only make use of the Authorized Capital III to the extent that pursuant to the Stock Option Plan in accordance with the resolution of the General Meeting of Fresenius AG of June 18, 1998 and taking into account the amendment resolution of the General Meeting of December 4, 2006, required due to the new division of the share capital, as well as the conversion resolution of the General Meeting of May 12, 2010, subscription rights to ordinary bearer shares have been issued and that the holders of such subscription rights have made use of their exercise right and provided that the servicing of the subscription rights is not effected using conditional capital.

Within the framework of the Authorized Capital IV, the General Partner shall be authorized, in the period until May 11, 2015, with the approval of the Supervisory Board, to increase the share capital of the Company by up to Euro 4,298,442.00 through a single or multiple issuance of new ordinary bearer shares against cash contributions and/or contributions in kind. The General Partner may only make use of the Authorized Capital IV to the extent that pursuant to the Stock Option Plan in accordance with the resolution of the General Meeting of Fresenius AG of May 28, 2003 and taking into account the amendment resolution of the General Meeting of December 4, 2006, required due to the new division of the share capital, as well as the conversion resolution of the General Meeting of May 12, 2010, convertible bonds on ordinary bearer shares have been issued and that the holders of such convertible bonds have made use of their conversion right and provided that the servicing of the conversion rights is not effected using conditional capital.

Finally, within the framework of the Authorized Capital V, the General Partner is to be authorized, in the period until May 11, 2015, with the approval of the Supervisory Board, to increase the share capital of the Company by up to Euro 6,200,000.00 through a single or multiple issuance of new ordinary bearer shares against cash contributions. The General Partner may only make use of the Authorized Capital V to the extent that pursuant to the Stock Option Plan 2008 in accordance with the resolution of the General Meeting of May 21, 2008 and taking into account the conversion resolution of the General Meeting of May 12, 2010, subscription rights are issued and that the holders of such subscription rights make use of their exercise right and that the Company in order to satisfy such subscription rights does not grant own shares or exercise its right to pay a cash compensation and provided that the subscription rights are not satisfied by using conditional capital, with the proviso that for the granting and settlement of

subscription rights to members of the Management Board of the General Partner, its Supervisory Board shall be exclusively competent.

In respect of the Authorized Capitals III, IV and V, the number of shares will have to be increased in each case in the same proportion as the share capital. The shareholders' subscription right is excluded in each case. Due to the exclusion of the subscription right, the Management Board has prepared and submitted to the General Meeting a detailed separate report, which was published together with the invitation to the Ordinary General Meeting to be held on May 12, 2010. Reference is made to the content of such report.

6.2.2 Effects of the Amendments on the Shareholders

Currently, Options for ordinary shares and preference shares can only be exercised synchronously under the employee participation programs. Therefore, an Option for an ordinary share can only be exercised if, at the same time, an Option for a preference share is exercised (and *vice versa*). Due to the amendment of the employee participation programs, only ordinary shares will be issued upon the exercise of the Options after the change of the legal form has taken effect. Insofar as under the current terms of the employee participation programs one ordinary share and one preference share are issued, two ordinary shares will be issued after the effectiveness of the change of the legal form. This entails an additional – though minor – dilution effect for the voting rights of the ordinary shareholders. This dilution effect is, legally considered, immanent to the creation of conditional capital because the law does not provide for subscription rights of the shareholders. Furthermore, it is a consequential result of the new capital structure which only provides for ordinary shares. This dilution is justified in the interests of the Company. The employee participation programs are each based on authorization resolutions of the General Meeting and are within the scope permitted by law. They serve, to a reasonable extent, as motivation of the beneficiaries under the employee participation programs.

6.3 Amendment of the Authorized Capitals

The present statutes of Fresenius SE contain in Art. 4 para. 4 and in Art. 4 para. 5 the Authorized Capitals I and II, which authorize the Management Board, with the approval of the Supervisory Board, to increase the share capital in the amount of up to Euro 12,800,000.00 through a single or multiple issuance of new ordinary bearer shares and/or non-voting preference shares against cash contributions (Authorized Capital I) and/or in an amount of up to Euro 6,400,000.00 through a single or multiple issuance of new ordinary bearer shares and/or non-voting preference shares against cash contributions and/or contributions in kind (Authorized Capital II).

Against the background of the intended conversion of all preference shares into ordinary shares such authorized capitals, to the extent that they relate to the issuance of non-voting preference shares, are not appropriate for the future. The Authorized Capitals I and II shall thus be amended

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in the articles of association of the entity in its new legal form to the effect that the General Partner which in this respect replaces the Management Board is only authorized to issue new ordinary bearer shares. The amount of the Authorized Capitals I and II remains unchanged. Also, the term of the Authorized Capitals I and II and the options for the exclusion of the subscription rights of the shareholders provided thereunder shall remain unchanged.

The Management Board has explained the amendment of the Authorized Capitals I and II in a detailed separate report to the General Meeting, which was published together with the invitation to the Ordinary General Meeting to be held on May 12, 2010. Reference is made to the content of such report.

7. The Future Participation of the Shareholders in Fresenius SE & Co. KGaA

Below follows a description of the future participation of the shareholders in Fresenius SE & Co. KGaA. For this purpose the material provisions of the law and of the statutes which currently apply to Fresenius SE will be compared to those which will govern the future Fresenius SE & Co. KGaA. The discussion will especially focus on the shareholders' rights and on corporate governance. Where the legal bases for an SE are generally discussed in the following, this will relate to an SE with its registered office in Germany.

7.1 General Description of the Legal Form of a “Partnership Limited by Shares” (KGaA)

7.1.1 The KGaA as a Mixed Form under Corporate Law

The KGaA is a mixed form under corporate law that has elements both of a partnership and of a corporation. The KGaA bears similarities to the limited partnership on the one hand and, on the other hand, to the stock corporation. Like a stock corporation and an SE, the KGaA is a corporation with a share capital divided up into shares. Therefore, as in the case of a stock corporation and an SE, the KGaA is suitable for a broad circle of shareholders and allows shareholders' rights to be handled simply. The KGaA is the only legal form under German law apart from the stock corporation with shares that can be traded at a stock exchange. As in a limited partnership, the KGaA has two different groups of shareholders, on the one hand the general partner(s) and, on the other hand, the (limited) shareholders.

7.1.2 The Corporate Bodies of the KGaA

The corporate bodies of the KGaA required by mandatory law are the general partner(s), the supervisory board and the general meeting.

The KGaA can have one or several general partners (*Komplementäre*). These general partners manage the business of the KGaA. They attain their position as a corporate body already through their position as shareholders; they are therefore a so-called “born corporate body”. By contrast, the management board of a stock corporation or a two-tier SE is appointed by the supervisory board (“chosen corporate body”). The supervisory board of a KGaA has, on the contrary, no influence on the appointment of the general partner, and the “removal from office” of a general partner is also possible only under very narrow conditions and only by court decision. The general partners can make a special contribution to the company and thereby participate in the share capital of the KGaA, but such participation is not compulsory. The general partners' liability to third parties for the liabilities of the KGaA is personal and unlimited. If the general partner is a legal entity with limited liability, the general partner's liability for the liabilities of the KGaA is limited to its own assets in accordance with the legal provisions applicable to it.

The supervisory board of the KGaA essentially resembles the supervisory board of a stock corporation or a two-tier SE. Like the supervisory board of a stock corporation or of a two-tier SE, the supervisory board of the KGaA is under an obligation to supervise the management. However, the supervisory board can generally issue neither rules of procedure for the management nor a list of management measures requiring its approval. The supervisory board is elected by the limited shareholders in the general meeting. If a general partner holds shares in the KGaA, it does not have the right to vote in elections for the supervisory board at the general meeting.

The general meeting is the corporate body through which the limited shareholders adopt resolutions. As opposed to the situation of a stock corporation or an SE, the general meeting of the KGaA also resolves on the formal approval of the annual financial statements (with the approval of the general partner). The internal procedure at the general meeting corresponds to that at the general meeting of a stock corporation or an SE. Resolutions of the general meeting to amend the articles of association and other resolutions regarding fundamental issues of the company always require the general partner's consent (effectively giving the general partner a veto right).

7.1.3 Position of the Members of the Different Groups of Partners/Shareholders

The members of the different groups of partners/shareholders, i.e. the group of the limited shareholders on the one hand and, on the other hand, the group of the general partners, have different legal positions within the partnership limited by shares due to the structure of the KGaA. This especially concerns the possibility to exercise influence on the company.

The limited shareholders have an influence through the exercise of voting rights in the general meeting. However, as opposed to the situation in case of a stock corporation or an SE, the statutory model provides for the general partners of a KGaA to have the right to veto resolutions regarding essential matters so that, on the whole, the influence on the company which can be exercised by the entirety of the limited shareholders through the general meeting is less than in the case of a stock corporation or an SE. As in the case of a stock corporation or an SE, the members of the supervisory board who are not employee representatives are elected by the general meeting. As, however, the supervisory board of a KGaA has lesser powers than the supervisory board of a stock corporation or an SE, the indirect influence of the limited shareholders on the company through the supervisory board is, in the general case envisaged by the law, also smaller than it is in a stock corporation or an SE.

The position of the group of general partners is structurally stronger than the limited shareholders' position. This is due to the management power of the general partners, the existing right to veto essential resolutions of the general meeting, and the general partners' independence in relation to influence exercised by the entirety of the limited shareholders, which the statutory

model of the KGaA provides in view of the general partner's personal liability. This independent position of the general partners entails protection for the general partners such that they or the shareholders/partners behind them cannot be deprived against their will of their influence by later amendments of the articles of association. This applies in principle also in cases where the general partners or, as the case may be, the shareholders/partners behind them do not participate at all or participate only to a minor extent in the share capital of the KGaA.

Further details regarding the legal differences between a stock corporation or an SE on the one hand and, on the other hand, a KGaA are described below, first in a general form and then in the light of the structure proposed for Fresenius SE & Co. KGaA.

7.2 Comparison between the Essential Legal Bases for an SE and a KGaA

7.2.1 General Provisions

Share Capital/Features of the Shares

The share capital of a KGaA is expressed, as in the case of an SE, in Euro (secs. 6, 278 para. 3 German Stock Corporation Act and Art. 4 para. 1 SE Regulation). Whereas the share capital of an SE must be at least Euro 120,000 (Art. 4 para. 2 SE Regulation), the share capital of a KGaA must amount to at least Euro 50,000 (sec. 7 German Stock Corporation Act).

Like the shares of an SE, the shares of a KGaA can have different features. Because of the transmission provision in Art. 5 SE Regulation, an SE with a registered office in Germany is in principle governed by the same provisions that apply to a German KGaA. The shares can thus be issued either as par value shares or as no-par value shares. Both in the case of an SE and in the case of a KGaA, the shares can be bearer shares or registered shares. Registered shares can be subject to restrictions of transferability. Also the issuance of different classes of shares, in particular the issuance of preference shares, is possible both for an SE and for a KGaA.

Registered Office

The registered office of an SE is determined by its statutes (Art. 7 SE Regulation in conjunction with sec. 2 SEAG). The same applies for the KGaA (secs. 5, 278 para. 3 German Stock Corporation Act). According to Art. 7 sentence 1 SE Regulation, the registered office of an SE must be located within the (European) Community, in the same Member State as its head office. The registered office of a KGaA must be located in Germany (secs. 5, 278 para. 3 German Stock Corporation Act).

The registered office of an SE or a KGaA can be transferred only through an amendment of the statutes or articles of association (for the SE, see Art. 8 SE Regulation in conjunction with Art.

9 para. 1 c) (ii) SE Regulation, secs. 179 et seq. German Stock Corporation Act; for the KGaA, see secs. 179 et seq., 45, 278 para. 3 German Stock Corporation Act). The SE can transfer its registered office to another Member State within the EU without a dissolution of the SE. However, sec. 12 SEAG requires the shareholders of an SE having its registered office in Germany to be offered reasonable cash compensation in the event of a transfer of its registered office to a location abroad. This provision is modeled on secs. 29, 207 of the German Conversion Act (“UmwG”), which contain comparable provisions in case of a merger or a change of the legal form. By contrast, a resolution of the general meeting of a KGaA to transfer the registered office abroad in principle constitutes a resolution for the dissolution of the company pursuant to secs. 131 para. 1 no. 2 German Commercial Code, 289 para. 1 German Stock Corporation Act.

Notification Requirements

The provisions in secs. 21 et seq. of the German Securities Trading Act (“WpHG”) are applicable both to a listed SE and to a listed KGaA with respect to duties to report voting rights. This includes the application of sec. 28 WpHG, according to which shareholder rights are suspended in the case of a violation of notification duties.

7.2.2 Formation of the Company

As the formation of an SE is in principle governed by the law of the state in which the SE has its registered office (Art. 15 SE Regulation) and an SE is to be regarded upon its formation as a stock corporation (cf. Art. 3 SE Regulation), the formation provisions applicable to German stock corporations also apply, in principle, to the formation of an SE having its registered office in Germany. The formation provisions (adoption of the statutes, special benefits, formation expenses, incorporators, formation of the company, appointment of the supervisory board, of the management board and of the auditor, formation report, formation audit, application for the registration of the company, examination of the application by the court as well as entry in the commercial register) are contained in secs. 23 et seq. German Stock Corporation Act. A change of the legal form is in addition governed by secs. 190 et seq. of the German Conversion Act.

Except where otherwise provided for in secs. 279 to 283 German Stock Corporation Act, the formation provisions applicable to a stock corporation also apply through the reference in sec. 278 para. 3 German Stock Corporation Act to the formation of a KGaA. The specific formation provisions for a KGaA take account of the fact that at least one general partner is involved in the formation of a KGaA. The change of the legal form is also governed by secs. 190 et seq. German Conversion Act. In the event of a conversion of an SE into a KGaA, the incorporators are the general partners of the KGaA.

As far as the raising of capital is concerned, the provisions applicable to a stock corporation apply also to the KGaA by virtue of the reference in sec. 278 para. 3 German Stock Corporation Act. The same applies for the SE through the transmission provision in Art. 5 SE Regulation.

7.2.3 Legal Relationships of the Company and the Shareholders

The German Stock Corporation Act requires the equal treatment of shareholders under equal circumstances (sec. 53a German Stock Corporation Act). By virtue of the reference in sec. 278 para. 3 German Stock Corporation Act, this principle also applies to the KGaA. The same is true for the SE by virtue of the comprehensive reference provision in Art. 9 para. 1 lit c) (ii) SE Regulation.

A major difference between an SE and a KGaA is that the general partners are personally liable without any limitation to third parties for the liabilities of the KGaA. If a general partner is a legal entity with limited liability, the general partner is liable for the liabilities of the KGaA only with its own assets in accordance with the provisions of the law applicable to it.

Pursuant to Art. 5 SE Regulation, the capital maintenance provisions of the German Stock Corporation Act also apply to the SE. As a consequence, sec. 56 German Stock Corporation Act prohibits the subscription of the company's own shares (treasury shares) and sec. 57 German Stock Corporation Act prohibits the repayment of contributions. Likewise, the provisions governing the utilization of the annual net profit and the setting aside of reserves (sec. 58 para. 1 to 3 German Stock Corporation Act) as well as the shareholders' entitlement to the distributable profit (sec. 58 para. 4 German Stock Corporation Act) also apply to the SE. Also, partial payments on account of the distributable profit are only permissible subject to strict requirements (Art. 5 SE Regulation in conjunction with sec. 59 German Stock Corporation Act). According to sec. 278 para. 3 German Stock Corporation Act, the above provisions apply also to the KGaA.

In case of an SE, the distribution of profits generally has to be made in accordance with the shares held by the shareholders, but the statutes may stipulate a different method of profit distribution. For a KGaA, the distribution of profits is governed by sec. 278 para. 2 German Stock Corporation Act in conjunction with sec. 168 para. 1 German Commercial Code, unless the articles of association provide for a different distribution of profits. As is the case with the statutes of Fresenius SE, the proposed articles of association for Fresenius SE & Co. KGaA provide that the General Meeting should decide on the appropriation of the distributable profit (see Section 7.3.3).

In accordance with the principle of capital maintenance, the acquisition of own shares by an SE or by a KGaA is admissible only under certain limited conditions (cf. Art. 5 SE Regulation in conjunction with secs. 71, 71a, 71b, 71c and 71d German Stock Corporation Act).

7.2.4 Organizational Constitution of the Company

In addition to the two-tier system (Art. 39 et seq. SE Regulation in conjunction with secs. 15 et seq. SEAG), the one-tier system with a single administrative body is also permissible for an SE (Art. 43 et seq. SE Regulation in conjunction with secs. 20 et seq. SEAG). The statutes of Fresenius SE provide for a two-tier system with a Management Board and a Supervisory Board. Although the KGaA also has a two-tier system, it does not consist of a management board and a supervisory board, but rather of general partners (secs. 278 para. 2, 283 German Stock Corporation Act, secs. 161 para. 2, 114, 115 German Commercial Code) and a supervisory board (secs. 95 et seq., 278 para. 3, 287 German Stock Corporation Act).

Managing Body

Management of the Company

The business of the company is managed in the case of an SE by its management board (Art. 39 para. 1 sentence 1 SE Regulation). As opposed to the SE, the KGaA has no management board. The general partners manage the business of the KGaA on their own responsibility (secs. 278 para. 2, 283 German Stock Corporation Act, secs. 161 para. 2, 114, 115 German Commercial Code). If the general partners are legal entities, they act through their management board or, as the case may be, their managing directors.

Size and Composition of the Managing Body

In an SE with a share capital in excess of Euro 3 mn., the management board consists of at least two persons (sec. 16 SEAG). Accordingly, the statutes of Fresenius SE provide for the Management Board to be composed of at least two persons.

In a KGaA, the general partners are required and authorized by law to manage the company because of their position as a so-called “born corporate body” (sec. 278 para. 2 German Stock Corporation Act, secs. 161 para. 2, 114, 115 German Commercial Code). The KGaA can have one or several general partners. A general partner of a KGaA can be a natural person, a partnership or a legal entity.

Management

Subject to stipulations to the contrary in the statutes and the rules of procedure, the principle of joint management applies to the SE. In addition, the principle applicable under German stock corporation law according to which differences of opinion within the management board cannot be decided by one or several management board members against the majority of the members of the management board, also applies (Art. 9 para. 1 lit. c) (ii) SE Regulation in conjunction

with sec. 77 para. 1 sentence 2 German Stock Corporation Act). However – as also provided for in the statutes of Fresenius SE – the chairman of the management board of an SE can be granted a veto right in respect of decisions of the management board. The exercising of the veto right has the consequence that the resolution is deemed to not have been passed.

In a KGaA with several managing general partners, each of them in principle has sole power of management (sec. 278 para. 2 German Stock Corporation Act, secs. 161 para. 2, 115 German Commercial Code). Joint management can be agreed on in the articles of association. In this case, every transaction requires the consent of all managing Partners (sec. 278 para. 2 German Stock Corporation Act, secs. 161 para. 2, 115 para. 2 German Commercial Code). Individual General Partners can be excluded from the management of the company (sec. 278 para. 2 German Stock Corporation Act, secs. 161 para. 2, 114 German Commercial Code). The power of management extends to all acts arising in the ordinary course of business (sec. 278 para. 2 German Stock Corporation Act, secs. 161 para. 2, 116 German Commercial Code). Exceptional transactions and actions affecting the fundamental situation of the company are not included. Unless otherwise provided for in the articles of association, exceptional transactions may be carried out only if all general partners, including a general partner excluded from management, consent and, in addition, the general meeting approves (sec. 278 para. 2 German Stock Corporation Act, sec. 116 para. 2 German Commercial Code). The bases of the company can be changed only through concurrent resolutions passed by the general partners and the general meeting. The allocation of management powers by law to the managing general partners and the limited shareholders can be changed through the articles of association. Thus, in particular the requirement that the general meeting must approve of exceptional transactions can be excluded.

Representation of the Company

In respect of the SE, there are no SE-specific provisions regarding representation; therefore the provisions of the German Stock Corporation Act and the stipulations in the statutes which are permissible under the German Stock Corporation Act are applicable by virtue of the comprehensive reference provision in Art. 9 para. 1 lit c) (ii) and (iii) SE Regulation. The SE is represented in court and out of court by the management board, however, subject to different provisions in the statutes, all members of the management board are authorized only jointly to represent the company (sec. 78 paras. 1 and 2 German Stock Corporation Act). In addition, the statutes can provide for individual members of the management board to be authorized alone or together with a holder of general power of attorney (*Prokurist*) to represent the company (sec. 78 para. 3 German Stock Corporation Act). According to the statutes of Fresenius SE, the Company is generally represented by two members of the Management Board or by one member of the Management Board together with a holder of general power of attorney.

The KGaA is represented in court and out of court by its general partners. Subject to different provisions in the articles of association, the KGaA is governed by the principle of individual representation (sec. 278 para. 2 German Stock Corporation Act, sec. 125 para. 1 German Commercial Code). Every general partner is therefore authorized to represent the company. The articles of association may derogate from this.

Appointment and Dismissal of the Managing Body/Term of Office

The members of the management board of an SE are appointed by the supervisory board for a period of time fixed in the statutes which must not exceed six years (Art. 46 para. 1 SE Regulation). Subject to any stipulations to the contrary in the statutes, reappointments are permissible (Art. 46 para. 2 SE Regulation). The statutes of Fresenius SE provide for an appointment of the members of the Management Board for a maximum of five years; reappointments are permissible. With regard to the dismissal of management board members, neither the SE Regulation nor the SEAG contains any stipulations. Because of the stipulation in the statutes of Fresenius SE and the comprehensive reference provision in Art. 9 para. 1 lit. c) (ii) SE Regulation to the national provisions applicable to stock corporations, the supervisory board can revoke the appointment of a management board member for good cause (cf. sec. 84 German Stock Corporation Act).

The general partners of the KGaA manage the company without any time limit from the time of its formation or, as the case may be, from the accession of the general partner through an appropriate amendment of the articles of association. The general partners can withdraw on the basis of legal provisions (sec. 289 German Stock Corporation Act, secs. 131 para. 3, 140 German Commercial Code) or be expelled on the basis of legal provisions (sec. 289 par 1 German Stock Corporation Act, secs. 161 para. 2, 140 German Commercial Code) or withdraw on the basis of stipulations in the articles of association (sec. 289 para 5 German Stock Corporation Act).

Principles for the Remuneration of the Managing Bodies, Prohibition of Competition, Granting of Loans to Members of the Managing Bodies

By virtue of the comprehensive reference provision in Art. 9 para. 1 lit c) (ii) SE Regulation, the provisions of the German Stock Corporation Act regarding the principles for the remuneration of the members of the management board, the prohibition of competition and the granting of loans to members of the management board (secs. 87 to 89 German Stock Corporation Act) are applicable to the SE.

The statutory provisions are based on the assumption that the general partners of the KGaA will be remunerated for their management activities through a profit participation. The law does, however, recognize the possibility to enter into agreements on remuneration for services (cf. sec. 288 para. 3 German Stock Corporation Act). These may also exclude a profit participation. Such

an arrangement regarding remuneration requires a corresponding provision in the articles of association. The prohibition of competition for the general partners is based upon sec. 284 German Stock Corporation Act. The granting of loans to general partners is based upon sec. 288 para. 2 German Stock Corporation Act, according to which the company must not grant a loan to a general partner if the conditions for endangering the capital bases of the company are fulfilled within the meaning of sec. 288 para. 1 sentence 2 German Stock Corporation Act.

Reports to the Supervisory Board

The reporting duties of the management board of an SE to the supervisory board are modeled after the reporting duties of the management board of a stock corporation. The management board of an SE must report to the supervisory board at least once every three months on the progress and foreseeable development of the SE's business (Art. 41 para. 1 SE Regulation). In addition to the regular information, the management board must promptly pass on to the supervisory board any information on events likely to have an appreciable effect on the SE (Art. 41 para. 2 SE Regulation). The supervisory board of an SE can request any information required for the exercise of control by the supervisory board (Art. 41 para. 3 SE Regulation). Also each member of the supervisory board can demand any information from the management board, however to be given only to the supervisory board (Art. 41 para. 3 SE Regulation in conjunction with sec. 18 SEAG). The supervisory board can undertake or arrange for any investigations necessary for the performance of its duties (Art. 41 para 4 SE Regulation). Each member of the supervisory board is entitled to examine all information submitted to the supervisory board (Art. 41 para 5 SE Regulation).

The general partners have the same reporting duties to the supervisory board of the KGaA as the management board of a stock corporation (cf. sec. 283 no. 4 German Stock Corporation Act). According to sec. 90 para. 1 German Stock Corporation Act, reports are to be made to the supervisory board on (i) intended business policy and other fundamental matters of corporate planning (in particular finance, investment and personnel planning), deviations of the actual development from targets reported earlier being discussed and reasons being given, (ii) the profitability of the company, in particular the return on equity, (iii) the course of business (in particular revenues) and the condition of the company, and (iv) transactions which may have a material impact on the profitability or liquidity of the company. If the company is a parent company, the report must also comprise subsidiaries and joint ventures (sec. 90 para. 2 German Stock Corporation Act). In addition, reports to the chairman of the supervisory board are to be made on the occurrence of other significant developments (sec. 90 para. 2 German Stock Corporation Act). Such another significant development can also be a business occurrence in an affiliated undertaking which becomes known to the general partner and can have a material impact on the situation of the company. The German Stock Corporation Act requires the reports to be submitted regularly. In addition, the supervisory board has the right at any time to demand a

report on the affairs of the company, on its business relationships with affiliated undertakings and on the circumstances concerning the business of such undertakings which may have a material impact on the condition of the company (sec. 90 para. 3 German Stock Corporation Act). Any individual member of the supervisory board may demand such a report which, however, is to be made only to the supervisory board. The reports must comply with the principles of diligent and accurate reporting. They are to be made in good time and generally in text form (sec. 90 para. 4 German Stock Corporation Act). Every member of the supervisory board has the right to take note of the reports (sec. 90 para. 5 sentence 1 German Stock Corporation Act).

Supervisory Board

Size and Composition of the Supervisory Board

The number of members of the supervisory board of an SE or, as the case may be, the stipulation according to which this number is to be determined is laid down in the statutes (Article 40 para. 3 SE Regulation). According to Art. 40 para. 3 sentence 2 SE Regulation in conjunction with sec. 17 para. 1 SEAG, the number of members must be divisible by three, and the supervisory board must be composed of at least three members with a maximum of 21 members. The number of employee representatives is determined primarily – also in the case of Fresenius SE – in an agreement on the participation of employees (sec. 21 para. 3 no. 1 SEBG). In the event of the formation of an SE by way of conversion, in respect of all components of employee participation, at least the same extent of participation must be granted that existed within the company which is to be converted into an SE. However, this refers only to the quality of co-determination, e.g. representation on a parity basis, but not to the absolute number of members on the supervisory board. Applying the principles set out above, the statutes of Fresenius SE provide for a Supervisory Board consisting of twelve members and composed on a parity basis of employee representatives and shareholder representatives.

The size and composition of the supervisory board of a KGaA is determined in principle by secs. 95, 96 German Stock Corporation Act because of the reference in sec. 278 para. 3 German Stock Corporation Act. Unless otherwise provided by the articles of association, the supervisory board consists of three members (sec. 95 sentence 3 German Stock Corporation Act). Any provision to the contrary in the articles of association must observe the maximum number of supervisory board members fixed in sec. 95 sentence 4 German Stock Corporation Act. Moreover, the number of supervisory board members must be divisible by three (sec. 95 sentence 3 German Stock Corporation Act). An exception applies where a KGaA is subject to parity co-determination in accordance with the German Co-Determination Act. The composition of the supervisory board of the KGaA depends on the applicable national co-determination law. Because of the planned cross-border merger of Calea Nederland N.V. into the Company, the co-

determination in the Supervisory Board of Fresenius SE & Co. KGaA will be governed by the German Act on Employee Co-Determination in Case of Cross-Border Mergers (“MgVG”). The effects of this on the composition of the Supervisory Board are described in Sections 4.3.9 and 9.2.2.

Status Proceeding Regarding the Composition of the Supervisory Board

By virtue of the comprehensive reference provision in Art. 9 para. 1 lit c) (ii) SE Regulation, the provisions of the Stock Corporation Act regarding the so-called status proceeding (*Statusverfahren*) apply to the SE. The status proceeding is conducted if it is disputed or uncertain whether the supervisory board is composed in accordance with the statutory provisions applicable to it (secs. 97, 98, 99 German Stock Corporation Act). In addition, the provision in sec. 17 para. 3 SEAG applies, stipulating that the SE works council is also entitled to initiate the status proceeding in court. By virtue of the reference in sec. 278 para. 3 German Stock Corporation Act, the provisions of the Stock Corporation Act dealing with the status proceeding also apply to the KGaA.

Personal Requirements for Supervisory Board Members

By virtue of the transmission provision in Art. 47 para. 1 SE Regulation, only natural persons of full legal capacity are eligible to be members of the supervisory board of an SE with its registered office in Germany (cf. sec. 100 para. 1 German Stock Corporation Act). Moreover, no person may be a member of the corporate body who pursuant to the law of the Member State where the SE’s registered office is situated may not serve on a management, supervisory or administrative body of a stock corporation governed by the law of such Member State or who, owing to a judicial or administrative decision rendered in a Member State, may not serve on a management, supervisory or administrative body of a stock corporation governed by the law of a Member State (Art. 47 para. 2 SE Regulation). Through the reference to sec. 100 para. 2 German Stock Corporation Act, congruity is achieved with the provision under German stock corporation law concerning the personal requirements for members of the supervisory board with regard to reasons for ineligibility (generally, not more than ten memberships in corporate bodies, legal representative of a controlled undertaking, no cross-holdings of membership positions, cf. sec. 100 para. 2 German Stock Corporation Act). Through the reference in sec. 278 para. 3 German Stock Corporation Act, these provisions of the German Stock Corporation Act apply also to the members of the supervisory board of a KGaA.

Appointment of the Supervisory Board

The members of the supervisory board of an SE are in principle appointed by the general meeting (Art. 40 para. 2 sentence 1 SE Regulation). This applies both for the shareholder representatives and for the employee representatives on the supervisory board. Whereas the

shareholder representatives are proposed to the general meeting by the supervisory board, the employee representatives are, under the statutory subsidiary regulation for the participation of employees in the SE, determined in accordance with the respective applicable national laws, taking into account the geographical distribution of the employees within the EU and the states party to the EEA Agreement. The agreement on the participation of the employees of Fresenius SE provides for the employee representatives on the supervisory board to be determined through an election within the SE works council. The general meeting is bound to the employee candidates thus designated (cf. sec. 36 para 4 SEBG, Art. 9 para. 1 of the statutes of Fresenius SE).

The members of the supervisory board of the KGaA are appointed in accordance with the provisions applicable to stock corporations (sec. 278 para. 3 German Stock Corporation Act). According to these provisions, the members of the supervisory board are elected by the general meeting unless the provisions of co-determination law provide otherwise (sec. 101 para. 1 German Stock Corporation Act). The conversion of Fresenius SE into a KGaA will not result in any change of the existing rules for the appointment of the shareholder representatives on the Supervisory Board. The appointment of the employee representatives will be determined for Fresenius SE & Co. KGaA by the German Act on Employee Co-Determination in Case of Cross-Border Mergers (“MgVG”) after the proposed cross-border merger becomes effective. The details are described in Sections 4.3.9 and 9.2.2.

Term of Office

The members of the supervisory board of an SE are appointed for a period of time which is laid down in the statutes and must not exceed six years (Art. 46 para. 1 SE Regulation). The statutes of Fresenius SE provide for an appointment of the Supervisory Board members for a term until the close of the General Meeting which resolves on the ratification of actions for the fourth financial year after the term of office commenced, not including the financial year in which the term of office commences, however for no longer than for a period of six years. Reappointments are permissible.

The term of office of a member of the supervisory board of a KGaA is determined by the provisions applicable to stock corporations (secs. 102, 278 para. 3 German Stock Corporation Act), according to which supervisory board members cannot be appointed for a period longer than up to the close of the general meeting which resolves on the ratification of actions for the fourth financial year after the term of office commenced, the financial year in which the term of office commences not counting for this purpose (sec. 102 para. 1 German Stock Corporation Act).

Dismissal

By virtue of the comprehensive reference provision in Art. 9 para. 1 lit c) (ii) SE Regulation, the provisions of the German Stock Corporation Act apply in principle to the dismissal of the members of the supervisory board in an SE. Subject to provisions in the statutes providing otherwise, supervisory board members that were elected by the general meeting without an obligation to follow the nomination of a candidate can be dismissed by the general meeting with a majority of at least three quarters of the votes cast (sec. 103 para. 1 German Stock Corporation Act). In addition, the court having jurisdiction can dismiss a member of the supervisory board at the request of the supervisory board provided that there is good cause for this. The supervisory board decides by simple majority whether to apply to the court for this. The employee representatives on the supervisory board of an SE can also be dismissed. For Fresenius SE, this is dealt with in the agreement on the participation of the employees of Fresenius SE. Under this agreement, the SE works council of Fresenius SE has the right to request the dismissal. The dismissal is effected by the General Meeting of Fresenius SE. Employee representatives on the supervisory board of an SE may also be dismissed by a court provided that the requirements under statutory law are met.

The dismissal of a member of the supervisory board of the KGaA is governed in principle by the German Stock Corporation Act (sec. 278 para. 3 German Stock Corporation Act). Also in the case of a co-determined KGaA, the dismissal of employee representatives on the supervisory board is possible. If the applicable co-determination law is the German Act on Employee Co-Determination in Case of Cross-Border Mergers (“MgVG”), which will apply to Fresenius SE & Co. KGaA because of the proposed cross-border merger, the provision in sec. 26 MgVG applies subject to an agreement on the participation of the employees. The persons or entities that are entitled to request the dismissal arise from sec. 26 para. 1 MgVG.

Appointment by the Court

The SE Regulation does not expressly stipulate whether a supervisory board member may be appointed by a competent court. However, by virtue of the comprehensive reference provision in Art. 9 para. 1 lit c) (ii) SE Regulation, the provisions of the German Stock Corporation Act apply. According to these provisions, upon a motion to this effect, the court must supplement the supervisory board to meet the number of members required to constitute a quorum (sec. 104 para. 1 sentence 1 German Stock Corporation Act), if the supervisory board comprises fewer members than this number. In urgent cases, the court must supplement the supervisory board on a respective motion even if the board still constitutes a quorum and prior to the expiry of the three-month period regularly required for supplementing the board because of an insufficiency of members (cf. sec. 104 para. 2 German Stock Corporation Act). In the case of a stock corporation, there always is such an urgent case if a supervisory board which is subject to co-

determination does not comprise all the members of which it must consist according to the applicable provisions of the law or the articles of association, i.e. if there is no parity (sec. 104 para. 3 German Stock Corporation Act). Such an urgent case can also be assumed in the case of an SE supervisory board composed on a parity basis, with the consequence that prior to the expiry of the three-month period an appointment by the court is also possible in cases where the supervisory board still constitutes a quorum, but is not complete. With regard to the SE, the supplementary provision in sec. 17 para. 3 SEAG applies, stipulating that the SE works council is also entitled to initiate the proceeding for the appointment by the court.

Through the reference in sec. 278 para. 3 German Stock Corporation Act, the provisions applicable to a stock corporation apply also to the KGaA and therefore there are no differences compared to the SE.

Incompatibility of the Membership on the Management and Supervisory Boards

No person may at the same time be a member of the management board and the supervisory board of an SE (Art. 9 para. 1 lit c) (ii) SE Regulation in conjunction with sec. 105 para. 1 German Stock Corporation Act). According to sec. 287 para. 3 German Stock Corporation Act, the general partners of a KGaA cannot be members of its supervisory board.

Internal Organization – Chairman/Deputy Chairman of the Supervisory Board

The chairman of the supervisory board of an SE is elected by the supervisory board, the majority of the votes of the members present and represented being required. In the case of a supervisory board subject to parity co-determination – as is the case of Fresenius SE – the chairman of the supervisory board must mandatorily be a shareholder representative (Art. 42 sentence 2 SE Regulation).

In a KGaA, the election of the chairman of the supervisory board is regulated in principle by the German Stock Corporation Act, subject to specific co-determination provisions (secs. 107 para. 1 sentence 1, 278 para. 3 German Stock Corporation Act). The German Act on Employee Co-Determination in Case of Cross-Border Mergers, which is applicable to Fresenius SE & Co. KGaA due to the planned cross-border merger, does not contain any provision regarding the election of the chairman of the supervisory board, so that in this case provisions of German stock corporation law apply.

Internal Organization – Voting Within the Supervisory Board

The supervisory board of an SE constitutes a quorum – subject to a different provision in the statutes or the SE Regulation – if at least half of its members are present or represented (Art. 50 para. 1 lit. a) SE Regulation). Decisions can be taken by a majority of the votes of the members

present or represented (Art. 15 para. 1 lit. b) SE Regulation). If the supervisory board is subject to parity co-determination, the chairman of the supervisory board has a casting vote in the event of a tie (Art. 50 para. 2 SE Regulation). The deputy chairman can also have the casting vote if he is a shareholder representative. The statutes of Fresenius SE contain a provision to this effect.

As a rule, the supervisory board of a KGaA constitutes – like the supervisory board of a stock corporation – a quorum if at least half of the members of which it must consist take part in voting; however the articles of association may deviate from this (secs. 108 para. 2 sentence 2, 278 para. 3 German Stock Corporation Act). Like the statutes of Fresenius SE, the articles of association of Fresenius SE & Co. KGaA provide for the resolutions of the Supervisory Board to require a majority of the votes cast. In the case of a KGaA, in principle the articles of association can also grant the chairman of the supervisory board a casting vote. Whereas in a KGaA subject to co-determination pursuant to the Co-Determination Act, a casting vote is granted to the chairman of the supervisory board subject to certain conditions, the German Act on Employee Co-Determination in Case of Cross-Border Mergers (“MgVG”) applicable here to Fresenius SE & Co. KGaA because of the cross-border merger contains no provision dealing with such a casting vote. As the MgVG is not exhaustive in this respect, a casting vote can be granted by the articles of association of the KGaA.

Convening Supervisory Board Meetings

Neither the SE Regulation nor the SEAG contains any provisions regarding the calling of supervisory board meetings. Therefore, by virtue of the comprehensive reference provision in Art. 9 para. 1 lit c) (ii) SE Regulation, the provisions applicable to a stock corporation apply, entitling every supervisory board member to request that the chairman of the supervisory board promptly convene a meeting of the supervisory board, provided that this member states the purpose and reasons for the request. If no meeting is held within a period of two weeks, the supervisory board member or the management board can convene a meeting of the supervisory board (cf. sec. 110 German Stock Corporation Act). In the case of listed companies, at least two supervisory board meetings must be held every calendar half-year. The provisions governing stock corporations also apply without any limitations to the KGaA (secs. 110, 278 para. 3 German Stock Corporation Act).

Responsibilities and Rights of the Supervisory Board

In an SE, the supervisory board supervises the management of the company by the management board (Art. 40 para. 1 sentence 1 SE Regulation). Pursuant to Art. 54 para. 2 SE Regulation in conjunction with sec. 111 para. 3 sentence 1 German Stock Corporation Act, it is also obliged to convene a general meeting if the interests of the company so require. Also in the KGaA, the supervisory board supervises the managing body, i.e. the general partners (secs. 111 para. 1, 278

para. 3 German Stock Corporation Act). Here, too, the supervisory board is obliged pursuant to sec. 111. para. 3 sentence 1 German Stock Corporation Act to convene a general meeting if the interests of the company so require. Neither in an SE nor in a KGaA may management powers be delegated to the supervisory board (cf. Art. 40 para. 1 sentence 2 SE Regulation and secs. 111 para 5, 278 para. 3 German Stock Corporation Act).

Art. 48 para. 1 sub-para. 1 SE Regulation requires the statutes of the SE to list the categories of transactions which require the approval of the supervisory board. This obligation to include a list of transactions requiring approval in the statutes does not, however, exclude the right of the supervisory board to list in its rules of procedure further categories of transactions that are also subject to its authorization (cf. Art. 48 para. 1 sub-para. 2 SE Regulation in conjunction with sec. 19 SEAG). For a KGaA, it is only possible to set out in the articles of association whether and, if so, what categories of transactions require the approval of the supervisory board. The supervisory board does not have the power to make further transactions subject to its approval.

Unlike the provision contained in Art. 39 SE Regulation, according to which the supervisory board of the SE appoints and dismisses the members of the management board, the supervisory board of the KGaA may neither admit nor exclude the general partners, nor deprive them of their power of management and representation, unless the articles of association contain provisions to this effect. In addition, the supervisory board cannot issue rules of procedure for the general partners or, if a general partner is a legal entity, for its corporate bodies. In an SE, there is a possibility by virtue of the comprehensive reference provision in Art. 9 para. 1 lit c) (ii) SE Regulation in conjunction with sec. 77 para. 2 sentence 1 German Stock Corporation Act to include a provision in the statutes delegating the right to issue rules of procedure for the management board to the supervisory board.

Finally, the supervisory board of the KGaA is not involved in the formal approval of the annual financial statements, as in the case of the SE (Art. 9 para. 1 lit. c) (ii) or (iii) SE Regulation in conjunction with sec. 172 para. 2 sentence 1 German Stock Corporation Act). In the KGaA, the annual financial statements are formally approved by the general meeting (sec. 286 para. 1 sentence 1 German Stock Corporation Act). The shareholders' resolution requires the approval of the general partners (sec. 286 para. 1 sentence 2 German Stock Corporation Act).

Duties of Care and Confidentiality Obligation

In an SE, by virtue of the transmission provision in Art. 51 SE Regulation, the responsibility of the members of the supervisory board is governed by the provisions of stock corporation law. In the exercise of its functions, the supervisory board must apply the care of a prudent and diligent supervisory board member (secs. 116, 93 para. 1 sentence 1 German Stock Corporation Act). These provisions also apply through the reference in sec. 278 para. 3 German Stock Corporation

Act to the members of the supervisory board of a KGaA. The confidentiality obligation of the members of the supervisory board of the SE is governed by Art. 49 SE Regulation. The members of the supervisory board of the KGaA have the same confidentiality obligation under stock corporation law (secs. 116 sentence 2, 278 para. 3 German Stock Corporation Act).

Representation of the Company vis-à-vis Members of the Managing Bodies

By virtue of the comprehensive reference provision in Art. 9 para. 1 lit c) (ii) SE Regulation, the provisions of stock corporation law apply to the SE with respect to the representation of the company vis-à-vis the members of the managing body. The supervisory board therefore represents the company vis-à-vis management board members in court and out of court (sec. 112 German Stock Corporation Act). In the KGaA, the supervisory board represents the entirety of the limited shareholders in legal disputes with the general partners (sec. 287 para. 2 German Stock Corporation Act). In addition, the supervisory board has the power to represent the company in legal transactions with the general partners (secs. 112, 278 para. 3 German Stock Corporation Act).

Remuneration of Supervisory Board Members, Contracts with Supervisory Board Members, Granting of Loans to Supervisory Board Members

By virtue of the comprehensive reference provision in Art. 9 para. 1 lit c) (ii) SE Regulation, the provisions of the German Stock Corporation Act regarding the remuneration of the supervisory board members, contracts with supervisory board members and the granting of loans to supervisory board members (secs. 113 to 115 German Stock Corporation Act) also apply to the SE. According to sec. 278 para. 3 German Stock Corporation Act, these provisions apply also to the KGaA. The remuneration of the supervisory board is – as in the case of Fresenius SE – dealt with in the proposed articles of association for Fresenius SE & Co. KGaA (see Section 7.3.3).

General Meeting

Rights of the General Meeting

In accordance with Art. 9 para. 1 lit c) (ii) SE Regulation and Art. 53 SE Regulation, the SE is subject to the provisions of stock corporation law according to which the shareholders exercise their rights concerning the affairs of the company in the general meeting, unless otherwise provided for by law (sec. 118 para. 1 German Stock Corporation Act). The members of the management board and of the supervisory board should thus take part in the general meeting (sec. 118 para. 2 sentence 1 German Stock Corporation Act). The general meeting of the SE decides on matters for which responsibility is given to the general meeting of a German stock corporation by virtue either of national legal provisions or of stipulations in the statutes. This

includes in particular the appointment of the members of the supervisory board, the utilization of the distributable profit, the ratification (*Entlastung*) of the actions of the members of the management and supervisory boards, the appointment of the auditor, amendments of the statutes, measures for raising capital and reducing the capital, the appointment of special auditors for the audit of events in connection with the formation or of the management of the company, as well as the dissolution of the company (sec. 119 para. 1 German Stock Corporation Act, Art. 52 sub-para. 2 SE Regulation). With regard to measures of company management, the general meeting of an SE can in principle decide only if the management board so requests (cf. sec. 119 para. 2 German Stock Corporation Act, Art. 52 sub-para. 2 SE Regulation). Exceptions apply with regard to the so-called *Holz Müller/Gelatine* cases, i.e. to structural measures which generally fall within the scope of executive competence of the management board but which, because of their importance, affect the shareholders' rights. This should be applicable also to the SE (cf. Art. 52 sub-para. 2 SE Regulation). Furthermore, the general meeting of the SE decides on measures under conversion law in accordance with the German Conversion Act (e.g. mergers, divisions, transfers of assets or changes of the legal form). In addition, pursuant to Art. 52 sub-para. 1 SE Regulation, the general meeting decides on matters for which it is given sole responsibility by the SE Regulation or by the legislation of the Member State in which the registered office of the SE is situated, adopted by way of implementation of Council Directive 2001/86/EC (SE Employee Involvement Directive). This includes in particular the transfer of the registered office (Art. 8 SE Regulation) as well as the reconversion into a national stock corporation (Art. 66 para. 6 SE Regulation).

The powers of the general meeting of the KGaA are in principle equivalent to those described above for the general meeting of an SE, insofar as they follow from the German Stock Corporation Act. The ratification of the actions of the general partners takes the place of the ratification of the actions of the management board members (secs. 278 para. 3, 285 para. 1 no. 2 German Stock Corporation Act). The so-called *Holz Müller/Gelatine* principles, which can give rise to unwritten powers of the general meeting, apply also – although not undisputedly – to the KGaA. In addition to the powers conferred through the German Stock Corporation Act, the general meeting of a KGaA has the powers arising from the law governing partnerships. This concerns in particular the requirement that its approval of exceptional management measures and decisions affecting the bases of the company be obtained (sec. 278 para. 2 in conjunction with sec. 285 para. 2 sentence 1 German Stock Corporation Act, secs. 164 sentence 1, 116 para. 2 German Commercial Code) as well as the withdrawal of the right to manage and represent the company (sec. 278 para. 2 in conjunction with sec. 285 para. 2 sentence 1 German Stock Corporation Act, secs. 117, 127 German Commercial Code), changes in the contribution of assets by general partners (sec. 281 para. 2 German Stock Corporation Act), changes of the right to manage and represent the company (sec. 278 para. 2 in conjunction with sec. 285 para. 2 sentence 1 German Stock Corporation Act, secs. 114, 125 German Commercial Code), the

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admission of new general partners and the withdrawal or expulsion of general partners (sec. 278 para. 2 German Stock Corporation Act in conjunction with sec. 109 German Commercial Code). In these cases, the powers of the general meeting depend on the articles of association, which can also deprive the general meeting of these rights. An exception applies to the approval of so-called fundamental matters, which affect the essence and core of membership. The proposed articles of association of Fresenius SE & Co. KGaA stipulate, deviating from the provisions of the law, that exceptional measures of management taken by the General Partners do not require the approval of the General Meeting (see Section 7.3.2). Among the rights of the general meeting arising from the rules specifically governing the KGaA, there is the formal approval of the annual financial statements pursuant to sec. 286 para. 1 sentence 1 German Stock Corporation Act. The shareholders' resolution requires the approval of the general partners (to sec. 286 para. 1 sentence 2 German Stock Corporation Act).

As opposed to the situation of an SE, certain matters require not only a resolution by the general meeting, but also the approval of the general partners. According to sec. 285 para. 2 sentence 1 German Stock Corporation Act, these are the matters which in the case of a limited partnership would require the agreement of the general partners and the limited partners. This includes amendments of the articles of association and other fundamental decisions, e.g. approval of inter-company agreements, the dissolution of the company, mergers, and any change of the legal form.

Voting Right

By virtue of the comprehensive reference provision in Art. 9 para. 1 lit c) (ii) SE Regulation, the provisions of the German Stock Corporation Act dealing with the shareholders' voting rights (secs. 134-137 German Stock Corporation Act) apply to an SE. The exercise of the voting right by the limited shareholders of a KGaA is also governed by the provisions of stock corporation law (sec. 278 para. 3 German Stock Corporation Act). The general partner's voting right is on the other hand subject to certain restrictions. For example, the general partner is prohibited from voting in connection with the election and dismissal of the supervisory board, the ratification of the general partners' and supervisory board members' actions, the appointment of special auditors, the assertion of damage claims and the waiver of damage claims as well as the election of external auditors (sec. 285 para. 1 German Stock Corporation Act). The prohibition to vote takes account of a potential conflict of interests of the general partners.

Ratification of the Actions of the Management Body and of the Supervisory Board

Through the transmission provision in Art. 52 sub-para. 2, 53 SE Regulation, the provisions of the German Stock Corporation Act dealing with the ratification of the actions of the management board and of the supervisory board are in principle applicable without any limitations to the

SE. The general meeting thus resolves in the first eight months of the financial year on the ratification of the actions of the members of the management board and the supervisory board, thereby approving of the management of the company by the members of the management board and the supervisory board (cf. secs. 119 para. 1 no. 3, 120 German Stock Corporation Act). The only deviation for the SE is that the general meeting must be held within six months (and not within eight months as in the case of a stock corporation) after the end of the financial year (Art. 54 para. 1 SE Regulation). Regarding the ratification of the actions of the general partners and of the supervisory board, the provisions applicable to a stock corporation apply to the KGaA (sec. 278 para. 3 German Stock Corporation Act). The general partners have no right to vote with respect to the ratification of the actions of the general partners and of the members of the supervisory board (sec. 285 para. 1 no. 2 German Stock Corporation Act).

Convening the General Meeting

In an SE, the general meeting may be convened at any time by the management board or the supervisory board in accordance with the national law applicable to stock corporations in the Member State where the registered office of the SE is situated (Art. 54 para. 2 SE Regulation). The organization and conduct of the general meeting as well as the voting procedure are governed in principle by the provisions of the stock corporation law (Art. 53 SE Regulation). A general meeting is held at least once a year within six months of the end of the financial year (Art. 54 para. 1 SE Regulation). On the whole, the provisions governing a stock corporation (cf. in particular, sec. 121 German Stock Corporation Act) are applicable, with the exception that the ordinary general meeting is not to be held in the first eight months of the financial year (sec. 175 para. 1 sentence 2 German Stock Corporation Act), but rather in the first six months after the end of the financial year.

The provisions dealing with the calling of the general meeting of a stock corporation fully apply also to the KGaA (sec. 283 no. 6 German Stock Corporation Act).

Convening the General Meeting at the Request of a Minority/Supplementing the Agenda at the Request of a Minority

One or several shareholders who together hold at least 5% of the share capital of an SE may request that a general meeting be convened and the agenda for it be drawn up (Art. 55 para. 1 SE Regulation, sec. 50 para. 1 SEAG). The request for the calling of the general meeting must state the items to be included in the agenda (Art. 55 para. 2 SE Regulation). If, following such a request, a general meeting is not held within two months of the request, the court can, upon application, authorize the shareholders to convene a general meeting (Art. 55 para. 3 SE Regulation). A minimum holding period before making the request is not a condition for the request in the case of an SE. The inclusion of one or more additional items in the agenda of the

general meeting of an SE may be requested by one or more shareholders who together hold at least 5% of the share capital or a proportionate amount of Euro 500,000 (Art. 56 SE Regulation, sec. 50 para. 2 SEAG). The procedure and time limits applicable to such requests are governed by national law, i.e. here by the SEAG (cf. Art. 56 sentence 2 SE Regulation in conjunction with sec. 50 SEAG).

In the case of a KGaA, the calling of the general meeting and the addition of items to the agenda at the request of a minority are governed by the provisions applicable to a stock corporation (sec. 283 no. 6 and sec. 278 para. 3 German Stock Corporation Act, respectively). The general meeting of the stock corporation is to be convened if shareholders who together hold at least 5% of the share capital demand this in writing, stating the purpose and the reasons (sec. 122 para. 1 German Stock Corporation Act). The shareholders must prove that they have owned the shares for at least three months before the date of the general meeting and that they continue to hold the shares until the decision on the motion is made (i.e. until the authorization by a court or until the calling of the meeting by the management board) (sec. 122 para. 1 sentence 3 German Stock Corporation Act in conjunction with sec. 142 para. 2 sentence 2 German Stock Corporation Act). In the same way, shareholders whose shares in the aggregate represent at least 5% of the share capital or a proportionate amount of the share capital of Euro 500,000 may request that certain items for the adoption of a resolution of a general meeting be published (sec. 122 para. 2 German Stock Corporation Act). If the request is not granted, the court can authorize the shareholders who have submitted the request to convene the general meeting or to publish the item for the adoption of a resolution (sec. 122 para. 3 sentence 1 German Stock Corporation Act).

Organization and Conduct of the General Meeting

With regard to the organization and conduct of the general meeting of an SE, the SE Regulation makes reference, by virtue of the transmission provision in Art. 53, 54 para. 2 SE Regulation and the comprehensive reference provision in Art. 9 para. 1 lit c) (ii) SE Regulation, to the provisions of the German Stock Corporation Act. These apply also to the general meeting of the KGaA (sec. 278 para. 3 German Stock Corporation Act). Therefore, among others, the provisions governing the limitations of the speaking right also apply to the SE and the KGaA.

The Shareholders' Right to Information, Speaking Right, and Right to Put Questions in the General Meeting

Regarding the shareholders' right to information, the provisions of stock corporation law are applicable by virtue of the comprehensive reference provision in Art. 9 para. 1 lit c) (ii) SE Regulation. The basis for the information of the shareholders is the annual financial statements, including the notes thereto, and the management report of the management board (sec. 175 para. 2 German Stock Corporation Act) as well as the report of the supervisory board (sec. 171 para. 2

German Stock Corporation Act). In addition, sec. 131 German Stock Corporation Act grants each shareholder, regardless of the extent of his interest in the company, a right to information in the general meeting to the extent that this is necessary for the appropriate assessment of the agenda. This right cannot be restricted by the articles of association (cf. sec. 23 para 5 German Stock Corporation Act); it is mandatory. Only for certain reasons listed in sec. 131 para. 3 German Stock Corporation Act may the management board refuse to give the information. Such a right to withhold information exists, for example, in cases where divulging the information could lead, in the view of a reasonable business man, to a significant disadvantage for the company. The right to sufficient information is also granted to the shareholders of a KGaA. This right is in principle also subject to the provisions applicable to stock corporations (sec. 278 para. 3 German Stock Corporation Act).

Rules of Procedure

The general meeting of a stock corporation may issue rules of procedure for itself concerning the preparation and conduct of the General Meeting with a majority of at least three quarters of the share capital represented at the voting (sec. 129 para. 1 sentence 1 German Stock Corporation Act). This provision of the stock corporation law applies also to the general meeting of the KGaA (sec. 278 para. 3 German Stock Corporation Act). It applies in principle also to the SE (cf. Art. 53 SE Regulation in conjunction with sec. 129 para. 1 German Stock Corporation Act). Whereas the German Stock Corporation Act requires a majority of three quarters of the represented share capital for the adoption of a resolution to issue rules of procedure for the preparation and conduct of the general meeting, the issuance of such rules of procedure in an SE requires a majority of three quarters of the votes (validly) cast, as the provisions of the German Stock Corporation Act regarding the applicable majority requirements for resolutions must be interpreted in a manner consistent with the SE. In contrast to the German Stock Corporation Act, the SE Regulation uses the criterion of votes cast (cf. Art. 57, 58, 59 SE Regulation). As German law in any case no longer provides for shares with multiple voting rights, this change has no practical effects, because the majority of the share capital of a KGaA or an SE is identical to the majority of votes.

Regular Resolutions of the General Meeting (not Involving an Amendment of the Articles of Association)

The adoption of regular resolutions of the general meeting of a KGaA requires the majority of the votes cast (simple majority of votes), unless a larger majority or additional requirements are stipulated by law or the articles of association (secs. 133 para. 1, 278 para. 3 German Stock Corporation Act). The resolutions of the general meeting of an SE are adopted by a majority of the votes cast, except where a larger majority is stipulated by the SE Regulation or by stock corporation law (Art. 57 SE Regulation).

Resolutions of the General Meeting to Amend the Articles of Association/Statutes

Any amendment of the statutes of an SE requires a resolution of the general meeting adopted with a majority of at least two thirds of the votes cast, provided that the legal provisions applicable to stock corporations do not stipulate or allow larger majority requirements (Art. 59 para. 1 SE Regulation). Therefore, according to what appears to be the prevailing opinion, amendments of the articles of association which pursuant to the German Stock Corporation Act already require a mandatory majority of three quarters of the share capital require, in the case of the statutes of an SE, a majority of three quarters of the votes (validly) cast. The statutes of an SE may stipulate that the simple majority of the votes cast is sufficient for a resolution of the general meeting amending the statutes, provided that at least half of the share capital is represented (sec. 51 sentence 1 SEAG). This does not apply with regard to an amendment of the corporate purpose, a resolution on the transfer of the registered office as well as in cases where a larger majority of the share capital is required by mandatory statutory law (sec. 51 sentence 2 SEAG). The statutes of Fresenius SE contain a provision to this effect.

The majority required in the general meeting of a KGaA, also for a resolution amending the articles of association, is in principle determined by the provisions applicable to the stock corporation (sec. 278 para. 3 German Stock Corporation Act). Thus, such resolutions require a majority of at least three quarters of the share capital represented at the voting as well as a simple majority of the votes cast (secs. 179 para. 2, 133 German Stock Corporation Act). The articles of association may stipulate deviating majority requirements, however with the proviso that in respect of a change of the corporate purpose only a larger majority of the share capital may be stipulated (sec. 179 para. 2 sentence 2 German Stock Corporation Act). The proposed articles of association of Fresenius SE & Co. KGaA provide, in cases where the law requires in a non-mandatory form a majority of the share capital represented at the voting, for the simple majority of the share capital to suffice. In the event of a tie, a motion is deemed rejected (cf. Section 7.3.3). A comparable provision is contained in the statutes of Fresenius SE.

Certain resolutions of the general meeting of a KGaA additionally require the general partners' approval (sec. 285 para. 2 sentence 1 German Stock Corporation Act). This concerns resolutions for which, in the case of a limited partnership, the approval of the general partners and of the limited partners is necessary. This includes amendments of the articles of association and other fundamental decisions, e.g. approval of inter-company agreements, the dissolution of the company, mergers and a change of the legal form. The articles of association can extend the cases in which the approval of the general partners is required.

Special Audit

By virtue of the comprehensive reference provision in Art. 9 para. 1 lit c) (ii) SE Regulation and the transmission provision in Art. 52 sub-para. 2 SE Regulation, the provisions applicable to a stock corporation (secs. 142, 258 German Stock Corporation Act) apply to the SE and through sec. 278 para. 3 German Stock Corporation Act to the KGaA.

Assertion of Damage Claims against Corporate Bodies/Shareholder Lawsuits

The SE Regulation and the SEAG do not contain any provisions regarding the assertion of damage claims or shareholder lawsuits. By virtue of the comprehensive reference provision in Art. 9 para. 1 lit c) (ii) SE Regulation, the provisions of the German Stock Corporation Act (secs. 147 et seq. German Stock Corporation Act) are therefore applicable. According to sec. 278 para. 3 German Stock Corporation Act, these apply also to the KGaA.

7.2.5 Annual Financial Statements/Consolidated Financial Statements

The preparation of the annual financial statements and the consolidated financial statements, including related management reports, as well as the auditing and publication of the financial statements are governed for an SE by the legal provisions applicable to a German stock corporation (Art. 61 SE Regulation). In addition, the provisions of stock corporation law and of the German Commercial Code apply by virtue of Art. 9 para. 1 lit c) (ii) and Art. 52 sub-para. 2 SE Regulation.

In the case of a KGaA, the annual financial statements are prepared and presented by the managing general partners within the first three months of the financial year (sec. 283 no. 9 German Stock Corporation Act, secs. 242, 264 German Commercial Code). The annual financial statements are then audited by the auditors. Promptly after receipt of the auditors' audit report, the managing general partners must submit the annual financial statements, the management report and the audit report as well as a proposal for the appropriation of profits to the supervisory board (sec. 283 no. 9, 10 in conjunction with sec. 170 German Stock Corporation Act). The supervisory board must examine the documents (secs. 278 para. 3, 171 German Stock Corporation Act) although in the case of a KGaA – as opposed to an SE – it is otherwise not involved in the adoption of the annual financial statements. According to sec. 286 para. 1 sentence 1 German Stock Corporation Act, the annual financial statements are formally approved by resolution of the general meeting with the consent of the general Partner. According to sec. 278 para. 3 German Stock Corporation Act, all provisions dealing with the disclosure of items in the balance sheet, the composition of the balance sheet and valuation issues which must be observed by a stock corporation also apply to the annual financial statements of the KGaA.

7.2.6 Measures for the Procurement of Capital and Capital Reduction

Generally, the same stock corporation law provisions regarding capital measures applicable to a German stock corporation also apply to an SE. However, to the extent that resolutions for capital measures of an SE can be adopted only by a simple majority of the share capital pursuant to a stipulation in the statutes, they now only require a simple majority of the votes cast. But this applies only if at least half of the share capital is represented. Otherwise, a majority of two thirds of the votes cast (and not a simple majority of the votes cast and of the share capital) is required. Capital measures which, pursuant to the German Stock Corporation Act, already require mandatory larger majorities (such as capital increases with an exclusion of the subscription right or a reduction of capital) also require a majority of three quarters of the votes cast in the case of an SE.

The KGaA can raise equity capital both in the form of limited shares and through contributions of assets by general partners which are not made against the issuance of share capital (sec. 281 para. 2 German Stock Corporation Act). The creation or increase of general partners' shares is governed exclusively by the law dealing with limited partnerships (sec. 278 para. 2 German Stock Corporation Act). As an increase of the contribution of assets by general partners constitutes an amendment of the articles of association, a resolution to be adopted by the general meeting with the required majority is necessary for this (cf. Section 7.2.4). An increase of the share capital of the KGaA, i.e. the capital put up by the limited shareholders, is governed by the general provisions of stock corporation law (sec. 278 para. 3 German Stock Corporation Act). In addition to a resolution of the general meeting to increase the capital, a resolution of the general partners giving their consent is necessary pursuant to sec. 285 para. 2 sentence 1 German Stock Corporation Act).

7.2.7 Invalidity of Resolutions of the General Meeting and of the Formally Approved Annual Financial Statements/Special Audit because of Inadmissible Undervaluation

Invalidity of Resolutions of the General Meeting

The SE Regulation and the SEAG do not contain any provisions regarding the challenging of resolutions or the examination (by a court) of the legality of the content of resolutions (*materielle Beschlusskontrolle*). By virtue of the comprehensive reference provision in Art. 9 para. 1 lit c) (ii) SE Regulation and in Art. 5 SE Regulation, the provisions of the German Stock Corporation Act regarding the invalidity of resolutions of the general meeting (secs. 241 et seq. German Stock Corporation Act) apply. According to sec. 278 para. 3 German Stock Corporation Act, these apply also to the KGaA.

Invalidity or Challenging of the Election of Supervisory Board Members

By virtue of the comprehensive reference provision in Art. 9 para. 1 lit c) (ii) SE Regulation and in Art. 5 SE Regulation, the provisions of the German Stock Corporation Act (secs. 250 et seq. German Stock Corporation Act) dealing with the invalidity or challenging of the election of supervisory board members apply in principle to the SE and, according to sec. 278 para. 3 German Stock Corporation Act, also to the KGaA.

Insofar as the election of employee representatives on the supervisory board is concerned, the unlawful adoption of election proposals for the employee representatives on the supervisory board can result in a challenging of the election, in the case of an SE. For Fresenius SE, a provision to this effect is contained in the agreement on the participation of the employees in Fresenius SE. Under the terms of this agreement, a challenge is possible only if material provisions concerning the right to vote, eligibility for election or the election procedure have been infringed and the infringement has not been remedied. An exception applies if the result of the vote could not be altered or influenced by the infringement. Such challenges may be asserted by the SE works council and by the management of the company. The action must be brought within one month following the appointment decision of the general meeting.

In the case of a co-determined KGaA, it is also possible to challenge the election of employee representatives. If, as in the case of Fresenius SE & Co. KGaA due to the planned cross-border merger, co-determination is governed by the German Act on Employee Co-Determination in Case of Cross-Border Mergers (“MgVG”), the provision in sec. 26 para. 2 MgVG applies unless otherwise provided for in an agreement on the participation of the employees. According to sec. 26 para. 2 MgVG, the election of an employee representative from Germany can be challenged if material provisions concerning the right to vote, eligibility for election or the election procedure have been infringed and the infringement has not been remedied. Also here, an exception applies if the result of the vote could not be altered or influenced by the infringement. The challenge may be asserted by the persons named in sec. 26 para. 1 sentence 2 MgVG and by the management of the company arising from the cross-border merger. The action must be brought within one month following the publication of the election result (cf. sec. 26 para. 2 sentence 3 in conjunction with sec. 25 para. 3 sentence 2 and 3 MgVG).

Invalidity of the Formally Approved Annual Financial Statements

By virtue of the comprehensive reference provision in Art. 9 para. 1 lit c) (ii) SE Regulation, and pursuant to sec. 278 para. 3 German Stock Corporation Act, the provisions governing the invalidity of the formally approved annual financial statements (secs. 256, 257 German Stock Corporation Act) apply to the SE and the KGaA, respectively.

Special Audit because of an Inadmissible Undervaluation

By virtue of the comprehensive reference provision in Art. 9 para. 1 lit c) (ii) SE Regulation, and pursuant to sec. 278 para. 3 German Stock Corporation Act, the provisions governing the special audit because of an inadmissible undervaluation (secs. 258 to 261a German Stock Corporation Act) also apply to the SE and the KGaA, respectively.

Dissolution and Declaration of Nullity of the Company

Regarding the dissolution, liquidation, insolvency, cessation of payments and similar procedures, an SE is governed by the legal provisions applicable to a stock corporation; this includes the provisions relating to the adoption of resolutions by the General Meeting (Art. 63 SE Regulation). The dissolution of a KGaA follows sec. 289 German Stock Corporation Act, and therefore the provisions regarding limited partnerships and the supplementary provisions that are specific to the KGaA are applicable. The company is liquidated in accordance with the provisions of stock corporation law, which are applicable pursuant to sec. 290 German Stock Corporation Act with specific exceptions taking account of the legal form.

The SE differs from the KGaA in that a decision to transfer the registered office to another Member State is not deemed to constitute a dissolution, as Art. 8 SE Regulation allows the transfer of the registered office of an SE to another Member State. The transfer of the registered office requires a resolution of the general meeting for which the majority required to amend the articles of association is necessary. To any shareholder who declares an objection to the transfer resolution which is recorded in the minutes of the general meeting, the SE has to offer to acquire his shares against payment of adequate cash compensation (sec. 12 para. 1 sentence SEAG).

7.2.8 Affiliated Undertakings

Like a stock corporation, the KGaA is governed by the provisions dealing with affiliated undertakings in sec. 291 et seq. German Stock Corporation Act. The German law on groups of companies applies also to the SE. Pursuant to the prevailing opinion this also applies to a controlled SE. Therefore, in the event of the conclusion of a control and/or profit and loss transfer agreement, the outside shareholders are entitled to the rights to adequate compensation payments which are provided for in the case of a German stock corporation or KGaA. This also applies in the case of a squeeze-out of minority shareholders against payment of adequate cash compensation (secs. 327a et seq. German Stock Corporation Act). Therefore – pursuant to the prevailing opinion – the conversion does not lead to any changes.

7.2.9 Dissolution by a Court

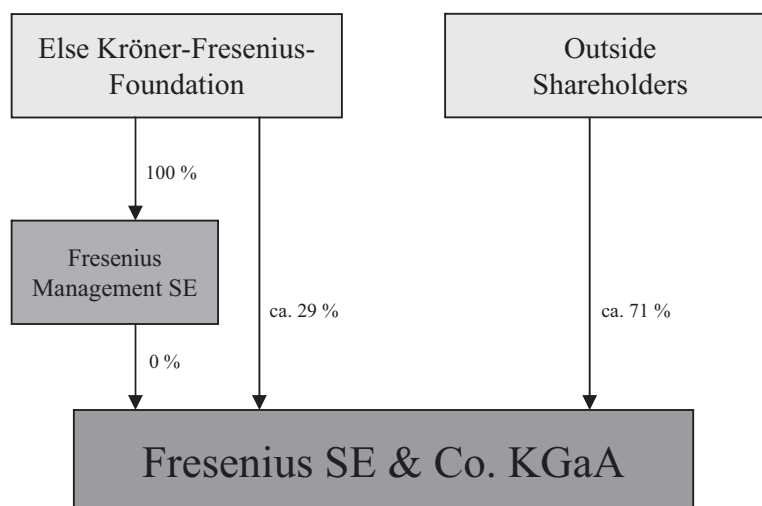
By virtue of the comprehensive reference provision in Art. 9 para. 1 lit c) (ii) SE Regulation and Art. 63 SE Regulation, the provisions regarding the dissolution by a court of a stock corporation and of a partnership limited by shares (secs. 396 to 398 German Stock Corporation Act) also apply to an SE.

7.2.10 Criminal Law and Civil Penalty Provisions

The criminal law and civil penalty provisions under German stock corporation law (secs. 399 et seq. German Stock Corporation Act) also apply to an SE (sec. 53 SEAG and Art. 9 para. 1 lit c) (ii) SE Regulation) and, according to sec. 408 German Stock Corporation Act also analogously to the KGaA.

7.3 Legal Structure of Fresenius SE & Co. KGaA

The Else Kröner-Fresenius-Foundation holds all shares in Fresenius Management SE (currently still having the corporate name Asion SE). The latter is to become the General Partner of Fresenius SE & Co. KGaA, however without participating in the assets or in any profit or loss of the Company. The shareholders' current participation in the share capital of the Company will not change. The corporate structure of Fresenius SE & Co. KGaA can be shown graphically as follows:



7.3.1 General Remarks on the Legal Structure of Fresenius SE & Co. KGaA

The relationship between the general partners on the one hand and, on the other hand, the limited shareholders can mostly be freely shaped in the articles of association of a KGaA. The articles of association of a KGaA can thus be adjusted to the specific requirements of the shareholders at the time of the formation of the KGaA or, as the case may be, the change of the legal form into a

KGaA. As the articles of association of a KGaA can be changed subsequently only by resolution of the general meeting and with the general partners' consent, each shareholder group is effectively protected against any unilateral amendments of the articles of association by the other shareholder group.

As already described in Section 3.2, the conversion of Fresenius SE into Fresenius SE & Co. KGaA is intended to serve the purpose of securing the influence of the Else Kröner-Fresenius-Foundation on the Company to the extent to which it exists today, although the Foundation will lose the majority of the voting rights in the General Meeting of the Company due to the change of the legal form and the conversion of preference shares into ordinary shares involved therein. The Else Kröner-Fresenius-Foundation is prepared to agree to the proposed measures because its present influence is secured in this way.

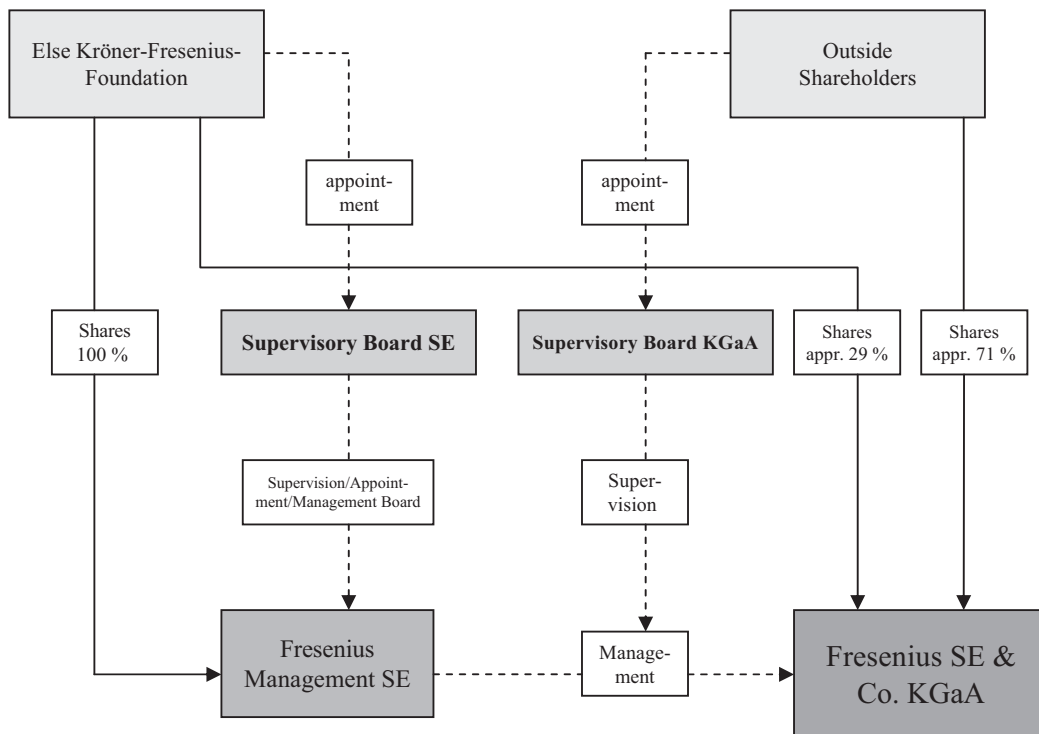
The details of the new shareholder structure proposed to the General Meeting is intended on the one hand to largely secure the current influence of the Else Kröner-Fresenius-Foundation on the Company, but not – to the extent legally possible – to extend it. On the other hand, certain protective mechanisms are intended to ensure for the benefit of the outside shareholders of the Company that the controlling position of the Else Kröner-Fresenius-Foundation will be contingent upon a significant financial commitment to Fresenius SE & Co. KGaA. It has therefore been stipulated that this controlling position will cease to exist if the participation held by the Foundation falls to 10% or less of the share capital of the Company. It is guaranteed at the same time that the business operations of the Company will remain unaffected by the change of the legal form.

The present influence of the Else Kröner-Fresenius-Foundation is secured through the proposed provisions in such a way that a wholly owned subsidiary of the Foundation, Fresenius Management SE (currently still bearing the corporate name of Asion SE), will assume the position of General Partner. Although the allocation of powers between the corporate bodies of the SE on the one hand and the KGaA on the other hand differs, the new structure will largely reflect the current shareholders' actual allocation of influence on Fresenius SE (in this respect, see the explanations in Section 7.4 below).

The model of a KGaA with a corporation as a General Partner was implemented within the Fresenius Group already in the case of Fresenius Medical Care AG & Co. KGaA and has proven itself. The main shareholder of Fresenius Medical Care AG & Co. KGaA is Fresenius SE; however Fresenius SE does not hold the majority of the voting share capital. The controlling influence of Fresenius SE on Fresenius Medical Care AG & Co. KGaA is ensured by the fact that Fresenius SE holds all shares in Fresenius Medical Care Management AG, the General Partner of Fresenius Medical Care AG & Co. KGaA. Except for the legal form of the General Partner, the model on which Fresenius Medical Care AG & Co. KGaA is based is therefore in principle the model proposed for the Company.

The choice of the SE as the legal form of the General Partner is intended to establish a link to the present European legal form of Fresenius SE. This emphasizes the importance of the international business, especially the European business, for the Fresenius Group, which will in the future also be reflected in the corporate name of the Company, “Fresenius SE & Co. KGaA”. Within a General Partner having this legal form, the management structures currently existing within Fresenius SE can to a large extent be continued. Thus, the internal structure of the General Partner is to be identical with the current structure of Fresenius SE, in particular the statutes will essentially contain the same provisions regarding the relationship between the Management Board and the Supervisory Board and, subject to the powers granted to the corporate bodies by law, the rules of procedure for the two corporate bodies will be modeled on the existing rules of procedure for Fresenius SE. In addition, it is planned that all current members of the Management Board of Fresenius SE – and only they – will become members of the Management Board of the General Partner after the change of the legal form. Moreover, all current shareholder representatives in the Supervisory Board of Fresenius SE – and only they – are to become members of the General Partner’s Supervisory Board.

The structure of Fresenius SE & Co. KGaA can be illustrated as follows:



7.3.2 The Corporate Bodies of Fresenius SE & Co. KGaA

General Partner

In the course of the conversion of Fresenius SE into Fresenius SE & Co. KGaA, Fresenius Management SE will accede to the Company as its sole General Partner. This General Partner will not make any capital contribution and will thus not participate in the assets and also neither in any profit nor in any loss of the Company. Fresenius Management SE currently still bears the corporate name Asion SE. It was established on May 12, 2009 (notarial document 718/2009 of Notary Dr. Susanna Welling, practicing in Düsseldorf) and was entered into the commercial register of the local court of Düsseldorf under HRB 61386 on July 14, 2009 with a share capital of Euro 120,000.00. The Else Kröner-Fresenius-Foundation is the sole shareholder of Asion SE. Following the Ordinary General Meeting of the Company on May 12, 2010, the corporate name of Asion SE is to be changed into “Fresenius Management SE”, its registered office is to be transferred to Bad Homburg vor der Höhe, the share capital will be increased to Euro 1,500,000.00 and the statutes will be adjusted to the requirements of the position of a General Partner which it then will hold. Details regarding the future statutes of Fresenius Management SE, which are contained in **Annex 4** to this conversion report, are described in Section 7.3.4.

The sole corporate purpose of Fresenius Management SE will be its participation in Fresenius SE & Co. KGaA as its General Partner as well as the management of Fresenius SE & Co. KGaA. Accordingly, Fresenius Management SE will not act in any way outside its role as the General Partner of Fresenius SE & Co. KGaA. In its management, Fresenius Management SE must observe the same duties of care which the Management Board of an SE must observe in relation to the SE. The Management Board of Fresenius Management SE has the duty to carefully manage Fresenius SE & Co. KGaA, the Supervisory Board of Fresenius Management SE has the duty to carefully supervise the Management Board and its management of Fresenius SE & Co. KGaA.

Deviating from the statutory model of the KGaA, exceptional management measures of Fresenius Management SE do not require the consent of the limited shareholders in the General Meeting. According to the basic statutory stipulations, every transaction which in terms of its nature or extent goes beyond the ordinary course of business requires – as in the case of a limited partnership – the consent of the limited shareholders in the general meeting (sec. 164 German Commercial Code in conjunction with sec. 278 para. 2 German Stock Corporation Act). The precise delimitation between ordinary management measures and exceptional management measures is problematic and leads to considerable legal uncertainty. Moreover, the convening of a General Meeting for the purpose of obtaining consent to individual management measures involves considerable effort and high costs; possible legal actions to challenge the validity of such a resolution of the General Meeting (*Anfechtungsklagen*) could block the measures for a

longer period of time and thus cause disadvantages for the company. Although it would generally be possible to make exceptional management measures contingent upon the consent of the Supervisory Board instead of the General Meeting, this would significantly reduce the influence of the Else Kröner-Fresenius-Foundation. The Foundation is prohibited from voting in elections for the Supervisory Board of the KGaA and can therefore not exert any influence on the composition of the Supervisory Board. The proposed stipulations thus effectively and essentially reflect the current possibilities of the Else Kröner-Fresenius-Foundation on the one hand and the outside shareholders on the other hand to exert an influence (for this, see Section 7.4). Upon the change of the legal form taking effect, the existing de facto allocation of influence within Fresenius SE will turn into a structural allocation of influence.

The relationship among the corporate bodies of Fresenius Management SE follows the existing stipulations for Fresenius SE. In particular, due to the amendment of the statutes of Fresenius Management SE following the Ordinary General Meeting of the Company to be held on May 12, 2010, the same legal transactions will require the consent of the Supervisory Board of Fresenius Management SE as currently require the consent of the Supervisory Board of Fresenius SE.

The Management Board of Fresenius Management SE, which currently still bears the corporate name Asion SE, currently consists only of Mr. Rudolf Herfurth, who is also a member of the Management Board of the Else Kröner-Fresenius-Foundation. The Supervisory Board consists of Dr. Gerd Krick, Dr. Dieter Schenk and Dr. Karl Schneider, who also serve as members of the Supervisory Board of Fresenius SE. It is planned that all current members of the Management Board of Fresenius SE – and only they – will be members of the General Partner's Management Board upon the change of the legal form taking effect. All current shareholder representatives in the Supervisory Board of Fresenius SE – and only they – are to be members of the Supervisory Board of Fresenius Management SE. It is intended in this way to ensure for the shareholders that the well-trying and successful collaboration between the current members of the corporate bodies will continue.

Supervisory Board

With the exception of Dr. Dieter Schenk and Dr. Karl Schneider, the current shareholder representatives in the Supervisory Board of Fresenius SE, i.e. Dr. Gerd Krick, Professor Dr. h.c. Roland Berger, Mr. Klaus-Peter Müller and Dr. Gerhard Rupprecht, will also be members of the Supervisory Board of Fresenius SE & Co. KGaA after the change of the legal form has taken effect. Prof. Dr. med. D. Michael Albrecht and Mr. Gerhard Roggemann are to be elected in place of Dr. Dieter Schenk and Dr. Karl Schneider. The present Supervisory Board members' term of office will end by operation of law upon the change of the legal form taking effect, so that all members of the Supervisory Board of Fresenius SE & Co. KGaA will be newly appointed.

Because of the planned cross-border merger, the Supervisory Board of Fresenius SE & Co. KGaA can consist – like the Supervisory Board of Fresenius SE – of six shareholder representatives and six employee representatives (for this, see Section 3.4.1.).

Decisions on the new election or dismissal of members of the Supervisory Board are taken for Fresenius SE & Co. KGaA only by the outside shareholders, since the Else Kröner-Fresenius-Foundation, the sole shareholder of the General Partner, is prohibited from voting in elections of the members of the Supervisory Board of Fresenius SE & Co. KGaA. This means that the Foundation will in the future have no influence on the composition of the Supervisory Board of Fresenius SE & Co. KGaA. The change of the legal form into Fresenius SE & Co. KGaA thus involves a certain extension of the outside shareholders' controlling rights. For this reason, the Foundation will abstain in the election of the shareholder representatives in the Supervisory Board of Fresenius SE & Co. KGaA which item 9 of the agenda for the Ordinary General Meeting of the Company on May 12, 2010 provides for. As Dr. Dieter Schenk and Dr. Karl Schneider, who are also members of the Administrative Board (*Verwaltungsrat*) of the Else Kröner-Fresenius-Foundation and executors of the estate of Ms Else Kröner, belong to the three-member Nomination Committee of the Supervisory Board of Fresenius SE, the Nomination Committee has refrained from proposing candidates for the election of the shareholder representatives provided for in item 9 of the agenda for the Ordinary General Meeting of the Company on May 12, 2010. Because of the close relation of Dr. Dieter Schenk and Dr. Karl Schneider with the Else Kröner-Fresenius-Foundation, they should not belong to the Supervisory Board of Fresenius SE & Co. KGaA.

Due to its specific legal form, Fresenius SE & Co. KGaA has a Supervisory Board with fewer powers and less influence than the Supervisory Board of Fresenius SE. The Supervisory Board of Fresenius SE & Co. KGaA cannot appoint the General Partner or its corporate bodies. Moreover, the Supervisory Board cannot issue a list of management measures of the General Partner requiring its consent. Likewise, it is not able to issue rules of procedure for the General Partner. Finally, in a KGaA, the limited shareholders resolve at the General Meeting, with the approval of the General Partners, on the formal approval of the annual financial statements. However, the Supervisory Board of Fresenius SE & Co. KGaA has supervision and controlling rights under the law and the articles of association in relation to the General Partner to the same extent as such rights exist in relation to the management board of a stock corporation. In summary, the outside shareholders will, after the change of the legal form into a KGaA, have more influence on the Supervisory Board elected by them (without the votes of the Else Kröner-Fresenius-Foundation) as in the case of Fresenius SE; but this Supervisory Board is not allowed to appoint the General Partner's Management Board so that the outside shareholders can also not exert any indirect influence on the management measures of the Company. However, the outside

shareholders' current level of protection against the influence of the Else Kröner-Fresenius-Foundation will continue in a comparable form (for this, see the description in Section 7.4).

General Meeting

The change of the legal form will as such not change the voting situation in the General Meeting, apart from changes regarding voting prohibitions, for this see the following paragraph. However, all preference shares will be converted into ordinary shares in connection with the change of the legal form. Through the consolidation of the classes of shares, the Else Kröner-Fresenius-Foundation will lose its majority of the votes in the General Meeting of Fresenius SE & Co. KGaA. Whereas the Foundation currently holds around 58% of the voting share capital, it will only hold around 29% of the voting share capital after the change of the legal form takes effect and all preference shares are converted into ordinary shares in that connection.

In addition, the Else Kröner-Fresenius-Foundation is subject to various voting prohibitions in the General Meeting of Fresenius SE & Co. KGaA, as it holds all shares in the General Partner, Fresenius Management SE (currently still bearing the corporate name Asion SE). For example, the Foundation has no voting right in the General Meeting of Fresenius SE & Co. KGaA for resolutions on the election and dismissal of the Supervisory Board, the ratification of the actions of the General Partner and of the members of the Supervisory Board, the appointment of special auditors, the assertion of damage claims against members of the corporate bodies, the waiver of compensation claims, and the election of the auditors.

As opposed to the situation within Fresenius SE, certain matters require not only a resolution of the general meeting, but also the consent of the general partner. According to sec. 285 para. 2 sentence 1 German Stock Corporation Act, these are matters which in the case of a limited partnership would require the consent of the general partners and the limited partners. These include amendments of the articles of association and other fundamental resolutions, e.g. consent to inter-company agreements, the dissolution of the company, any merger or a change of the legal form. Because of this statutory veto right of the general partner, the position of the general meeting of the KGaA and thus of the limited shareholders is deemed as weaker compared to the general meeting of an SE.

According to sec. 286 para. 1 sentence 1 German Stock Corporation Act, the general meeting resolves on the formal approval of the annual financial statements. This resolution also requires the consent of the general partner (sec. 286 para. 1 sentence 2 German Stock Corporation Act).

Apart from that, the procedure at the general meeting is the same as the procedure at the General Meeting of Fresenius SE.

7.3.3 Explanation of the Articles of Association of Fresenius SE & Co. KGaA

The proposed articles of association of Fresenius & Co. KGaA (**Annex 3** to this conversion report) are based on the statutes of the existing Fresenius SE. Major provisions from the statutes of Fresenius SE were carried over into the proposed articles of association of Fresenius SE & Co. KGaA, in particular with respect to the capital structure, the Supervisory Board and the General Meeting. Other parts of the proposed articles of association, especially with respect to the management of the company, were adjusted to the new legal form. The main consideration in drafting the proposed articles of association was to transfer the existing allocation of influence in Fresenius SE between the Else Kröner-Fresenius-Foundation on the one hand and the outside shareholders on the other hand to the future structure of Fresenius SE & Co. KGaA.

The following overview contains a summary of selected aspects and is intended to provide a synoptic comparison between the statutes of Fresenius SE and the proposed articles of association of Fresenius SE & Co. KGaA.

Subject Matter	Statutes of Fresenius SE	Articles of Association of Fresenius SE & Co. KGaA
Corporate Name	– Fresenius SE	– Fresenius SE & Co. KGaA
Registered Office	– Bad Homburg vor der Höhe	– Bad Homburg vor der Höhe
Corporate Purpose	<ul style="list-style-type: none"> – The development, manufacture, and distribution of, as well as trading in, products, systems and processes in the health care sector. – The construction, development and operation of medical and curative facilities as well as of hospitals – Planning and construction of production facilities – Consulting in the medical and pharmaceutical fields as well as scientific information and documentation 	<ul style="list-style-type: none"> – The development, manufacture and distribution of, as well as trading in products, systems and processes in the health care sector – The construction, development and operation of medical and curative facilities as well as of hospitals – Consulting in the medical and pharmaceutical fields as well as scientific information and documentation
Share Capital*)	<ul style="list-style-type: none"> – Euro 161,315,376.00 – Divided one half each into ordinary bearer shares and non-voting preference bearer shares 	<ul style="list-style-type: none"> – Euro 161,315,376.00 – Divided into ordinary bearer shares only

Subject Matter	Statutes of Fresenius SE	Articles of Association of Fresenius SE & Co. KGaA
Authorized/ Conditional Capital	<ul style="list-style-type: none"> – <u>Authorized Capital I</u>: Issue of new ordinary bearer shares and/or non-voting preference bearer shares against cash contributions up to Euro 12,800,000.00; in principle, subscription right for the shareholders – <u>Authorized Capital II</u>: Issue of new ordinary bearer shares and/or non-voting preference bearer shares against cash contributions and/or contributions in kind up to Euro 6,400,000.00; authorization to exclude the subscription right – <u>Conditional Capital I - III</u>: Issue of subscription rights or, as the case may be, convertible bonds on ordinary bearer shares and non-voting preference bearer shares to satisfy the stock option plans 1998, 2003 and 2008 	<ul style="list-style-type: none"> – <u>Authorized Capital I</u>: Issue of new ordinary bearer shares against cash contributions up to Euro 12,800,000.00; in principle subscription right for shareholders – <u>Authorized Capital II</u>: Issue of new ordinary bearer shares against cash contributions and/or contributions in kind up to Euro 6,400,000.00; authorization to exclude the subscription right – <u>Authorized Capitals III – V (alternatively to Conditional Capitals I – III)</u>: Issue of new ordinary bearer shares against cash contributions to satisfy the stock option plans 1998, 2003 and 2008) – <u>Conditional capitals I – III</u>: Issue of subscription rights or, as the case may be, convertible bonds on ordinary bearer shares to satisfy the stock option plans 1998, 2003 and 2008
Management/ Representation	<ul style="list-style-type: none"> – Management by the Management Board – Representation by two members of the Management Board or one member of the Management Board acting jointly with a holder of a general power of attorney 	<ul style="list-style-type: none"> – Management and representation by the General Partner – The General Partner will be excluded from the Company if and as soon as all shares in it are no longer held directly or indirectly by a person holding more than 10% of the share capital of the Company – If the shares in the General Partner are sold, the General Partner will also be excluded from the Company unless the acquirer submits a takeover bid or a compulsory bid to the shareholders of the Company pursuant to the rules of the German Securities Acquisition and Takeover Act (WpÜG) within twelve months after such acquisition takes effect

Subject Matter	Statutes of Fresenius SE	Articles of Association of Fresenius SE & Co. KGaA
Election/Term of Office of the Supervisory Board Members	<ul style="list-style-type: none"> – Appointment of the members of the Supervisory Board by the General Meeting (bound by the nomination of candidates for the election of the employee representatives) – Appointment for the time up to the end of the General Meeting which resolves on the ratification of the actions for the fourth financial year after the term of office commenced, without counting the financial year in which the term of office begins, but for a maximum of six years 	<ul style="list-style-type: none"> – Election of half of the members of the Supervisory Board by the General Meeting in accordance with the provisions of the German Stock Corporation Act, election of the other half by the employees – Appointment – subject to a differing resolution of the General Meeting – for a period of time up to the end of the General Meeting which resolves on the ratification of the actions for the fourth financial year after the term of office commenced, without counting the financial year in which the term of office begins
Constitution of the Supervisory Board	<ul style="list-style-type: none"> – Election of a Chairman and two deputies – For the election of the Chairman, the oldest shareholder representative in terms of age has the chair; provisions granting a second vote to the Chairman of the Supervisory Board apply analogously to the election of the Chairman of the Supervisory Board 	<ul style="list-style-type: none"> – Election of a Chairman and two deputies – For the election of the Chairman, the oldest shareholder representative in terms of age has the chair; provisions granting a second vote to the Chairman of the Supervisory Board apply analogously to the election of the Chairman of the Supervisory Board
Meetings/ Resolutions of the Supervisory Board	<ul style="list-style-type: none"> – Resolutions are passed in principle in actual meetings – Meetings may be held by means of a video conference or through a video transmission with individual Supervisory Board members; in this case resolutions may also be passed or votes cast by video conference or video transmission – The Supervisory Board constitutes a quorum if half of the members of which it must consist participates in the passing of a resolution – Resolutions of the Supervisory Board require the majority of the votes cast – In case the votes are tied, the Chairman or, if he does not attend, the Deputy Chairman has a casting vote, provided the latter is a shareholder representative 	<ul style="list-style-type: none"> – Resolutions are passed in principle in actual meetings – Meetings may be held by means of a video conference or through a video transmission with individual Supervisory Board members; in this case resolutions may also be passed or votes cast by video conference or video transmission – Meetings may be held in the form of a telephone conference and individual Supervisory Board members may participate through a telephone link; in these cases resolutions may be passed or votes cast by telephone conference or through a telephone link – The Supervisory Board constitutes a quorum if half of the members of which it must consist take part in the voting – Resolutions of the Supervisory Board require the majority of the votes cast – In case the votes are tied the Chairman or, if he does not attend, the Deputy Chairman has a casting vote, provided the latter is a shareholder representative

Subject Matter	Statutes of Fresenius SE	Articles of Association of Fresenius SE & Co. KGaA
Rights and Duties of the Supervisory Board	<ul style="list-style-type: none"> – The Supervisory Board supervises the management by the Management Board – Certain management measures taken by the Management Board require the express consent of the Supervisory Board – The Supervisory Board can extend the list of measures requiring its consent – The Supervisory Board should issue rules of procedure for the Management Board 	<ul style="list-style-type: none"> – The Supervisory Board supervises the management by the General Partner – If the Company holds a participation in the General Partner, the rights of the Company are exercised by the Supervisory Board
Remuneration of the Supervisory Board	<ul style="list-style-type: none"> – Fixed and flexible remuneration – The Chairman receives twice and his deputies one and a half times the amount of remuneration received by a Supervisory Board member – Additional remuneration for membership in a committee 	<ul style="list-style-type: none"> – Fixed and flexible remuneration – The Chairman receives twice and his deputies one and a half times the amount of remuneration received by a Supervisory Board member – Additional remuneration for membership in a committee – Set-off in case of membership on the Supervisory Board of Fresenius SE & Co. KGaA and Fresenius Management SE
Convening the General Meeting	<ul style="list-style-type: none"> – To be convened at least 30 days before the day by the end of which the shareholders must register for the General Meeting 	<ul style="list-style-type: none"> – Unless a shorter period is allowed by law, to be convened at least 30 days before the day of the General Meeting – Convocation period is extended by the days of the registration period, the day of the General Meeting and the day of the convocation do not count for this purpose
Participation in the General Meeting	<ul style="list-style-type: none"> – Registration and proof of eligibility must be received by the Company no later than on the seventh day before the General Meeting (registration date) – Registration requires the text form (sec. 126b BGB) and must be in German or English 	<ul style="list-style-type: none"> – The registration and proof of eligibility must be received by the Company no later than six days prior to the General Meeting. – The invitation can fix a shorter period; the day of the General Meeting and the day of receipt do not count for this purpose – Registration requires text form (sec. 126b BGB) and must be in German or English – The General Partner is authorized to provide for shareholders to be allowed to cast their votes in writing or by way of electronic communication (so-called postal voting)
Date of the Ordinary General Meeting	<ul style="list-style-type: none"> – Within the first six months after the end of a financial year 	<ul style="list-style-type: none"> – Within the first eight months of a financial year

Subject Matter	Statutes of Fresenius SE	Articles of Association of Fresenius SE & Co. KGaA
Chairmanship of the General Meeting	<ul style="list-style-type: none"> – Chairman of the Supervisory Board or, if he is unavailable or at the request of the Chairman of the Supervisory Board, by another member of the Supervisory Board whom the Chairman of the Supervisory Board appoints 	<ul style="list-style-type: none"> – Chairman of the Supervisory Board or, if he is unavailable or at the request of the Chairman of the Supervisory Board, by another member of the Supervisory Board whom the Chairman of the Supervisory Board appoints
Voting at the General Meeting	<ul style="list-style-type: none"> – Unless otherwise provided for by the statutes or by mandatory law, by simple majority of the votes cast – Amendments of the statutes require, except where this is inconsistent with provisions of mandatory law, a majority of two thirds of the votes cast or, if at least half of the share capital is represented, the simple majority of the votes cast – If mandatory legal provisions require a majority of the share capital represented during voting for the validity of a resolution, the simple majority of the represented share capital suffices to the extent legally admissible – In case of a tie, a motion is deemed rejected 	<ul style="list-style-type: none"> – Unless mandatory provisions of the law or of the articles of association require a greater majority, simple majority of the votes cast – In case where the law prescribes – in a non-mandatory form – a particular majority of the share capital represented during the passing of the resolution, the simple majority of the represented share capital suffices. – In case of a tie, a motion is deemed rejected
Annual Financial Statements	<ul style="list-style-type: none"> – To be prepared by the Management Board – Adoption by the Supervisory Board 	<ul style="list-style-type: none"> – To be prepared by the General Partner – Adoption by resolution of the General Meeting with the consent of the General Partner
Appropriation of Profits	<ul style="list-style-type: none"> – The General Meeting resolves on the appropriation of the distributable profit, subject to the rights of the preference shareholders 	<ul style="list-style-type: none"> – The General Meeting resolves on the appropriation of the distributable profit
Severability	<ul style="list-style-type: none"> – No stipulation 	<ul style="list-style-type: none"> – Should any of the provisions of the articles of association entirely or partly be or later become ineffective or should the articles of association turn out to contain a gap, the validity of the remaining provisions is not affected thereby; the parties must replace any such ineffective provision by, or fill any such gap with, a reasonable provision which to the extent legally possible comes closest to the intent and purposes of the articles of association

*) The information is based on the share capital of Fresenius SE according to the statutes (as of March 12, 2010); until the registration of the change of the legal form the actual share capital may change due to the issuance of shares from conditional capital; according to the draft conversion resolution the Supervisory Board shall be authorized to adapt the articles of association of Fresenius SE & Co. KGaA as required due to such issuance of shares from conditional capital.

In the following, the relevant provisions of the articles of association will be described in detail, in particular where their contents deviate from the provisions in the statutes of Fresenius SE.

General Terms

The general terms of the proposed articles of association (Articles 1 to 3) were essentially carried over from the statutes of Fresenius SE.

Corporate Name and Registered Office (Art. 1)

The new corporate name of the Company “Fresenius SE & Co. KGaA” in Art. 1 para. 1 of the proposed articles of association is in line with sec. 279 para. 2 German Stock Corporation Act, according to which the corporate name of the company must disclose the limitation of liability if no natural person is personally liable in the company. Except for the inclusion of the suffix “& Co. KGaA” the corporate name will not change through the conversion. Like Fresenius SE, Fresenius SE & Co. KGaA will have its registered office in Bad Homburg vor der Höhe, Germany, according to Art. 1 para. 2 of the proposed articles of association.

Corporate Purpose (Art. 2)

Fresenius SE & Co. KGaA will essentially have the same corporate purpose as Fresenius SE. However, Art. 2 para. 1 of the proposed articles of association will not include the current Art. 2 para. 1 lit. c) of the statutes of Fresenius SE. This provision extends the corporate purpose to the planning and construction of production facilities, in particular for the manufacture of pharmaceutical, dietary and medical devices products. The described activities were carried out in the past by the former affiliated companies Pharmaplan GmbH and Pharmatec GmbH. The companies, including their participations, were sold in 2006 and 2007, respectively. As the Company no longer operates in this field (neither itself nor through an affiliated undertaking), the provision is obsolete. It was therefore not included in the proposed articles of association of Fresenius SE & Co. KGaA.

Notifications (Art. 3)

According to Art. 3 of the proposed articles of association, the notifications of the Company are to be published in the electronic Federal Gazette. The provision has the same wording as Art. 3 of the statutes of Fresenius SE.

Share Capital and Shares

The provisions in the proposed articles of association regarding the share capital and the shares (Art. 4 and 5) take account in particular of the changes following from the conversion of all preference shares into ordinary shares.

Share Capital (Art. 4)

Art. 4 para. 1 of the proposed articles of association deals with the amount of the share capital and its division into ordinary bearer shares. As all preference shares are to be converted into ordinary shares in the course of the change of the legal form of Fresenius SE, Art. 4 para. 1 no longer provides for any preference bearer shares.

Art. 4 para. 2 of the proposed articles of association states the manner in which the share capital of Fresenius AG was raised, Art. 4 para. 3 shows how the share capital of Fresenius SE was raised through the conversion of Fresenius AG into Fresenius SE and how the share capital of Fresenius SE & Co. KGaA will be raised through the conversion of Fresenius SE into Fresenius SE & Co. KGaA. Such a provision is necessary in view of the application of the law governing the incorporation of a company, so that a reference to the raising of the share capital was included in the articles of association of Fresenius SE & Co. KGaA.

The authorized capitals dealt with in Art. 4 paras 4 and 5 of the proposed articles of association of Fresenius SE & Co. KGaA now relate, as opposed to the earlier statutes, only to ordinary shares. In Art. 4 paras. 9 to 11, the conditional capitals contained in the statutes of Fresenius SE in Art. 4 paras. 6 to 8 now also relate only to ordinary shares. The amounts provided for in the proposed articles of association follow in each case from an addition of the amounts made available for ordinary shares and for preference shares for Fresenius SE. New authorized capitals are provided for in Art. 4 paras. 6 to 8 of the proposed articles of association. These are intended, alternatively to the conditional capitals provided for in Art. 4 paras. 9 to 11, to be used for the servicing of the existing stock option plans. Details regarding the conversion of the preference shares into ordinary shares, the changes regarding the stock option plans (and the conditional capitals created for this purpose) in view of the ordinary shares as well as the authorized capitals are described in Section 6.

Like Art. 4 para. 9 of the statutes of Fresenius SE, Art. 4 para. 12 of the proposed articles of association of Fresenius SE & Co. KGaA allows the participation in profits to be determined in derogation of sec. 60 German Stock Corporation Act, so that, for example, shares issued in the course of a financial year can confer an entitlement to dividends for the entire financial year.

Shares (Art. 5)

The provisions dealing with the shares largely correspond with the provisions in Art. 5 of the statutes of Fresenius SE. The shares are no-par value bearer shares.

Fresenius SE & Co. KGaA will remain entitled to issue share certificates made out to the bearer, each evidencing a plurality of shares (collective share certificates). The shareholders' right to have their individual shares represented by certificates is excluded, unless a share certificate is required under the rules applicable at a stock exchange to which the shares are admitted. The form of the share certificates and of the dividend coupons and renewal coupons is determined by the General Partner (instead of the Management Board, who is responsible for this in the case of Fresenius SE) with the approval of the Supervisory Board. The Company intends also in the future to no longer issue any effective share certificates.

Constitution of the Company

The provisions so far contained in the statutes of Fresenius SE which deal with the Management Board (Articles 7 and 8) are replaced in the proposed articles of association of Fresenius SE & Co. KGaA by new provisions regarding the General Partner of Fresenius SE & Co. KGaA.

General Partner (Art. 6)

Art. 6 para. 1 names Fresenius Management SE with registered office in Bad Homburg vor der Höhe as the General Partner of Fresenius SE & Co. KGaA. According to Art. 6 para. 2, Fresenius Management SE makes no special contribution and participates neither in the profit or loss of the company nor in its assets.

In the interest of the outside shareholders of the Company, Art. 6 para. 3 lit. (a) of the proposed articles of association of Fresenius SE & Co. KGaA ties a participation in the capital of the Company to the possibility of exerting an influence on the Company. Under the statutory provisions, it would be possible for the shareholder of Fresenius Management SE to reduce to a minimum or even entirely give up its participation in the share capital of Fresenius SE & Co. KGaA but retain its influence on the General Partner. There is no obligation for a General Partner or for its shareholder to hold an interest in the share capital of the KGaA at the same time. In contrast to this, the proposed articles of association require a person to hold a significant participation in the share capital of Fresenius SE & Co. KGaA in order to be able to be the General Partner's shareholder. To this end, Art. 6 para. 3 lit. (a) of the proposed articles of association requires a participation in excess of 10% of the share capital of Fresenius SE & Co. KGaA (at least 10% of the share capital plus 1 share). The limit for a participation of more than 10% of the share capital is deemed appropriate, since in these cases there is a substantial

participation, as shown for example by the provisions of the German Securities Trading Act (“WpHG”). According to sec. 27a German Securities Trading Act, a participation of 10% or more of the voting rights is to be regarded as a substantial participation which can trigger certain disclosure duties regarding the purposes pursued through the acquisition of the voting rights and the origin of the funds used for the acquisition. It makes sense to orient the definition of a significant participation in the articles of association of Fresenius SE & Co. KGaA to this limit.

Accordingly, the General Partner is excluded from the Company if its shareholder no longer directly or indirectly holds more than 10% of the share capital of Fresenius SE & Co. KGaA. This provision has the effect that the Else Kröner-Fresenius-Foundation (or a legal successor) must not reduce its participation in the capital of Fresenius SE & Co. KGaA to an amount below this percentage if it wants to make sure that the General Partner under its controlling influence may retain its function within Fresenius SE & Co. KGaA. But the articles of association do open up the possibility of preventing the exclusion of the General Partner through a transfer by the Foundation of all shares in the General Partner to the Company, in which way it would voluntarily give up its position of influence.

Moreover, according to Art. 6 para. 3 lit. (b) of the proposed articles of association, the General Partner is excluded from the Company if the shares in the General Partner are acquired by a person who does not, within twelve months after such acquisition takes effect, submit a takeover bid or a mandatory takeover bid to the shareholders of the Company pursuant to the rules of the German Securities Acquisition and Takeover Act (“WpÜG”). The effect of this provision is that the outside shareholders are in any case protected through the provisions of the WpÜG in case the General Partner is sold. However, according to the provisions of the WpÜG, a compulsory bid would have to be submitted to the outside shareholders only once the acquirer acquires at least 30% of the voting rights, resulting in a so-called acquisition of control (cf. sec. 35 WpÜG). The provision in Art. 6 para. 3 of the proposed articles of association stipulates in favor of the outside shareholders that a takeover bid must be submitted to the shareholders if the shares in the General Partner are transferred, even if this statutory threshold is not reached (i.e. between 10% and 30%). This gives the outside shareholders a tag-along right to sell in any case of an actual change of control.

Art. 6 para. 3 lit. (b) of the proposed articles of association also contains detailed provisions regarding the amount of consideration offered in the takeover bid or compulsory bid which can be illustrated as follows:

(1) Statutory Minimum Price Rule

According to sec. 5 para. 1 of the German Ordinance regarding the Offer Document, the Consideration in connection with Takeover Bids and Mandatory Bids and the Exemption from

the Obligation to Publish and Make a Bid (“WpÜG-AngVO”), the consideration offered in a takeover or compulsory bid must be equivalent at least to the weighted average domestic stock exchange price for the shares within the last three months prior to publication pursuant to sec. 10 para. 1 sentence 1 WpÜG or sec. 35 para. 2 sentence 1 WpÜG. According to sec. 4 WpÜG, the consideration must also be equivalent to the value of consideration for the acquisition of shares in the target company granted or agreed on within the last six months prior to the publication of the offer document.

(2) Legal Situation at Fresenius SE

Due to the statutory minimum price rule, prior to the effectiveness of the change of the legal form, the outside ordinary shareholders would profit from a possible control premium as the acquirer would have to pay the purchase price paid for the controlling shareholder’s ordinary shares according to sec. 4 WpÜG-AngVO also to the other ordinary shareholders. A purchase price paid by the acquirer to the controlling shareholder would therefore also benefit the outside ordinary shareholder insofar as it would be above the current stock exchange price. The control premium from which the outside ordinary shareholders would overall participate in this way, can, for calculation purposes, be put in proportion to the control premium that would be paid to the controlling shareholder. The formula for this calculation has to take into account that the ordinary shareholders hold 50% of the overall share capital of Fresenius SE and that all ordinary shares are divided between the outside ordinary shareholders, on one side, and the Foundation as controlling shareholder, on the other side. The control premium from which the other ordinary shareholders of Fresenius SE would profit can for the purpose of the Fresenius SE therefore be calculated by multiplying the control premium paid in total to the controlling shareholder with the following factor:

[(50 minus quota of the participation of the controlling shareholder) divided by the quota of the participation of the controlling shareholder]

The following example shall clarify this: Given a quota of the controlling shareholder in the overall share capital of Fresenius SE of 20% (40% of the ordinary shares) and a control premium paid to him in the amount of 100, the other ordinary shareholders, that hold 30% of the share capital (60% of the ordinary shares), profit from the control premium in an amount of 100 multiplied by 3/2, therefore by an amount of 150.

(3) Provision in Art. 6 para. 3 lit. (b) of the proposed articles of association of Fresenius SE & Co. KGaA

Also after the change of the legal form, the outside shareholders shall profit from a possible control premium according to Art. 6 para. 3 lit. (b) of the proposed articles of association. Art. 6

para. 3 lit. (b) of the proposed articles of association therefore stipulates with respect to the amount of consideration to the outside shareholders in case of a takeover or compulsory bid:

The consideration offered to the other shareholders must also take account of a payment made by the acquirer to the direct or indirect holder of the shares in the General Partner for the acquisition of the shares in the General Partner and the Company in excess of the sum of the General Partner's equity and of the average stock exchange price of the shares in the Company being acquired, during the last five stock exchange trading days before the day of the conclusion of the agreement on the acquisition of the shares in the General Partner (calculated on the basis of the average final quotations in the XETRA trading system or a comparable successor system) in the following amount:

Payment multiplied by [(50 minus quota) divided by quota].

For the purposes of these stipulations, a "quota" means the quota of the participation expressed in percent held by the direct or indirect holder of the shares in the General Partner directly or indirectly in the share capital of the Company at the time of the conclusion of the agreement on the acquisition of the shares in the General Partner.

The effect of this provision is that the outside shareholders profit from a possible control premium in a manner largely corresponding with the situation of the Company prior to the change of the legal form into a KGaA with consolidation of the classes of shares taking effect. The outside shareholders profit from a possible control premium even if it is allocated to the participation in Fresenius Management SE or the offer is submitted outside the 6-month period prior to the acquisition. After the change of the legal form, however, this will apply to all outside shareholders of the company, so that the former preference shareholders, too, profit from the overall control premium allotted to the outside shareholders.

Convenience Translation

The manner in which the control premium is taken into account through the above formula can be illustrated by the following examples (with arbitrarily chosen and partly rounded figures):

Assumed participation quota EKFS ¹⁾ in the share capital of the KGaA ²⁾ at the time of the conclusion of the agreement on the acquisition of the GP ³⁾ (“quota”)	29% ⁴⁾	25%	20%	15%
Number of the KGaA shares held by EKFS at the time of the conclusion of the agreement on the acquisition of the GP	46,871,154	40,328,844	32,263,075	24,197,306
Number of other KGaA shares	114,444,222	120,986,532	129,052,301	137,118,070
Assumed average stock exchange price for the KGaA shares during the last 5 stock exchange trading days before the day of the conclusion of the agreement on the acquisition of the GP	Euro 50,00	Euro 50,00	Euro 50,00	Euro 50,00
Assumed amount of the control premium (payment minus equity capital GP ⁵⁾ and 5 day average stock exchange price multiplied by the number of acquired KGaA shares)	Euro 100,000,000	Euro 100,000,000	Euro 100,000,000	Euro 100,000,000
Amount of the payment to EKFS for the shares in the GP and in the KGaA	Euro 2,445,057,700	Euro 2,117,942,200	Euro 1,714,653,750	Euro 1,311,365,300
Amount to be taken into account, calculated by multiplying the control premium by [(50 minus quota) divided by quota]	Euro 72,413,793	Euro 100,000,000	Euro 150,000,000	Euro 233,333,333
Assumed relevant statutory average stock exchange price for the takeover or compulsory bid (sec. 5 WpÜG-AngVO)	Euro 50,00	Euro 50,00	Euro 50,00	Euro 50,00
Consideration per KGaA share to be offered by the acquirer in the takeover or compulsory bid, taking the control premium into consideration	Euro 50,63	Euro 50,83	Euro 51,16	Euro 51,70

¹⁾ EKFS = Else Kröner-Fresenius-Foundation

²⁾ KGaA = Fresenius SE & Co. KGaA

³⁾ GP = General Partner

⁴⁾ rounded

⁵⁾ Equity capital GP = Euro 1.5 mn

Art. 6 para. 3 of the proposed articles of association of Fresenius SE & Co. KGaA additionally makes clear that any obligation of the acquirer of the shares in the Company and the shares in the General Partner to submit a takeover or compulsory bid to the shareholders of Fresenius SE & Co. KGaA will remain unaffected. Furthermore, it is made clear that the other statutory grounds for withdrawal of the General Partner remain unaffected.

If the General Partner leaves the Company through the procedure described above or for other reasons, Art. 6 para. 4 of the proposed articles of association of Fresenius SE & Co. KGaA provides for the continuation of the Company as a so-called “unified KGaA” (*Einheits-KGaA*). If the “unified KGaA” comes into existence, the limited shareholders of Fresenius SE & Co. KGaA are effectively given the same position as the shareholders of a stock corporation, since the rights arising from the participation in Fresenius Management SE are exercised in this case by the Supervisory Board of Fresenius SE & Co. KGaA according to Art. 11 para. 4 of the proposed articles of association. Art. 6 para. 5 provides in the case of a continuation as a “unified KGaA” that the next Ordinary General Meeting must decide on the change of the legal form of

the Company into an SE, if legally permissible, and otherwise into a German stock corporation. The path to an SE or alternatively to a German stock corporation is facilitated in this case, as the articles of association impose an obligation upon the General Partner to consent to the change of the legal form, a simply majority sufficing for this purpose to the extent legally admissible.

Management and Representation of the Company, Reimbursement of Expenses and Remuneration (Art. 7)

Art. 7 of the proposed articles of association deals with the management and representation of Fresenius SE & Co. KGaA by the General Partner. In principle the business of Fresenius SE & Co. KGaA is managed by its General Partner, which represents Fresenius SE & Co. KGaA in dealing with external third parties. As an exception to this, Fresenius SE & Co. KGaA is represented according to Art. 7 para. 1 sentence 2 of the proposed articles of association by the Supervisory Board vis-à-vis its General Partner.

Art. 7 para. 2 of the proposed articles of association of Fresenius SE & Co. KGaA clarifies that, deviating from the general rule provided by the law, the General Meeting has no right to participate in the resolution of exceptional management measures. Such a right to consent also does not exist under the current wording of the statutes of Fresenius SE and will also not be created in the future for the structure of Fresenius SE & Co. KGaA (see for this also the explanation in Section 7.3.2). The right of the General Meeting to participate in measures of exceptional significance (so-called *Holz Müller/Gelatine* cases) will remain unaffected by the conversion into a KGaA.

Art. 7 para. 3 of the proposed articles of association stipulates that the Company must reimburse the General Partner for any and all expenses in connection with the management of the Company's business. This also includes the remuneration of the members of the Management and Supervisory Boards of the General Partner. Effectively, Fresenius SE & Co. KGaA is to pay the entire costs of its own management. Fresenius Management SE will act exclusively for the purpose of managing the business of Fresenius SE & Co. KGaA.

According to Art. 7 para. 4, the General Partner will receive an annual remuneration from the Company in the amount of 4% of its share capital, in addition to the reimbursement of its expenses. This consideration for assuming the management of Fresenius SE & Co. KGaA and the liability is independent of a profit or loss. This ensures a reasonable minimum return on the capital invested by the Else Kröner-Fresenius-Foundation in the form of the share capital of Fresenius Management SE. At the same time, account is taken thereby of the liability risk of Fresenius Management SE as the General Partner of Fresenius SE & Co. KGaA. This return is necessary for reasons of tax law in order to avoid the assumption that a hidden distribution of

profits is made by the General Partner to its shareholder, i.e. the Else Kröner-Fresenius-Foundation, in the amount of a reasonable consideration for the assumption of liability.

Art. 7 para. 5 of the proposed articles of association makes clear that the General Partner is not authorized to undertake transactions for its own or for another's account outside the scope of its responsibilities within Fresenius SE & Co. KGaA.

As opposed to the statutes of Fresenius SE, the proposed articles of association of Fresenius SE & Co. KGaA contain no list of management measures which require the consent of the Supervisory Board. Because of the legal differences between an SE and a KGaA, the Supervisory Board of Fresenius SE & Co. KGaA also does not have the right to prepare a list of management measures of the General Partner which require the consent of the Supervisory Board (for this, see already the explanations in Section 7.3.2).

Election and Term of Office of the Supervisory Board (Art. 8)

Articles 8 to 13 of the proposed articles of association contain provisions dealing with the Supervisory Board. Their content is largely based on the corresponding provisions in the statutes of Fresenius SE.

Art. 8 paras. 1 and 2 of the proposed articles of association deal with the composition of the Supervisory Board and the appointment of the members of the Supervisory Board. According to these provisions, the Supervisory Board of Fresenius SE & Co. KGaA consists – like the Supervisory Board of Fresenius SE – of twelve members. Half of the members of the Supervisory Board are elected by the General Meeting in accordance with the provisions of the German Stock Corporation Act; the other half of the members of the Supervisory Board are elected by the employees. The Else Kröner-Fresenius-Foundation is excluded from the right to vote on such resolutions.

The provision in Art. 8 para. 1, according to which the Supervisory Board consists of twelve members, already takes account of the planned cross-border merger of Calea Nederland N.V. into the Company. Because of the cross-border merger, the size of the Supervisory Board can be fixed in the articles of association of Fresenius SE & Co. KGaA (for this, see the explanations in Section 3.4.1). If, contrary to expectations, the cross-border merger should fail to be registered, an amendment of the articles of association would not be imperative as Art. 8 para. 1 of the proposed articles of association expressly contains a reservation relating to the mandatory legal provisions.

Unlike Art. 9 para. 2 of the statutes of Fresenius SE, Art. 8 of the proposed articles of association contains no provision dealing with the appointment of the shareholder representatives in the first Supervisory Board. The provision in the statutes of Fresenius SE is based on a special feature of the law governing European Companies. According to Art. 40 para. 2 sentence 2 SE Regulation,

the members of the first Supervisory Board can be appointed by the statutes. No comparable provision exists for a change of the legal form into a KGaA, so that the new appointment of Supervisory Board members cannot be made here by the articles of association. Accordingly, the new appointment of the six shareholder representatives that is necessary because of the change of the legal form of Fresenius SE into a KGaA is included as item 9 of the agenda for the Ordinary General Meeting of the Company on May 12, 2010. The six employee representatives will be elected by the employees (for this, see Sections 4.3.9 and 9.2.2).

Art. 8 para. 3 of the proposed articles of association deals with the term of office of the Supervisory Board members. According to the current provision in Art. 9 para. 3 of the statutes of Fresenius SE, the members of the Supervisory Board are appointed for a term of office up to the end of the General Meeting which resolves on the ratification of the actions for the fourth financial year after the term of office commenced, without counting the financial year in which the term of office begins, but for a maximum of six years. Art. 8 para. 3 of the proposed articles of association is based on this provision. The members of the Supervisory Board are thus appointed – subject to a deviating resolution of the General Meeting – for the time until the close of the Ordinary General Meeting which resolves on the ratification of the actions for the fourth financial year after the term of office commenced. Also in Article 8 para. 3, it is stipulated that the financial year in which the term of office begins should not count for this purpose. Accordingly, the members of the Supervisory Board are generally appointed for five years. However, as opposed to Art. 9 para. 3 of the statutes of Fresenius SE, Art. 8 para. 3 of the proposed articles of association does not limit the appointment to a maximum of six years. The limitation to six years in the statutes of Fresenius SE follows a provision to this effect in Art. 46 para. 1 SE Regulation. The German Stock Corporation Act contains no such provision, so that the limitation of the term of office to a maximum of six years was not included in the proposed articles of association of Fresenius SE & Co. KGaA. Like Art. 9 para. 3 of the statutes of Fresenius SE, Art. 8 para. 3 of the proposed articles of association provides that the reappointment of members to the Supervisory Board is permissible.

If a member elected by the General Meeting ceases to be a member of the Supervisory Board before his term of office expires, a new election to replace this member is to be held at the next General Meeting. The newly elected member's term of office runs to the end of the former member's term of office. This provision in Art. 8 para. 4 of the proposed articles of association follows the corresponding provision in the statutes of Fresenius SE. As a result, all members of the Supervisory Board have the same term of office without any staggered expiry of the various Supervisory Board members' terms of office.

In addition, like Art. 9 para. 5 of the statutes of Fresenius SE, Art. 8 para. 5 of the articles of association of Fresenius SE & Co. KGaA allows substitute members to be appointed. The appointment of the substitute members is made in an order to be determined at the time of their

appointment. The position as a substitute member revives if and when the General Meeting appoints a new member for a former member of the Supervisory Board replaced by such substitute member. The substitute member's term of office is limited to the period until the close of the General Meeting at which a new election for a member elected by the General Meeting for the remaining term of office of the former member is held. This provision is identical with the corresponding provision for Fresenius SE.

Finally, like Art. 9 para. 6 of the statutes of Fresenius SE, Art. 8 para. 6 of the articles of association of Fresenius SE & Co. KGaA stipulates that members of the Supervisory Board can resign from office at any time, even without good cause, by giving one month's written notice to the Chairman of the Supervisory Board.

Constitution of the Supervisory Board (Art. 9)

To constitute the Supervisory Board, Art. 9 para. 1 of the proposed articles of association stipulates, as does Art. 10 para. 1 of the statutes of Fresenius SE, that, following the General Meeting in which a new Supervisory Board has been appointed, the Supervisory Board shall hold a meeting without special notice and elect, if necessary, a Chairman and two Deputy Chairmen from among its members for the duration of their term of office on the Supervisory Board.

If the Chairman or one of his deputies should prematurely cease to hold office, the Supervisory Board must promptly hold a new election to replace the former member according to sec. 9 para. 2 of the proposed articles of association. This provision corresponds with Art. 10 para. 2 of the statutes of Fresenius SE.

In addition, Art. 9 para. 3 of the proposed articles of association stipulates, like Art. 10 para. 3 of the statutes of Fresenius SE, that the election of the Chairman of the Supervisory Board is to be chaired by the oldest member in terms of age among the shareholder representatives on the Supervisory Board. Art. 9 para. 3 half sentence 2 declares Art. 10 para. 5 sentence 2 of the proposed articles of association to be applicable analogously. The latter provision gives the Chairman a casting vote in the event of a tie. This provision secures the right of the chairman, to be appointed by the shareholder representatives, to cast the decisive vote in elections for the Chairman of the Supervisory Board. This avoids a deadlock in the election of a Chairman of the Supervisory Board.

Meetings and Resolutions of the Supervisory Board (Art. 10)

The provision in Art. 10 of the proposed articles of association dealing with meetings and resolutions of the Supervisory Board largely follows Art. 11 of the statutes of Fresenius SE. The meetings of the Supervisory Board of Fresenius SE & Co. KGaA must therefore be convened by the Chairman in writing with a notice period of 14 days. The individual items on the agenda must be stated in the invitation to the meeting. In urgent cases, the period may be shortened and the

meeting may be convened by telegram, telex, telefax, other means of electronic communication (e-mail etc.) or telephone.

As presently at Fresenius SE, resolutions of the Supervisory Board are, as a rule, adopted in meetings personally attended by the members (*Präsenzsitzungen*). It is permissible that meetings of the Supervisory Board be held by way of a video conference or that individual Supervisory Board members participate by means of a video transmission, and that in such cases the passing of resolutions or voting takes place by way of a video conference or video transmission. Compared to Art. 11 para. 2 of the statutes of Fresenius SE, Art. 10 para. 2 of the proposed articles of association facilitates the proceedings by additionally allowing a meeting to be held in the form of a telephone conference or through the participation of Supervisory Board members by telephone. In these cases, resolutions can be adopted or votes cast by way of a telephone conference or by telephone. Outside of meetings, resolutions in text form (in particular in writing, by telegraph, telex, telefax, other means of electronic communication (e-mail etc.) – cf. sec. 126b BGB – are admissible, if the Chairman of the Supervisory Board or, in the event of his being unavailable, his deputy directs to do so. Unlike Art. 11 para. 2 of the statutes of Fresenius SE, Art. 10 para. 2 of the proposed articles of association of Fresenius SE & Co. KGaA does not provide that this procedure may not be followed if a member of the Supervisory Board promptly objects in text form.

Art. 10 para. 3 of the proposed articles of association corresponds with Art. 11 para. 3 of the statutes of Fresenius SE. According to these provisions, the Supervisory Board constitutes a quorum if half of the total number of members of which it is to consist takes part in the voting. This provision is consistent with sec. 108 para. 2 sentence 2 German Stock Corporation Act. If the number of Supervisory Board members representing the shareholders who take part in the voting is not the same as the number of Supervisory Board members representing the employees who take part in the voting, or if the Chairman of the Supervisory Board does not take part, the voting shall, upon motion of at least two members of the Supervisory Board, be postponed. The procedure described above applies to the postponed voting; it can be held also on the same day if so directed by the Chairman of the Supervisory Board.

If members of the Supervisory Board are unable to attend meetings, they may have another member of the Supervisory Board submit their written votes pursuant to Art. 10 para. 4 sentence 1 of the proposed articles of association. The submission of a written vote is deemed to be participation in the passing of the resolution. Article 10 para. 4 of the proposed articles of association corresponds with Art. 11 para. 4 of the statutes of Fresenius SE.

According to Art. 10 para. 5 sentence 1 of the proposed articles of association, resolutions of the Supervisory Board require the majority of the votes cast. As in the case of Fresenius SE, the Chairman's casting vote or, if the Chairman does not attend, his deputy's casting vote is decisive

in the event of a tie already in the first voting, provided, in the case of a deputy, that the deputy is a shareholder representative. A deputy who is an employee representative does not have the right to a casting vote. This also applies to the passing of resolutions in the committees of the Supervisory Board of which the Chairman or his deputy, if he is a shareholder representative, is a member. Art. 10 para. 5 of the proposed articles of association corresponds with Art. 11 para. 5 of the statutes of Fresenius SE.

According to Art. 10 para. 6 of the proposed articles of association, as also provided for in the statutes of Fresenius SE, minutes of the meeting of the Supervisory Board are to be prepared and signed by the Chairman of the meeting. The Chairman of the Supervisory Board signs the records of resolutions adopted outside a meeting by personal attendance.

Rights and Duties of the Supervisory Board (Art. 11)

Art. 11 para. 1 of the proposed articles of association, according to which the Supervisory Board has the rights and duties defined by mandatory legal provisions and by the articles of association, corresponds with Art. 12 para. 1 of the statutes of Fresenius SE.

Art. 11 paras. 2 and 3 of the proposed articles of association contain additional provisions for the supervision by the Supervisory Board of the management. According to Art. 11 para. 2 of the proposed articles of association, the Supervisory Board must supervise the management of the General Partner. For this purpose, it can inspect and audit the books and records as well as the assets of the Company. According to Art. 11 para. 3 of the proposed articles of association, the General Partner must report regularly to the Supervisory Board. In addition, the Supervisory Board may request the submission of a report if and when there is an important reason for this, also if this relates to a business transaction at an affiliated undertaking which has become known to the General Partner and may substantially affect the situation of the Company.

In case the Company holds a participation in its General Partner, Art. 11 para. 4 of the proposed articles of association makes clear that all rights of the Company under and with respect to this participation are to be exercised by the Supervisory Board.

According to Art. 11 para. 5 of the proposed articles of association, the Supervisory Board is entitled, without a resolution of the General Meeting, to make any amendments to the articles of association which concern only their wording. This provision corresponds with Art. 12 para. 3 sentence 1 of the statutes of Fresenius SE. Art. 12 para. 3 sentence 2 of the statutes of Fresenius SE, according to which the right to amend the statutes also in the cases of Art. 4 para. 1 sentence 1 and paras. 4, 5, 6 and 7 of the statutes of Fresenius SE, has a merely clarifying function and is therefore dispensable. Therefore, no such provision was included in the articles of association of Fresenius SE & Co. KGaA.

The provision in Art. 12 para. 3 of the statutes of Fresenius SE, according to which the Supervisory Board shall issue rules of procedure for the Management Board, cannot be included in the articles of association of Fresenius SE & Co. KGaA as it is incompatible with the law governing the KGaA. The KGaA itself has no Management Board. Moreover, the Supervisory Board of the KGaA can also not, for lack of authority to do so under corporate law, issue rules of procedure for the General Partner's Management Board.

Rules of Procedure of the Supervisory Board (Art. 12)

Art. 12 of the proposed articles of association stipulates, like Art. 13 of the statutes of Fresenius SE, that the Supervisory Board issues rules of procedure for itself within the framework of applicable mandatory provisions and the articles of association.

Remuneration of Supervisory Board Members (Art. 13)

The provision dealing with the remuneration for Supervisory Board members in Art. 13 of the proposed articles of association of Fresenius SE & Co. KGaA was carried over essentially from Art. 14 of the statutes of Fresenius SE.

Art. 13 para. 1 of the proposed articles of association corresponds with Art. 14 para. 1 of the statutes of Fresenius SE. According to these provisions, every member of the Supervisory Board receives a fixed annual remuneration of Euro 13,000.00 for every full financial year, payable after the end of the financial year. For each full financial year, the remuneration increases by 10% if the dividend distributed per ordinary share for the financial year (dividend amount according to the resolution of the General Meeting (gross dividend)) is one percentage point higher than 3.6% of the proportionate amount of the share capital attributable to each individual no-par value share; intermediate amounts are to be interpolated. If the General Meeting resolves a higher remuneration in view of the annual results, the increased amount is applicable. The Chairman of the Supervisory Board receives twice and his deputies one and a half times the remuneration of a Supervisory Board member.

For a membership in the Audit Committee (*Prüfungsausschuss*) of the Supervisory Board, a member receives – as presently at Fresenius SE – an additional remuneration of Euro 10,000.00, while the Chairman of such a committee receives twice the amount. Unlike Art. 14 para. 2 of the statutes of Fresenius SE, Art. 13 para. 2 of the proposed articles of association no longer mention any Personnel Committee (*Personalausschuss*). There will be no Personnel Committee for Fresenius SE & Co. KGaA, as Fresenius SE & Co. KGaA does not have a Management Board. The Management Board of Fresenius Management SE is appointed by its Supervisory Board.

If a financial year does not comprise a full calendar year or if a member of the Supervisory Board is on the Supervisory Board only for a part of a financial year, the remuneration is to be paid on a

pro rata temporis basis according to Art. 13 para. 3 of the proposed articles of association, as presently at Fresenius SE. This applies accordingly to a membership in the Audit Committee of the Supervisory Board. For the reasons described above, a Personnel Committee – unlike in Art. 14 para. 3 of the statutes of Fresenius SE – is no longer mentioned at this point.

According to Art. 13 para. 4 of the proposed articles of association, the members of the Supervisory Board are reimbursed – as presently at Fresenius SE – for the expenses incurred exercising their office, including applicable value-added tax. In addition, Art. 13 para. 4 of the proposed articles of association contains a provision according to which the Company provides insurance coverage to the members of the Supervisory Board to an extent appropriate with regard to the exercise of the Supervisory Board office. This provision of the articles of association is based on Art. 14 para. 4 of the statutes of Fresenius SE, but differs from the latter provision in that it does not expressly make insurance cover subject to an amount of self-retention.

In Art. 13 para. 5, the proposed articles of association contain an additional provision according to which the remuneration pursuant to Art. 13 para. 1 sentence 1 to 3 is reduced by half if a member of the Supervisory Board of Fresenius SE & Co. KGaA is at the same time a member of the Supervisory Board of the General Partner Fresenius Management SE and receives remuneration for his service on the Supervisory Board of Fresenius Management SE. The same applies to the additional part of the remuneration for the Chairman or his deputies if they are at the same time the Chairman or one of his deputies on the Supervisory Board of Fresenius Management SE. If a deputy of the Chairman of the Supervisory Board of the Company is at the same time the Chairman of the Supervisory Board of Fresenius Management SE, he does not receive any additional remuneration for his work as a Deputy Chairman of the Supervisory Board of the Company. Such a provision halving the remuneration is also contained in the statutes of Fresenius Management SE. This ensures that those who serve as members of both Supervisory Boards will in total receive the full remuneration only once.

Convening the General Meeting (Art. 14)

The provisions in the proposed articles of association of Fresenius SE & Co. KGaA dealing with the General Meeting (Articles 14 to 17) largely correspond with the provisions of the current statutes of Fresenius SE. However, a number of adjustments were made in view of the German Act to Implement the Shareholders' Rights Directive ("ARUG") of July 30, 2009.

According to Art. 14 para. 1 of the proposed articles of association, the General Meeting is to be convened – unless the law allows a shorter period – at least 30 days prior to the day of the General Meeting. This convocation period is extended by the number of days of the registration period. The day of the General Meeting and the day on which the meeting is convened do not

count for this purpose. Compared to the provision in Art. 15 para. 1 of the statutes of Fresenius SE, the calculation of the convocation period was adjusted to the legal situation as changed by the ARUG.

According to Art. 14 para. 2 of the proposed articles of association, the General Meeting is held at the registered office of the Company, at the place of a German stock exchange or at the registered office of a domestic associated company. This provision corresponds with Art. 15 para. 2 of the statutes of Fresenius SE.

Participation in the General Meeting (Art. 15)

The provisions dealing with the participation in the General Meeting in Art. 15 of the proposed articles of association of Fresenius SE & Co. KGaA largely follow the provisions dealing with the participation in the General Meeting in Art. 16 of the statutes of Fresenius SE.

Shareholders who wish to participate in the General Meeting or to exercise a voting right must therefore register for the General Meeting and prove their eligibility (Art. 15 para. 1 of the proposed articles of association). The registration and the proof of eligibility must be received by the Company at the address stated for this purpose in the invitation at least six days prior to the General Meeting. A shorter period to be expressed in days can be fixed in the invitation. The day of the General Meeting and the day of receipt do not count for this purpose. Compared to the provision in Art. 16 para. 1 of the statutes of Fresenius SE, the computation of the registration period was adjusted to the legal situation as changed by the ARUG. The registration must be in text form (sec. 126b BGB) and in German or English.

For the proof of eligibility, special proof of ownership issued by the custodian institution in text form in the German or English language is sufficient (Art. 15 para. 2 of the proposed articles of association). The proof regarding shares that are not held in a collective custody account may also be issued by the Company or a credit institution against delivery of the shares. The proof of ownership of the shares must – as presently at Fresenius SE – relate to the point in time determined by the German Stock Corporation Act for this purpose. According to sec. 123 para. 3 sentence 3 German Stock Corporation Act, this is the beginning of the 21st day prior to the General Meeting.

According to Art. 15 para. 3 of the proposed articles of association, the members of the General Partner's Management Board and the members of the Supervisory Board of Fresenius SE & Co. KGaA should personally participate in the General Meeting. If a member of the Supervisory Board is not able to attend at the place of the General Meeting, he can also participate in the General Meeting by way of video and audio transmission. The statutes of Fresenius SE contain no provision to this effect as, in its case, the members of the Management Board and of the Supervisory Board are to participate in the General Meeting already in accordance with sec. 118

para. 3 sentence 1 German Stock Corporation Act. This legal provision does not apply to the members of the Management Board of the General Partner of a KGaA so that their participation in the General Meeting can be dealt with only in the articles of association.

According to Art. 15 para. 4 of the proposed articles of association of Fresenius SE & Co. KGaA, the voting right can be exercised by proxy. The power of attorney must be granted or revoked and proof of such authority must be provided to the Company in text form. Art. 15 para. 4 sentence 2 half sentence 2 of the proposed articles of association makes clear that sec. 135 German Stock Corporation Act remains unaffected. According to sec. 135 para. 1 sentence 2 German Stock Corporation Act, a power of attorney granted to a credit institution (or another professionally acting person or institution named in sec. 135 German Stock Corporation Act) is to be recorded in a verifiable form. Art. 15 para. 4 sentence 3 of the proposed articles of association states, in conformity with sec. 134 para. 3 sentence 3 German Stock Corporation Act, that the formal requirements may be eased in the invitation to the General Meeting. The statutes of Fresenius SE contain no rules for the form of the power of attorney, so that the statutory rule applies in this respect. The provision in Art. 15 para. 4 of the proposed articles of association also largely reflects the statutory provision. The only exception is the right to ease the formal requirements. This is intended to give the General Partner the necessary flexibility in view of future technical developments.

Art. 15 para. 5 of the proposed articles of association authorizes the General Partner to provide for shareholders to be allowed to cast their votes in writing or by way of electronic communication (so-called postal voting). This provision, which is new compared to the statutes of Fresenius SE, is based on sec. 118 para. 2 German Stock Corporation Act as amended by the ARUG. From the shareholders' point of view, postal voting resembles a power of attorney to cast a vote with individual instructions given prior to the General Meeting. As Art. 15 para. 5 of the proposed articles of association is formulated as an authorization, the decision whether to allow postal voting is incumbent in each case upon the General Partner.

Date of the Ordinary General Meeting (Art. 16)

Unlike the statutes of Fresenius SE, Art. 16 of the proposed articles of association of Fresenius SE & Co. KGaA stipulates that the Ordinary General Meeting is to be held not within the first six months of a financial year, but within the first eight months. The change results from the fact that, according to sec. 175 para. 1 sentence 2 German Stock Corporation Act, which is applicable to Fresenius SE & Co. KGaA, it is sufficient to hold the ordinary general meeting in the first eight months of the financial year, whereas the ordinary general meeting of an SE must be held already in the first six months of the financial year according to Art. 54 para. 1 sentence 1 SE Regulation. The proposed articles of association of Fresenius SE & Co. KGaA thus – as presently the statutes of Fresenius SE – merely repeat the legal situation.

Chairmanship of the General Meeting and Voting (Art. 17)

Art. 17 para. 1 of the proposed articles of association of Fresenius SE & Co. KGaA largely reflects Art. 18 para. 1 of the statutes of Fresenius SE. The General Meeting is thus chaired by the Chairman of the Supervisory Board of Fresenius SE & Co. KGaA or, if he is unavailable or at the request of the Chairman of the Supervisory Board, by another member of the Supervisory Board whom the Chairman of the Supervisory Board appoints. If no such appointment is made, another member of the Supervisory Board to be determined by the Supervisory Board shall chair the meeting if the Chairman of the Supervisory Board is unavailable.

As already stipulated in Art. 18 para. 2 of the statutes of Fresenius SE, the Chairman (of the General Meeting) chairs the meeting, determines the order of items to be discussed and of the speakers as well as the manner and form of voting. He may determine appropriate restrictions of the speaking time, of the question time, and of the combined speaking and question time at the beginning or during the General Meeting, regarding the discussions on individual items of the agenda, as well as for individual speaking and question contributions. He orders the end of the debate to the extent and as soon as this is necessary for an orderly conduct of the General Meeting (Art. 17 para. 2 of the proposed articles of association).

According to Art. 17 para. 3 of the proposed articles of association, the resolutions of the General Meeting are passed by simple majority of the votes cast unless mandatory provisions of the law or of the articles of association require a greater majority. In cases where the law prescribes – in a non-mandatory form – a particular majority of the share capital represented during the passing of the resolution, the simple majority of the represented share capital is sufficient. If the voting results in a tie, a motion is deemed rejected. A similar provision is contained in Art. 18 para. 3 of the statutes of Fresenius SE. There it is stipulated additionally that amendments of the statutes require – to the extent not inconsistent with mandatory legal provisions – a majority of at least two thirds of the votes cast or, if at least half of the share capital is represented, the simple majority of the votes cast. This provision is based on the requirements set out in Art. 59 paras. 1 and 2 SE Regulation in conjunction with sec. 51 SEAG. For Fresenius SE & Co. KGaA, such a provision is not necessary as, according to sec. 179 para. 2 sentence 2 German Stock Corporation Act, the articles of association of a KGaA can stipulate that only a simple majority of the votes is necessary for amendments of the articles of association (except for a change of the corporate purpose), regardless of the represented share capital. The provision in Art. 17 para. 3 sentence 1 of the proposed articles of association thus also covers amendments of the articles of association. Factually, this does not lead to any change. As long as the Else Kröner-Fresenius-Foundation is the majority shareholder with more than 50% of the voting capital of Fresenius SE, it can be assumed that a presence of 50% of the share capital is ensured, so that amendments of the statutes also in the case of Fresenius SE can generally be decided with a simple majority.

According to Art. 17 para. 4 of the proposed articles of association, each ordinary share of Fresenius SE & Co. KGaA grants one vote in the General Meeting, as is also the case of Fresenius SE. A provision dealing with preference shares is no longer necessary in Art. 17 para. 4 of the proposed articles of association as this class of shares no longer exists in Fresenius SE & Co. KGaA.

Art. 17 para. 5 of the proposed articles of association stipulates as a supplement that the General Partner as well as the Chairman (of the General Meeting) during the General Meeting may determine that the General Meeting should be partly or completely broadcast by video and/or audio transmission (also in a manner which provides unrestricted access to the general public).

Art. 17 para. 6 sentence 1 of the proposed articles of association reflects the wording of sec. 285 para. 2 sentence 1 German Stock Corporation Act. Sec. 17 para. 1 sentence 2 of the proposed articles of association provides that the General Partner declares at the General Meeting whether it approves or rejects resolutions requiring its approval. These provisions refer to the specific features of a KGaA. Therefore the statutes of Fresenius SE contain no provision to this effect.

Annual Financial Statements and Appropriation of Profits

Financial Year, Accounting (Art. 18)

The provisions in the proposed articles of association of Fresenius SE & Co. KGaA relating to the financial year and to accounting (Art. 18) have a similar content as the corresponding provisions of the statutes of Fresenius SE. They were adjusted to the formal approval of the annual financial statements by the General Meeting of the KGaA with the consent of the General Partner required in the case of a company with this specific legal form.

Art. 18 para. 1 of the proposed articles of association stipulates that – as in the case of Fresenius SE – the financial year is the calendar year.

Art. 18 para. 2 sentence 1 of the proposed articles of association, according to which the General Partner must prepare the financial statements and the management report for the respective previous financial year within the first three months of the financial year, however no later than within the maximum period set by mandatory legal provisions, and submit them to the auditors, corresponds with the provision in Art. 19 para. 2 of the statutes of Fresenius SE. In addition, as in the case of Fresenius SE, Art. 18 para. 2 sentence 2 provides that, in preparing the financial statements, the General Partner can transfer a part of the annual profit not exceeding half of the profit to other profit reserves.

According to Art. 18 para. 3 sentence 1 of the proposed articles of association, the Supervisory Board mandates the auditor for the audit. This corresponds with Art. 19 para. 3 of the statutes of

Fresenius SE. In addition, Art. 18 para. 3 sentence 2 of the proposed articles of association stipulates that the General Partner must be given an opportunity to comment prior to the submission of the auditor's audit report to the Supervisory Board.

At the same time as the submission of the annual financial statements and the management report as well as the consolidated financial statements and the group management report, the General Partner submits to the Supervisory Board its proposal for the appropriation of the distributable profit. This provision corresponds with the contents of Art. 19 para. 4 of the statutes of Fresenius SE.

Art. 18 para. 5 of the proposed articles of association stipulates that the annual financial statements are to be adopted by resolution of the General Meeting with the consent of the General Partner. This provision merely repeats sec. 286 para. 1 German Stock Corporation Act.

Art. 18 para. 6 of the proposed articles of association stipulates by way of a clarification that Art. 18 paras 2 and 3 apply analogously to consolidated financial statements and a group management report if sec. 170 para. 1 sentence 2 German Stock Corporation Act is applicable to the Company as a parent company.

Appropriation of Profits (Art. 19)

According to Art. 19 of the proposed articles of association, the General Meeting resolves on the appropriation of the distributable profit. This provision corresponds with Art. 20 para. 1 of the statutes of Fresenius SE. The provisions in Art. 20 paras. 2 to 4 of the statutes of Fresenius SE can be omitted as they relate exclusively to the preference shares which no longer exist in Fresenius SE & Co. KGaA.

Miscellaneous

Severability (Art. 20)

In Art. 20, the proposed articles of association of Fresenius SE & Co. KGaA contain a rule for the event that a provision of the articles of association turns out to be or later becomes entirely or partly ineffective, or the articles of association contain a gap, in which case the validity of the remaining provisions remains unaffected and a rule shall apply which comes closest to the intent and purpose of the articles of association. Such a provision is common for a KGaA because, as opposed to the situation of an SE, possible reasons for invalidity are not limited by law and it is therefore not possible to rule out altogether that individual provisions of the articles of association, which in principle are subject to the freedom of legal arrangement, will not stand up to subsequent legal review.

Formation Expenses (Art. 21)

Regarding the formation expenses, Art. 21 paras. 1 to 3 of the articles of association of Fresenius SE & Co. KGaA firstly reflect the provisions set out in Art. 20 paras. 1 to 3 of the statutes of Fresenius SE. In addition, Art. 21 para. 4 of the proposed articles of association stipulates that the formation expenses in connection with the conversion of Fresenius SE into Fresenius SE & Co. KGaA will be borne by the company up to an amount of Euro 7 mn.

The reference to the appointment of members of the Management Board and of the Supervisory Board of Fresenius SE which is contained in Art. 21 para. 4 of the statutes of Fresenius SE is obsolete due to the change of the legal form of the Company into a KGaA and can be omitted.

7.3.4 Explanation of the Statutes of Fresenius Management SE

The future statutes of Fresenius Management SE (**Annex 4** to this conversion report), which however will be implemented only after the resolution of the Ordinary General Meeting of the Company to be held on May 12, 2010 regarding the change of the legal form, is also largely based on the existing statutes of Fresenius SE. In particular, the provisions for Fresenius SE dealing with the relationships among the corporate bodies have been carried over into the proposed statutes of Fresenius Management SE. On the other hand, the provisions dealing with the capital structure have been significantly shortened and simplified, compared to the provisions for Fresenius SE, because of the position of the Else Kröner-Fresenius-Foundation as the sole shareholder of Fresenius Management SE.

General Provisions

Corporate Name and Registered Office (Art. 1)

Art. 1 para. 1 of the statutes stipulates that the corporate name is “Fresenius Management SE”. Art. 1 para. 2 states that Fresenius Management SE has its registered office – like Fresenius SE and Fresenius SE & Co. KGaA – in Bad Homburg vor der Höhe.

Corporate Purpose (Art. 2)

Art. 2 para. 1 of the statutes of Fresenius Management SE establishes its participation in Fresenius SE & Co. KGaA as its General Partner as well as the management of Fresenius SE & Co. KGaA as the sole corporate purpose of the company. In addition to this corporate purpose of Fresenius Management SE, the corporate purpose of Fresenius SE & Co. KGaA is described in Art. 2 para. 2 for the purpose of clarification. As Fresenius Management SE is not intended to engage in any activities going beyond this limited corporate purpose, the “group clause” in Art. 2 para. 2 of the statutes of Fresenius SE is not included here. Art. 2 para. 3 of the statutes makes

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clear that the company is entitled to enter into any and all business transactions and to take any and all measures that are deemed necessary or useful in accomplishing the corporate purpose of the company.

Notification (Art. 3)

Art. 3 of the statutes, according to which the notifications of the company are published in the electronic Federal Gazette (*elektronischer Bundesanzeiger*), is identical with Article 3 of the statutes of Fresenius SE.

Share Capital and Shares

The provisions dealing with the share capital and the shares (Articles 4 and 5) of the proposed statutes of Fresenius Management SE are greatly simplified compared to the existing statutes of Fresenius SE.

Share Capital (Art. 4)

The amount of the share capital is Euro 1,500,000.00. In Art. 4 of the proposed statutes of Fresenius Management SE, it is stipulated that the shares are issued as registered shares. This provision must be seen in connection with Art. 6 para. 3 of the articles of association of Fresenius SE & Co. KGaA, according to which Fresenius Management SE is excluded from Fresenius SE & Co. KGaA under certain circumstances. In view of the statutory provision in sec. 67 para. 2 German Stock Corporation Act, according to which only persons entered in the list of shareholders are recognized by the company as shareholders holding registered, it is ensured that the company will become aware of a transfer of its shares to a third party before the third party can exert an influence on the company. The Management Board of Fresenius Management SE is informed in this way about any sale of the shares in this company and can make an announcement regarding the sale and take any further related measures. At the same time, the Management Board of Fresenius Management SE can examine whether this company has ceased to be the General Partner of Fresenius SE & Co. KGaA because of the share transfer.

Shares (Art. 5)

According to Art. 5 para. 1 of the statutes, Fresenius Management SE is entitled to issue registered share certificates, each representing a plurality of shares (collective share certificates). The shareholders' right to have their shares represented by certificates is excluded. The right to issue collective share certificates and to exclude the shareholders' right to have their shares represented by certificates corresponds with the provision in Art. 5 para. 2 of the statutes of Fresenius SE. The additional provision according to which the right to have one's individual shares represented by a certificate is excluded only if no share certificates are required under the

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rules applicable at a stock exchange to which the shares are admitted, is not necessary in the case of Fresenius Management SE as its shares will not be listed.

The form of the share certificates and of the dividend and renewal coupons is determined by the Management Board, with the approval of the Supervisory Board, according to Art. 5 para. 2 of the statutes. This provision is identical with Art. 5 para. 3 of the statutes of Fresenius SE.

Constitution of the Company

The provisions of the future statutes of Fresenius Management SE dealing with the internal constitution of the company (Articles 6 to 14) largely correspond with the provisions in the statutes of Fresenius SE dealing with the Management Board and the Supervisory Board. This is intended to ensure that the management structures within the General Partner and the management structures of the existing Fresenius SE will be largely identical. Deviations mostly concern only minor details with respect to procedural rules.

Corporate Bodies (Art. 6)

Art. 6 of the statutes corresponds with Art. 6 of the statutes of Fresenius SE. The provision makes clear that Fresenius Management SE has a Management Board, a Supervisory Board and a General Meeting as its corporate bodies.

Composition of the Management Board (Art. 7)

The composition of the Management Board of Fresenius Management SE is dealt with in Art. 7 of the statutes. Art. 7 of the statutes is identical with Art. 7 of the statutes of Fresenius SE.

According to Art. 7 para. 1 of the statutes, the Management Board of Fresenius Management SE consists of at least two persons. The Supervisory Board may fix a higher number. It may also appoint a Chairman of the Management Board as well as a Deputy Chairman. Subject to the competence of the Supervisory Board of Fresenius Management SE, it is planned that all current Management Board members of Fresenius SE – and only they – will be members of the Management Board of Fresenius Management SE.

The members of the Management Board are appointed by the Supervisory Board in accordance with Art. 7 para. 2 of the statutes for a maximum term of five years. Reappointments are permissible.

According to Art. 7 para. 3 of the statutes, the resolutions of the Management Board are adopted by a simple majority of the votes unless statutory law requires otherwise. In addition, the provision stipulates that the Chairman of the Management Board – if one has been appointed –

has a casting vote if votes are tied. Supplementing this provision, Art. 7 para. 4 of the statutes gives the Chairman of the Management Board a veto right. If a Chairman of the Management Board is appointed, he can therefore object to a resolution of the Management Board. The exercise of the veto right has the effect that the resolution is deemed to not have been passed in spite of the requisite majority having been reached.

Representation (Art. 8)

Art. 8 of the statutes, which deals with the representation of Fresenius Management SE, largely corresponds with Art. 8 of the statutes of Fresenius SE.

Art. 8 para. 1 of the statutes stipulates that the company is represented by two Management Board members or by one Management Board member acting jointly with a holder of a general power of attorney (*Prokura*). Such a general power of attorney may only be granted as a joint power of attorney (*Gesamtprokura*). The consent requirements set out in Art. 8 para. 3 of the statutes must be observed in this connection. Deviating from Art. 8 para. 1, according to which the Company in principle is to be represented by two Management Board members or one Management Board member jointly with a holder of a general power of attorney, the Supervisory Board may grant the right to solely represent the company to an individual or several members of the Management Board and may revoke such right at any time. This gives greater flexibility to the Supervisory Board.

Art. 8 para. 3 of the statutes stipulates that certain management measures of Fresenius Management SE taken by it in its capacity as the General Partner of Fresenius SE & Co. KGaA require the prior consent of the Supervisory Board of Fresenius Management SE. More specifically, this includes (i) the acquisition, disposal and encumbrance of real property and equivalent rights, if in an individual case the amount exceeds Euro 15,000,000.00, (ii) the adoption of new and the discontinuation of existing lines of business, as well as (iii) the granting of consent to the undertaking of any of the above legal actions by an associated company (*Beteiligungsgesellschaft*) of Fresenius SE & Co. KGaA. The list of management measures requiring consent is identical with the list in Art. 8 para. 3 of the statutes of Fresenius SE. The extension of this catalogue of measures requiring consent to the Management Board of Fresenius Management SE serves to preserve the existing governance structure.

Art. 8 para. 4 of the statutes authorizes the Supervisory Board, notwithstanding the collective responsibility of the Management Board, to assign duties of the Management Board to the individual members of the Management Board (*Ressortverteilung*) (in particular in the form of rules of procedure for the Management Board). The Supervisory Board can for this purpose assign the tasks of the Management Board to the various members of the Management Board and, within the scope of mandatory legal provisions and the statutes, determine the relationship

among the members of the Management Board and towards the company. Furthermore, Art. 8 para. 4 of the statutes allows the Supervisory Board, by way of an extension of Art. 8 para. 3, to define the acts for which the Management Board requires the express prior consent of the Supervisory Board. The Supervisory Board may also grant consent in accordance with Art. 8 para. 3 in a general manner, for limited or unlimited periods, as well as to individual members of the Management Board, in particular to the Chairman of the Management Board. Art. 8 para. 4 sentence 3 of the statutes makes clear that the Supervisory Board can at any time extend, restrict or revoke the rules of procedure for the Management Board. The provision of Art. 8 para. 4 sentence 4 of the statutes of Fresenius SE, according to which the Supervisory Board can delegate the passing of resolutions in accordance with Art. 8 para. 3 and the granting of consent according to the rules of procedure for the Management Board to a committee of the Supervisory Board which must have three members, but can otherwise have a composition freely determined by the Supervisory Board, was not carried over.

Also not carried over was the provision in Art. 8 para. 5 of the statutes of Fresenius SE, according to which the Management Board can give itself rules of procedure with the consent of the Supervisory Board, as long and insofar as the Supervisory Board has not issued rules of procedure for the Management Board. There is no need for such a provision as the Supervisory Board of Fresenius Management SE is to issue rules of procedure for the Management Board, the contents of which are to correspond with the rules of procedure for the Management Board of Fresenius SE. The provision in Art. 12 para. 2 of the statutes must also be seen in this context. Unlike Art. 12 para. 2 of the statutes of Fresenius SE, it stipulates that the Supervisory Board “must issue” rules of procedure for the Management Board (not: “should issue”).

Election and Term of Office of the Supervisory Board (Art. 9)

The provisions dealing with the election and the term of office of the members of the Supervisory Board in Art. 9 of the statutes is largely based on the corresponding provisions in Art. 9 of the statutes of Fresenius SE.

Art. 9 para. 1 of the statutes first determines the number of members of the Supervisory Board. The Supervisory Board consists of six members, all of whom are appointed by the General Meeting of Fresenius Management SE. In this respect, Art. 9 para. 1 of the statutes differs from Art. 9 para. 1 of the statutes of Fresenius SE. There, the Supervisory Board consists of twelve members, six of whom to be appointed as nominees of the employees. As Fresenius Management SE will not have any employees and its Supervisory Board therefore, unlike the Supervisory Board of Fresenius SE, is not subject to co-determination, Art. 9 para. 1 of the statutes need not include any provision dealing with employee representatives. As the Supervisory Board of Fresenius Management SE will consist exclusively of shareholder representatives, a size of six members appears to be reasonable. Thus, the number of shareholder representatives in

the Supervisory Board of Fresenius SE & Co. KGaA will be equivalent to the number of Supervisory Board members of Fresenius Management SE.

Contrary to Art. 9 para. 2 of the statutes of Fresenius SE, Art. 9 of the statutes contains no rules for the appointment of the members of the Supervisory Board. The possibility to appoint Supervisory Board members through the statutes is contemplated in Article 40 para. 2 sentence 2 SE Regulation only for the members of the first Supervisory Board. Fresenius Management SE is an already existing company with statutes that are to be adjusted after the change of the legal form takes effect, as set out in **Annex 4**. Following this, the current shareholder representatives in the Supervisory Board of Fresenius SE are to be appointed by the General Meeting of Fresenius Management SE to serve as members of the Supervisory Board of Fresenius Management SE. As this is thus not the first Supervisory Board, the appointment cannot be effected by the statutes.

Unless the General Meeting expressly resolves otherwise, the Supervisory Board members are appointed according to Art. 9 para. 2 of the statutes, which is identical with Art. 9 para. 3 of the statutes of Fresenius SE, for a term of office ending with the close of the Ordinary General Meeting which resolves on the ratification of actions for the fourth financial year after the term of office commenced. The year in which the term of office commences does not count for this calculation. The term of office must not exceed six years. This provision of the statutes relates to Article 46 para. 1 SE Regulation, according to which the term of office of the members of a corporate body must not exceed six years and must be determined in the statutes. Supervisory Board members may be reappointed once or several times.

If a member appointed by the General Meeting ceases to be a member of the Supervisory Board before his term of office expires, a new member is to be appointed at the next General Meeting in his place. The newly appointed member holds office for the withdrawing member's remaining term of office. This provision in Art. 9 para. 3 of the statutes corresponds with Article 9 para. 4 of the statutes of Fresenius SE. As a result, all Supervisory Board members have the same term of office and there is thus no staggered expiry of the various Supervisory Board members' terms of office.

In addition, Art. 9 para. 4 of the statutes, which corresponds with Art. 9 para 5 of the statutes of Fresenius SE, provides for the possibility to appoint substitute members. The appointment of the substitute members is made in a specific order to be determined at the time of their appointment. Their position as substitute members shall revive if and when the General Meeting appoints a new member for a former member who left office and was replaced by the respective substitute member. The substitute member's term of office is limited to the period until the close of the General Meeting at which a new appointment replacing the member appointed by the General Meeting for the rest of the former member's term of office takes place.

Finally, Art. 9 para. 5 of the statutes stipulates that members of the Supervisory Board may resign from office, even without good cause, at any time by giving one month's written notice. This provision corresponds with Art. 9 para. 6 of the statutes of Fresenius SE.

Constitution of the Supervisory Board (Art. 10)

For the purpose of constituting the Supervisory Board, Art. 10 para. 1 of the statutes stipulates that, following the General Meeting at which a new Supervisory Board has been appointed, the Supervisory Board holds a meeting without special notice in which the Supervisory Board elects a Chairman and a deputy from among its members for the duration of their office on the Supervisory Board. This provision is based on Art. 10 para. 1 of the statutes of Fresenius SE. However, unlike that provision, Art. 10 para. 1 of the statutes provides only for the election of one Deputy Chairman of the Supervisory Board. The reason for this is that, as opposed to Fresenius SE, Fresenius Management SE has a Supervisory Board which consists only of six members and is not subject to co-determination. There is therefore no need for a second deputy as provided for in the statutes of Fresenius SE.

If the Chairman or his deputy prematurely ceases to hold office, the Supervisory Board must promptly hold a new election to replace the former member according to Art. 10 para. 2 of the statutes. This provision corresponds with Art. 10 para. 2 of the statutes of Fresenius SE.

In addition, Art. 10 para. 3 of the statutes stipulates that the oldest member in terms of age chairs the proceedings for the election of the Chairman of the Supervisory Board. As the Supervisory Board of Fresenius Management SE is not subject to co-determination, no reference to the Supervisory Board Chairman's casting vote was – as opposed to the provision in Art. 10 para. 3 half sentence 2 of the statutes of Fresenius SE – included for the election of the Chairman of the Supervisory Board.

Meetings and Resolutions of the Supervisory Board (Art. 11)

The provision in Art. 11 of the statutes dealing with the meetings and resolutions of the Supervisory Board largely follows Art. 11 of the statutes of Fresenius SE. The meetings of the Supervisory Board of Fresenius Management SE must be convened by the Chairman in writing with a notice period of 14 days. The individual items of the agenda must be stated in the invitation to the meeting. In urgent cases, the notice period may be shortened and the meeting convened by telegram, telex, telefax, by other means of electronic communication (e-mail etc.) or by telephone.

As presently at Fresenius SE, the resolutions of the Supervisory Board are, as a rule, passed in meetings personally attended by the members (*Präsenzsitzungen*). It is permissible that meetings of the Supervisory Board be held by way of a video or telephone conference, or

that individual members of the Supervisory Board participate by means of a video transmission or by telephone, and that in such cases resolutions or votes can also be passed or cast by means of a video conference or telephone or by means of a video transmission. Compared to Art. 11 para. 2 of the statutes of Fresenius SE, Art. 11 para. 2 of the statutes provides for a facilitation of the proceedings by additionally allowing meetings to be held in the form of a telephone conference or through the participation of individual Supervisory Board members by telephone. In these cases, resolutions can be passed or votes cast by means of a telephone conference or by telephone. Outside of meetings, resolutions may be passed in text form (especially in writing, by telegram, telex, telefax, by other means of electronic communication (e-mail etc.), cf. sec. 126 BGB) or by telephone, if the Chairman of the Supervisory Board or, in the event of his being unavailable, his deputy directs to do so.

Art. 11 para. 3 sentence 1 of the statutes corresponds with Article 11 para. 3 sentence 1 of the statutes of Fresenius SE. According to this provision, the Supervisory Board constitutes a quorum if half of the total number of members of which it must consist participate in the passing of a resolution. The provision in Art. 11 para. 3 sentences 2 and 3 of the statutes of Fresenius SE was not carried over, as no employee representatives belong to the Supervisory Board of Fresenius Management SE.

If members of the Supervisory Board are unable to attend meetings, they may have another member of the Supervisory Board submit their written vote in accordance with Art. 11 para. 4 sentence 1 of the statutes. The submission of a written vote shall count as participation in the passing of the resolution. Art. 11 para. 4 of the statutes corresponds with Art. 11 para. 4 of the statutes of Fresenius SE.

Resolutions of the Supervisory Board require the majority of the votes cast according to Art. 11 para. 5 sentence 1 of the statutes, unless otherwise provided for by law or by the statutes. In the event of a tie, a new vote on the same issue is to be taken at the request either of the Chairman of the Supervisory Board or of another Supervisory Board member. If this vote also results in a tie, the Chairman of the Supervisory Board has two votes, also – to the extent legally admissible – in committees of the Supervisory Board of which he is a member. Art. 11 para. 4 of the statutes applies analogously to the second vote if a member of the Supervisory Board is prevented from attending. The Deputy Chairman of the Supervisory Board does not have a second vote.

Minutes of the meetings of the Supervisory Board of Fresenius Management SE are to be prepared according to Art. 11 para. 6 of the statutes, as also provided for in the statutes of Fresenius SE, and are to be signed by the Chairman of the meeting. The Chairman of the Supervisory Board must sign the records of resolutions passed outside of meetings by personal attendance.

Rights and Duties of the Supervisory Board (Art. 12)

Art. 12 of the statutes follows Art. 12 of the statutes of Fresenius SE. Thus, the Supervisory Board of Fresenius SE has the rights and duties defined by mandatory legal provisions and by the statutes of Fresenius SE (Art. 12 para. 1 of the statutes).

As opposed to Art. 12 para. 2 of the statutes of Fresenius SE, according to which the Supervisory Board should issue rules of procedure for the Management Board pursuant to Art. 8 para. 4 of the statutes of Fresenius SE, Art. 12 para. 2 of the statutes sets out a duty to do so.

According to Art. 12 para. 3 of the statutes, the Supervisory Board is entitled, without a resolution of the General Meeting, to make amendments to the articles of association which concern only their wording. Art. 12 para. 3 sentence 2 of the statutes of Fresenius SE, according to which the right to amend the statutes applies also in the cases of Article 4 para. 1 sentence 1 and paras. 4, 5, 6 and 7 of the statutes of Fresenius SE, has a merely clarifying function and is therefore dispensable. No corresponding provision was therefore included in the statutes of Fresenius Management SE.

Rules of Procedure of the Supervisory Board (Art. 13)

Like Art. 13 of the statutes of Fresenius SE, Art. 13 of the statutes stipulates that the Supervisory Board shall issue rules of procedure for itself within the framework of the mandatory legal provisions and the statutes.

Remuneration of the Supervisory Board (Art. 14)

The provisions dealing with the remuneration of the members of the Supervisory Board of Fresenius Management SE are basically identical with those applicable to the Supervisory Board members of Fresenius SE & Co. KGaA.

Art. 14 para. 1 of the statutes has the same contents as Art. 14 para. 1 of the statutes of Fresenius SE and Art. 13 para. 1 of the proposed articles of association of Fresenius SE & Co. KGaA. Each member of the Supervisory Board receives a fixed annual remuneration of Euro 13,000.00 for every full financial year, payable after the end of the financial year. For each full financial year, the remuneration increases by 10% if the dividend distributed per ordinary share of Fresenius SE & Co. KGaA for such financial year (dividend amount according to the resolution of the General Meeting of Fresenius SE & Co. KGaA (gross dividend)) is one percentage point higher than 3.6% of the proportionate amount of the share capital attributable to each individual no-par value share of the share capital; intermediate amounts are to be interpolated. If the General Meeting resolves a higher remuneration in view of the annual results of Fresenius SE & Co.

KGaA, the increased amount applies. The Chairman of the Supervisory Board receives twice and his deputy one and a half times the remuneration of a Supervisory Board member.

A provision dealing with remuneration of the members of an Audit Committee of the Supervisory Board as contained in Art. 13 para. 2 of the proposed articles of association of Fresenius SE & Co. KGaA is not necessary for Fresenius Management SE, as the establishment of an Audit Committee is not intended.

If a financial year does not comprise a full calendar year or if a member of the Supervisory Board is on the Supervisory Board only for a part of a financial year, the remuneration is paid *pro rata temporis* according to Art. 14 para. 2 of the statutes, as presently at Fresenius SE and in the future also at Fresenius SE & Co. KGaA.

According to Art. 14 para. 3 of the proposed statutes, the members of the Supervisory Board will – as presently at Fresenius SE – be reimbursed for expenses incurred in the exercise of their office, including applicable value-added tax. In addition, Art. 14 para. 3 of the proposed statutes contains a provision according to which the company provides insurance coverage to the members of the Supervisory Board to an extent appropriate with regard to the exercise of the Supervisory Board office. This wording is consistent with the provision in Art. 13 para. 4 of the proposed articles of association of Fresenius SE & Co. KGaA.

In Art. 14 para. 4, the proposed statutes contain a provision according to which the remuneration pursuant to Art. 14 para. 1 sentences 1 to 3 is reduced by half if a member of the Supervisory Board of Fresenius Management SE is at the same time a member of the Supervisory Board of Fresenius SE & Co. KGaA and receives remuneration for his service as a member of the Supervisory Board of Fresenius SE & Co. KGaA. The same applies with respect to the additional part of the remuneration for the Chairman or his deputy, provided they are at the same time the Chairman or, as the case may be, his deputy on the Supervisory Board of Fresenius SE & Co. KGaA. If the Deputy Chairman of the Supervisory Board of Fresenius Management SE is at the same time the Chairman of the Supervisory Board of Fresenius SE & Co. KGaA, he receives no additional remuneration for his position as Deputy Chairman of the Supervisory Board of Fresenius Management SE. A corresponding provision halving the remuneration is also contained in the proposed articles of association of Fresenius SE & Co. KGaA. This ensures that persons serving on both Supervisory Boards will receive the full remuneration payable under the articles of association or the statutes only once.

Convening the General Meeting (Art. 15)

The provisions of the future statutes of Fresenius Management SE dealing with the General Meeting (Articles 15 to 17) were significantly simplified compared to the provisions in the statutes of the existing Fresenius SE, as Fresenius Management SE has only one shareholder,

namely the Else Kröner-Fresenius-Foundation. In particular, the provisions setting out the conditions for participation in the General Meeting contained in Art. 16 of the statutes of Fresenius SE were omitted.

According to Art. 15 para. 1 of the statutes, the General Meeting is held at the registered office of the company or in a German city with more than 50,000 inhabitants.

According to Art. 15 para. 2 of the statutes, the Chairman of the Supervisory Board has the right, in addition to the Management Board and the other persons entitled by virtue of the law to do so, to convene the General Meeting. Art. 15 para. 3 of the statutes stipulates that the General Meeting is to be convened by means of a publication in the electronic Federal Gazette. If the company knows all shareholders by name, the General Meeting can also be convened by registered letter to the shareholders; the day on which the letter is mailed is deemed to be the day of its publication. Art. 15 para. 4 of the statutes stipulates that the General Meeting must be convened in principle at least thirty days prior to the day of the General Meeting, the day of the publication and the day of the General Meeting not counting for this purpose. A shorter period may apply if allowed by law.

The General Meeting can adopt resolutions without observing the provisions in secs. 121 to 128 German Stock Corporation Act if all shareholders are present or represented and no shareholder objects to such passing of a resolution. Art. 15 para. 5 of the statutes therefore merely repeats the legal provisions in this respect.

Date of the Ordinary General Meeting (Art. 16)

Art. 16 of the statutes, which determines the date of the Ordinary General Meeting, corresponds with Art. 17 of the statutes of Fresenius SE. The Ordinary General Meeting must be held within the first six months of a financial year. This provision is consistent with Art. 54 para. 1 SE Regulation, according to which the General Meeting is held at least once a calendar year within six months of the end of the preceding financial year.

Chairmanship of the General Meeting and Voting (Art. 17)

Art. 17 para. 1 of the statutes reflects Art. 18 para. 1 of the statutes of Fresenius SE. According to this provision, the General Meeting is chaired by the Chairman of the Supervisory Board of Fresenius Management SE or, if he is unavailable or at the request of the Chairman of the Supervisory Board, by another member of the Supervisory Board whom the Chairman of the Supervisory Board appoints. If no such appointment is made, another member of the Supervisory Board to be determined by the Supervisory Board chairs the meeting if the Chairman of the Supervisory Board is unavailable.

As stipulated in Art. 17 para. 2 of the statutes, the Chairman chairs the meeting, determines the order of items to be discussed as well as the manner and form of voting. The provisions contained in Art. 18 para. 2 sentences 2 and 3 of the statutes of Fresenius SE, dealing with the limitation of the speaking time and the close of the debate, are not necessary for Fresenius Management SE as this is not a publically held corporation. It was therefore decided not to include such provisions in the future statutes.

According to Art. 17 para. 3 of the statutes, the majorities of the votes cast and of the share capital represented in the voting that are necessary for the passing of resolutions of the General Meeting are determined by the legal provisions. In the event of a tie, a motion is deemed to have been rejected. At Fresenius Management SE a reduction of the majorities required by the legal provisions, as stipulated in Art. 18 para. 3 of the statutes of Fresenius SE, is not necessary, since the Else Kröner-Fresenius-Foundation is the only shareholder of Fresenius Management SE.

According to Art. 17 para. 4 of the statutes, each share grants one vote in the General Meeting. This provision corresponds with Art. 18 para. 4 sentence 1 of the statutes of Fresenius SE. Art. 17 para. 4 sentence of the statutes of Fresenius SE was not carried over, as Fresenius Management SE has no preference shares.

If a shareholder wishes to vote by proxy, the text form within the meaning of sec. 126b BGB suffices according to Art. 17 para. 5 of the statutes for the granting of the power of attorney, its revocation and proof of the power of attorney.

Annual Financial Statements and Appropriation of Profits

Financial Year, Rendering of Accounts (Art. 18)

The provisions in the proposed statutes of Fresenius Management SE dealing with the financial year and the rendering of accounts (Art. 18) have a similar content to those of Fresenius SE.

Art. 18 para. 1 of the statutes stipulates that, as in the case of Fresenius SE and of Fresenius SE & Co. KGaA, the financial year is the calendar year.

Art. 18 para. 2 sentence 1 of the statutes, according to which the Management Board prepares the annual financial statements and the management report for the previous financial year within the first three months of the financial year, however no later than within the maximum period set by mandatory legal provisions, and submits them promptly to the Supervisory Board, corresponds with the provision in Art. 19 para. 2 of the statutes of Fresenius SE.

At the same time as the submission of the annual financial statements and the management report, the Management Board must, pursuant to Art. 18 para. 3 of the statutes, submit to the

Supervisory Board the proposal which it intends to submit to the General Meeting concerning the appropriation of profits.

Art. 18 para. 4 of the statutes stipulates by way of clarification that Art. 18 para. 2 of the statutes applies analogously to consolidated financial statements and a group management report if sec. 170 para. 1 sentence 2 German Stock Corporation Act is applicable to the company as a parent company.

The appropriation of profits, which in the statutes of Fresenius SE is dealt with in Art. 20, is to be made in accordance with the statutory provisions at Fresenius Management SE.

Formation Expenses (Art. 19)

Art. 19 of the draft statutes stipulates that the formation expenses (notarial and court fees, publication costs) will be borne by the company up to an amount of Euro 1,500.00.

7.4 Comparison of the Positions of the Shareholders of Fresenius SE and Fresenius SE & Co. KGaA

Basis of the Comparison

The differences specific to the legal forms of an SE on the one hand and, on the other hand, a KGaA have the effect that the general Meeting and the supervisory Board elected by it have a weaker position on the whole in the case of a KGaA than the corresponding corporate bodies of an SE. However, to compare the shareholders' position before and after the change of the legal form, it is not the abstract consideration of the two legal forms which is relevant, but instead a concrete assessment of the individual facts in the present case.

Current Position of the Shareholders of Fresenius SE

The current situation within Fresenius SE is characterized by the fact that the Else Kröner-Fresenius-Foundation holds the majority of the voting ordinary shares. Allianz Lebensversicherungs-AG holds, according to its own statement, between 5 and 10% of the voting ordinary shares. The remaining ordinary shares as well as the entire preference shares are free float shares. This means that within Fresenius SE the Else Kröner-Fresenius-Foundation is currently able to pass resolutions requiring only a simple majority at any time due to its voting majority of approx. 58% in the General Meeting. This concerns especially the election of the Supervisory Board and of the auditors. Amendments of the statutes of Fresenius SE can also be resolved by simple majority of the votes provided that at least half of the (voting) share capital is represented. As the Foundation holds around 58% of the voting share capital, this condition is always fulfilled if the Foundation takes part with its shares in the passing of a resolution. Moreover, the Foundation can exert a significant influence on certain fundamental resolutions requiring a

majority of at least three quarters of the votes cast or of the share capital represented at the passing of the vote, especially if the attendance quota of the ordinary shareholders at the General Meeting is low. If the attendance quota of the ordinary shareholders remains below 77.33%, the Foundation can pass such resolutions with its own majority of the votes or the capital, as the case may be. The outside shareholders have no possibility to influence the composition of the Supervisory Board and thus indirectly the appointment of the members of the Management Board of Fresenius SE against the votes of the Foundation. Under these conditions, the same goes for any influence on amendments of the statutes and on fundamental resolutions requiring a majority of at least three quarters of the votes cast or of the share capital represented at the passing of the resolution.

Future Position of the Shareholders of Fresenius SE & Co. KGaA

Upon the taking effect of the change of the legal form, the existing de facto allocation of influence within Fresenius SE between the Else Kröner-Fresenius-Foundation and the outside shareholders will turn into a structural allocation of influence. In the partnership limited by shares, the General Partner is responsible for the management and representation of the company. With respect to the relationship between the Foundation and the outside shareholders, this means: On the one hand, the Foundation can retain its present influence over the General Partner. Through the appointment of the Supervisory Board of Fresenius Management SE, it can exert an influence on the appointment of its Management Board. On the other hand, following the change of the legal form and the conversion of preference shares into ordinary shares connected thereto, the percentage of the Foundation in the voting share capital will be reduced by half from approx. 58% to approx. 29%. The possibilities of the Foundation to exert influence in the General Meeting of the partnership limited by shares are therefore reduced. Correspondingly, the weight of the outside shareholders in the General Meeting increases.

The following comparison will show the (factual) possibilities of the outside shareholders and of the Else Kröner-Fresenius-Foundation to exert an influence before the change of the legal form and after the change of the legal form. To simplify the comparison, the legal independence of the members of the Supervisory Board in the exercise of their office, especially in selecting and appointing the members of the Management Board, will be disregarded.

The (factual) *possibilities of the outside shareholders to exert an influence* before the change of the legal form and after the change of the legal form, including the conversion of the preference shares into ordinary shares connected therewith, can be shown as follows:

Subject matter	Influence on Fresenius SE (before the change of the legal form)	Influence on Fresenius SE & Co. KGaA (after the change of the legal form)
Passing of resolutions of the General Meeting requiring a simple majority	The outside shareholders cannot prevent the passing of resolutions of the General Meeting requiring a simple majority, as the Else Kröner-Fresenius-Foundation has the majority of the votes in the General Meeting.	Influence of the outside shareholders, as the Else Kröner-Fresenius-Foundation loses its majority of the votes. Moreover, sole decision-taking power of the outside shareholders regarding certain matters due to the existing voting prohibitions.
Amendments of the statutes	If at least half of the (voting) share capital is represented, outside shareholders cannot prevent the amendment of the statutes, as the Else Kröner-Fresenius-Foundation has the majority of the votes in the General Meeting.	The amendments of the articles of association can be prevented by the outside shareholders, as the percentage of their votes will grow due to the conversion of the preference shares into ordinary shares. However, the articles of association cannot be amended without the consent of the General Partner.
Election of the Supervisory Board members	The outside shareholders cannot prevent the election of Supervisory Board members, as the Else Kröner-Fresenius-Foundation has the majority of the votes in the General Meeting.	Sole influence of the outside shareholders, as the Else Kröner-Fresenius-Foundation is subject to a voting prohibition.
Appointment of the Management Board	No influence of the outside shareholders, as the Else Kröner-Fresenius-Foundation has the majority in the General Meeting and thus appoints the Supervisory Board, which in turn appoints the Management Board.	No influence of the outside shareholders; as, although they appoint the Supervisory Board, the latter has however no right to appoint the Management Board of Fresenius Management SE.
Formal approval of the annual financial statements	No involvement of the outside shareholders, as the annual financial statements are, as a rule, formally approved by the Supervisory Board, which is appointed with the majority of the votes held by the Else Kröner-Fresenius-Foundation.	Influence of the outside shareholders, as the General Meeting decides on the formal approval of the annual financial statements. However, the resolution requires the consent of the General Partner.
Appropriation of profits	The Else Kröner-Fresenius-Foundation has the majority of the votes in the General Meeting, so that no resolution can be passed against its will.	Influence of the outside shareholders, as the Else Kröner-Fresenius-Foundation loses the voting majority due to the conversion of all preference shares into ordinary shares.
Ratification of the actions of the Management Board/General Partner and the Supervisory Board	The Else Kröner-Fresenius-Foundation has the majority of the votes in the General Meeting, so that no resolution can be passed against its will.	Sole influence of the outside shareholders as the Else Kröner-Fresenius-Foundation is subject to a voting prohibition in this respect.
Appointment of special auditors^{*)} and election of auditors	The Else Kröner-Fresenius-Foundation has the majority of the votes in the General Meeting, so that no resolution can be passed against its will.	Sole influence of the outside shareholders as the Else Kröner-Fresenius-Foundation is subject to a voting prohibition in this respect.

*) Disregarding the provisions for the appointment of special auditors by the court

The (factual) *possibilities of the Else Kröner-Fresenius-Foundation to exert an influence* before the change of the legal form and after the change of the legal form, including the conversion of the preference shares into ordinary shares connected therewith, can be shown as follows:

Subject matter	Influence on Fresenius SE (before the change of the legal form)	Influence on Fresenius SE & Co. KGaA (after the change of the legal form)
Passing of resolutions of the General Meeting requiring a simple majority	The Else Kröner-Fresenius-Foundation can pass resolutions at the General Meeting requiring a simple majority alone with its majority of the votes in the General Meeting.	Smaller influence as the Else Kröner-Fresenius-Foundation loses the majority of the votes. Moreover, voting prohibitions apply to certain resolutions.
Amendments of the statutes	If at least half of the (voting) share capital is represented, the Else Kröner-Fresenius-Foundation can resolve alone to amend the statutes.	Smaller influence as the Else Kröner-Fresenius-Foundation loses the majority of the votes. However, the articles of association can still not be amended against the will of the Else Kröner-Fresenius-Foundation, as it has a veto right through the General Partner.
Election of the Supervisory Board members	The Else Kröner-Fresenius-Foundation can pass resolutions alone for the election of Supervisory Board members with its majority of the votes in the General Meeting.	No influence of the Else Kröner-Fresenius-Foundation, as it is subject to a voting prohibition in this respect.
Appointment of the Management Board	Sole indirect influence, as the Else Kröner-Fresenius-Foundation has the majority in the General Meeting and thereby appoints the Supervisory Board, which in turn appoints the Management Board.	Sole indirect influence, as the Else Kröner-Fresenius-Foundation has all votes in the General Meeting of Fresenius Management SE and thus appoints its Supervisory Board, which appoints the Management Board of Fresenius Management SE.
Formal approval of the annual financial statements	Sole indirect influence on the Supervisory Board and the Management Board.	Smaller influence, as the Else Kröner-Fresenius-Foundation loses the majority of the votes. However, the annual financial statements cannot be formally approved against the will of the Else Kröner-Fresenius-Foundation, as their adoption requires the consent of the General Partner.
Appropriation of profits	The Else Kröner-Fresenius-Foundation can resolve alone on the appropriation of profits with its majority of the votes in the General Meeting.	Smaller influence, as the Else Kröner-Fresenius-Foundation loses the majority of the votes.
Ratification of the actions of the Management Board/General Partner and the Supervisory Board	The Else Kröner-Fresenius-Foundation can resolve alone on the ratification of the actions with its majority of the votes in the General Meeting.	No influence of the Else Kröner-Fresenius-Foundation, as it is subject to a voting prohibition in this respect.
Appointment of special auditors^{*)} and election of auditors	The Else Kröner-Fresenius-Foundation can resolve alone on the appointment of the auditor with its majority of the shares in the General Meeting.	No influence of the Else Kröner-Fresenius-Foundation, as it is subject to a voting prohibition in this respect.

^{*)} Disregarding the provisions for the appointment of special auditors by the court

8. Securities and Stock Exchange Trading

Both the voting ordinary bearer shares (except for the vast majority of the ordinary shares that are held by the Else Kröner-Fresenius-Foundation) and the non-voting preference bearer shares are presently listed on the regulated market of the Frankfurt Stock Exchange, sub-segment with additional post-admission obligations (*Prime Standard*), and on the regulated market of the Dusseldorf and the Munich Stock Exchanges. In addition, the shares are included in the electronic trading system XETRA. The preference shares of the Company are listed on the German equity index DAX.

8.1 Stock Exchange Listing of the Shares of Fresenius SE & Co. KGaA

The change of the legal form of the Company into the legal form of a partnership limited by shares will take effect upon registration in the commercial register. The shareholders of Fresenius SE at the time of entering the change of the legal form in the commercial register will become shareholders in Fresenius SE & Co. KGaA. They participate to the same extent and with the same number of shares in Fresenius SE & Co. KGaA as they did in Fresenius SE prior to the change of the legal form taking effect. However, the change of the legal form will involve the conversion of all preference shares into ordinary shares. The proposed articles of association of Fresenius SE & Co. KGaA only provide for ordinary shares, the exchange of the preference shares to be implemented at a proportion of 1 : 1. Consequently, the preference shareholders of Fresenius SE will receive a corresponding number of ordinary shares after the change of the legal form taking effect. Simultaneously with the change of the legal form taking effect, the securities description of the ordinary bearer shares of Fresenius SE will be changed into ordinary bearer shares of Fresenius SE & Co. KGaA.

The shares of Fresenius SE & Co. KGaA will be exclusively represented by global certificates to be deposited with Clearstream Banking AG, Frankfurt am Main. The limited shareholders of Fresenius SE & Co. KGaA will participate in the collective holdings of ordinary shares of the Company held with Clearstream Banking AG as co-owners in the proportion of their shareholding. The right of the limited shareholders to have individual share certificates issued for their shares is excluded unless the issuance of such certificates is required under the rules of the stock exchange on which the shares are admitted to trading.

As all shares of the Company are maintained in collective securities accounts and held in custody by depositary banks for the respective shareholders, the exchange of the ordinary shares and preference shares in Fresenius SE into ordinary shares in Fresenius SE & Co. KGaA will be likewise exclusively effected through the collective accounts. In this context, the shareholders are not required to take any further action. The exchange of the shares will be implemented through Clearstream Banking AG, Frankfurt am Main, and the respective depositary banks will

book the relevant entries in the securities accounts of the shareholders. The shareholders will be informed of the relevant entries booked.

The existing shares in Fresenius SE will lose their admission to stock exchange trading upon registration of the change of the legal form in the commercial register. It is planned that the listing on the relevant stock exchanges will be discontinued and that all outstanding stock exchange orders relating to the shares of Fresenius will expire at the close of the trading session for the day on which the change of the legal form takes effect. The Company will, immediately upon the change of the legal form taking effect, apply for the admission of the ordinary shares in Fresenius SE & Co. KGaA to stock exchange trading in accordance with the applicable regulations. The Company will endeavor to apply for the admission of the ordinary shares of Fresenius SE & Co. KGaA in sufficient time to ensure the uninterrupted tradability on the stock exchange.

8.2 German Corporate Governance Code

Pursuant to sec. 161 para. 1 German Stock Corporation Act (AktG), the Management Board and the Supervisory Board of a listed stock corporation must declare annually that the recommendations of the “Government Commission German Corporate Governance Code” (*Regierungskommission Deutscher Corporate Governance Kodex*) published by the German Ministry of Justice in the official part of the electronic Federal Gazette have been and will be complied with, or state which recommendations are not being or have not been applied giving the reasons therefor. Sec. 161 German Stock Corporation Act must also be complied with by the management board and the supervisory board of a listed SE with registered office in Germany. The above declaration must be made permanently available to the public on the internet website of the Company (sec. 161 para. 2 German Stock Corporation Act). The German Corporate Governance Code provides material regulations for management and supervision (corporate governance) and contains both provisions describing German statutory rules as well as recommendations and suggestions. Only the statutory rules are mandatorily binding upon the companies. Regarding the recommendations, sec. 161 German Stock Corporation Act provides that listed companies must issue an annual declaration as to whether and why they deviated from the recommendations (declaration of conformity).

The most recent declaration of conformity was issued by Fresenius SE in March 2010 and is available on the internet website of the Company. In such declaration, the Company stated that, apart from several exceptions, it complies with the recommendations of the German Corporate Governance Code. This declaration of conformity is attached to this conversion report as **Annex 5**.

Convenience Translation

The German Corporate Governance Code is tailored to the constitution of a listed stock corporation and can apply to a listed partnership limited by shares in modified form at best. These special characteristics are described in detail in the present conversion report. In all other respects, the Company will continue to follow the recommendations of the German Corporate Governance Code to the same extent as before. Following the change of the legal form, the General Partner and the Supervisory Board of the Company will issue a new declaration of conformity which includes the existing exceptions and takes account of the special characteristics of the partnership limited by shares.

9. Cross-Border Merger

It is intended in connection with the change of the legal form of Fresenius SE into a KGaA to merge Calea Nederland N.V. into the Company. This cross-border merger is to take effect immediately after the change of the legal form takes effect. The group structure will be cleared up and simplified through the merger between Calea Nederland N.V. and the Company. The cross-border merger will have the additional consequence that the Company can maintain its well-trying governance structure with a Supervisory Board consisting of twelve members including employee representatives (so-called employee bench) with an international composition.

Further information about the merger can be found in the joint merger report by the Management Board of Fresenius SE and the management of Calea Nederland N.V., which is on display at the offices of Fresenius SE and of Calea Nederland N.V. from the day on which the Ordinary General Meeting of Fresenius SE to be held on May 12, 2010 is convened.

9.1 Procedure of the Cross-Border Merger

The Company currently holds 100% of the share capital of Calea Nederland N.V., a stock corporation (*Naamloze Vennootschap*) having its registered office in 's-Hertogenbosch, Netherlands, which was incorporated under Dutch law. Calea Nederland N.V. is to be merged by way of a cross-border merger with Fresenius SE & Co. KGaA (as the absorbing legal entity) immediately after the change of the legal form becomes effective. When the merger takes effect upon its entry in the commercial register of the local court of Bad Homburg vor der Höhe competent for the acquiring company, the entire assets and liabilities of Calea Nederland N.V., i.e. all assets and liabilities, debts, rights and duties, will pass over to Fresenius SE & Co. KGaA. Calea Nederland N.V. will cease to exist as an independent legal entity when the merger takes effect. The details of the merger are set out in the terms of merger.

9.2 The Most Important Legal Steps of the Cross-Border Merger

Directive 2005/56/EC of the European Parliament and of the Council of October 26, 2005 on cross-border mergers of limited liability companies ("EU Merger Directive") provides for the Member States of the European Union to enable cross-border mergers to be carried out within Europe through harmonized merger proceedings. The requirements of the Merger Directive relating to company law were implemented by the German legislator through the Second Act to Amend the Conversion Act, which entered into force on April 25, 2007. The German Act on Employee Co-Determination in Case of Cross-Border Mergers ("MgVG") serves to implement the requirements of said directive relating to co-determination and entered into force on December 29, 2006. The Dutch legislator implemented the Merger Directive through the Act to Amend the Second Book of the Dutch Civil Code (*Burgerlijk Wetboek*), which entered

into force on July 15, 2008. Accordingly, the Company and Calea Nederland N.V. will shape the merger process such that it will be in compliance with the legal provisions dealing with cross-border mergers in both countries.

In the following, the most important legal steps of the cross-border merger will be described.

9.2.1 Terms of Merger

The legal basis for the merger by absorption are the common terms of merger of the Company and Calea Nederland N.V., which were drawn up by the Management Board of Fresenius SE and the management of Calea Nederland N.V. on March 31, 2010. The application for the entry in the commercial register of the Company regarding the cross-border merger is to be filed at such time that the merger will take effect only after the change of the legal form of Fresenius SE into a KGaA becomes effective. Calea Nederland N.V. will cease to exist when the cross-border merger takes effect. Fresenius SE & Co. KGaA will become the universal legal successor to Calea Nederland N.V. when the cross-border merger takes effect.

9.2.2 Employee Participation

Fresenius SE currently has a Supervisory Board with equal representation of shareholders and employees, with six shareholder representatives and six employee representatives as its members. Once the change of the legal form has taken effect, Fresenius SE & Co. KGaA would in principle be required under the German Co-Determination Act (“MitbestG”) to set up a Supervisory Board consisting of 20 members on a parity basis (ten shareholder representatives and ten employee representatives). With respect to the employee representatives on the Supervisory Board of Fresenius SE & Co. KGaA, out of the employees of the Fresenius Group only the employees working in Germany would have the right to vote and a right to be elected under the German Co-Determination Act. Calea Nederland N.V. currently has no employees so that there is no co-determination at the corporate level under Dutch law.

Both under Dutch and under German law, the German Act on Employee Co-Determination in Case of Cross-Border Mergers (“MgVG”) is applicable to cross-border mergers resulting in a company having its registered office in Germany.

In case of a cross-border merger, in principle a procedure regarding the participation of employees must be conducted. The purpose of such procedure would be to conclude an agreement between the management of each of the companies involved in the merger and a special negotiating body representing the interests of the employees on the co-determination of the employees in the Supervisory Board of the company resulting from the cross-border merger. If no agreement is reached by the end of the negotiation period provided for by the MgVG, the statutory subsidiary regulation of the MgVG applies, ensuring the co-determination of the

employees by operation of law. According to the provisions of the MgVG, the managements of the companies involved in the merger may instead also decide to apply the co-determination by operation of law without prior negotiations with a special negotiating body immediately as of the time of the registration of the company resulting from the cross-border merger (sec. 23 para. 1 sentence 1 no. 3 MgVG). The Management Board of the Company and the management of Calea Nederland N.V. decided on March 30, 2010 that the regulations on co-determination by operation of law should be applicable to the company resulting from the cross-border merger without prior negotiations as of the time of the registration of the merger. For this reason, no negotiations with a special negotiating body need be conducted.

The decision for the co-determination by operation of law leads to the Supervisory Board of the company resulting from the cross-border merger (i.e. of Fresenius SE & Co. KGaA) being subject to parity composition. The size of the Supervisory Board will be determined in the articles of association of Fresenius SE & Co. KGaA within the limits of sec. 95 German Stock Corporation Act. The articles of association of Fresenius SE & Co. KGaA (**Annex 3**) to be adopted in connection with the conversion report provides for the Supervisory Board to consist of twelve members, unless mandatory legal provisions require a different number of members. The details regarding the co-determination by operation of law pursuant to the MgVG, in particular regarding the allocation of seats for employee representatives on the Supervisory Board to the Member States of the EU or the states party to the EEA Agreement and the determination of the employee representatives attributable to a member state of the EU or a state party to the EEA Agreement, are described in Section 4.3.9.

9.2.3 Shareholders' Resolution of Calea Nederland N.V.

In view of the fact that the Company holds 100% of the share capital of Calea Nederland N.V., no resolution of the General Meeting of the acquiring company is necessary, unless shareholders whose aggregate shares represent one twentieth of the share capital demand the passing of such a resolution. For Calea Nederland N.V., on the other hand, an approving shareholders' resolution is necessary. Fresenius SE as the sole shareholder of Calea Nederland N.V. is expected to pass the approving resolution on May 13, 2010, after the change of the legal form of Fresenius SE has been approved at its General Meeting on May 12, 2010.

9.2.4 Disclosure

Both German and Dutch law provide for certain disclosure duties in the course of the merger process which serve to inform the shareholders and the employees and to protect the creditors of the companies involved.

Disclosure Duties under German Law

According to secs. 122d sentence 1, 122a para. 2, 62 para. 3 of the German Conversion Act, the terms of merger must be submitted to the commercial register of Fresenius SE one month prior to the shareholders' meeting of the company being acquired. The registry court must then publish, in accordance with sec. 10 of the German Commercial Code ("HGB") the following without undue delay: (i) notification that the terms of merger have been submitted to the commercial register; (ii) the legal form, the corporate name and the registered office of the companies involved in the cross-border merger; (iii) the registers in which the companies merging through the cross-border merger are registered, as well as the number of the entry in that register; (iv) an indication of the arrangements made for the exercise of the rights of creditors and of any minority shareholders of the companies merging through the cross-border merger, and the address at which complete information on those arrangements may be obtained.

In addition, no later than one month prior to the day of the shareholders' meeting of the company being acquired which is to decide on the merger, the Management Board of Fresenius SE must publish an announcement of the imminent merger in the German electronic Federal Gazette (*elektronischer Bundesanzeiger*) in accordance with secs. 122a para. 2, 62 para. 3 sentence 2 German Conversion Act, as well as a notice of the shareholders' rights according to sec. 62 para. 2 German Conversion Act (i.e. the right to have a General Meeting convened).

Furthermore, according to secs. 122e sentence 2, 122a para. 2, 62 para. 3 of the German Conversion Act, the terms of merger, the annual financial statements and, to the extent that there is a legal obligation to prepare such reports, the management reports for the last three financial years of the legal entities involved in the merger as well as the merger report must be made available at the offices of Fresenius SE during the usual business hours for an inspection by the shareholders of Fresenius SE no later than one month before the date of the shareholders' meeting of the company being acquired which is to decide on the merger. Every shareholder of Fresenius SE must be given a cost-free copy of these documents without undue delay at its request. According to sec. 122e sentence 2 German Conversion Act, the merger report must also be put on display for an inspection by the competent works council.

According to secs. 122a para. 2, 5 para. 3 German Conversion Act, the terms of merger must be transmitted to the competent works council no later than one month prior to the shareholders' meeting of every legal entity involved which is to decide on the approval of the terms of merger according to sec. 13 para. 1 German Conversion Act. The Management Board of Fresenius SE will transmit the terms of merger to the general works council of Fresenius SE, the SE works council, the group works councils of HELIOS Kliniken and Wittgensteiner Kliniken, the site works councils in Bad Homburg, St. Wendel and Friedberg, as well as the executives' committee (*Sprecherausschuss*) of the acquiring company and the executives' committees of HELIOS Klinikum Schwerin.

Disclosure Duties under Dutch Law

Dutch law contains similar information requirements and demands that the common terms of merger including the current and future articles of association of the acquiring company as well as the annual financial statements and, to the extent that there is a legal obligation to prepare such reports, the management reports for both companies for the last three financial years be filed with the competent commercial register at least one month prior to the approving resolution of the shareholders' meeting of Calea Nederland N.V. These documents will therefore be filed with the commercial register of the chamber of commerce Midden-Nederland.

According to Dutch law, the documents referred to above must additionally be put on display at the offices of Calea Nederland N.V. and of Fresenius SE from the time of filing with the commercial register of the chamber of commerce Midden-Nederland up to the point in time at which the merger takes effect. Moreover, the merger report will also be put on display at the offices of both companies.

Furthermore, a notice of the submission of the documents referred to above to the commercial register of the chamber of commerce Midden-Nederland must be published in a Dutch daily newspaper and in the official Dutch bulletins (*Staatscourant*).

9.2.5 Pre-Merger Certificate

After the passing of the resolution by Calea Nederland N.V., a Dutch notary scrutinizes the fulfillment of all conditions for the merger of Calea Nederland N.V. and Fresenius SE under Dutch law. The Dutch notary issues a so-called pre-merger certificate setting out the result of this scrutiny. The pre-merger certificate must be submitted to the commercial register of the acquiring company in Bad Homburg vor der Höhe within six months after it is issued, together with the terms of merger approved by the shareholders' meeting by Calea Nederland N.V. and other documents.

9.2.6 Scrutiny of the Legality and Entry in the Commercial Register

The registry court in Bad Homburg vor der Höhe scrutinizes, after receiving the Dutch pre-merger certificate and all other documents, whether all provisions of German law were complied with. After the completion of the scrutiny of legality, the registry court in Bad Homburg vor der Höhe registers the merger. The entry will not be made before the change of the legal form of Fresenius SE into a KGaA takes effect.

9.2.7 Taking of Effect of the Merger

The merger takes effect when the entry into the commercial register of Bad Homburg vor der Höhe is made. The commercial register of the chamber of commerce Midden-Nederland is

notified of the registration so that the commercial register of the chamber of commerce Midden-Nederland can delete the registration of Calea Nederland N.V.

9.3 Effects of the Cross-Border Merger

9.3.1 Effects of the Cross-Border Merger on the Company

When the merger takes effect, the entire assets and liabilities of Calea Nederland N.V. will pass over to Fresenius SE & Co. KGaA.

The corporate co-determination of Fresenius SE & Co. KGaA will be subject to the provisions of the MgVG after the cross-border merger takes effect. The procedure of employee participation is described in Section 9.2.2.

The cross-border merger will have no effect on the business activities of the Company.

9.3.2 Effects of the Cross-Border Merger on the Shareholders

The cross-border merger will have no influence on the legal position of the shareholders of the Company. The percentages of shares held will remain unchanged as the Company holds 100% of the share capital of Calea Nederland N.V. and therefore no new shares in the Company need be issued for the merger.

9.4 Change of the Legal Form without a Subsequent Cross-Border Merger

The validity of the change of the legal form into a KGaA is independent of the implementation of the cross-border merger. Only inversely shall the registration of the cross-border merger be contingent upon a prior entry of the change of the legal form in the commercial register of the Company.

Should the cross-border merger not be entered in the commercial register after the change of the legal form becomes effective, and thus not take effect, the consequence of this would be that the corporate co-determination at the level of the corporate bodies of Fresenius SE & Co. KGaA would be governed by the provisions of the German Co-Determination Act. Fresenius SE & Co. KGaA would then have to set up a Supervisory Board with equal representation, consisting of ten shareholder representatives and ten employee representatives. Regarding the employee representatives, out of the employees of the Fresenius Group, only the employees working in Germany would have the right to vote in elections for the employee representatives and could be elected in such an election. This would lead to the result that the Company would not be able to maintain its well-tried governance structure with a Supervisory Board consisting of twelve members including employee representatives (so-called employee bench) with an international composition. The implementation of the cross-border merger in connection with the change of the legal form is therefore deemed clearly preferable.

Convenience Translation

Bad Homburg, March 31, 2010

Fresenius SE
The Management Board

signed Dr. Ulf M. Schneider

signed Rainer Baule

signed Dr. Francesco De Meo

signed Dr. Jürgen Götz

signed Dr. Ben Lipps

signed Stephan Sturm

signed Dr. Ernst Wastler

List of Abbreviations

AG	German Stock Corporation
AktG	German Stock Corporation Act
approx.	approximately
Art.	Article
ARUG	German Act to Implement the Shareholders' Rights Directive
BGB	German Civil Code
B.V.	Besloten Vennootschap met beperkte aansprakelijkheid (Dutch Limited Liability Company)
cf.	compare
DAX	German equity index
EEA	European Economic Area
EBRG	European Works Councils Act
e.g.	for example
EU	European Union
GmbH	German Limited Liability Company
HGB	German Commercial Code
i.e.	that is, in other words
Inc.	Incorporated (US-American Stock Corporation)
KGaA	Partnership limited by shares
Ltd.	Limited (British Limited Liability Company, Thai Limited Liability Company, respectively)
MDAX	Mid-Cap-DAX (German equity index)
MgVG	German Act on Employee Co-Determination in Case of Cross-Border Mergers
mn.	Million
MitbestG	German Co-Determination Act
N.V.	Naamloze Vennootschap (Dutch Stock Corporation)
para.	Paragraph
Plc.	Public Limited Company (British Stock Corporation)
S.A.	Société Anonyme, Sociedad Anónima, Sociedade Anónima (French Stock Corporation, Spanish Stock Corporation, Portuguese Stock Corporation, respectively)
S.A.S.	Société par actions simplifiée (French Simplified Stock Corporation)
SE	Societas Europaea (European Company)
SEAG	Law for the Implementation of Council Regulation (EC) No. 2157/2001 of October 8, 2001, on the Statute for a European Company (SE) of December 22, 2004 (SE Implementation Act)
SEBG	Act on the participation of employees in a European Company (SE Employee Participation Act)
Sec.	Section
SE-Regulation	Council Regulation (EC) No. 2157/2001 of October 8, 2001, on the Statute for a European company (SE)
S.p.A.	Società per Azioni (Italian Stock Corporation)
UmwG	German Conversion Act
US	United States of America
US-GAAP	US Generally Accepted Accounting Principles
VorstAG	Act on the Appropriateness of Executive Board Compensation
WpHG	German Securities Trading Act
WpÜG	German Securities Acquisition and Takeover Act
WpÜG-AngVO	German Ordinance regarding the Offer Document, the Consideration in connection with Takeover Bids and Mandatory Bids and the Exemption from the Obligation to Publish and Make a Bid (German Ordinance regarding the Offer Document)
XETRA	Exchange Electronic Trading (Electronic trading platform of Deutsche Börse Group)

Annex 1: Agenda for the General Meeting including the Conversion Resolution

INVITATION TO THE ORDINARY GENERAL MEETING

FRESENIUS SE

Bad Homburg v. d. H.

ISIN: DE0005785604 // WKN: 578560

ISIN: DE0005785620 // WKN: 578562

ISIN: DE0005785638 // WKN: 578563

We hereby invite our shareholders to the

Ordinary General Meeting

to be held on Wednesday, May 12, 2010, at 10 a.m. at Congress Center Messe Frankfurt, Ludwig-Erhard-Anlage 1, 60327 Frankfurt am Main.

Agenda

- 1. Presentation of the formally approved annual financial statements of Fresenius SE and the approved consolidated financial statements for the financial year 2009. Presentation of the Management Reports for the Fresenius Group and Fresenius SE for the financial year 2009 and the Report of the Management Board on the disclosures in accordance with sec. 289 paras. 4 and 5 and sec. 315 para. 2 no. 5 and para. 4 German Commercial Code (*Handelsgesetzbuch*) for the financial year 2009. Presentation of the Report of the Supervisory Board.**

In accordance with the statutory provisions, no resolution is to be taken regarding agenda item 1, as the Supervisory Board has formally approved the annual financial statements of Fresenius SE and approved the consolidated financial statements for the financial year 2009. Sec. 175 para. 1 sentence 1 German Stock Corporation Act (*Aktiengesetz*) merely provides that the Management Board shall convene the General Meeting, inter alia, in order to receive the documents stated therein. Pursuant to sec. 176 para. 1 sentences 1 and 2 German Stock Corporation Act, the Management Board shall make available to the General Meeting the documents referred to in sec. 175 para. 2 German Stock Corporation Act and, in case of listed companies, an explanatory report on the disclosures made under secs. 289 para. 4, 315 para 4 German Commercial Code, and comment on the presented documents at the beginning of the meeting; the Chairman of the Supervisory Board shall comment on the report of the Supervisory Board.

2. Resolution on the appropriation of the distributable profit.

The Management Board and the Supervisory Board propose that the distributable profit of Fresenius SE in the amount of Euro 121,841,531.70 shown in the annual financial statements for the financial year 2009 should be used as follows:

Payment of a dividend of Euro 0.75 per ordinary share on the 80,657,688 units of the ordinary shares entitled to dividend	Euro	60,493,266.00
Payment of a dividend of Euro 0.76 per preference share on the 80,657,688 units of the preference shares entitled to dividend	Euro	61,299,842.88
The dividend is payable on May 13, 2010	Euro	48,422.82
Balance to be carried forward	Euro	121,841,531.70

3. Resolution on the ratification of the actions of the Management Board for the financial year 2009.

The Management Board and the Supervisory Board propose to ratify the actions of the members of the Management Board who were in office in the financial year 2009 for this financial year.

4. Resolution on the ratification of the actions of the Supervisory Board for the financial year 2009.

The Management Board and the Supervisory Board propose to ratify the actions of the members of the Supervisory Board who were in office in the financial year 2009 for this financial year.

5. Resolution on the approval of the system of remuneration of the members of the Management Board.

The Act on the Appropriateness of Executive Board Compensation (*Gesetz zur Angemessenheit der Vorstandsvergütung*) of July 31, 2009 provides for the possibility that the General Meeting resolves on the approval of the system of remuneration of the members of the Management Board (sec. 120 para. 4 German Stock Corporation Act). The resolution does not create rights or obligations; in particular, the obligations of the Supervisory Board to independently determine the remuneration of the members of the Management Board remain unaffected. Nonetheless, the Company wants to give its shareholders the opportunity to resolve upon the system of remuneration of the members of the Management Board.

The resolution under this agenda item refers to the system of remuneration of the members of the Management Board as adjusted to the requirements of the Act on the

Appropriateness of Executive Board Compensation as applicable as of 2010. It is further described on pages 24 et seq. of the annual report 2009 of Fresenius SE as well as in the declaration with respect to the company management available on the website www.fresenius.com in the section Who we are/Corporate Governance.

The Management Board and the Supervisory Board propose to approve the system of remuneration of the members of the Management Board of Fresenius SE for the financial year 2010.

6. Election of the auditor and group auditor for the financial year 2010.

Upon recommendation of its Audit Committee, the Supervisory Board proposes to elect KPMG AG Wirtschaftsprüfungsgesellschaft, Berlin, as the auditor and the group auditor for the financial year 2010.

Upon the taking of effect of the change of the legal form of the Company into the legal form of a partnership limited by shares (*Kommanditgesellschaft auf Aktien*) proposed under agenda item 7, the above election of the auditor and the group auditor for the financial year 2010 is to remain effective.

7. Resolution on the change of the legal form of the Company into the legal form of a partnership limited by shares (*Kommanditgesellschaft auf Aktien*) with accession of Fresenius Management SE.

Preliminary Remark

The Management Board and the Supervisory Board have decided to propose to the General Meeting under agenda item 7 the change of the legal form of the Company from a European Company (*Europäische Gesellschaft – SE*) into a partnership limited by shares (*KGaA*).

The articles of association of the entity in its new legal form, which form part of this invitation to the General Meeting as **Annex 1**, will provide exclusively for ordinary shares. Under the terms of the conversion resolution, upon the change of the legal form taking effect, the preference shareholders will receive one ordinary share in Fresenius SE & Co. KGaA for each preference share in Fresenius SE.

The unification of the share structure – in combination with the change of the legal form into a partnership limited by shares – is intended to strengthen the position of Fresenius on the capital market and to facilitate potential future capital measures and thus the further development of the business. Furthermore, the highly limited liquidity of the ordinary shares will be significantly increased. The unification of the share structure should also have a positive effect on the weighting in the German equity index

(*Deutscher Aktienindex – “DAX”*). The DAX currently includes only the preference shares of the Company. In the future, the inclusion of all (ordinary) shares of the Company can be expected. The overall goal is to significantly increase the attractiveness of the Fresenius share for all investors.

In the course of the change of the legal form, the General Partner of the partnership limited by shares is to be a European Company (SE), in which the Else Kröner-Fresenius-Foundation, which currently holds approx. 58% of the ordinary shares in Fresenius SE, holds a 100% stake. As General Partner, the SE will assume, through its Management Board, the management and the representation of the Company. The legal and actual position of the shareholders of Fresenius SE is already at present characterized by the influence the Else Kröner-Fresenius-Foundation exerts by means of its majority shareholding in the voting capital in the General Meeting. Alone with its voting majority, the Else Kröner-Fresenius-Foundation can for instance decide on the election of members of the Supervisory Board and thereby indirectly influence the appointment of the Management Board of Fresenius SE. Upon the change of the legal form taking effect, this de facto allocation of influence will turn into a structural allocation of influence. In the partnership limited by shares the General Partner is responsible for the management and representation of the company. With respect to the relationship between the Else Kröner-Fresenius-Foundation and the outside shareholders, this means: On the one hand, the Foundation can retain its present influence via the General Partner. Through the appointment of the Supervisory Board of Fresenius Management SE it can exert an influence on the appointment of its Management Board. On the other hand, following the change of the legal form and the related conversion of preference shares into ordinary shares the percentage of the Foundation in the ordinary shares will be reduced by half from approx. 58% to approx. 29%. The possibilities of the Foundation to exert influence in the General Meeting of the partnership limited by shares are therefore reduced. Correspondingly, the weight of the outside shareholders in the General Meeting increases.

The following are the main considerations in favor of the intended transaction:

- **Strengthening of the position on the capital market.** The free float will no longer be split between preference shares and ordinary shares as before, but will be consolidated in a single class of shares. As a result, the transaction is expected to increase the liquidity of the Fresenius share and to improve the position of the Company in the DAX. Ultimately, the position of Fresenius on the capital market will be strengthened and the operative and financial maneuverability of the business will be increased.

- **Maintenance of the existing corporate governance standards.** The proposed change of the legal form of the Company will maintain and continue today's corporate governance and transparency standards. The long-term strategic policy of the Company endorsed by the majority shareholder will be preserved.

In connection with the change of the legal form of Fresenius SE into a partnership limited by shares, it is intended to merge the Dutch Calea Nederland N.V. into the Company by way of a cross-border merger. The cross-border merger is to become effective immediately upon the change of the legal form taking effect. It serves the purpose of clearing up and simplifying the group structure. As a result of the cross-border merger, the Company will be able to maintain its well-trying governance structure with a Supervisory Board consisting of twelve members including employee representatives (so-called employee bench) with an international composition. According to sec. 62 para. 1 German Conversion Act (*Umwandlungsgesetz*), no resolution of the General Meeting of Fresenius SE needs to be taken for the cross-border merger, as the Company holds a 100% stake in Calea Nederland N.V. The only exception would be if shareholders of Fresenius SE whose aggregate shareholding equals or exceeds one-twentieth of the Company's share capital requested the convening of a General Meeting to resolve on the merger. The common terms of merger of the Company and of Calea Nederland N.V. form part of this invitation to the General Meeting as **Annex 2**.

A detailed legal and financial explanation and description of the consequences of the change of the legal form, the future participation of shareholders as well as the entire transaction is contained in the conversion report prepared by the Management Board, which has been available for inspection at the offices of the Company since the convening of the General Meeting. Upon request, each shareholder will receive a copy of the conversion report free of charge. In addition, the German language conversion report is available on the website of the Company www.fresenius.de in the section Investor Relations/Hauptversammlung. [An English convenience translation of the conversion report is available on the website of the Company www.fresenius.com in the section Investor Relations/Annual General Meeting.]

Resolution Proposals

- a) Resolution on the change of the legal form of Fresenius SE into Fresenius SE & Co. KGaA

The Management Board and the Supervisory Board propose to resolve as follows:

- (1) Fresenius SE is converted by way of a change of the legal form in accordance with the provisions of the German Conversion Act (*Umwandlungsgesetz*) into a partnership limited by shares (*Kommanditgesellschaft auf Aktien – KGaA*).
- (2) The corporate name of the entity in its new legal form is Fresenius SE & Co. KGaA.
- (3) The entire share capital of Fresenius SE in the amount existing at the time of entering the change of the legal form in the commercial register becomes the share capital of Fresenius SE & Co. KGaA, and the shareholders who are shareholders of Fresenius SE at the time of entering the change of the legal form in the commercial register become limited liability shareholders (*Kommanditaktionäre*) of Fresenius SE & Co. KGaA. They participate to the same extent and with the same number of no-par value shares in the share capital of Fresenius SE & Co. KGaA as they did in Fresenius SE prior to the change of the legal form taking effect. The notional proportion of each no-par value share in the share capital remains unchanged. Both the ordinary shareholders and the preference shareholders of Fresenius SE participate in Fresenius SE & Co. KGaA with voting ordinary shares. The ordinary shareholders receive the same number of voting ordinary bearer shares which they held in Fresenius SE prior to the change of the legal form taking effect. The preference shareholders receive a number of voting ordinary bearer shares corresponding to the number of non-voting preference bearer shares which they held in Fresenius SE prior to the change of the legal form taking effect.
- (4) The General Partner of Fresenius SE & Co. KGaA will be Asion SE (in future bearing the corporate name Fresenius Management SE) with its registered office in Düsseldorf. Pursuant to sec. 245 para. 2 German Conversion Act, in applying the rules of incorporation of the German Stock Corporation Act, the General Partner takes the position of the incorporator of the entity in its new legal form. In the context of the change of the legal form, the General Partner does not take any participation in the share capital and does therefore not participate in the assets, profit and loss of Fresenius SE & Co. KGaA.
- (5) Special Rights and Benefits

Non-Voting Preference Bearer Shares

Under the current legal situation, the preference shares of Fresenius SE receive a dividend from the annual distributable profit of Fresenius SE which is Euro 0.01 per preference share higher than the dividend for the ordinary shares, at least, however, a dividend of Euro 0.02 per preference share. The minimum dividend in the amount of

Euro 0.02 per preference share has priority over the distribution of a dividend on the ordinary shares. If the distributable profit in one or more financial years is not sufficient to distribute Euro 0.02 per preference share, the deficits will be paid in arrears, without interest, from the distributable profit of the following financial years, after distribution of the minimum dividend on the preference shares for those financial years and before the payment of a dividend on the ordinary shares. The right to such payment in arrears is a part of the participation in profits for the financial year, out of the distributable profit of which the payment of arrears on the preference shares is made.

The share capital of Fresenius SE & Co. KGaA will be exclusively divided into voting ordinary bearer shares. The preference shareholders of Fresenius SE will receive one voting ordinary bearer share in Fresenius SE & Co. KGaA for each non-voting preference bearer share they held in Fresenius SE prior to the change of the legal form taking effect. The voting ordinary shares in Fresenius SE & Co. KGaA and the non-voting preference shares in Fresenius SE are equivalent within the meaning of sec. 23 German Conversion Act. On the one hand, the preference shareholders of Fresenius SE will not be entitled to a higher dividend or an (advance) minimum dividend after the change of the legal form into Fresenius SE & Co. KGaA has taken effect; on the other hand, they will, as ordinary shareholders of Fresenius SE & Co. KGaA, obtain the voting right.

Special Rights under Existing Employee Participation Programs

By resolution of the General Meeting of June 18, 1998, the Company has issued subscription rights to ordinary shares and to preference shares to members of the Management Board of the Company, members of the managements of affiliates of the Fresenius Group, senior officers (*leitende Angestellte*) (within the meaning of the classification by the Company) of the Company and of German affiliates of the Fresenius Group and executive staff members (*Führungskräfte*) of the foreign affiliates of the Fresenius Group (“Stock Option Plan 1998”); altogether, these subscription rights entitle their holders to subscribe for up to 450,000 ordinary shares and for up to 450,000 preference shares. Excluded are members of the management and employees of Fresenius Medical Care AG (now Fresenius Medical Care AG & Co. KGaA) and of those affiliates that are affiliated with the Company only via Fresenius Medical Care. An option entitles either to the subscription for an ordinary share or for a preference share. To the group of the members of the Management Board, up to 200,000 options are allotted, which grant the right to subscription for up to 100,000 ordinary shares and up to 100,000 preference shares. To the group of the executive staff members, up to 700,000 options are allotted, which grant the right to subscription

for up to 350,000 ordinary shares and for up to 350,000 preference shares. The stock options granted under the Stock Option Plan 1998 have a term of ten years. One third of the options can be exercised at the earliest two, three or four years after the date they were granted, respectively. Furthermore, the exercise of the options is subject to the mandatory requirement that within the first two-year vesting period following the granting of the options to the beneficiary, the consolidated earnings of the group before interest, before payments for profit participation capital and for securities similar to profit participation rights and before taxes on income and profit (EBIT) must have increased by at least 15% (success target). The Management Board and the Supervisory Board are authorized to determine in the terms of the options a higher percentage than 15 as a prerequisite for exercising the options. The exercise price of an option corresponds to the average standard quotation of the ordinary bearer share or the non-voting preference bearer share of the Company on the Frankfurt Stock Exchange on the last 30 trading days prior to the granting of the option to the beneficiaries. As of December 31, 2009, under the Stock Option Plan 1998, stock options in a volume of 457,062 units were issued, all of which were exercisable.

By resolution of May 28, 2003, the Ordinary General Meeting of the Company has authorized the Management Board of the Company, with the consent of the Supervisory Board, to issue convertible bonds in the aggregate nominal amount of Euro 4,608,000.00 to the members of the Management Board of the Company, to members of the management of affiliates of the Company, to employees of the Company and to employees of affiliates of the Company; altogether, the convertible bonds entitle their holders to subscribe for up to 900,000 ordinary shares and up to 900,000 preference shares ("Stock Option Plan 2003"). Excluded are members of the management and employees of Fresenius Medical Care AG (now Fresenius Medical Care AG & Co. KGaA) and of those affiliates that are affiliated with the Company only via Fresenius Medical Care. Each convertible bond grants the right to subscription for one ordinary share or one preference share. To the group of the members of the Management Board, up to 400,000 convertible bonds are allotted, which grant the right to subscription for up to 200,000 ordinary shares and for up to 200,000 preference shares. To the group of the employees, up to 1,400,000 convertible bonds are allotted, which grant the right to subscription for up to 700,000 ordinary shares and for up to 700,000 preference shares. The beneficiaries are entitled to choose between convertible bonds with a success target (stock price target) and convertible bonds without a success target. If the beneficiaries opt for convertible bonds without a success target, they receive 15% less stock options than if they opt for convertible bonds with a success target. In the case of convertible bonds with a success target, the exercise of the conversion right depends on the achievement of the following success target: The success target is deemed to be

achieved if prior to the conversion of the convertible bonds there is an increase of the joint average stock exchange price of ordinary shares and preference shares compared to the average stock exchange price of ordinary shares and preference shares on the day such convertible bonds were granted (“initial value”) that amounted to a minimum of 25% on at least one day. The initial value is determined based on the joint average stock exchange price of the ordinary and the preference share during the last 30 days preceding the day on which the respective convertible bond has been granted. The conversion price for convertible bonds with a success target corresponds to the stock exchange price of the ordinary shares or the preference shares, respectively, at the time the target is achieved for the first time, less the par value of the converted convertible bond. The conversion price for convertible bonds without a success target corresponds to the average stock exchange price of the ordinary share or the preference share, respectively, during the last 30 trading days at the stock exchange prior to the granting of the relevant convertible bonds, less the par value of the converted convertible bond. As of December 31, 2009, under the Stock Option Plan 2003, convertible bonds in a volume of 2,799,514 units were issued. Thereof, 1,953,308 items were exercisable.

By resolution of May 21, 2008, the Ordinary General Meeting of the Company has authorized the Management Board of the Company, with the consent of the Supervisory Board, to issue up to 6,200,000 subscription rights for up to 3,100,000 ordinary bearer shares as well as for up to 3,100,000 preference bearer shares to members of the Management Board of the Company, to members of the management of affiliates and to executive staff members of the Company and of affiliates (“Stock Option Plan 2008”). Excluded are members of the Management Board of Fresenius Medical Care Management AG in its capacity as General Partner of Fresenius Medical Care AG & Co. KGaA as well as employees of Fresenius Medical Care AG & Co. KGaA and of affiliates which are affiliated with the Company only via Fresenius Medical Care AG & Co. KGaA, to the extent that they are in an exclusive working or service relationship with Fresenius Medical Care AG & Co. KGaA or with an affiliate which is affiliated with the Company only via Fresenius Medical Care AG & Co. KGaA. Each subscription right grants the right to subscription for one ordinary bearer share or one preference bearer share. To the group of the Management Board, up to 1,200,000 subscription rights are allotted, which grant the right to subscription for up to 600,000 ordinary bearer shares and for up to 600,000 preference bearer shares. To the group of the members of the managements of affiliates, up to 3,200,000 subscription rights are allocated, which grant the right to subscription for up to 1,600,000 ordinary bearer shares and for up to 1,600,000 preference bearer shares. To the group of executive staff members of the Company and of affiliates, up to 1,800,000 subscription rights are allotted, which grant the right to subscription for up to 900,000 ordinary bearer shares

and for up to 900,000 preference bearer shares, respectively. Subscription rights may only be exercised if the annual success target has been reached within the three-year vesting period determined in accordance with the regulations of the Stock Option Plan 2008. The success target is achieved in each case if, after the granting of the subscription rights to the respective beneficiary, the adjusted annual profit as compared to the previous financial year has increased by at least 8%. The exercise price of a subscription right corresponds to the average stock exchange price (closing price) of the ordinary bearer share or the preference bearer share of the Company in the electronic XETRA trading system of Deutsche Börse AG in Frankfurt am Main or a comparable successor system on the last 30 trading days prior to the granting of the subscription right. The minimum exercise price is the pro-rata amount of the share capital of the Company allocable to the ordinary bearer share or the preference bearer share, respectively. As of December 31, 2009, under the Stock Option Plan 2008, subscription rights in the volume of 2,136,876 units were issued, none of which have so far been exercisable.

In the course of the change of the legal form, the beneficiaries under the existing employee participation programs receive subscription rights or conversion rights to shares in Fresenius SE & Co. KGaA instead of shares in Fresenius SE. The number of subscription rights and the number of shares to be delivered remains unaffected by the change of the legal form. As the share capital of Fresenius SE & Co. KGaA will be divided only into voting ordinary bearer shares, only voting ordinary bearer shares will be delivered. For each subscription right or conversion right granted at Fresenius SE for the subscription of a non-voting preference bearer share, the beneficiary will, in case of an exercise of such right – and provided that the relevant prerequisites for the exercise are fulfilled – receive a voting ordinary bearer share instead of a non-voting preference bearer share. The voting ordinary bearer shares in Fresenius SE & Co. KGaA and the non-voting preference bearer shares in Fresenius SE are equivalent within the meaning of sec. 23 German Conversion Act. On the one hand, the entitlement to a higher dividend and an (advance) minimum dividend for the preference shares will cease to exist upon the change of the legal form taking effect; on the other hand, each ordinary share replacing a preference share grants one voting right.

The exercise price or, in case of the Stock Option Plan 2003, the conversion price to be paid, in each case will remain unchanged. As exclusively ordinary shares are delivered, the exercise or conversion price, respectively, refers to the respective applicable stock exchange price of the ordinary shares.

Likewise, the respective success targets of the Stock Option Plans 1998 and 2008 will remain unchanged. With a view to the conversion of the entire share capital of the Company into voting ordinary bearer shares in the context of the change of the legal form, the success target of the Stock Option Plan 2003 is to be adjusted to the effect that the success target is deemed to be achieved if the price increase of 25% provided for in the Stock Option Plan 2003 is achieved by the fact that the sum of the following price increases amounts to at least 25%: (i) increase of the joint average stock exchange price of ordinary shares and preference shares from the day of the issuance until the day when the change of the legal form takes effect; (ii) increase of the stock exchange price of the ordinary shares since the taking of effect of the change of the legal form. To the extent that the success target is or has already been achieved prior to the change of the legal form taking effect, the success target is deemed to be achieved also after the change of the legal form.

The rights under the options will remain unaffected by the change of an employment relationship of a beneficiary with Fresenius SE into an employment relationship with Fresenius SE & Co. KGaA or with Asion SE (which will in future bear the corporate name Fresenius Management SE) which will be acceding to the Company as General Partner.

The conditional capitals, which were created to secure the subscription or conversion rights under the Stock Option Plans 1998, 2003 and 2008, will continue to exist in amended form in Fresenius SE & Co. KGaA. With a view to the conversion of the entire share capital into voting ordinary bearer shares in the context of the change of the legal form of Fresenius SE to Fresenius SE & Co. KGaA, the conditional capitals will be amended in particular to the effect that the conditional capitals will exclusively provide for the issuance of voting ordinary bearer shares. The total amounts of the conditional capitals remain unchanged.

In addition to the conditional capitals, three authorized capitals are created in the articles of association of Fresenius SE & Co. KGaA, which are intended to alternatively service the existing employee participation programs. These authorized capitals also exclusively provide for the issuance of voting ordinary bearer shares.

General Partner

As a legal precaution, it is pointed out that Asion SE (in future bearing the corporate name Fresenius Management SE), in which the Else Kröner-Fresenius-Foundation holds a 100% stake, will accede to the Company as General Partner and will take over the management of the business of the Company.

Corporate Body Members

As a legal precaution, it is pointed out that – irrespective of the decision-making authority of the Supervisory Board of Asion SE (which will in the future bear the corporate name Fresenius Management SE) according to German Stock Corporation Act – it can be assumed, that the present members of the Management Board of Fresenius SE will be appointed as members of the Management Board of the General Partner of Fresenius SE & Co. KGaA. The present members of the Management Board of Fresenius SE are the gentlemen Dr. Ulf M. Schneider (Chairman), Rainer Baule, Dr. Francesco De Meo, Dr. Jürgen Götz, Dr. Ben Lipps, Stephan Sturm and Dr. Ernst Wastler.

Furthermore, members of the Supervisory Board of Fresenius SE, namely the gentlemen Dr. Gerd Krick, Prof. Dr. h.c. Roland Berger, Klaus-Peter Müller and Dr. Gerhard Rupprecht, shall be appointed as members of the Supervisory Board of Fresenius SE & Co. KGaA. The gentlemen Dr. Dieter Schenk and Dr. Karl Schneider shall not be appointed as members of the Supervisory Board of Fresenius SE & Co. KGaA.

Moreover, the gentlemen Dr. Gerd Krick, Prof. Dr. h.c. Roland Berger, Klaus-Peter Müller, Dr. Gerhard Rupprecht, Dr. Dieter Schenk and Dr. Karl Schneider, all of whom are members of the Supervisory Board of Fresenius SE, shall be appointed as members of the Supervisory Board of the General Partner of Fresenius SE & Co. KGaA.

(6) Amendment of the Stock Option Plans 1998, 2003 and 2008

Stock Option Plan 1998

The Stock Option Plan 1998 set up on the basis of the resolution of the General Meeting of June 18, 1998 (taking into account the amendment resolution of the General Meeting of December 4, 2006, required due to the new division of the share capital) is amended because of the conversion of the entire share capital into voting ordinary bearer shares in the context of the change of the legal form of the Company into a partnership limited by shares, so that all outstanding subscription rights are to be serviced, in case of exercise, with voting ordinary bearer shares. The rights under the options will remain unaffected by the change of an employment relationship of a beneficiary with Fresenius SE into an employment relationship with Fresenius SE & Co. KGaA or with Asion SE (which in future will bear the corporate name Fresenius Management SE), which will be acceding to the Company as General Partner.

Upon adoption of the new articles of association of Fresenius SE & Co. KGaA, the Conditional Capital I of the Company intended for the servicing of the Stock Option Plan 1998 (Art. 4 para. 6 of the statutes of Fresenius SE) will be adjusted to the conversion of the subscription rights to the subscription for voting ordinary bearer shares and, upon the change of the legal form of the Company into a partnership limited by shares taking effect, will take the form as set forth in Art. 4 para. 9 of Annex 1 to this invitation to the General Meeting.

Stock Option Plan 2003

The Stock Option Plan 2003 set up on the basis of the resolution of the General Meeting of May 28, 2003 (taking into account the amendment resolution of the General Meeting of December 4, 2006, required due to the new division of the share capital) is amended because of the conversion of the entire share capital into voting ordinary bearer shares in the context of the change of the legal form of the Company into a partnership limited by shares, so that all outstanding subscription rights associated with the issued convertible bonds are to be serviced with voting ordinary bearer shares in so far as the convertible bond holders use their exercise right.

The rights under the convertible bonds will remain unaffected by the change of an employment relationship of a beneficiary with Fresenius SE into an employment relationship with Fresenius SE & Co. KGaA or with Asion SE (which in future will bear the corporate name Fresenius Management SE), which will be acceding to the Company as General Partner.

With a view to the conversion of the entire share capital of the Company into voting ordinary bearer shares in the context of the change of the legal form, the success target of the Stock Option Plan 2003 is to be adjusted to the effect that the success target is deemed to be achieved if the price increase of 25% provided for in the Stock Option Plan 2003 is achieved by the fact that the sum of the following price increases amounts to at least 25%: (i) increase of the joint average stock exchange price of ordinary shares and preference shares from the day of the issuance until the day when the change of the legal form takes effect; (ii) increase of the stock exchange price of the ordinary shares since the taking of effect of the change of the legal form. To the extent that the success target is or has already been achieved prior to the change of the legal form taking effect, the success target is deemed to be achieved also after the change of the legal form.

Upon adoption of the new articles of association of Fresenius SE & Co. KGaA, the Conditional Capital II of the Company intended for the servicing of the Stock Option Plan 2003 (Art. 4 para. 7 of the statutes of Fresenius SE) will be adjusted to the

conversion of the subscription rights to the subscription of voting ordinary bearer shares and, upon the change of the legal form of the Company into a partnership limited by shares taking effect, will take the form as set forth in Art. 4 para. 10 of Annex 1 to this invitation to the General Meeting.

Stock Option Plan 2008

The Stock Option Plan 2008 set up on the basis of the resolution of the General Meeting of May 21, 2008 is amended because of the conversion of the entire share capital into voting ordinary bearer shares in the context of the change of the legal form of the Company into a partnership limited by shares as follows:

- As of the change of the legal form of the Company into a partnership limited by shares taking effect, the beneficiaries under the Stock Option Plan 2008 can be exclusively granted subscription rights for voting ordinary bearer shares. As of the change of the legal form taking effect, subscription rights already granted are to be serviced exclusively by voting ordinary bearer shares.
- With respect to the different corporate body structure of Fresenius SE & Co. KGaA, the circle of beneficiaries will be adjusted so that, as of the change of the legal form taking effect, instead of the members of the then no longer existing Management Board of the Company, the members of the Management Board of the General Partner are the beneficiaries. The rights under the options will remain unaffected by the change of an employment relationship of a beneficiary with Fresenius SE into an employment relationship with Fresenius SE & Co. KGaA or with Asion SE (which in future will bear the corporate name Fresenius Management SE), which will be acceding to the Company as General Partner.
- To the extent that, upon the change of the legal form taking effect, the Management Board (with respect to subscription rights for executive staff members) or the Supervisory Board (with respect to subscription rights for members of the Management Board) has not yet used the authorization under the stock option plan to grant subscription rights, the General Partner (with respect to subscription rights for executive staff members) or its Supervisory Board (with respect to subscription rights for members of the Management Board of the General Partner) is authorized to grant in such amount subscription rights for voting ordinary bearer shares.

Upon adoption of the new articles of association of Fresenius SE & Co. KGaA, the Conditional Capital III of the Company intended for the servicing of the Stock Option Plan 2008 (Art. 4 para. 8 of the statutes of Fresenius SE) will be adjusted to the conversion of the subscription rights to the subscription for voting ordinary bearer

shares and, upon the change of the legal form of the Company into a partnership limited by shares taking effect, will take the form as set forth in Art. 4 para. 11 of Annex 1 to this invitation to the General Meeting.

- (7) The articles of association of Fresenius SE & Co. KGaA are hereby adopted in the wording set forth in Annex 1 to this invitation to the General Meeting.

By adoption of the new articles of association of Fresenius SE & Co. KGaA, the Authorized Capital I and the Authorized Capital II will, as of the change of the legal form into a partnership limited by shares taking effect, be adjusted with respect to the change of the legal form of the Company into a partnership limited by shares and the conversion of the entire share capital into voting ordinary bearer shares and will take the form as set forth in Art. 4 para. 4 (Authorized Capital I) and Art 4 para. 5 (Authorized Capital II) of Annex 1 to this invitation to the General Meeting. With respect to the Authorized Capital I, the General Partner is authorized to exclude the shareholders' subscription right for fractional amounts. With respect to the Authorized Capital II, the General Partner is authorized, pursuant to the wording of Art. 4 para. 5 of Annex 1 to this invitation to the General Meeting, to exclude the shareholders' subscription right with the consent of the Supervisory Board.

Furthermore, by adoption of the new articles of association of Fresenius SE & Co. KGaA, the Authorized Capital III, the Authorized Capital IV and the Authorized Capital V will, as of the change of the legal form into a partnership limited by shares taking effect, be newly created and will take the form as set forth in Art. 4 para. 6 (Authorized Capital III), Art. 4 para. 7 (Authorized Capital IV) and Art. 4 para. 8 (Authorized Capital V) of Annex 1 to this invitation to the General Meeting. With respect to the Authorized Capitals III, IV and V, the shareholders' subscription right is excluded.

The Supervisory Board is authorized to amend the wording of the articles of association prior to entering the resolution on the change of the legal form in the commercial register, insofar as this is required due to an issuance of shares out of existing conditional capital which has occurred in the meantime, to the then applicable amount of the share capital. The Supervisory Board is further authorized to amend the wording of the articles of association prior to entering the resolution on the change of the legal form in the commercial register, insofar as changes regarding the amounts of the respective conditional capitals occur.

- (8) No offer of compensation under sec. 207 German Conversion Act needs to be made as a result of the provision of sec. 250 German Conversion Act.

- (9) The consequences of the change of the legal form for the employees and their representations and the measures planned in this respect are determined as follows (including information on the procedure regarding the participation of the employees in connection with the planned cross-border merger of Calea Nederland N.V. into the Company):

The change of the legal form has no effects for the employees and their employment relationships. The change of the legal form does not involve a change of employer; the employment contracts of the employees continue to apply unchanged. The employer's right to issue instructions will be exercised after the change of the legal form and the subsequent cross-border merger of Calea Nederland N.V. into Fresenius SE & Co. KGaA by Fresenius SE & Co. KGaA, represented by the Management Board of the General Partner, i.e., Asion SE (which will in the future bear the corporate name Fresenius Management SE). This does not involve any changes for the employees.

The change of the legal form and the subsequent cross-border merger of Calea Nederland N.V. into Fresenius SE & Co. KGaA have the following impacts on the employees' representations and the co-determination of employees in the Supervisory Board:

The existing SE works council of Fresenius SE is linked to the legal form of the SE, so that it will cease to exist upon the change of the legal form taking effect. As the Fresenius Group is a group of companies with business activities all over the European Union, the controlling company of which has its registered office in Germany, a European works council can be established instead of the former SE works council in accordance with the provisions of the European Works Councils Act (*Europäisches Betriebsräte-Gesetz – "EBRG"*). Other than that, the existence and composition of the works councils, the executives' committees (*Sprecherausschüsse*) and other employee representations as well as their rights and powers will not be changed by the change of the legal form and the subsequent cross-border merger of Calea Nederland N.V. into Fresenius SE & Co. KGaA. All works agreements remain in effect unchanged in their present form. The binding character of collective bargaining agreements for the Company and its subsidiaries remains likewise unaffected by the change of the legal form.

The change of the legal form changes the corporate co-determination. The corporate co-determination in the Supervisory Board of Fresenius SE is governed by the provisions of the SE Participation Act and the agreement regarding the participation of employees in Fresenius SE of July 13, 2007. The Supervisory Board of Fresenius SE maintains equal representation and consists of six Supervisory Board members of

the shareholders and six of the employees. At the moment, four of the employee representatives in the Supervisory Board of Fresenius SE are from Germany and one each from Italy and Austria. The change of the legal form of Fresenius SE into a partnership limited by shares would, in principle, lead to the corporate co-determination being governed by the provisions of the German Co-Determination Act. Based on the number of employees working for the Company and its group companies in Germany, a Supervisory Board with equal representation, consisting of ten members of the Supervisory Board of the shareholders and ten of the employees, would have to be established pursuant to the provisions of the German Co-Determination Act. With respect to the employee representatives in the Supervisory Board of Fresenius SE & Co. KGaA, out of the employees of the Fresenius Group, only the employees working in Germany would have a right to vote and a right to be elected in accordance with the German Co-Determination Act.

It is planned to implement a cross-border merger of the Dutch Calea Nederland N.V. into the Company in connection with the change of the legal form of the Company into a partnership limited by shares. The Company has a 100% stake in Calea Nederland N.V. In 2008, Calea Nederland N.V. sold and transferred its entire business to Tefa-Portanje B.V. Since then, it no longer has any own business or any employees. The cross-border merger is to become effective immediately upon the change of the legal form taking effect. As a result of the cross-border merger, the corporate co-determination at Fresenius SE & Co. KGaA will not be governed by the provisions of the German Co-Determination Act, but rather by the provisions of the German Act on Employee Co-Determination in case of Cross-Border Mergers (“MgVG”). If the cross-border merger becomes effective, as planned, immediately after the change of the legal form takes effect, the provisions of the German Co-Determination Act do not apply. Accordingly, the Supervisory Board of the Company for the time after the change of the legal form takes effect will be established not in accordance with the provisions of the German Co-Determination Act, but in accordance with the provisions of the MgVG. The MgVG governs the co-determination of employees in the corporate bodies of a company resulting from a cross-border merger. The Act aims at safeguarding the co-determination rights of employees in the companies involved in the merger.

In connection with a cross-border merger, in principle, a procedure regarding the participation of employees must be conducted. Such procedure would aim at the conclusion of an agreement among the managements of the companies involved in the merger and a special negotiating body representing the interests of the employees on the co-determination of employees in the supervisory board of the company. For the

purpose set out above, co-determination means the influence of employees on the matters of a company by exercising the right to elect or appoint part of the members of the supervisory or administrative body of the company, or the exercise of the right to recommend or reject the appointment of some or all members of the supervisory or administrative body of the company (sec. 2 para. 7 MgVG). If no agreement can be reached until the end of the negotiating period provided for in the MgVG, the statutory subsidiary regulation of the MgVG applies, which secures the co-determination of the employees by operation of law (“co-determination by operation of law”).

Under the provisions of the MgVG, the managements of the companies involved in the merger, i.e., the Management Board of the Company and the management of Calea Nederland N.V., may decide to apply the regulations on the co-determination by operation of law without prior negotiations with a special negotiating body immediately as of the time of the registration of the company resulting from the cross-border merger (sec. 23 para. 1 sentence 1 no. 3 MgVG). The further requirement that at least a third of all employees of the Company, of Calea Nederland N.V. and of the concerned subsidiaries was entitled to co-determination rights prior to the registration of the company resulting from the cross-border merger (sec. 23 para. 1 sentence 2 no. 1 MgVG), is fulfilled in this case. With respect to the co-determination by operation of law, the corporate co-determination is governed by the provisions of secs. 23 et seq. MgVG. These contain, in particular, regulations on the scope of the co-determination, the allocation of seats within the employees’ representation (so-called employee bench), the removal of employee representatives and the contesting of the election of employee representatives as well as on the legal position of the employee representatives.

The Management Board of the Company and the management of Calea Nederland N.V. decided on March 30, 2010 pursuant to sec. 23 para. 1 sentence 1 no. 3 MgVG that the regulations on the co-determination by operation of law without prior negotiations shall apply to the company resulting from the cross-border merger immediately as of the time of the registration of the merger. For this reason, negotiations with a special negotiating body need not be initiated.

Pursuant to sec. 24 para. 1 MgVG, within the framework of the statutory subsidiary regulation, the number of employee representatives in the supervisory body of the company resulting from the cross-border merger is assessed on the basis of the highest number of employee representatives existing in one of the bodies of the companies involved in the merger prior to such merger. As Calea Nederland N.V. is not subject to any corporate co-determination, the proportionate allocation of the seats of the Supervisory Board between shareholders and employees of the acquiring company

following the merger is based on the number of employee representatives existing in the acquiring company prior to the merger taking effect.

As the Supervisory Board of Fresenius SE maintains equal representation and the change of the legal form of the Company into a partnership limited by shares without the cross-border merger would, in principle, lead to the corporate co-determination being governed by the provisions of the German Co-Determination Act and thus, a Supervisory Board would have to be established with equal representation, half of the Supervisory Board of the company resulting from the merger will consist of employee representatives. Thus, the principle of equal representation applied in Fresenius SE is continued in effect in the Supervisory Board of Fresenius SE & Co. KGaA.

The size of the Supervisory Board of the company resulting from the cross-border merger will be determined within the limits of sec. 95 German Stock Corporation Act in the articles of association of Fresenius SE & Co. KGaA. The articles of association of Fresenius SE & Co. KGaA to be adopted in the context of the conversion resolution provide that the Supervisory Board is to consist of twelve members unless another number of members is prescribed under mandatory statutory provisions; one half of the members of the Supervisory Board is elected by the General Meeting in accordance with the provisions of the German Stock Corporation Act, the other half of the members of the Supervisory Board is elected by the employees.

The MgVG provides that a special negotiating body is to allocate the number of seats for employee representatives in the Supervisory Board to the Member States of the EU or the states party to the EEA Agreement, in which members are to be elected or appointed (sec. 25 para. 1 sentence 1 MgVG). The allocation is based on the respective number of employees of the company resulting from the cross-border merger, its subsidiaries and operational units who are employed in the individual Member States of the EU or the states party to the EEA Agreement (sec. 25 para. 1 sentence 2 MgVG). In the event that the employees from one or several Member States of the EU or the states party to the EEA Agreement cannot obtain a seat in such pro-rata allocation, the last seat to be allocated is to be assigned to a Member State of the EU or a state party to the EEA Agreement that has not yet been allocated any seats (sec. 25 para. 1 sentence 3 MgVG). As the Management Board of the Company and the management of Calea Nederland N.V. have decided that the regulations on the co-determination by operation of law without prior negotiations are to be applied immediately as of the time of the registration of the company resulting from the cross-border merger, a special negotiating body would have to be established merely for the purposes of the allocation of seats. The Management Board of the Company and the management of Calea Nederland N.V. are of the opinion that the creation of a special negotiating

body merely for the purpose of the allocation of seats can be dispensed with, since Calea Nederland N.V. has no employees and within Fresenius SE with the SE works council a body with a composition similar to the special negotiating body to be established pursuant to the MgVG already exists, which has the function to look after the interests of the employees of the Fresenius Group from the Member States of the EU and from the states party to the EEA Agreement. For this reason, the SE works council shall allocate the seats, following the consent of the SE works council of Fresenius SE, in accordance with sec. 25 para. 1 MgVG. Since the SE works council will cease to exist upon the change of the legal form taking effect, the seat allocation shall be carried out before the change of the legal form takes effect.

The determination of the employee representatives to be allocated to a Member State of the EU or a state party to the EEA Agreement in the Supervisory Board of Fresenius SE & Co. KGaA is based on the national regulations of the relevant Member State concerned. The election of the employee representatives in the Supervisory Board of Fresenius SE & Co. KGaA to be allocated to Germany is made by an electoral body consisting of the employees' representations of the Company, its subsidiaries and operational units (sec. 25 para. 3 sentence 1 MgVG). Pursuant to secs. 25 para. 3 sentence 2, 8 paras. 2 and 3 MgVG, employees of the German companies and operational units of the Fresenius Group as well as trade union representatives may be elected. Men and women are to be elected in accordance with their numerical proportion. For each member, a substitute member is to be elected. Every third German employee representative must be a representative of a trade union which is represented in a company involved in the merger, the concerned subsidiaries or a concerned operational unit. Consequently, since it is expected that, as was the case in Fresenius SE, four seats for employee representatives will be allocated to Germany also in the Supervisory Board of the converted Fresenius SE & Co. KGaA, one German trade union representative would have to be elected to the Supervisory Board.

The regulations under the MgVG regarding co-determination by operation of law apply as of the time of registration of the merger.

Irrespective of the fact that the size of the Supervisory Board and the composition of equal representation will not change because of the cross-border merger compared to the situation at Fresenius SE, as a result of the change of the legal form all previous Supervisory Board mandates will cease to exist. All members of the Supervisory Board, i.e., also the employee representatives, will have to be newly elected. The election of the shareholder representatives is provided for in item 9 of the agenda of the Ordinary General Meeting of the Company to be held on May 12, 2010. In the event that the procedure for the election of the employee representatives has not been

completed upon the change of the legal form taking effect, the employee representatives in the Supervisory Board of Fresenius SE & Co. KGaA are to be initially appointed by the court.

With regard to the change of the legal form or the cross-border merger, no other measures are proposed or planned which would affect the situation of the employees.

The resolution of the ordinary shareholders regarding this agenda item also constitutes the special resolution of the ordinary shareholders pursuant to Art. 60 of Council Regulation (EC) No. 2157/2001 of October 8, 2001 on the Statute for a European company (SE).

- b) Consent of Asion SE (which will in future bear the corporate name Fresenius Management SE) to the accession as General Partner of Fresenius SE & Co. KGaA and approval of the articles of association of Fresenius SE & Co. KGaA pursuant to Annex 1 to this invitation to the General Meeting by Asion SE (in future bearing the corporate name Fresenius Management SE).

8. Separate vote of the preference shareholders on the resolution of the Ordinary General Meeting on the same date on the change of the legal form of the Company into the legal form of a partnership limited by shares (*Kommanditgesellschaft auf Aktien*) with accession of Fresenius Management SE.

The Management Board and the Supervisory Board propose to resolve as follows:

- (1) Fresenius SE is converted by way of a change of the legal form in accordance with the provisions of the German Conversion Act (*Umwandlungsgesetz*) into a partnership limited by shares (*Kommanditgesellschaft auf Aktien – KGaA*).
- (2) The corporate name of the entity in its new legal form is Fresenius SE & Co. KGaA.
- (3) The entire share capital of Fresenius SE in the amount existing at the time of entering the change of the legal form in the commercial register becomes the share capital of Fresenius SE & Co. KGaA, and the shareholders who are shareholders of Fresenius SE at the time of entering the change of the legal form in the commercial register become limited liability shareholders (*Kommanditaktionäre*) of Fresenius SE & Co. KGaA. They participate to the same extent and with the same number of no-par value shares in the share capital of Fresenius SE & Co. KGaA as they did in Fresenius SE prior to the change of the legal form taking effect. The notional proportion of each no-par value share in the share capital remains unchanged. Both the ordinary shareholders and the preference shareholders of Fresenius SE participate in Fresenius SE & Co. KGaA with voting ordinary shares. The ordinary shareholders receive the same number of voting ordinary bearer shares which they

held in Fresenius SE prior to the change of the legal form taking effect. The preference shareholders receive a number of voting ordinary bearer shares corresponding to the number of non-voting preference bearer shares which they held in Fresenius SE prior to the change of the legal form taking effect.

- (4) The General Partner of Fresenius SE & Co. KGaA will be Asion SE (in future bearing the corporate name Fresenius Management SE) with its registered office in Düsseldorf. Pursuant to sec. 245 para. 2 German Conversion Act, in applying the rules of incorporation of the German Stock Corporation Act, the General Partner takes the position of the incorporator of the entity in its new legal form. In the context of the change of the legal form, the General Partner does not take any participation in the share capital and does therefore not participate in the assets, profit and loss of Fresenius SE & Co. KGaA.

(5) Special Rights and Benefits

Non-Voting Preference Bearer Shares

Under the current legal situation, the preference shares of Fresenius SE receive a dividend from the annual distributable profit of Fresenius SE which is Euro 0.01 per preference share higher than the dividend for the ordinary shares, at least, however, a dividend of Euro 0.02 per preference share. The minimum dividend in the amount of Euro 0.02 per preference share has priority over the distribution of a dividend on the ordinary shares. If the distributable profit in one or more financial years is not sufficient to distribute Euro 0.02 per preference share, the deficits will be paid in arrears, without interest, from the distributable profit of the following financial years, after distribution of the minimum dividend on the preference shares for those financial years and before the payment of a dividend on the ordinary shares. The right to such payment in arrears is a part of the participation in profits for the financial year, out of the distributable profit of which the payment of arrears on the preference shares is made.

The share capital of Fresenius SE & Co. KGaA will be exclusively divided into voting ordinary bearer shares. The preference shareholders of Fresenius SE will receive one voting ordinary bearer share in Fresenius SE & Co. KGaA for each non-voting preference bearer share they held in Fresenius SE prior to the change of the legal form taking effect. The voting ordinary shares in Fresenius SE & Co. KGaA and the non-voting preference shares in Fresenius SE are equivalent within the meaning of sec. 23 German Conversion Act. On the one hand, the preference shareholders of Fresenius SE will not be entitled to a higher dividend or an (advance) minimum dividend after the change of the legal form into

Fresenius SE & Co. KGaA has taken effect; on the other hand, they will, as ordinary shareholders of Fresenius SE & Co. KGaA, obtain the voting right.

Special Rights under Existing Employee Participation Programs

By resolution of the General Meeting of June 18, 1998, the Company has issued subscription rights to ordinary shares and to preference shares to members of the Management Board of the Company, members of the managements of affiliates of the Fresenius Group, senior officers (*leitende Angestellte*) (within the meaning of the classification by the Company) of the Company and of German affiliates of the Fresenius Group and executive staff members (*Führungskräfte*) of the foreign affiliates of the Fresenius Group (“Stock Option Plan 1998”); altogether, these subscription rights entitle their holders to subscribe for up to 450,000 ordinary shares and for up to 450,000 preference shares. Excluded are members of the management and employees of Fresenius Medical Care AG (now Fresenius Medical Care AG & Co. KGaA) and of those affiliates that are affiliated with the Company only via Fresenius Medical Care. An option entitles either to the subscription for an ordinary share or for a preference share. To the group of the members of the Management Board, up to 200,000 options are allotted, which grant the right to subscription for up to 100,000 ordinary shares and up to 100,000 preference shares. To the group of the executive staff members, up to 700,000 options are allotted, which grant the right to subscription for up to 350,000 ordinary shares and for up to 350,000 preference shares. The stock options granted under the Stock Option Plan 1998 have a term of ten years. One third of the options can be exercised at the earliest two, three or four years after the date they were granted, respectively. Furthermore, the exercise of the options is subject to the mandatory requirement that within the first two-year vesting period following the granting of the options to the beneficiary, the consolidated earnings of the group before interest, before payments for profit participation capital and for securities similar to profit participation rights and before taxes on income and profit (EBIT) must have increased by at least 15% (success target). The Management Board and the Supervisory Board are authorized to determine in the terms of the options a higher percentage than 15 as a prerequisite for exercising the options. The exercise price of an option corresponds to the average standard quotation of the ordinary bearer share or the non-voting preference bearer share of the Company on the Frankfurt Stock Exchange on the last 30 trading days prior to the granting of the option to the beneficiaries. As of December 31, 2009, under the Stock Option Plan 1998, stock options in a volume of 457,062 units were issued all of which were exercisable.

By resolution of May 28, 2003, the Ordinary General Meeting of the Company has authorized the Management Board of the Company, with the consent of the Supervisory

Board, to issue convertible bonds in the aggregate nominal amount of Euro 4,608,000.00 to the members of the Management Board of the Company, to members of the management of affiliates of the Company, to employees of the Company and to employees of affiliates of the Company; altogether, the convertible bonds entitle their holders to subscribe for up to 900,000 ordinary shares and up to 900,000 preference shares (“Stock Option Plan 2003”). Excluded are members of the management and employees of Fresenius Medical Care AG (now Fresenius Medical Care AG & Co. KGaA) and of those affiliates that are affiliated with the Company only via Fresenius Medical Care. Each convertible bond grants the right to subscription for one ordinary share or one preference share. To the group of the members of the Management Board, up to 400,000 convertible bonds are allotted, which grant the right to subscription for up to 200,000 ordinary shares and for up to 200,000 preference shares. To the group of the employees, up to 1,400,000 convertible bonds are allotted, which grant the right to subscription for up to 700,000 ordinary shares and for up to 700,000 preference shares. The beneficiaries are entitled to choose between convertible bonds with a success target (stock price target) and convertible bonds without a success target. If the beneficiaries opt for convertible bonds without a success target, they receive 15% less stock options than if they opt for convertible bonds with a success target. In the case of convertible bonds with a success target, the exercise of the conversion right depends on the achievement of the following success target: The success target is deemed to be achieved if prior to the conversion of the convertible bonds there is an increase of the joint average stock exchange price of ordinary shares and preference shares compared to the average stock exchange price of ordinary shares and preference shares on the day such convertible bonds were granted (“initial value”) that amounted to a minimum of 25% on at least one day. The initial value is determined based on the joint average stock exchange price of the ordinary and the preference share during the last 30 days preceding the day on which the respective convertible bond has been granted. The conversion price for convertible bonds with a success target corresponds to the stock exchange price of the ordinary shares or the preference shares, respectively, at the time the target is achieved for the first time, less the par value of the converted convertible bond. The conversion price for convertible bonds without a success target corresponds to the average stock exchange price of the ordinary share or the preference share, respectively, during the last 30 trading days at the stock exchange prior to the granting of the relevant convertible bonds, less the par value of the converted convertible bond. As of December 31, 2009, under the Stock Option Plan 2003, convertible bonds in a volume of 2,799,514 units were issued. Thereof, 1,953,308 items were exercisable.

By resolution of May 21, 2008, the Ordinary General Meeting of the Company has authorized the Management Board of the Company, with the consent of the Supervisory Board, to issue up to 6,200,000 subscription rights for up to 3,100,000 ordinary bearer

shares as well as for up to 3,100,000 preference bearer shares to members of the Management Board of the Company, to members of the managements of affiliates and to executive staff members of the Company and of affiliates (“Stock Option Plan 2008”). Excluded are members of the Management Board of Fresenius Medical Care Management AG in its capacity as General Partner of Fresenius Medical Care AG & Co. KGaA as well as employees of Fresenius Medical Care AG & Co. KGaA and of affiliates which are affiliated with the Company only via Fresenius Medical Care AG & Co. KGaA, to the extent that they are in an exclusive working or service relationship with Fresenius Medical Care AG & Co. KGaA or with an affiliate which is affiliated with the Company only via Fresenius Medical Care AG & Co. KGaA. Each subscription right grants the right to subscription for one ordinary bearer share or one preference bearer share. To the group of the Management Board, up to 1,200,000 subscription rights are allotted, which grant the right to subscription for up to 600,000 ordinary bearer shares and for up to 600,000 preference bearer shares. To the group of the members of the managements of affiliates, up to 3,200,000 subscription rights are allocated, which grant the right to subscription for up to 1,600,000 ordinary bearer shares and for up to 1,600,000 preference bearer shares. To the group of executive staff members of the Company and of affiliates, up to 1,800,000 subscription rights are allotted, which grant the right to subscription for up to 900,000 ordinary bearer shares and for up to 900,000 preference bearer shares, respectively. Subscription rights may only be exercised if the annual success target has been reached within the three-year vesting period determined in accordance with the regulations of the Stock Option Plan 2008. The success target is achieved in each case if, after the granting of the subscription rights to the respective beneficiary, the adjusted annual profit as compared to the previous financial year has increased by at least 8%. The exercise price of a subscription right corresponds to the average stock exchange price (closing price) of the ordinary bearer share or the preference bearer share of the Company in the electronic XETRA trading system of Deutsche Börse AG in Frankfurt am Main or a comparable successor system on the last 30 trading days prior to the granting of the subscription right. The minimum exercise price is the pro-rata amount of the share capital of the Company allocable to the ordinary bearer share or the preference bearer share, respectively. As of December 31, 2009, under the Stock Option Plan 2008, subscription rights in the volume of 2,136,876 units were issued, none of which have so far been exercisable.

In the course of the change of the legal form, the beneficiaries under the existing employee participation programs receive subscription rights or conversion rights to shares in Fresenius SE & Co. KGaA instead of shares in Fresenius SE. The number of subscription rights and the number of shares to be delivered remains unaffected by the change of the legal form. As the share capital of Fresenius SE & Co. KGaA will be divided only into voting ordinary bearer shares, only voting ordinary bearer shares will be delivered. For each

subscription right or conversion right granted at Fresenius SE for the subscription of a non-voting preference bearer share, the beneficiary will, in case of an exercise of such right – and provided that the relevant prerequisites for the exercise are fulfilled – receive a voting ordinary bearer share instead of a non-voting preference bearer share. The voting ordinary bearer shares in Fresenius SE & Co. KGaA and the non-voting preference bearer shares in Fresenius SE are equivalent within the meaning of sec. 23 German Conversion Act. On the one hand, the entitlement to a higher dividend and an (advance) minimum dividend for the preference shares will cease to exist upon the change of the legal form taking effect; on the other hand, each ordinary share replacing a preference share grants one voting right.

The exercise price or, in case of the Stock Option Plan 2003, the conversion price to be paid, in each case will remain unchanged. As exclusively ordinary shares are delivered, the exercise or conversion price, respectively, refers to the respective applicable stock exchange price of the ordinary shares.

Likewise, the respective success targets of the Stock Option Plans 1998 and 2008 will remain unchanged. With a view to the conversion of the entire share capital of the Company to voting ordinary bearer shares in the context of the change of the legal form, the success target of the Stock Option Plan 2003 is to be adjusted to the effect, that the success target is deemed to be achieved if the price increase of 25% provided for in the Stock Option Plan 2003 is achieved by the fact that the sum of the following price increases amounts to at least 25%: (i) increase of the joint average stock exchange price of ordinary shares and preference shares from the day of the issuance until the day when the change of the legal form takes effect; (ii) increase of the stock exchange price of the ordinary shares since the taking of effect of the change of the legal form. To the extent that the success target is or has already been achieved prior to the change of the legal form taking effect, the success target is deemed to be achieved also after the change of the legal form.

The rights under the options will remain unaffected by the change of an employment relationship of a beneficiary with Fresenius SE into an employment relationship with Fresenius SE & Co. KGaA or with Asion SE (which will in future bear the corporate name Fresenius Management SE) which will be acceding to the Company as General Partner.

The conditional capitals, which were created to secure the subscription or conversion rights under the Stock Option Plans 1998, 2003 and 2008, will continue to exist in amended form in Fresenius SE & Co. KGaA. With a view to the conversion of the entire share capital into voting ordinary bearer shares in the context of the change of the legal form of Fresenius SE to Fresenius SE & Co. KGaA, the conditional capitals will be amended in particular to the effect that the conditional capitals will exclusively provide for the issuance of voting ordinary bearer shares. The total amounts of the conditional capitals remain unchanged.

In addition to the conditional capitals, three authorized capitals are created in the articles of association of Fresenius SE & Co. KGaA, which are intended to alternatively service the existing employee participation programs. These authorized capitals also exclusively provide for the issuance of voting ordinary bearer shares.

General Partner

As a legal precaution, it is pointed out that Asion SE (in future bearing the corporate name Fresenius Management SE), in which the Else Kröner-Fresenius-Foundation holds a 100% stake, will accede to the Company as General Partner and will take over the management of the business of the Company.

Corporate Body Members

As a legal precaution, it is pointed out that – irrespective of the decision making authority of the Supervisory Board of Asion SE (which will in the future bear the corporate name Fresenius Management SE) according to German Stock Corporation Act – it can be assumed, that the present members of the Management Board of Fresenius SE will be appointed as members of the Management Board of the General Partner of Fresenius SE & Co. KGaA. The present members of the Management Board of Fresenius SE are the gentlemen Dr. Ulf M. Schneider (Chairman), Rainer Baule, Dr. Francesco De Meo, Dr. Jürgen Götz, Dr. Ben Lipps, Stephan Sturm and Dr. Ernst Wastler.

Furthermore, members of the Supervisory Board of Fresenius SE, namely the gentlemen Dr. Gerd Krick, Prof. Dr. h.c. Roland Berger, Klaus-Peter Müller and Dr. Gerhard Rupprecht, shall be appointed as members of the Supervisory Board of Fresenius SE & Co. KGaA. The gentlemen Dr. Dieter Schenk and Dr. Karl Schneider shall not be appointed as members of the Supervisory Board of Fresenius SE & Co. KGaA.

Moreover, the gentlemen Dr. Gerd Krick, Prof. Dr. h.c. Roland Berger, Klaus-Peter Müller, Dr. Gerhard Rupprecht, Dr. Dieter Schenk and Dr. Karl Schneider, all of whom are members of the Supervisory Board of Fresenius SE, shall be appointed as members of the Supervisory Board of the General Partner of Fresenius SE & Co. KGaA.

(6) Amendment of the Stock Option Plans 1998, 2003 and 2008

Stock Option Plan 1998

The Stock Option Plan 1998 set up on the basis of the resolution of the General Meeting of June 18, 1998 (taking into account the amendment resolution of the General Meeting of December 4, 2006, required due to the new division of the share capital) is amended because of the conversion of the entire share capital into voting ordinary bearer shares in the

context of the change of the legal form of the Company into a partnership limited by shares, so that all outstanding subscription rights are to be serviced, in case of exercise, with voting ordinary bearer shares. The rights under the options will remain unaffected by the change of an employment relationship of a beneficiary with Fresenius SE into an employment relationship with Fresenius SE & Co. KGaA or with Asion SE (which in future will bear the corporate name Fresenius Management SE), which will be acceding to the Company as General Partner.

Upon adoption of the new articles of association of Fresenius SE & Co. KGaA, the Conditional Capital I of the Company intended for the servicing of the Stock Option Plan 1998 (Art. 4 para. 6 of the statutes of Fresenius SE) will be adjusted to the conversion of the subscription rights to the subscription for voting ordinary bearer shares and, upon the change of the legal form of the Company into a partnership limited by shares taking effect, will take the form as set forth in Art. 4 para. 9 of Annex 1 to this invitation to the General Meeting.

Stock Option Plan 2003

The Stock Option Plan 2003 set up on the basis of the resolution of the General Meeting of May 28, 2003 (taking into account the amendment resolution of the General Meeting of December 4, 2006, required due to the new division of the share capital) is amended because of the conversion of the entire share capital into voting ordinary bearer shares in the context of the change of the legal form of the Company into a partnership limited by shares, so that all outstanding subscription rights associated with the issued convertible bonds are to be serviced with voting ordinary bearer shares in so far as the convertible bond holders use their exercise right.

The rights under the convertible bonds will remain unaffected by the change of an employment relationship of a beneficiary with Fresenius SE into an employment relationship with Fresenius SE & Co. KGaA or with Asion SE (which in future will bear the corporate name Fresenius Management SE), which will be acceding to the Company as General Partner.

With a view to the conversion of the entire share capital of the Company into voting ordinary bearer shares in the context of the change of the legal form, the success target of the Stock Option Plan 2003 is to be adjusted to the effect, that the success target is deemed to be achieved if the price increase of 25% provided for in the Stock Option Plan 2003 is achieved by the fact that the sum of the following price increases amounts to at least 25%:

- (i) increase of the joint average stock exchange price of ordinary shares and preference shares from the day of the issuance until the day when the change of the legal form takes

effect; (ii) increase of the stock exchange price of the ordinary shares since the taking of effect of the change of the legal form. To the extent that the success target is or has already been achieved prior to the change of the legal form taking effect, the success target is deemed to be achieved also after the change of the legal form.

Upon adoption of the new articles of association of Fresenius SE & Co. KGaA, the Conditional Capital II of the Company intended for the servicing of the Stock Option Plan 2003 (Art. 4 para. 7 of the statutes of Fresenius SE) will be adjusted to the conversion of the subscription rights to the subscription of voting ordinary bearer shares and, upon the change of the legal form of the Company into a partnership limited by shares taking effect, will take the form as set forth in Art. 4 para. 10 of Annex 1 to this invitation to the General Meeting.

Stock Option Plan 2008

The Stock Option Plan 2008 set up on the basis of the resolution of the General Meeting of May 21, 2008 is amended because of the conversion of the entire share capital into voting ordinary bearer shares in the context of the change of the legal form of the Company into a partnership limited by shares as follows:

- As of the change of the legal form of the Company into a partnership limited by shares taking effect, the beneficiaries under the Stock Option Plan 2008 can be exclusively granted subscription rights for voting ordinary bearer shares. As of the change of the legal form taking effect, subscription rights already granted are to be serviced exclusively by voting ordinary bearer shares.
- With respect to the different corporate body structure of Fresenius SE & Co. KGaA, the circle of beneficiaries will be adjusted so that, as of the change of the legal form taking effect, instead of the members of the then no longer existing Management Board of the Company, the members of the Management Board of the General Partner are the beneficiaries. The rights under the options will remain unaffected by the change of an employment relationship of a beneficiary with Fresenius SE into an employment relationship with Fresenius SE & Co. KGaA or with Asion SE (which in future will bear the corporate name Fresenius Management SE), which will be acceding to the Company as General Partner.
- To the extent that, upon the change of the legal form taking effect, the Management Board (with respect to subscription rights for executive staff members) or the Supervisory Board (with respect to subscription rights for members of the Management Board) has not yet used the authorization under the stock option plan to grant subscription rights, the General Partner (with respect to subscription rights for executive staff members) or its Supervisory Board (with respect to subscription rights for

members of the Management Board of the General Partner) is authorized to grant in such amount subscription rights for voting ordinary bearer shares.

Upon adoption of the new articles of association of Fresenius SE & Co. KGaA, the Conditional Capital III of the Company intended for the servicing of the Stock Option Plan 2008 (Art. 4 para. 8 of the statutes of Fresenius SE) will be adjusted to the conversion of the subscription rights to the subscription for voting ordinary bearer shares and, upon the change of the legal form of the Company into a partnership limited by shares taking effect, will take the form as set forth in Art. 4 para. 11 of Annex 1 to this invitation to the General Meeting.

- (7) The articles of association of Fresenius SE & Co. KGaA are hereby adopted in the wording set forth in Annex 1 to this invitation to the General Meeting.

By adoption of the new articles of association of Fresenius SE & Co. KGaA, the Authorized Capital I and the Authorized Capital II will, as of the change of the legal form into a partnership limited by shares taking effect, be adjusted with respect to the change of the legal form of the Company into a partnership limited by shares and the conversion of the entire share capital into voting ordinary bearer shares and will take the form as set forth in Art. 4 para. 4 (Authorized Capital I) and Art 4 para. 5 (Authorized Capital II) of Annex 1 to this invitation to the General Meeting. With respect to the Authorized Capital I, the General Partner is authorized to exclude the shareholders' subscription right for fractional amounts. With respect to the Authorized Capital II, the General Partner is authorized, pursuant to the wording of Art. 4 para. 5 of Annex 1 to this invitation to the General Meeting, to exclude the shareholders' subscription right with the consent of the Supervisory Board.

Furthermore, by adoption of the new articles of association of Fresenius SE & Co. KGaA, the Authorized Capital III, the Authorized Capital IV and the Authorized Capital V will, as of the change of the legal form into a partnership limited by shares taking effect, be newly created and will take the form as set forth in Art. 4 para. 6 (Authorized Capital III), Art. 4 para. 7 (Authorized Capital IV) and Art. 4 para. 8 (Authorized Capital V) of Annex 1 to this invitation to the General Meeting. With respect to the Authorized Capitals III, IV and V, the shareholders' subscription right is excluded.

The Supervisory Board is authorized to amend the wording of the articles of association prior to entering the resolution on the change of the legal form in the commercial register, insofar as this is required due to an issuance of shares out of existing conditional capital which has occurred in the meantime, to the then applicable amount of the share capital. The Supervisory Board is further authorized to amend the wording of the articles of association

prior to entering the resolution on the change of the legal form in the commercial register, insofar as changes regarding the amounts of the respective conditional capitals occur.

- (8) No offer of compensation under sec. 207 German Conversion Act needs to be made as a result of the provision of sec. 250 German Conversion Act.
- (9) The consequences of the change of the legal form for the employees and their representations and the measures planned in this respect are determined as follows (including information on the procedure regarding the participation of the employees in connection with the planned cross-border merger of Calea Nederland N.V. into the Company):

The change of the legal form has no effects for the employees and their employment relationships. The change of the legal form does not involve a change of employer; the employment contracts of the employees continue to apply unchanged. The employer's right to issue instructions will be exercised after the change of the legal form and the subsequent cross-border merger of Calea Nederland N.V. into Fresenius SE & Co. KGaA by Fresenius SE & Co. KGaA, represented by the Management Board of the General Partner, i.e., Asion SE (which will in the future bear the corporate name Fresenius Management SE). This does not involve any changes for the employees.

The change of the legal form and the subsequent cross-border merger of Calea Nederland N.V. into Fresenius SE & Co. KGaA have the following impacts on the employees' representations and the co-determination of employees in the Supervisory Board:

The existing SE works council of Fresenius SE is linked to the legal form of the SE, so that it will cease to exist upon the change of the legal form taking effect. As the Fresenius Group is a group of companies with business activities all over the European Union, the controlling company of which has its registered office in Germany, a European works council can be established instead of the former SE works council in accordance with the provisions of the European Works Councils Act (*Europäisches Betriebsräte-Gesetz – "EBRG"*). Other than that, the existence and composition of the works councils, the executives' committees (*Sprecherausschüsse*) and other employee representations as well as their rights and powers will not be changed by the change of the legal form and the subsequent cross-border merger of Calea Nederland N.V. into Fresenius SE & Co. KGaA. All works agreements remain in effect unchanged in their present form. The binding character of collective bargaining agreements for the Company and its subsidiaries remains likewise unaffected by the change of the legal form.

The change of the legal form changes the corporate co-determination. The corporate co-determination in the Supervisory Board of Fresenius SE is governed by the provisions of the SE Participation Act and the agreement regarding the participation of employees in

Fresenius SE of July 13, 2007. The Supervisory Board of Fresenius SE maintains equal representation and consists of six Supervisory Board members of the shareholders and six of the employees. At the moment, four of the employee representatives in the Supervisory Board of Fresenius SE are from Germany and one each from Italy and Austria. The change of the legal form of Fresenius SE into a partnership limited by shares would, in principle, lead to the corporate co-determination being governed by the provisions of the German Co-Determination Act. Based on the number of employees working for the Company and its group companies in Germany, a Supervisory Board with equal representation, consisting of ten members of the Supervisory Board of the shareholders and ten of the employees, would have to be established pursuant to the provisions of the German Co-Determination Act. With respect to the employee representatives in the Supervisory Board of Fresenius SE & Co. KGaA, out of the employees of the Fresenius Group, only the employees working in Germany would have a right to vote and a right to be elected in accordance with the German Co-Determination Act.

It is planned to implement a cross-border merger of the Dutch Calea Nederland N.V. into the Company in connection with the change of the legal form of the Company into a partnership limited by shares. The Company has a 100% stake in Calea Nederland N.V. In 2008, Calea Nederland N.V. sold and transferred its entire business to Tefa-Portanje B.V. Since then, it no longer has any own business or any employees. The cross-border merger is to become effective immediately upon the change of the legal form taking effect. As a result of the cross-border merger, the corporate co-determination at Fresenius SE & Co. KGaA will not be governed by the provisions of the German Co-Determination Act, but rather by the provisions of the German Act on Employee Co-Determination in case of Cross-Border Mergers (“MgVG”). If the cross-border merger becomes effective, as planned, immediately after the change of the legal form takes effect, the provisions of the German Co-Determination Act do not apply. Accordingly, the Supervisory Board of the Company for the time after the change of the legal form takes effect will be established not in accordance with the provisions of the German Co-Determination Act, but in accordance with the provisions of the MgVG. The MgVG governs the co-determination of employees in the corporate bodies of a company resulting from a cross-border merger. The Act aims at safeguarding the co-determination rights of employees in the companies involved in the merger.

In connection with a cross-border merger, in principle, a procedure regarding the participation of employees must be conducted. Such procedure would aim at the conclusion of an agreement among the managements of the companies involved in the merger and a special negotiating body representing the interests of the employees on the co-determination of employees in the supervisory board of the company. For the purpose set out

above, co-determination means the influence of employees on the matters of a company by exercising the right to elect or appoint part of the members of the supervisory or administrative body of the company, or the exercise of the right to recommend or reject the appointment of some or all members of the supervisory or administrative body of the company (sec. 2 para. 7 MgVG). If no agreement can be reached until the end of the negotiating period provided for in the MgVG, the statutory subsidiary regulation of the MgVG applies, which secures the co-determination of the employees by operation of law (“co-determination by operation of law”).

Under the provisions of the MgVG, the managements of the companies involved in the merger, i.e., the Management Board of the Company and the management of Calea Nederland N.V., may decide to apply the regulations on the co-determination by operation of law without prior negotiations with a special negotiating body immediately as of the time of the registration of the company resulting from the cross-border merger (sec. 23 para. 1 sentence 1 no. 3 MgVG). The further requirement that at least a third of all employees of the Company, of Calea Nederland N.V. and of the concerned subsidiaries was entitled to co-determination rights prior to the registration of the company resulting from the cross-border merger (sec. 23 para. 1 sentence 2 no. 1 MgVG), is fulfilled in this case. With respect to the co-determination by operation of law, the corporate co-determination is governed by the provisions of secs. 23 et seq. MgVG. These contain, in particular, regulations on the scope of the co-determination, the allocation of seats within the employees’ representation (so-called employee bench), the removal of employee representatives and the contesting of the election of employee representatives as well as on the legal position of the employee representatives.

The Management Board of the Company and the management of Calea Nederland N.V. decided on March 30, 2010 pursuant to sec. 23 para. 1 sentence 1 no. 3 MgVG that the regulations on the co-determination by operation of law without prior negotiations shall apply to the company resulting from the cross-border merger immediately as of the time of the registration of the merger. For this reason, negotiations with a special negotiating body need not be initiated.

Pursuant to sec. 24 para. 1 MgVG, within the framework of the statutory subsidiary regulation, the number of employee representatives in the supervisory body of the company resulting from the cross-border merger is assessed on the basis of the highest number of employee representatives existing in one of the bodies of the companies involved in the merger prior to such merger. As Calea Nederland N.V. is not subject to any corporate co-determination, the proportionate allocation of the seats of the Supervisory Board between shareholders and employees of the acquiring company following the merger is based on the

number of employee representatives existing in the acquiring company prior to the merger taking effect.

As the Supervisory Board of Fresenius SE maintains equal representation and the change of the legal form of the Company into a partnership limited by shares without the cross-border merger would, in principle, lead to the corporate co-determination being governed by the provisions of the German Co-Determination Act and thus, a Supervisory Board would have to be established with equal representation, half of the Supervisory Board of the company resulting from the merger will consist of employee representatives. Thus, the principle of equal representation applied in Fresenius SE is continued in effect in the Supervisory Board of Fresenius SE & Co. KGaA.

The size of the Supervisory Board of the company resulting from the cross-border merger will be determined within the limits of sec. 95 German Stock Corporation Act in the articles of association of Fresenius SE & Co. KGaA. The articles of association of Fresenius SE & Co. KGaA to be adopted in the context of the conversion resolution provide that the Supervisory Board is to consist of twelve members unless another number of members is prescribed under mandatory statutory provisions; one half of the members of the Supervisory Board is elected by the General Meeting in accordance with the provisions of the German Stock Corporation Act, the other half of the members of the Supervisory Board is elected by the employees.

The MgVG provides that a special negotiating body is to allocate the number of seats for employee representatives in the Supervisory Board to the Member States of the EU or the states party to the EEA Agreement, in which members are to be elected or appointed (sec. 25 para. 1 sentence 1 MgVG). The allocation is based on the respective number of employees of the company resulting from the cross-border merger, its subsidiaries and operational units who are employed in the individual Member States of the EU or the states party to the EEA Agreement (sec. 25 para. 1 sentence 2 MgVG). In the event that the employees from one or several Member States of the EU or the states party to the EEA Agreement cannot obtain a seat in such pro-rata allocation, the last seat to be allocated is to be assigned to a Member State of the EU or a state party to the EEA Agreement that has not yet been allocated any seats (sec. 25 para. 1 sentence 3 MgVG). As the Management Board of the Company and the management of Calea Nederland N.V. have decided that the regulations on the co-determination by operation of law without prior negotiations are to be applied immediately as of the time of the registration of the company resulting from the cross-border merger, a special negotiating body would have to be established merely for the purposes of the allocation of seats. The Management Board of the Company and the management of Calea Nederland N.V. are of the opinion that the creation of a special negotiating body merely for the purpose of the allocation of seats can be dispensed with,

since Calea Nederland N.V. has no employees and within Fresenius SE with the SE works council a body with a composition similar to the special negotiating body to be established pursuant to the MgVG already exists, which has the function to look after the interests of the employees of the Fresenius Group from the Member States of the EU and from the states party to the EEA Agreement.

For this reason, the SE works council shall allocate the seats, following the consent of the SE works council of Fresenius SE, in accordance with sec. 25 para. 1 MgVG. Since the SE works council will cease to exist upon the change of the legal form taking effect, the seat allocation shall be carried out before the change of the legal form takes effect.

The determination of the employee representatives to be allocated to a Member State of the EU or a state party to the EEA Agreement in the Supervisory Board of Fresenius SE & Co. KGaA is based on the national regulations of the relevant Member State concerned. The election of the employee representatives in the Supervisory Board of Fresenius SE & Co. KGaA to be allocated to Germany is made by an electoral body consisting of the employees' representations of the Company, its subsidiaries and operational units (sec. 25 para. 3 sentence 1 MgVG). Pursuant to secs. 25 para. 3 sentence 2, 8 paras. 2 and 3 MgVG, employees of the German companies and operational units of the Fresenius Group as well as trade union representatives may be elected. Men and women are to be elected in accordance with their numerical proportion. For each member, a substitute member is to be elected. Every third German employee representative must be a representative of a trade union which is represented in a company involved in the merger, the concerned subsidiaries or a concerned operational unit. Consequently, since it is expected that, as was the case in Fresenius SE, four seats for employee representatives will be allocated to Germany also in the Supervisory Board of the converted Fresenius SE & Co. KGaA, one German trade union representative would have to be elected to the Supervisory Board.

The regulations under the MgVG regarding co-determination by operation of law apply as of the time of registration of the merger.

Irrespective of the fact that the size of the Supervisory Board and the composition of equal representation will not change because of the cross-border merger compared to the situation at Fresenius SE, as a result of the change of the legal form all previous Supervisory Board mandates will cease to exist. All members of the Supervisory Board, i.e., also the employee representatives, will have to be newly elected. The election of the shareholder representatives is provided for in item 9 of the agenda of the Ordinary General Meeting of the Company to be held on May 12, 2010. In the event that the procedure for the election of the employee representatives has not been completed upon the change of the legal form

taking effect, the employee representatives in the Supervisory Board of Fresenius SE & Co. KGaA are to be initially appointed by the court.

With regard to the change of the legal form or the cross-border merger, no other measures are proposed or planned which would affect the situation of the employees.

9. Election of the Supervisory Board of Fresenius SE & Co. KGaA.

Following the change of the legal form of the Company into a partnership limited by shares proposed under agenda item 7 taking effect, the composition of the Supervisory Board of the Company will be governed by other provisions than those currently applicable. Upon the change of the legal form taking effect, the office of the current members of the Supervisory Board ceases to exist by operation of law, so that the members of the Supervisory Board of the entity in its new legal form, i.e., Fresenius SE & Co. KGaA, will have to be newly appointed.

Pursuant to Art. 40 para. 2, para. 3 of Council Regulation (EC) No 2157/2001 of October 8, 2001 on the Statute for a European company (SE) (SE Regulation), sec. 17 SE Implementation Act (*SE-Ausführungsgesetz*), sec. 21 para. 3 SE Employee Participation Act (*SE-Beteiligungsgesetz*), Part II, Clause 3.3. of the agreement regarding the participation of employees in Fresenius SE of July 13, 2007 as well as Art. 9 para. 1 of the statutes of Fresenius SE, the Supervisory Board of Fresenius SE currently consists of six shareholder representatives and six employee representatives.

Upon the change of the legal form taking effect, the Supervisory Board of Fresenius SE & Co. KGaA would, in principle, consist of ten shareholder representatives and ten employee representatives in accordance with secs. 95, 96 German Stock Corporation Act, sec. 7 para. 1 no. 3 German Co-Determination Act (*Mitbestimmungsgesetz*). However, it is planned to merge Calea Nederland N.V. into the Company in connection with the change of the legal form. This cross-border merger is to become effective immediately upon the change of the legal form of Fresenius SE into Fresenius SE & Co. KGaA taking effect. Upon the cross-border merger taking effect, the Supervisory Board, pursuant to secs. 95, 96 German Stock Corporation Act, secs. 24, 25 German Act on Employee Co-Determination in case of Cross-Border Mergers (*Gesetz über die Mitbestimmung der Arbeitnehmer bei einer grenzüberschreitenden Verschmelzung*) as well as Art. 8 paras. 1 and 2 of the articles of association of Fresenius SE & Co. KGaA attached as Annex 1, will consist of six shareholder representatives and six employee representatives. The composition of the Supervisory Board may be based on statutory provisions other than those last applied only if the statutory provisions stated in the publication of

the Management Board or in the court decision are applicable pursuant to secs. 97 or 98 German Stock Corporation Act (sec. 96 para. 2 German Stock Corporation Act).

Against this background, the Supervisory Board proposes to adopt the following resolution:

The persons set out below are elected as members of the Supervisory Board of Fresenius SE & Co. KGaA for the period until the end of the General Meeting which resolves on the ratification of actions for the fourth financial year after the term of office commenced; for purposes of this calculation, the financial year in which the term of office commences shall not count:

Prof. Dr. h. c. Roland Berger

Munich

Management consultant (Roland Berger Strategy Consultants)

Mandates

Supervisory Board

Life Holding AG (Chairman)

Prime Office AG (Chairman)

Roland Berger Strategy Consultants Holding GmbH (Chairman)

Schuler AG

Senator Entertainment AG

Wilhelm von Finck AG (Deputy Chairman)

WMP EuroCom AG (Chairman)

Board of Directors

Fiat S.p.A., Italy

Loyalty Partner Holdings S.A., Luxembourg

Special Purpose Acquisition Company (S.P.A.C.) Germany 1

Acquisition Limited, Guernsey (Co-Chairman)

Telecom Italia S.p.A., Italy

Administrative Board (*Verwaltungsrat*)

Wittelsbacher Ausgleichsfonds

Dr. Gerd Krick

Königstein

Former Chairman of the Management Board of Fresenius AG

Mandates

Supervisory Board

Fresenius Medical Care AG & Co. KGaA (Chairman)

Fresenius Medical Care Management AG

VAMED AG, Austria (Chairman)

Klaus-Peter Müller

Bad Homburg v.d.H.

Chairman of the Supervisory Board of Commerzbank AG

Mandates

Supervisory Board

Commerzbank AG (Chairman)

Fraport AG

Linde AG

Board of Directors

Parker Hannifin Corporation, U.S.A.

Administrative Board (Verwaltungsrat)

Assicurazioni Generali S.p.A., Italy

Landwirtschaftliche Rentenbank

Dr. Gerhard Rupprecht

Gerlingen

Member of the Management Board of Allianz SE

Member of the Management Board of Allianz Deutschland AG

Mandates

Supervisory Board

Allianz Beratungs- und Vertriebs-AG (Chairman)

Allianz Elementar Lebensversicherungs-AG (Chairman)

Allianz Elementar Versicherungs-AG (Chairman)

Allianz Investmentbank AG (Deputy Chairman)

Allianz Lebensversicherungs-AG (Chairman)

Allianz Private Krankenversicherungs-AG (Chairman)

Allianz Suisse Lebensversicherungs-AG, Switzerland

Allianz Suisse Versicherungs-AG, Switzerland

Allianz Versicherungs-AG (Chairman)

Heidelberger Druckmaschinen AG

Prof. Dr. med. D. Michael Albrecht

Dresden

Medical director and spokesman of the Management Board of the Universitätsklinikum Carl

Gustav Carus Dresden

Mandates

Supervisory Board

GÖK Consulting AG

HELIOS Kliniken GmbH

Gerhard Roggemann

Hannover

Vice Chairman (*Mitglied der Geschäftsleitung*) von Hawkpoint Partners, Ltd., Great Britain

Mandates

Supervisory Board

Deutsche Börse AG (Deputy Chairman)

GP Günter Papenburg AG (Chairman)

Board of Directors

F&C Asset Management plc, Great Britain

Friends Provident plc, Great Britain

Administrative Board (*Verwaltungsrat*)

VHV Holding AG

The General Meeting is not bound by election proposals. Pursuant to sec. 31 para. 3 sentence 3 German Stock Corporation Act, sec. 278 para. 3 German Stock Corporation Act, sec. 197 sentence 3 German Conversion Act, the office of the members of the Supervisory Board ceases to exist in accordance with sec. 97 para. 2 sentence 3 German Stock Corporation Act only if the composition of the Supervisory Board is governed by other provisions than those deemed applicable.

It is intended to have the General Meeting decide on the elections to the Supervisory Board of Fresenius SE & Co. KGaA by way of individual votes.

In accordance with Clause 5.4.3., sentence 3 of the German Corporate Governance Code, it is pointed out that, in case of his election to the Supervisory Board, Dr. Gerd Krick is to be proposed as candidate for the chairmanship of the Supervisory Board.

Written Report of the Management Board to the Ordinary General Meeting of Fresenius SE re. items 7 and 8 of the Agenda pursuant to sec. 186 para. 4 sentence 2 and sec. 203 para. 2 German Stock Corporation Act

Agenda item 7 of the Ordinary General Meeting to be held on May 12, 2010 contains the proposal regarding the change of the legal form of Fresenius SE into Fresenius SE & Co. KGaA. The adoption of the articles of association of Fresenius SE & Co. KGaA (agenda item 7

no. 7) forms part of the conversion resolution. The change of the legal form requires an approving special resolution of the preference shareholders of Fresenius SE. The wording of this special resolution is provided under agenda item 8 of the Ordinary General Meeting to be held on May 12, 2010.

Upon adoption of the articles of association of Fresenius SE & Co. KGaA pursuant to agenda item 7 of the Ordinary General Meeting to be held on May 12, 2010, the existing Authorized Capitals I and II of the Company (Art. 4 para. 4 and Art. 4 para. 5 of the statutes of Fresenius SE, respectively) are to be amended with respect to the change of the legal form of Fresenius SE into a partnership limited by shares and the corresponding conversion of the entire share capital into voting ordinary bearer shares, so that the General Partner of Fresenius SE & Co. KGaA, which takes the position of the Management Board of Fresenius SE, shall only be entitled to issue new ordinary bearer shares. Apart from the changes resulting from the above, the Authorized Capitals I and II are to remain unchanged in all other respects. The Authorized Capitals I and II are provided for in Art. 4 para. 4 (Authorized Capital I) and Art. 4 para. 5 (Authorized Capital II), respectively, of the proposed articles of association of Fresenius SE & Co. KGaA.

In addition, upon adoption of the articles of association of Fresenius SE & Co. KGaA pursuant to agenda item 7 of the Ordinary General Meeting to be held on May 12, 2010, three new authorized capitals (Authorized Capitals III, IV and V) are to be created. The Authorized Capitals III, IV and V are provided for in Art. 4 para. 6 (Authorized Capital III), Art. 4 para. 7 (Authorized Capital IV) and Art. 4 para. 8 (Authorized Capital V) of the articles of association of Fresenius SE & Co. KGaA. They serve the purpose of servicing the stock options and convertible bonds under the existing employee participation programs of the Company (Stock Option Plans 1998, 2003 and 2008, in each case taking account of the amendment resolutions). The Authorized Capitals III, IV and V are to coexist with the Conditional Capitals I, II and III created for these employee participation programs (Art. 4 paras. 6, 7 and 8 of the statutes of Fresenius SE and Art. 4 paras. 9, 10 and 11 of the articles of association of Fresenius SE & Co. KGaA, respectively). Their utilization for the servicing of the employee participation programs is to be an alternative to the utilization of the Conditional Capitals I, II and III. To the extent that the stock options and the convertible bonds are serviced out of the Conditional Capitals I, II or III, the Authorized Capitals III, IV and V are not used. They cannot be used for any other purposes than the servicing of the existing employee participation programs. In addition, reference is made to the details set forth in Section 6.2.1 of the conversion report.

The new creation of the Authorized Capitals III, IV and V shall be effected as a mere precautionary measure in light of the change of sec. 193 para. 2 no. 4 German Stock Corporation Act by the German Act on the Appropriateness of Executive Board Compensation (VorstAG) of July 31, 2009. Sec. 193 para. 2 no. 4 German Stock Corporation Act now provides that the vesting period prior to the first exercise of stock options must amount to four (instead of

previously two) years. The provision also applies to conversion rights and is to be applied to resolutions passed in general meetings convened after August 5, 2009. The existing employee participation programs provide, in accordance with the former legal situation, for vesting periods of less than four years, which means that a new employee participation program in such form could no longer be adopted by the General Meeting. Since in the course of the change of the legal form of Fresenius SE into a partnership limited by shares the articles of association have to be newly adopted (agenda item 7 no. 7), it cannot be excluded altogether that sec. 193 para. 2 no. 4 German Stock Corporation Act in the version of the German Act on the Appropriateness of Executive Board Compensation will apply to the conditional capitals adjusted in the context of the conversion of all preference shares into ordinary shares. As a consequence the employee participation programs would stay in force, conditional capitals for servicing the stock options and convertible bonds would, however, be no longer available since they could not be incorporated in the new articles of association with their present terms. Under the correct interpretation, sec. 193 para. 2 no. 4 German Stock Corporation Act, in the version of the German Act on the Appropriateness of Executive Board Compensation, cannot be applicable to the inclusion of the existing conditional capitals in the articles of association of the entity in its new legal form, irrespective of the necessary amendments in the context of the conversion of preference shares into ordinary shares. Firstly, in the present case there is a mere continuation of existing conditional capitals, the total volume of which remains unchanged. Solely an adjustment to the conversion of the entire share capital into ordinary shares takes place. Secondly, with the German Act on the Appropriateness of Executive Board Compensation, the legislator precisely did not intend to intervene in existing employee participation programs. Such goal would be thwarted if, while the employee participation programs were continuing, the conditional capitals adopted for such programs would cease to exist. This applies both to the issue of new stock options under the current Stock Option Plan 2008 as well as – and even more so – to the servicing of options already issued under this or another employee participation program which is still running. In addition, it has to be taken into account that the holders of options already issued are to be granted, pursuant to sec. 23 German Conversion Act, equivalent rights in the entity in its new legal form. This also requires that the existing conditional capitals can be included in the articles of association of the entity in its new legal form. Correspondingly, it can be assumed that the conditional capitals will be validly included in the articles of association of the entity in its new legal form.

Authorized Capital I

Pursuant to Art. 4 para. 4 of the articles of association of Fresenius SE & Co. KGaA – as so far at Fresenius SE – the Authorized Capital I amounts to Euro 12,800,000.00. This corresponds to 7.9% of the share capital of the Company at the time the General Meeting is convened. Due to the different corporate body structure of the partnership limited by shares as compared to that of

a European company, the General Partner of Fresenius SE & Co. KGaA – instead of the hitherto authorized Management Board of Fresenius SE – is now authorized to increase the share capital, with the approval of the Supervisory Board of the Company, on one or several occasions. The current term of the Authorized Capital I until May 7, 2014 remains unchanged. Under the present regulation, the Management Board of Fresenius SE is authorized to issue new ordinary bearer shares and/or non-voting preference bearer shares against cash contributions. As a result of the conversion of the entire share capital of the Company into ordinary bearer shares, the General Partner of Fresenius SE & Co. KGaA is now exclusively authorized to issue ordinary bearer shares against cash contributions.

The inclusion of the Authorized Capital I in the articles of association of Fresenius SE & Co. KGaA is to ensure that the Company can strengthen its equity in case of favorable capital market conditions. If the General Partner of Fresenius SE & Co. KGaA exercises such authorization, it will – as under the current regulations the Management Board of Fresenius SE – in principle offer the new ordinary bearer shares out of the Authorized Capital I to the shareholders for subscription. In this case, the subscription price will in due time be set in such a way that the interests of the shareholders and of the Company are reasonably taken into account under due consideration of the respective capital market situation.

The present regulation at Fresenius SE provides for the authorization of the Management Board to exclude the subscription right of the shareholders for fractional amounts in order to achieve a round issue amount and an even subscription ratio. This regulation is to be maintained also in the articles of association of Fresenius SE & Co. KGaA. The exclusion of the subscription right for fractional amounts in the case of the Authorized Capital I is necessary in order to present a practicable subscription ratio for capital increase amounts below the amount of the share capital. The shares excluded as free fractions from the shareholders' subscription right are either sold on the stock exchange or are otherwise sold for the Company on best possible terms. As a possible exclusion of the subscription right here is limited to fractional amounts, a potential dilution effect is minimal.

In addition, the Authorized Capital I at Fresenius SE contains the authorization to exclude – when ordinary shares and preference shares are issued at the same time – the subscription right of the holders of shares of one class of shares for shares in the other class, provided that the subscription ratio is determined to be the same for both classes. As the entire share capital of the Company will be converted into voting ordinary bearer shares upon the change of the legal form taking effect, and also only ordinary shares may be issued out of the Authorized Capital I, a corresponding regulation at Fresenius SE & Co. KGaA is obsolete, so that it was not included in the proposed articles of association of Fresenius SE & Co. KGaA.

At Fresenius SE, the authorization also includes the right to issue additional preference shares which are equal to the non-voting preference shares previously issued in respect of the distribution of profits or of the Company's assets. This authorization may only be exercised insofar as – in case all authorized capitals which are entered in the commercial register on the basis of the resolutions adopted by the General Meeting of Fresenius SE of May 8, 2009, are fully utilized – the number of ordinary shares issued may not exceed the number of non-voting preference shares issued. This regulation has also become obsolete with a view to the conversion of the entire share capital of the Company into voting ordinary bearer shares, so that it was not included in the articles of association of Fresenius SE & Co. KGaA, either.

Authorized Capital II

Pursuant to Art. 4 para. 5 of the articles of association of Fresenius SE & Co. KGaA – as so far at Fresenius SE – the Authorized Capital II amounts to Euro 6,400,000.00. The authorization thereby corresponds to a maximum of 4.0% of the share capital of the Company at the time the General Meeting is convened. Also with respect to the Authorized Capital II, the General Partner of Fresenius SE & Co. KGaA – instead of the hitherto authorized Management Board of Fresenius SE – is authorized to increase the share capital, with the approval of the Supervisory Board of the Company, as of the change of the legal form into a partnership limited by shares taking effect. The term of the Authorized Capital II, as presently at Fresenius SE, ends on May 7, 2014. Under the present regulation, the Management Board of Fresenius SE is authorized to issue new ordinary bearer shares and/or non-voting preference bearer shares against cash contributions and/or contributions in kind. As a result of the conversion of the entire share capital of the Company into ordinary bearer shares, the General Partner of Fresenius SE & Co. KGaA is now exclusively authorized to issue ordinary bearer shares against cash contributions and/or contributions in kind.

The inclusion of the Authorized Capital II in the articles of association of Fresenius SE & Co. KGaA is to enable the Company to strengthen its equity base at the most favorable conditions and to grant ordinary shares against contributions in kind for the purpose of acquisitions. The authorization to grant ordinary shares of the Company against contributions in kind is intended to give the Company the necessary room for maneuver to seize opportunities that may arise for the acquisition of companies or participations in companies swiftly and flexibly. The inclusion of the Authorized Capital II in the articles of association of Fresenius SE & Co. KGaA (while maintaining the possibility to exclude the shareholders' subscription right in case of contributions in kind) allows for this, because a capital increase by way of the adoption of a resolution of the General Meeting would not be possible when opportunities for acquisitions arise or, respectively, would not afford the flexibility required in the course of takeovers.

In case of a utilization of the Authorized Capital II, the General Partner of Fresenius SE & Co. KGaA – as presently the Management Board of Fresenius SE – is authorized to decide on the exclusion of the subscription right of the shareholders with the approval of the Supervisory Board of the Company. The authorization to exclude the subscription right may be exercised in case of an acquisition of a company or a participation in a company; in the case of cash contributions, the subscription right may only be excluded if the issue price is not significantly lower than the stock exchange price. Without the exclusion of the subscription right, the Authorized Capital II could in case of capital increases against contributions in kind not be used for the intended purpose as acquisition currency. The financial interests of the shareholders are safeguarded by the General Partner's obligation, when exercising the authorization, to issue the new shares in accordance with sec. 255 para. 2 German Stock Corporation Act at an issue price that is in reasonable proportion to the value of the contribution in kind. In determining the value of the shares granted as consideration, their stock exchange price will be of relevance. However, a schematic tying to the stock exchange price is not planned, in particular to avoid that achieved negotiation results are put into question by fluctuations of the stock exchange price. The exclusion of the subscription right in case of a capital increase against cash contributions requires an issue price which is not significantly lower than the stock exchange price of the ordinary shares; this corresponds to the intention of the legislator in sec. 186 para. 3 sentence 4 German Stock Corporation Act, according to which a dilution of the value of the interests held by the current shareholders shall be largely excluded. A placement with an exclusion of the subscription right enables the Company to have a higher inflow of funds than in case of an issue with subscription right. It allows to set a price close to market levels and thereby to achieve selling profits as high as possible, because the placement can be made immediately after the determination of the issue price. In the event of an offer for sale made to all shareholders, the subscription price could, pursuant to sec. 186 para. 2 sentence 2 German Stock Corporation Act, at the latest be announced three days prior to the expiration of the subscription period. However, even when fully using this scope, there would be a risk of stock price change for several days, which would result in safety margins being deducted when determining the sales price. Due to the length of the subscription period, the Company would, furthermore, not be able to respond quickly to favorable market conditions. The possibility of a capital increase with exclusion of subscription rights shall enable the General Partner of Fresenius SE & Co. KGaA to make flexible use of favorable market conditions and thereby to carry out the strengthening of the equity base necessary for the future development of the business at the best possible conditions. A possible sales discount on the stock exchange price will presumably amount to less than 3%, but not exceed 5% in any event. The relevant market price shall be the current stock exchange price at the time the sales price is determined by the General Partner. Since, due to the volatility of the markets, fluctuations in prices within shortest periods cannot be excluded, it shall not be determined in advance whether rather an average market price over a period of only a few days,

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or the current market price at a specific point in time shall apply. This must be determined in each individual case.

In addition, the General Partner of Fresenius SE & Co. KGaA – as currently the Management Board of Fresenius SE – is authorized to exclude the shareholders' subscription right for fractional amounts. As with the Authorized Capital I (see above), the exclusion of the subscription right for fractional amounts is necessary also in this case in order to present a practicable subscription ratio for capital increase amounts below the amount of the share capital.

The Authorized Capital II at Fresenius SE also contains the authorization to exclude – when ordinary shares and preference shares are issued at the same time – the subscription right of the holders of shares of one class of shares for shares in the other class, provided that the subscription ratio is determined to be the same for both classes. As at Fresenius SE, the authorization in this case also includes the right to issue additional preference shares which are equal to the non-voting preference shares previously issued in respect of the distribution of profits or of the Company's assets. As in case of the Authorized Capital I (see above), these regulations have become obsolete with a view to the conversion of the entire share capital of the Company into voting ordinary bearer shares, so that they were not included in the articles of association of Fresenius SE & Co. KGaA.

Authorized Capital III

Within the framework of the Authorized Capital III, the General Partner of Fresenius SE & Co. KGaA is to be authorized to increase the share capital of the Company, with the approval of the Supervisory Board of the Company, until May 11, 2015 by a total of up to Euro 1,313,100.00 through a single or multiple issuance of new ordinary bearer shares against cash contributions. This corresponds to 0.8% of the share capital of the Company at the time the General Meeting is convened. The General Partner of Fresenius SE & Co. KGaA may only make use of the Authorized Capital III to the extent that – pursuant to the Stock Option Plan in accordance with the resolution of the General Meeting of Fresenius AG of June 18, 1998 (Stock Option Plan 1998) and taking into account the amendment resolution of the General Meeting of December 4, 2006, required due to the new division of the share capital, as well as the conversion resolution of the General Meeting to be held on May 12, 2010 – subscription rights to shares in the Company have been issued, the holders of such subscriptions rights have made use of their exercise right and insofar as no conditional capital is used to satisfy the subscription rights. The number of shares must increase in each case in the same proportion as the share capital. The new ordinary bearer shares are entitled to profit participation from the beginning of the financial year in which the capital increase becomes effective in each case.

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The subscription right of the shareholders is excluded with regard to the Authorized Capital III. As the Authorized Capital III is to be used exclusively for the servicing of the Stock Option Plan 1998, a subscription right of the shareholders to the newly to be issued ordinary bearer shares is out of the question. The exclusion of the subscription right will not lead to an additional dilution for the shareholders, as the Authorized Capital III is provided exclusively as an alternative to the existing Conditional Capital I. If the subscription rights issued under the Stock Option Plan 1998 are serviced out of the Conditional Capital I, the Authorized Capital III is not used; to the extent that, conversely, the Authorized Capital III is used, the increase in capital out of the Conditional Capital I will not be implemented.

Authorized Capital IV

Within the framework of the Authorized Capital IV, the General Partner of Fresenius SE & Co. KGaA is to be authorized to increase the share capital of the Company, with the approval of the Supervisory Board of the Company, until May 11, 2015 by a total of up to Euro 4,298,442.00 through a single or multiple issuance – of new ordinary bearer shares against cash contributions and/or contributions in kind. This corresponds to 2.7% of the share capital of the Company at the time the General Meeting is convened. The General Partner of Fresenius SE & Co. KGaA may only make use of the Authorized Capital IV to the extent that – pursuant to the stock option plan in accordance with the resolution of the General Meeting of Fresenius AG of May 28, 2003 (Stock Option Plan 2003) and taking into account the amendment resolution of the General Meeting of December 4, 2006, required due to the new division of the share capital, and of the conversion resolution of the General Meeting to be held on May 12, 2010 – convertible bonds with subscription rights to shares in the Company have been issued, the holders of such convertible bonds have exercised their conversion right and provided that the servicing of the conversion rights is not effected using conditional capital. The number of shares must increase in each case in the same proportion as the share capital. The new ordinary bearer shares are entitled to profit participation from the beginning of the financial year in which the capital increase becomes effective in each case. In case that the conversion of the convertible bonds into shares in the Company constitutes a contribution in kind, this is accounted for by the wording of the authorization.

The subscription right of the shareholders is excluded with regard to the Authorized Capital IV. As the Authorized Capital IV is to be used exclusively for the servicing of the Stock Option Plan 2003, a subscription right of the shareholders to the newly to be issued ordinary bearer shares is out of the question. The exclusion of the subscription right will not lead to an additional dilution for the shareholders, as the Authorized Capital IV is provided exclusively as an alternative to the existing Conditional Capital II. If the subscription rights issued under the Stock Option Plan 2003 are serviced out of the Conditional Capital II, the Authorized Capital IV is not used; to the

extent that, conversely, the Authorized Capital IV is used, the capital increase out of the Conditional Capital II will not be implemented.

Authorized Capital V

Within the framework of the Authorized Capital V, the General Partner of Fresenius SE & Co. KGaA is to be authorized to increase the share capital of the Company, with the approval of the Supervisory Board of the Company, until May 11, 2015 by a total of up to Euro 6,200,000.00 through a single or multiple issuance of new ordinary bearer shares against cash contributions. This corresponds to 3.8% of the share capital of the Company at the time the General Meeting is convened. The General Partner of Fresenius SE & Co. KGaA may only make use of the Authorized Capital V to the extent that – pursuant to the stock option plan in accordance with the resolution of the General Meeting of May 21, 2008 (Stock Option Plan 2008) and taking into account the conversion resolution of the General Meeting to be held on May 12, 2010 – subscription rights are issued and the holders of such subscription rights make use of their exercise right, the Company grants no own shares to satisfy the subscription rights nor exercises its right to cash compensation and insofar as no conditional capital is used to satisfy the subscription rights, whereas the General Partner's Supervisory Board shall be exclusively competent regarding the granting and settlement of subscription rights to members of the General Partner's Management Board. The number of shares must increase in each case in the same proportion as the share capital. The new ordinary bearer shares are entitled to profit participation from the beginning of the financial year in which the capital increase becomes effective in each case.

The subscription right of the shareholders is excluded with regard to the Authorized Capital V. As the Authorized Capital V is to be used exclusively for the servicing of the Stock Option Plan 2008, a subscription right of the shareholders to the newly to be issued ordinary bearer shares is out of the question. The exclusion of the subscription right will not lead to an additional dilution for the shareholders, as the Authorized Capital V is provided exclusively as an alternative to the existing Conditional Capital III. If the subscription rights issued under the Stock Option Plan 2008 are serviced out of the Conditional Capital III, the Authorized Capital V is not used; to the extent that, conversely, the Authorized Capital V is used, the capital increase out of the Conditional Capital III will not be implemented.

Total Number of Shares and Voting Rights

80,657,688 units of ordinary shares and 80,657,688 units of preference shares are outstanding at the time of the invitation to the General Meeting. Thereof, 80,657,688 units of ordinary shares have the right of participation and the voting right, and 80,657,688 units of preference shares

have the right of participation as well as the voting right in the special vote of the preference shareholders (agenda item 8).

Participation in the General Meeting and the Exercise of the Voting Right (with Record Date pursuant to sec. 123 para. 3 sentence 3 German Stock Corporation Act and its Impact)

Shareholders who wish to participate in the Ordinary General Meeting or to exercise their voting right have to register for the Ordinary General Meeting and prove their eligibility.

The registration and proof of eligibility must be received by the Company at

Fresenius SE
c/o Commerzbank AG
WASHV dwpbank AG
Wildunger Straße 14
60487 Frankfurt am Main
Telefax: +49 (0) 69 / 50 99-11 10
E-Mail: hv-eintrittskarten@dwpbank.de

in each case no later than on the seventh day before the General Meeting, i.e., no later than May 5, 2010, 24:00 hours CEST. For the purpose of proving eligibility, a special proof of share ownership issued by the custodian institution in text form in the German or English language is sufficient. The proof of share ownership has to relate to the beginning of April 21, 2010, i.e., 0:00 hrs. CEST (record date). The shareholder or his authorized representative will receive an admission ticket for the Ordinary General Meeting against submission of the proof of share ownership.

A shareholder will only be deemed a shareholder entitled to participate in the meeting and to exercise voting rights in relation to the Company if the shareholder has submitted a special proof of share ownership. The entitlement to participate in the meeting and the scope of the voting rights are exclusively determined by the shares owned on the record date. The record date will not lead to a block of a sale of the shareholding. Even in the event of a full or partial sale of the shareholding following the record date, solely the shares owned by the shareholder on the record date will be relevant for participation in the meeting and the scope of the voting rights, i.e., the sale of shares after the record date will not affect the entitlement to participate in the meeting and the scope of the voting rights. This also applies *mutatis mutandis* if (additional) shares are purchased after the record date. Persons who do not own any shares on the record date and become shareholders only after the record date, are not entitled to participate in the meeting and to exercise voting rights. The record date does not constitute a relevant date with respect to the dividend entitlement.

Each ordinary share grants one vote in the Ordinary General Meeting. The preference shares have voting rights with respect to agenda item 8 only (special vote of the preference shareholders). Each preference share grants one vote for this agenda item.

Voting Procedure

Voting by Proxies

A shareholder may have his voting right or his right to participate in the Ordinary General Meeting, respectively, also exercised by an authorized representative, e.g. the custodian bank, an association of shareholders or any other person of his choice. Registration, including provision of proof of share ownership, in due time in accordance with the aforesaid provisions is also necessary in case of proxy authorizations.

Pursuant to sec. 134 para. 3 sentence 3 German Stock Corporation Act, the granting of the power of attorney, its revocation and the evidence of the authorization towards the Company require the text form (sec. 126b German Civil Code (*Bürgerliches Gesetzbuch*)). Shareholders who wish to authorize a proxy are asked to use the form of the power of attorney they will receive together with the admission ticket. Pursuant to sec. 134 para. 3 sentence 4 German Stock Corporation Act, the Company additionally offers its shareholders to send the proof of the appointment of a proxy by e-mail to the Company (ir-fre@fresenius.com). Such a submission by e-mail should preferably be made until Monday, May 10, 2010, 6:00 p.m. CEST.

If the power of attorney is granted to a credit institution, an association of shareholders or any other individual or institution treated as equivalent to the aforesaid pursuant to sec. 135 para. 8 and para. 10 in conjunction with sec. 125 para. 5 German Stock Corporation Act, it suffices if the power of attorney is kept by the proxy in a verifiable form. Such power of attorney must be complete and may only contain declarations associated with the exercising of the voting rights. Shareholders wishing to appoint as proxy a credit institution, an association of shareholders or any other individual or institution treated as equivalent to the aforesaid are asked to agree with the same on the form of the power of attorney.

Voting by Company Proxies

In addition, the Company offers to its shareholders to authorize, already prior to the Ordinary General Meeting, Company-nominated employees as proxies for the exercise of voting rights, who are bound to the instructions given to them (*weisungsgebundene Stimmrechtsvertreter*). Those shareholders who wish to grant a power of attorney to the Company-nominated proxies also have to register for the Ordinary General Meeting and prove their eligibility as aforesaid. The power of attorney of the proxies and the instructions to them shall have been received preferably by Monday, May 10, 2010, 6:00 p.m. CEST; they require text form. The shareholders

will receive the documents and information in this regard together with the admission ticket to the Ordinary General Meeting.

The power of attorney and the instructions to the Company-nominated proxies are to be addressed by mail, telefax or by electronic means of communication (by e-mail) exclusively to the following address:

Fresenius SE
Investor Relations
Else-Kröner-Straße 1
61352 Bad Homburg v.d.H.
Telefax: +49 (0) 61 72 / 608-24 88
E-Mail: ir-fre@fresenius.com

Shareholder Rights

Motions of Shareholders for an Addition to the Agenda pursuant to Art. 56 SE Regulation; sec. 50 para. 2 SE Implementation Act, sec. 122 para. 2 German Stock Corporation Act

Shareholders whose aggregate shareholding equals or exceeds 5% of the share capital or a pro rata amount of Euro 500,000 may request that items be included in the agenda and published. Any such request must be made in writing to the Management Board of the Company (Fresenius SE, Investor Relations, Else-Kröner-Straße 1, 61352 Bad Homburg v.d.H.). The request must have been received by the Company at least 30 days prior to the meeting; for the purpose of calculating the above time period, the day of the General Meeting and the day of receipt shall not be counted, i.e., the request must have been received by April 11, 2010, 24:00 hours CEST. Each new item must be substantiated or accompanied by a proposal for resolution.

Motions and Election Proposals by Shareholders pursuant to secs. 126 para. 1 and 127 German Stock Corporation Act

Shareholders may make motions regarding individual agenda items (cf. sec. 126 para. 1 German Stock Corporation Act); this also applies to proposals for the election of members of the Supervisory Board or of auditors (cf. sec. 127 German Stock Corporation Act).

Pursuant to sec. 126 para. 1 German Stock Corporation Act, motions of shareholders, including the shareholder's name, a statement of grounds for the motion and any comments of the management, are to be made available to the relevant persons listed in sec. 125 paras. 1 to 3 German Stock Corporation Act (inter alia shareholders who so request) under the conditions set forth therein, provided that the shareholder has sent a counter-motion against the proposal of the Management Board and/or the Supervisory Board with respect to a certain agenda item,

including a statement of grounds for the counter-motion, to the Company under the address set forth below, no later than 14 days prior to the General Meeting of the Company; in this context the day of the General Meeting and the day of receipt shall not be counted, i.e., the counter-motion must be received by April 27, 2010, 24:00 hours CEST. The aforementioned information must be made available on the website of the Company. A counter-motion need not be made available if one of the exclusions pursuant to sec. 126 para. 2 German Stock Corporation Act applies. The statement of the grounds need not be made available if it exceeds a total of 5,000 characters.

The right of each shareholder to make counter-motions regarding the various agenda items without prior communication to the Company during the General Meeting remains unaffected. Please note that any counter-motions which have been sent to the Company in advance in due time will be considered only if they are made orally during the General Meeting.

No statement of grounds needs to be provided for election proposals made by shareholders pursuant to sec. 127 German Stock Corporation Act. Election proposals need not be made available if they do not contain the name, the exercised profession and the place of residence of the nominees and, in case of an election of members of the Supervisory Board, information on their membership in other supervisory boards, the constitution of which is required by law (cf. sec. 127 sentence 3 in conjunction with sec. 124 para. 3 and sec. 125 para. 1 sentence 5 German Stock Corporation Act). Pursuant to sec. 127 sentence 1 in conjunction with sec. 126 para. 2 German Stock Corporation Act, there are further conditions under which election proposals need not be made available via the website. In all other respects, the requirements and provisions for the making available of motions apply *mutatis mutandis*.

Any motions and election proposals of shareholders pursuant to sec. 126 para. 1 and sec. 127 German Stock Corporation Act shall be sent exclusively to:

Fresenius SE
Investor Relations
Else-Kröner-Straße 1
61352 Bad Homburg v.d.H.
Telefax: +49 (0) 61 72 / 608-24 88
E-Mail: ir-fre@fresenius.com

Any motions and election proposals of shareholders to be made available will be published under the aforesaid conditions on the website www.fresenius.com in the section Investor Relations/Annual General Meeting. Any comments of the management will also be published on the above website.

Information Right pursuant to sec. 131 para. 1 German Stock Corporation Act

At the General Meeting, each shareholder shall upon request be provided with information by the Management Board regarding the matters of the Company to the extent that such information is necessary for a proper evaluation of the relevant item on the agenda (cf. sec. 131 para. 1 German Stock Corporation Act). The Management Board's duty to provide information also extends to the Company's legal and business relationships with any affiliate as well as to the situation of the group and the companies included in the consolidated financial statements. Requests for information must in principle be made orally at the General Meeting during the discussion.

The information provided shall comply with the principles of diligent and accurate reporting. The Management Board may refuse to provide information under the conditions set forth in sec. 131 para. 3 German Stock Corporation Act. Pursuant to Art. 18 para. 2 of the statutes, the Chairman of the meeting may, with regard to time, reasonably restrict the shareholders' questions right and speaking right; in particular, he has – at the beginning or during the General Meeting – the right to determine a reasonable time frame for the conduct of the General Meeting, for individual items, or for individual speakers.

General Meeting Documents

As from the day of publication of this convening notice, the following documents are available, together with this notice, for inspection by the shareholders at the offices of Fresenius SE (Else-Kröner-Straße 1, 61352 Bad Homburg v.d.H.):

- Annual financial statements of Fresenius SE as of December 31, 2009, approved by the Supervisory Board and thereby adopted
- Management Report of Fresenius SE for the financial year 2009
- IFRS consolidated financial statements of Fresenius SE as of December 31, 2009, approved by the Supervisory Board
- IFRS Group Management Report of Fresenius SE for the financial year 2009
- US GAAP Annual Report 2009 of the Fresenius Group including the report of the Supervisory Board, the corporate governance declaration and the compensation report for the financial year 2009
- List of investments (*Aufstellung des Anteilsbesitzes*) of Fresenius SE for the financial year 2009
- Proposal of the Management Board on the appropriation of the distributable profit for the financial year 2009 ended on December 31, 2009
- Explanatory report of the Management Board to the statements under secs. 289 paras. 4 and 5, 315 para. 2 no. 5 and para. 4 German Commercial Code
- Report of the Management Board on agenda items 7 and 8

Convenience Translation

- Conversion report of the Management Board on the change of the legal form of Fresenius SE into a partnership limited by shares
- Resolutions of the General Meeting of Fresenius AG or Fresenius SE, respectively, on the Stock Option Plans 1998, 2003 and 2008
- Statutes of Fresenius SE (as of March 12, 2010)
- Common terms of merger for the merger of Calea Nederland N.V. into Fresenius SE
- Joint report of the Management Board of Fresenius SE and the management of Calea Nederland N.V. pursuant to sec. 122e German Conversion Act in connection with sec. 8 German Conversion Act on the merger of Calea Nederland N.V. into Fresenius SE (including the incorporated invitation to the general meeting of Fresenius SE on May 12, 2010 and the documents named in the invitation to the general meeting as well as the IFRS consolidated financial statements and Group Management Reports of the Fresenius SE for the financial year 2007 and 2008)
- Annual financial statements and management reports of Fresenius SE for the financial years 2007 and 2008
- List of investments of Fresenius SE for the financial years 2007 and 2008
- Annual financial statements of Calea Nederland N.V. for the financial years 2007, 2008 and 2009

Publications on the Website

The information pursuant to sec. 124a German Stock Corporation Act regarding the General Meeting (inter alia, convening notice, documents to be made available, forms for proxy authorization and the issuance of instructions, motions of shareholders, if applicable) as well as further explanations with respect to the rights of the shareholders pursuant to Art. 56 SE Regulation, sec. 50 para. 2 SE Implementation Act, sec. 122 para. 2 German Stock Corporation Act as well as pursuant to secs. 126 para. 1, 127 and 131 para. 1 German Stock Corporation Act are made available to the shareholders on the website of the Company www.fresenius.com in the section Investor Relations/Annual General Meeting. It is intended to broadcast the speech of the Chairman of the Management Board in sound and vision on the internet.

Bad Homburg v.d.H., in March 2010

Fresenius SE

The Management Board

Annex 1 to the invitation to the Ordinary General Meeting of Fresenius SE on May 12, 2010

Articles of Association of Fresenius SE & Co. KGaA

[The Articles of Association are not imprinted at this place. The Articles of Association of Fresenius SE & Co. KGaA are imprinted in Annex 3 to the Conversion Report.]

Annex 2 to the invitation to the Ordinary General Meeting of Fresenius SE on May 12, 2010

Common Terms of Merger

for the cross-border merger

between

Fresenius SE

Bad Homburg vor der Höhe, Germany

– hereinafter also referred to as the “Acquiring Company” –

and

Calea Nederland N. V.

's-Hertogenbosch, Netherlands

– hereinafter also referred to as the “Company being Acquired” –

The Management Board of Fresenius SE and the management of Calea Nederland N.V. draw up the following Terms of Merger:

Preamble

1. Fresenius SE is a European Company (*Societas Europaea*) having its registered office in Bad Homburg vor der Höhe (Germany), entered in the commercial register of the local court of Bad Homburg vor der Höhe under number HRB 10660. Its business address is Else-Kröner-Straße 1, 61352 Bad Homburg vor der Höhe, Federal Republic of Germany. The share capital of Fresenius SE pursuant to the Statutes (as of March 12, 2010) is Euro 161,315,376.00. It is divided into 80,657,688 ordinary bearer shares and 80,867,688 non-voting preference bearer shares.
2. The General Meeting of Fresenius SE is to resolve on May 12, 2010 on the change of the legal form (secs. 190 et seq. of the German Conversion Act) of Fresenius SE into a partnership limited by shares (*Kommanditgesellschaft auf Aktien - KGaA*). After the change of the legal form takes effect, the corporate name of the Acquiring Company will be Fresenius SE & Co. KGaA. The general partner of Fresenius SE & Co. KGaA will be Fresenius Management SE. After the change of the legal form takes effect, the Acquiring

Company will no longer have any preference shares. The share capital of the Acquiring Company will then be divided only into ordinary bearer shares.

3. Calea Nederland N.V. is a stock corporation (*Naamloze Vennootschap*) incorporated under Dutch law having its registered office in 's-Hertogenbosch (Netherlands), entered in the commercial register of the chamber of commerce Midden-Nederland under number 30110255. Its business address is Demkaweg 11, 3555 HW Utrecht, Netherlands. The company capital (*Maatschappelijk Kapitaal*) of Calea Nederland N.V. is NLG 500,000.00/Euro 226,890.11, divided into 500 registered shares with a nominal value of NLG 1,000 each. The subscribed capital (*Geplaatst Kapitaal*) of Calea Nederland N.V. is NLG 100,000.00/Euro 45,378.02 and has been fully paid in. No deposit certificates (*certificaten van aandelen*) for the shares referred to above have been issued with the involvement of Calea Nederland N.V., and neither any right of usufruct nor any right of lien has been granted in respect of the shares referred to above. Fresenius SE is the sole shareholder of Calea Nederland N.V.
4. The Management Board of Fresenius SE and the management of Calea Nederland N.V. intend to merge the companies by way of a cross-border merger between Calea Nederland N.V. and Fresenius SE. The merger is to take effect only once the change of the legal form of Fresenius SE into a KGaA described in Clause 2 has taken effect. The use of the term “Acquiring Company” in these Terms of Merger therefore also always designates Fresenius SE in its future legal form of a KGaA insofar as the respective provisions relate to points in time at which the intended change of the legal form has already taken effect.
5. Calea Nederland N.V. sold its entire business in the year 2008. Since then, it no longer has any own business. As Calea Nederland N.V. has no more functions within the Fresenius Group, Calea Nederland N.V. is to be merged with the Acquiring Company in the process of clearing-up and simplifying the group structure. As a result of the intended merger, the Acquiring Company will be able to maintain its well-trying governance structure with a Supervisory Board consisting of twelve members including employee representatives (so-called employee bench) with an international composition. The corporate co-determination of the Acquiring Company will be governed, after the merger takes effect, by the German Act on Employee Co-determination in Case of Cross-Border Mergers (“*MgVG*”). In view of this, the intended merger is to be tied into the timing of the intended change of the legal form in such a way that the merger can take effect immediately upon the change of the legal form of Fresenius SE taking effect.
6. The merger will be carried out on the basis of Directive 2005/56/EC of the European Parliament and of the Council of October 26, 2005 on cross-border mergers of limited

liability companies (“*EU Merger Directive*”). To the extent that German law is applicable, secs. 122a et seq. of the German Conversion Act (“*UmwG*”) and the MgVG, whereby the Merger Directive was implemented into German law, and, insofar as Dutch law is applicable, Title 7 of the Second Book of the Dutch Civil Code (*Burgerlijk Wetboek – “BW*”) and in particular its Section 3a “Special Provisions for Cross-Border Mergers” (*Bijzondere bepalingen voor grensoverschrijdende fusies*) apply to the merger.

7. Neither of the merging companies is in the process of liquidation or in the process of conducting insolvency or composition proceedings.

§ 1

Transfer of Assets by Merger

1. Calea Nederland N.V. as the Company being Acquired will merge with Fresenius SE as the Acquiring Company pursuant to secs. 122a et seq. of the German Conversion Act and Title 2.7 of the Dutch Civil Code. By way of this merger, Calea Nederland N.V. transfers all of its assets and liabilities together with all rights and duties, on being dissolved without winding up, to the Acquiring Company (merger by absorption). When the merger takes effect, the entire assets and liabilities of Calea Nederland N.V. will pass over to the Acquiring Company by way of universal legal succession and the Company being Acquired will cease to exist.
2. As all shares in Calea Nederland N.V. are held by Fresenius SE, the share capital of the Acquiring Company will not be increased for the purpose of carrying out the merger, and no new shares will be issued by the Acquiring Company in the course of the merger. Furthermore, according to the applicable German provisions, the Terms of Merger and their explanations in the Merger Report need not contain (i) any statement on an exchange ratio (sec. 122c para. 3 German Conversion Act), (ii) information regarding the transfer of new shares in the Acquiring Company (sec. 122c para. 3 German Conversion Act), (iii) the date from which newly issued shares will entitle the holders to share in profits (sec. 122c para. 3 German Conversion Act) or (iv) a scrutiny of the merger (sec. 122f sentence 1 in conjunction with sec. 9 para. 2 German Conversion Act).

According to the applicable Dutch provisions, the Terms of Merger and their explanation in the Merger Report need not contain, in particular, (i) information on an exchange ratio or the nature of the procedure for the exchange of shares (Art. 2:326 lit a), Art. 2:333 para. 1 Dutch Civil Code), (ii) the date from which the shareholders of the Company being Acquired will be entitled to share in profits of the Acquiring Company (Art. 2:326 lit. b), Art. 2:333 para 1 Dutch Civil Code), (iii) the number of shares to be redeemed

pursuant to Art. 2:325 Dutch Civil Code, and (iv) the scrutiny of the Terms of Merger by an auditor (Art. 2:328, Art. 2:331 para. 1 Dutch Civil Code).

3. The merger will take effect upon its entry in the commercial register of the local court of Bad Homburg vor der Höhe as the competent commercial register for Fresenius SE. The entry will not be made before the change of the legal form of Fresenius SE into a KGaA takes effect. Calea Nederland N.V. will cease to exist when the merger takes effect. After the expiry of Calea Nederland N.V., the entry regarding Calea Nederland N.V. will be deleted from the commercial register of the chamber of commerce Midden-Nederland.

§ 2

Merger Balance Sheet, Effective Merger Date, Evaluation of the Assets to Be Transferred and Passing over, Continuation of the Book Values, Effect on the Goodwill and the Free Reserves

1. The balance sheet of Calea Nederland N.V. prepared per December 31, 2009, which the auditor's unqualified audit opinion is appended to, is deemed to be the merger balance sheet of Calea Nederland N.V.
2. The separate balance sheet of Fresenius SE prepared per December 31, 2009, which the auditor's unqualified audit opinion is appended to, is deemed to be the merger balance sheet of Fresenius SE.
3. As between the Company being Acquired and the Acquiring Company, the merger will take effect on December 31, 2009 24:00 o'clock. From January 1, 2010, 00:00 o'clock ("*Effective Merger Date*"), all actions and transactions of Calea Nederland N.V. will be deemed to have been effected for the account of the Acquiring Company. The data regarding the asset, financial and earnings situation of Calea Nederland N.V. will be included in the annual financial statements of the Acquiring Company from the Effective Merger Date.
4. After the merger takes effect, the Acquiring Company will for accounting purposes record the assets and liabilities of Calea Nederland N.V. in its accounts prepared for financial reporting purposes (*Handelsbilanz*) with the book values shown in the merger balance sheet of Calea Nederland N.V. (sec. 122c para. 2 no. 11 German Conversion Act). The balance sheet dates of the balance sheets referred to in paragraph 1 and paragraph 2 of this Sec. 2 are the relevant dates for the determination of the conditions of the merger within the meaning of sec. 122c para. 2 no. 12 German Conversion Act.

5. The merger will have no effect on the goodwill of the Acquiring Company and on the amount of the free reserves in the balance sheet of the Acquiring Company. However, it does affect the annual result of the Acquiring Company in the amount of the difference between the book value of the shares of Fresenius SE in Calea Nederland N.V. and the book value of the assets and liabilities being transferred.

§ 3

Probable Effects of the Merger on Employment

1. Calea Nederland N.V. has no employees so that the merger will have no effect on employment at Calea Nederland N.V.
2. Fresenius SE has an SE works council before the change of the legal form into a KGaA takes effect. This SE works council is linked to the legal form of the SE so that it will cease to exist upon the change of the legal form taking effect. As the Fresenius Group is a group of companies with business activities all over the European Union, the controlling company of which has its registered office in Germany, a European works council can be established after the change of the legal form instead of the current SE works council in accordance with the provisions of the European Works Councils Act (*Europäisches Betriebsräte-Gesetz – “EBRG”*). This possibility will continue to exist unchanged after the merger.
3. Furthermore, the Management Board of Fresenius AG (now Fresenius SE), the Management Board of Fresenius Medical Care AG (now Fresenius Medical Care AG & Co. KGaA), the Management Board of Fresenius Kabi AG, the management of Fresenius ProServe GmbH and the general works council of Fresenius AG (now Fresenius SE) as well as the industrial union Industriegewerkschaft Bergbau, Chemie, Energie (IGBCE), represented by its principal Management Board, concluded an agreement on the works council structure on December 15, 2005. In this agreement, the creation of a group works council was waived and the central works council structure was maintained. The agreement also stipulates that, at the locations of joint operational units of several undertakings of the Fresenius Group in Germany, uniform works council for the entire location are to be established as so-called location works councils. The employee representations in Wittgensteiner Kliniken and in HELIOS Kliniken are not covered by said agreement. They each have their own group works councils. The works councils created on the basis of the agreement of December 15, 2005 will continue to exist unchanged after the change of the legal form and the subsequent merger like all other employee representations for Fresenius SE and its subsidiaries (with the exception of the SE works council). The existence, the composition and the rights of these employee

representative bodies will not change through the change of the legal form and the subsequent merger.

4. The Supervisory Board of Fresenius SE consists of twelve members, of whom half are employee representatives (regarding the Supervisory Board and the changes arising in this respect, see Sec. 4 below).
5. Apart from that, the merger will not have any effect on the employees of the Acquiring Company and their employment relationships. The business operations of the Acquiring Company will be continued unchanged after the merger. No operational unit or part of an operational unit of the Company being Acquired will pass over to the Acquiring Company in the course of the merger. The employment relationships of the employees of the Acquiring Company will continue to exist unchanged, in particular the position of the employees regarding dismissal or termination will not deteriorate. Insofar as collective agreements, works agreements, individually concluded contracts or other business-related agreements, commitments and rules exist, these will remain unaffected by the merger and will continue to apply without any change to the employees of the Acquiring Company. In connection with the merger there are also no plans for any measures which could have an effect on the employee representative bodies or the employees of the Fresenius Group. In particular, no measures to reduce staff, no changes of the business and no transfers to other posts are being planned.
6. The subsidiaries of Fresenius SE will continue to be subsidiaries of the Acquiring Company also after the merger. The employment relationships of the employees employed there will continue to exist unchanged with the respective subsidiary. Collective agreements applicable to the subsidiaries will remain applicable pursuant to their respective terms. Employee representative bodies established in the subsidiaries will also not be affected by the merger.

§ 4

Procedure to Regulate the Participation of Employees in Determining their Co-Determination Rights

1. The company resulting from the cross-border merger between Fresenius SE and Calea Nederland N.V. will have its registered office in Germany. Therefore, the merger is subject to the German Act on Employee Co-Determination in Case of Cross-Border Mergers (sec. 3 para. 1 sentence 1 MgVG). The MgVG deals with the co-determination of the employees in the corporate bodies of the company resulting from the cross-border

merger. The purpose of this law is to safeguard the co-determination rights acquired by the employees in the companies involved in the merger.

The provisions of the MgVG regarding the corporate co-determination are applicable in any case pursuant to sec. 5 no. 3 of this Act. Because of the principle of territoriality, national German co-determination law (the German Co-Determination Act (“*MitbestG*”)), which will be applicable to Fresenius SE after the change of the legal form to be resolved on May 12, 2010 takes effect, does not provide to employees of operational units of the company that are situated outside Germany the same entitlement to exercise co-determination rights as is enjoyed by employees working in Germany.

In principle, a procedure regarding the participation of employees must be conducted in connection with every cross-border merger. The purpose of such a procedure is to conclude an agreement between the managements of the companies involved in the merger and a special negotiating body, which represents the interests of the employees, on the co-determination of the employees in the Supervisory Board of the company resulting from the cross-border merger.

Under Dutch law, a procedure to establish rules in relation to corporate co-determination within the meaning of Article 2:333k Dutch Civil Code is not applicable here.

2. However, according to sec. 23 para. 1 sentence 1 no. 3 MgVG, there is a simplified possibility deviating from the negotiating solution described above, whereby the employee co-determination can be regulated without setting up a special negotiating body. According to this provision, the provisions in secs. 23 et seq. MgVG (“*co-determination by operation of law*”) apply if the management of each of the companies involved in the merger decides to apply these provisions immediately as of the time of the registration of the merger without prior negotiations. The Management Board of Fresenius SE and the management of Calea Nederland N.V. passed resolutions to this effect on March 30, 2010 pursuant to sec. 23 para. 1 sentence 1 no. 3 MgVG. The further requirement that at least one third of all employees of Fresenius SE, of Calea Nederland N.V. and of the concerned subsidiaries was entitled to co-determination rights prior to the registration of the company resulting from the cross-border merger (sec. 23 para. 1 sentence 2 no. 1 of the act), is fulfilled in this case. For this reason, no negotiations with a special negotiating body need to be conducted.

In a case of co-determination by operation of law, the corporate co-determination is governed by the provisions in secs. 23 et seq. of the MgVG. These provisions contain, more specifically, rules regarding the scope of co-determination, the allocation of seats within the employee representation (so-called employee bench), the removal of

employee representatives, the contesting of the election of employee representatives as well as the legal position of the employee representatives.

3. Under the statutory subsidiary regulation, the proportion of the seats on the Supervisory Board of the company resulting from the cross-border merger to be occupied by employee representatives is determined according to sec. 24 para. 1 of the MgVG by the highest proportion of employee representatives serving in a corporate body of one of the merged companies prior to the merger. As Calea Nederland N.V. is not subject to any corporate co-determination, the proportionate allocation of the Acquiring Company's Supervisory Board seats between the shareholders and the employees following the merger is determined by the legal provisions applicable to the Acquiring Company at the time the merger takes effect. As the Supervisory Board of Fresenius SE maintains equal representation and the change of the legal form of the Company into a partnership limited by shares without the cross-border merger leads, in principle, to the corporate co-determination being governed by the provisions of the German Co-Determination Act and thus, a Supervisory Board would have to be established with equal representation, half of the Supervisory Board of the company resulting from the cross-border merger will consist of employee representatives. The company resulting from the cross-border merger will have twelve Supervisory Board members according to its articles of association. Consequently, six of the seats on the Supervisory Board will be allocated to employee representatives.

The MgVG provides that a special negotiating body is to allocate the number of employee seats on the Supervisory Board among the member states of the European Union and the other states party to the EEA Agreement (hereinafter together the "*Member States*") in which members are to be elected or to be appointed (sec. 25 para. 1 sentence 1 MgVG). The allocation is based on the respective number of employees of the company resulting from the cross-border merger, its subsidiaries and operational units who are employed in the individual Member States (sec. 25 para. 1 sentence 2 MgVG). If employees from one or several Member States cannot obtain a seat in such pro-rata allocation, the last available seat is to be allocated to a Member State which has not yet been considered (sec. 25 para. 1 sentence 3 MgVG). Therefore, in the present case, at least one seat will not be allocated to Germany.

As the Management Board of Fresenius SE and the management of Calea Nederland N.V. have decided that the regulations on the co-determination by operation of law without prior negotiations are to be applied immediately as of the time of the registration of the company resulting from the cross-border merger, a special negotiating body would have to be established merely for the purpose of the allocation of seats. The Management Board of Fresenius SE and the management of Calea Nederland N.V. hold the opinion

that the creation of a special negotiating body merely for the purpose of the allocation of seats can be dispensed with, since Calea Nederland N.V. has no employees and within Fresenius SE with the SE works council a body with a composition similar to the special negotiating body to be established pursuant to the MgVG already exists, which has the function to look after the interests of the employees of the Fresenius Group from the Member States. For this reason, the SE works council shall allocate the seats, following the consent of the SE works council, in accordance with sec. 25 para. 1 MgVG. Since the SE works council will cease to exist upon the change of the legal form taking effect, the seat allocation shall be carried out before the change of the legal form takes effect.

The determination of the employee representatives on the Supervisory Board of Fresenius SE & Co. KGaA to be allocated to a Member State is based on the national regulations of the relevant Member State concerned. The election of the employee representatives to be allocated to Germany will be made by an electoral body consisting of the employee representatives of Fresenius SE & Co. KGaA, its subsidiaries and operational units. According to secs. 25 para. 3 sentence 2, 8 para. 2 and 3 of the MgVG, the employees of the German companies and operational units of the Fresenius Group as well as trade union representatives may be elected. Women and men are to be elected in accordance with their numerical proportion. A substitute member must be elected for each member. Every third German employee representative must be a representative of a trade union represented in one of the companies involved in the merger, a subsidiary concerned or an operational unit concerned. If, as in the case of Fresenius SE, four employee seats should be attributable to Germany on the Supervisory Board of the converted Fresenius SE & Co. KGaA, a German trade union representative would therefore have to be elected to the Supervisory Board. If the proceedings for the appointment of the employee representatives are not completed when the change of the legal form becomes effective, the employee representatives will initially be appointed by the court (sec. 104 German Stock Corporation Act).

The provisions of the MgVG dealing with co-determination by operation of law are applicable as of the time of the registration of the merger.

§ 5

Other Securities than Shares and Special Rights

Calea Nederland N.V. has neither issued any preference shares, shares granting multiple voting rights or other special rights within the meaning of sec. 122c para. 2 no. 7 German Conversion Act, nor do any other securities than shares exist within the meaning of this provision. There are no natural persons or legal entities holding special rights within the meaning of Article 2:320 in

conjunction with Article 2:312 para. 2 lit. c) of the Dutch Civil Code (such as, for example, a right to a share of the profit or a subscription right) other than a shareholder's rights vis-à-vis Calea Nederland N.V., so that no rights or compensation within the meaning of the provisions referred to above must be granted. Rights within the meaning of these provisions will therefore also not be granted as compensation in the future, and no other measures within the meaning of these provisions are proposed.

When the merger takes effect, the Acquiring Company will no longer have any preference shares because the change of the legal form into a KGaA will have taken effect before that time and the articles of association of Fresenius SE & Co. KGaA no longer provide for any preference shares. The stock option plans existing for the Acquiring Company at the time at which the merger takes effect will continue to exist unchanged after the merger takes effect. Other rights within the meaning of sec. 122c para. 2 no. 7 of the German Conversion Act do not exist in the Acquiring Company and will therefore also not be granted in connection with the merger. No other measures within the meaning of the above-mentioned provisions or Article 2:312 para. 2 lit. g) of the Dutch Civil Code are proposed.

§ 6

Management by Fresenius Management SE as the General Partner, Composition of the Supervisory Board

It is not intended, after the merger takes effect, to change the position or composition of the general partner, Fresenius Management SE, as the managing body of the Acquiring Company at the time at which the merger takes effect, or to make other changes in the composition of the Supervisory Board of the Acquiring Company than those described in Sec. 4.

§ 7

Special Benefits

No special benefits within the meaning of sec. 122c para. 2 no. 8 of the German Conversion Act or Article 2:312 para 2 lit. d) of the Dutch Civil Code were granted to the members of the administrative, management, supervisory or controlling bodies of Fresenius SE or Calea Nederland N.V. or any other party to the merger. Such benefits have also not been proposed or provided for. However, it should be noted in this connection that the position of the general partner existing at the time at which the merger takes effect and of the members of the Supervisory Board of the Acquiring Company holding office at the time at which the merger takes effect will continue to exist also after the merger takes effect.

§ 8

Statutes/Articles of Association

1. The statutes of Fresenius SE and the articles of association of Calea Nederland N.V. contain no provisions which require the consent of other corporate bodies or other persons to the merger resolution to be passed by the shareholders' meeting of Calea Nederland N.V.
2. Fresenius SE currently has the statutes attached as **Annex 1**. When the merger takes effect, the Acquiring Company will have the articles of association attached as **Annex 2**. Reference is made to the annexes in accordance with sec. 9 para. 1 sentence 2 of the German Notarization Act (*Beurkundungsgesetz*). The above-mentioned annexes form an integral part of these Terms of Merger.

§ 9

Annual Financial Statements

The annual financial statements and management reports of the Acquiring Company for the years 2009, 2008 and 2007 including the audit opinions issued by the auditor will be submitted to the commercial register of the chamber of commerce Midden-Nederland together with these Terms of Merger. They do not form a part of these Terms of Merger.

§ 10

Costs

Fresenius SE and Calea Nederland N.V. will each bear their own costs incurred in connection with the preparation and implementation of the merger as well as the costs incurred in connection with these Terms of Merger. The costs jointly caused will be borne by Fresenius SE.

Bad Homburg/Utrecht, March 31, 2010

Fresenius SE

The Management Board

Calea Nederland N.V.

Management

Annex 1 to the Commom Terms of Merger

Statutes of Fresenius SE

I. General Provisions

Section 1

Company Name and Registered Office

The company is a European Company having the company name

Fresenius SE.

Its registered office is in Bad Homburg vor der Höhe.

Section 2

Corporate Purpose

- (1) The corporate purpose of the company is:
 - (a) development, manufacture, and distribution as well as trading with products, systems, and processes in the health care sector,
 - (b) construction, development, and operation of medical and curative facilities as well as of hospitals,
 - (c) planning and construction of production plants, in particular for the manufacture of pharmaceutical, dietary, and medical devices products,
 - (d) consulting in the medical and pharmaceutical fields as well as scientific information and documentation.

The company engages in business activities in its domestic market or abroad either directly or through associated companies (*Beteiligungsgesellschaften*).

- (2) The company is entitled to enter into any business transactions and take any measures that are deemed necessary or useful in accomplishing the corporate purpose of the company, in particular, to acquire interests in other companies of the same or a related kind, to take over their management and/or representation, to transfer company

divisions, including major company divisions, to other enterprises, provided that the company owns at least the majority of the latter's voting capital and/or holds a controlling interest, and to establish branches at home and abroad.

Section 3 Notifications

All proclamations of the company shall be published in the electronic Federal Gazette (*elektronischer Bundesanzeiger*).

II. Subscribed Capital and Shares

Section 4 Subscribed Capital

- (1) The subscribed capital (*Grundkapital*) of the company amounts to Euro 161,315,376.00 and is divided into 80,657,688 ordinary bearer shares (*Inhaber-Stammaktien*) and 80,657,688 non-voting preference bearer shares (*Inhaber-Vorzugsaktien*).

The terms of the non-voting preference bearer shares are set out in Section 20. The issuance of further preference shares, which with respect to the distribution of the profits or of the company's assets rank equal to or prevail over the preference shares already issued, is not subject to the approval of the holders of preference shares.

- (2) The portion of the subscribed capital attributable to the ordinary bearer shares was paid in
- a) in the amount of DM 100,000 against an issue of shares in the nominal amount of DM 100,000 through the conversion of Fresenius Verwaltungs GmbH;
 - b) in the amount of DM 19,538,800 against an issue of shares in the nominal amount of DM 19,538,800 through contribution in kind by Mrs. Else Kröner, namely through the contribution of her interests in the limited partnerships (*Kommanditbeteiligungen*)
 - aa) Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG Apparatebau KG
 - bb) Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG Klinikbedarf KG

- cc) Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG,
 - c) in the amount of DM 361,200 against an issue of shares in the nominal amount of DM 361,200 through contribution in kind by Mr. Detlef Kröner, namely through the contribution of his interests in the limited partnerships (*Kommanditbeteiligungen*)
 - aa) Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG Apparatebau KG
 - bb) Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG Klinikbedarf KG
 - cc) Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG,
 - d) in the amount of DM 3,162,100 against an issue of shares in the nominal amount of DM 3,162,100 through cash contribution by Mrs. Else Kröner, with a premium of 195%, and in the amount of DM 837,900 against an issue of shares in the nominal amount of DM 837,900 through cash contribution by Mr. Hans Kröner, with a premium of 195%;
 - e) in the amount of DM 6,000,000 through the conversion of capital reserves in the amount of DM 6,000,000 through the issuance of new shares with a nominal value of DM 6,000,000, with one new share being issued in each case for four old shares.
- (3) The subscribed capital of Fresenius SE was provided by way of conversion of Fresenius AG into a European Company (SE).
- (4) The management board is authorized until May 7, 2014, with the approval of the supervisory board, to increase the company's subscribed capital by a total amount of up to Euro 12,800,000.00 through a single or multiple issuance of new ordinary bearer shares and/or non-voting bearer preference shares against cash contributions (Authorized Capital I – *Genehmigtes Kapital I*). The number of shares shall increase in the same proportion as the subscribed capital. The shareholders shall be granted a subscription right; the subscription right may also be granted in such a manner that the new shares are taken up by a bank or syndicate of banks under an obligation to offer them for subscription to shareholders of Fresenius SE. The management board is, however, authorized, to exclude fractional amounts from the shareholders' subscription right and, if ordinary and preference shares are issued at the same time, to exclude rights of the holders of one class of shares to subscribe to the shares of the other class, provided that

the subscription ratio is set the same for both share classes. The authorization also includes the right to issue additional preference shares which are equal to the previously issued non-voting preference shares in respect of the distribution of the company's profits or assets. The authorization may only be exercised to the extent that when utilizing the entire Authorized Capitals registered in the commercial register pursuant to the resolutions in the general meeting on May 8, 2009, the number of ordinary shares issued does not exceed the number of non-voting preference shares issued. The management board is further authorized, with the approval of the supervisory board, to determine the further details of the implementation of capital increases from Authorized Capital I. The supervisory board is authorized to amend section 4 para. 4 of the Statutes after complete or partial implementation of the capital increase from Authorized Capital I or after the expiry of the authorized period in accordance with the amount of the capital increase from Authorized Capital I.

- (5) The management board is authorized until May 7, 2014, with the approval of the supervisory board, to increase the company's subscribed capital by a total of up to Euro 6,400,000 through a single or multiple issuance of new bearer ordinary shares and/or non-voting bearer preference shares against cash contributions and/or contributions in kind (Authorized Capital II – *Genehmigtes Kapital II*). The number of shares shall increase in the same proportion as the subscribed capital. The management board is authorized to exclude fractional amounts from the shareholders' subscription right and, if ordinary and preference shares are issued at the same time, to exclude rights of the holders of one class of shares to subscribe to the shares of the other class if the subscription ratio is set the same for both share classes. The management board is further authorized to decide on the exclusion of the shareholders' subscription rights, in each case with the approval of the supervisory board. The exclusion of subscription rights is only permissible, however, if in the case of a capital increase against cash contribution, the issue price is not significantly lower than the stock exchange price. In case of a capital increase against contributions in kind, the exclusion of subscription rights is only permissible for the acquisition of a company or parts of a company, or a participation in a company. The authorization also includes the right to issue further preference shares which are equal to the previously issued non-voting preference shares in the distribution of the company's profits or assets. This authorization may be exercised only to the extent that, when utilizing the entire authorized capitals registered in the commercial register pursuant to the resolutions in the general meeting on May 8, 2009, the number of ordinary shares issued does not exceed the number of non-voting preference shares issued. The management board is further authorized, with the approval of the supervisory board, to determine the further details of the implementation of capital increases from authorized capital II. The supervisory board is authorized to amend section 4 para. 5 of

the statutes after complete or partial implementation of the capital increase from Authorized Capital II or after the expiry of the authorized period in accordance with the amount of the capital increase from Authorized Capital II.

- (6) The subscribed capital of the company is conditionally increased by up to Euro 656,550.00, divided into 656,550 shares, through the issuance of new ordinary bearer shares (Conditional Capital I Ordinary Shares – *Bedingtes Kapital I Stämme*). The conditional capital increase will only be implemented to the extent that subscription rights for ordinary bearer shares are issued in accordance with the stock option plan pursuant to the resolution of the general meeting of Fresenius AG of June 18, 1998, and taking into account the amendment resolution of the general meeting of December 4, 2006, required due to the new division of the subscribed capital, and the holders of these subscription rights exercise these rights. The new ordinary bearer shares are entitled to profit participation starting from the beginning of the financial year in which they are issued.

The subscribed capital of the company is conditionally increased by up to Euro 656,550.00, divided into 656,550 shares, through the issuance of new non-voting preference bearer shares (Conditional Capital I Preference Shares – *Bedingtes Kapital I Vorzüge*). The conditional capital increase will only be implemented to the extent that subscription rights for non-voting preference bearer shares are issued in accordance with the stock option plan pursuant to the resolution of the general meeting of Fresenius AG of June 18, 1998, and taking into account the amendment resolution of the general meeting of December 4, 2006, required due to the new division of the subscribed capital, and the holders of these subscription rights exercise these rights. The new non-voting preference bearer shares are entitled to profit participation starting from the beginning of the financial year in which they are issued.

- (7) The subscribed capital of the company is conditionally increased by up to Euro 2,149,221.00 divided into up to 2,149,221 shares, through the issuance of new ordinary bearer shares (Conditional Capital II Ordinary Shares – *Bedingtes Kapital II Stämme*). The conditional capital increase will only be implemented to the extent that convertible bonds for ordinary bearer shares are issued in accordance with the stock option plan pursuant to the resolution of the general meeting of Fresenius AG of May 28, 2003, and taking into account the amendment resolution of the general meeting of December 4, 2006, required due to the new division of the subscribed capital, and the holders of these convertible bonds exercise their conversion rights. The new ordinary bearer shares are entitled to profit participation starting from the beginning of the financial year in which they are issued.

The subscribed capital of the company is conditionally increased by up to Euro 2,149,221.00, divided into up to 2,149,221 shares, through the issuance of new non-voting preference bearer shares (Conditional Capital II Preference Shares – *Bedingtes Kapital II Vorzüge*). The conditional capital increase will only be implemented to the extent that convertible bonds for non-voting preference bearer shares are issued in accordance with the stock option plan pursuant to the resolution of the general meeting of Fresenius AG of May 28, 2003, and taking into account the amendment resolution of the general meeting of December 4, 2006, required due to the new division of the subscribed capital, and the holders of these convertible bonds exercise their conversion rights. The new non-voting preference bearer shares are entitled to profit participation starting from the beginning of the financial year in which they are issued.

- (8) The subscribed capital of the company is conditionally increased by up to Euro 3,100,000.00 (in words: Three Million One Hundred Thousand Euro), divided into 3,100,000 shares, through the issuance of new ordinary bearer shares (Conditional Capital III Ordinary Shares – *Bedingtes Kapital III Stämme*). The conditional capital increase will only be implemented to the extent that subscription rights are issued in accordance with the 2008 stock option plan pursuant to the resolution of the general meeting of May 21, 2008, and the holders of these subscription rights exercise their rights and the company does not grant any shares of its own to satisfy the subscription rights or utilise its right to a cash settlement, whereby the supervisory board alone shall be responsible for granting subscription rights to management board members and for handling such subscription rights. The new ordinary bearer shares are entitled to profit participation starting from the beginning of the financial year in which they are issued.

The subscribed capital of the company is conditionally increased by up to Euro 3,100,000.00 (in words: Three Million One Hundred Thousand Euro), divided into 3,100,000 shares, through the issuance of new preference bearer shares (Conditional Capital III Preference Shares – *Bedingtes Kapital III Vorzüge*). The conditional capital increase will only be implemented to the extent that subscription rights are issued in accordance with the 2008 stock option plan pursuant to the resolution of the general meeting of May 21, 2008, and the holders of these subscription rights exercise their rights and the company does not grant any shares of its own to satisfy the subscription rights or utilise its right to a cash settlement, whereby the supervisory board alone shall be responsible for granting subscription rights to management board members and for handling such subscription rights. The new preference bearer shares are entitled to profit participation starting from the beginning of the financial year in which they are issued.

- (9) In the case of a capital increase, participation in profits (*Gewinnbeteiligung*) may be determined in derogation of Section 60 of the German Stock Corporation Act (*Aktien-gesetz*).

Section 5

Shares

- (1) The shares are non-par value shares and are issued to bearer.
- (2) The company is entitled to issue share certificates made out to the bearer which embody multiple shares (global share certificates). The shareholders' right to have their shares embodied in certificates is excluded, unless certificates are required under the rules applicable at a stock exchange where the shares are admitted.
- (3) The management board, with the approval of the supervisory board, shall determine the form of the share certificates and of the dividend and renewal coupons.

III. Organisational Constitution of the Company

Section 6

Corporate Bodies

The company's corporate bodies are:

the management board,

the supervisory board, as well as

the general meeting of shareholders.

A. Management Board

Section 7

Composition

- (1) The management board shall comprise of at least two persons. The supervisory board may determine a higher number. It may appoint a chairman of the management board as well as deputy members of the management board.

- (2) The members of the management board are appointed by the supervisory board for a maximum term of five years. Reappointments are permissible.
- (3) The resolutions of the management board shall be adopted by simple majority of the votes unless required otherwise by statutory law. If a chairman of the management board has been appointed he shall have the casting vote in case of a parity of votes (tie).
- (4) If a chairman of the management board has been appointed he shall have the right to object to a management board resolution (veto right). If the chairman of the management board exercises his veto right the resolution shall be deemed to not have been passed.

Section 8

Representation of the Company

- (1) The company shall be represented by two management board members or by one management board member jointly with an executive holding a general power of attorney (*Prokura*). The general power of attorney (*Prokura*) may only be granted as joint power of attorney (*Gesamtprokura*) subject to the restrictions referred to in Section 8 (3).
- (2) The supervisory board may grant the right to solely represent the company (*Einzelvertretung*) to individual or several members of the management board and revoke such right at any time.
- (3) The express prior consent of the supervisory board is required:
 - (a) for the acquisition, disposal and encumbrance of real property and equivalent rights, if in an individual case the amount of Euro 15,000,000 is exceeded,
 - (b) the taking up of new and the discontinuation of existing lines of business,
 - (c) the granting of consent to the undertaking of any of the above legal acts by an associated company (*Beteiligungsgesellschaft*).
- (4) Notwithstanding the collective responsibility of the management board, the supervisory board may assign the duties of the management board to the individual members of the management board, in particular in form of rules of procedure for the management board and, within the scope of mandatory legal provisions and the statutes, determine the relations of the management board members among each other and towards the company and define, in extension of Section 8 (3), the acts for which the management board shall require the express prior consent of the supervisory board. The supervisory board may

also grant consent in accordance with Section 8 (3) in a general manner, for limited or unlimited periods, as well as to individual members of the management board, in particular to the chairman of the management board. The supervisory board may at any time extend, restrict or revoke the rules of procedure for the management board. The supervisory board may transfer the passing of resolutions in accordance with Section 8 (3) and the granting of approvals in accordance with the rules of procedure for the management board to a committee of the supervisory board; such a committee must have three members, but otherwise the supervisory board may freely determine its composition.

- (5) The management board, with the approval of the supervisory board, may give to itself rules of procedure, as long as and to the extent that the supervisory board has not issued such rules of procedure for the management board.

B. Supervisory Board

Section 9

Election and Term of Office of the Supervisory Board

- (1) The supervisory board shall comprise twelve members who are appointed by the general meeting. Of the twelve members, six members are to be appointed upon proposal of the employees. The general meeting shall be bound to the proposals for the appointment of the employee representatives.
- (2) As members of the first supervisory board are appointed for a term until the close of the general meeting which resolves on the ratification of actions for the first financial year of Fresenius SE, however, for no longer than a term of three years:

Dr. Gerd Krick, Königstein, Former Chairman of the Management Board of Fresenius AG

Dr. Gabriele Kröner, Berg, doctor

Dr. Gerhard Rupprecht, Gerlingen, Member of the Management Board of Allianz AG, chairman of the Management Board of Allianz Deutschland AG

Dr. Dieter Schenk, München, attorney and tax advisor, law firm Nörr, Stiefenhofer & Lutz

Dr. Karl Schneider, Mannheim, Former Chairman of the Management Board of Südzucker AG

Dr. Bernhard Wunderlin, Bad Homburg v.d.H., Former Managing Director of Harald Quandt Holding GmbH.

The other six members of the supervisory board shall be appointed upon proposal of the employees. The first financial year of Fresenius SE is the financial year in which the conversion of Fresenius AG into a European Company (SE) is registered in the commercial register of Fresenius AG.

- (3) The general meeting appoints the supervisory board members, subject to Section 9 (2), for a term until the close of the general meeting which resolves on the ratification of actions for the fourth financial year after the term of office commenced, with the financial year in which the term of office commences not being counted, however, for no longer than for a period of six years. Reappointments are permissible.
- (4) If a member appointed by the general meeting ceases to be a member of the supervisory board before his term of office expires, a new member is to be appointed by the next general meeting. The newly-appointed member shall hold office for the remaining term of office of the member whose membership has ceased.
- (5) The general meeting may appoint substitute members for the supervisory board members to be appointed by it. Their positions as substitute members shall revive if and when the general meeting appoints a new member for a former member who has left office and has been replaced by the respective substitute member. The term of office of the substitute member is limited to the period up to the close of the general meeting at which an appointment according to Section 9 (4) takes place.
- (6) Each member of the supervisory board may resign from office, also without cause, by giving one month's written notice to the chairman of the supervisory board. The chairman of the supervisory board shall give notification of his resignation from office to his deputy.

Section 10

Constitution of the Supervisory Board

- (1) Following the general meeting at which a new supervisory board has been appointed, the supervisory board shall hold a meeting without special notice in which the supervisory board shall elect, if necessary, a chairman and two deputy chairmen from among its members for the whole term of their office on the supervisory board.

- (2) In case the membership of the chairman or one of his deputies should cease before the expiry of his term of office, the supervisory board shall elect a successor without undue delay (*unverzüglich*).
- (3) For the election of the chairman of the supervisory board, the oldest member in terms of age among the shareholder representatives on the supervisory board shall have the chair; Section 11 (5) sentence 2 shall apply.

Section 11

Meetings and Resolutions of the Supervisory Board

- (1) The meetings of the supervisory board are to be convened by the chairman in writing with a notice period of 14 days. The individual items of the agenda are to be stated in the invitation to the meeting. In urgent cases, this notice period may be shortened and the meeting convened by telegram, telex, facsimile, by other means of electronic communication (e-mail etc.) or by telephone.
- (2) Resolutions of the supervisory board generally are to be passed in actual meetings (*Präsenzsitzungen*). However, it is permissible that meetings of the supervisory board are held by means of video conference, or that individual members of the supervisory board participate by means of video transmission, and that in such cases resolutions or votes are also passed or cast by means of video conference or video transmission, respectively. Outside of meetings, resolutions may be passed in text form (in writing, by telegram, telex, facsimile, by other means of electronic communication (e-mail etc.)) or by telephone, if the chairman of the supervisory board, or in case the chairman is unavailable, his deputy directs to do so and no member of the supervisory board objects to this procedure in text form without undue delay (*unverzüglich*).
- (3) The supervisory board shall constitute a quorum if half of the total number of members of which it comprises participates in the passing of a resolution. If no equal number of shareholders' representatives and of employees' representatives on the supervisory board takes part in the passing of a resolution, or if the chairman of the supervisory board does not take part, the passing of the resolution is, upon motion of at least two supervisory board members, to be postponed. Section 11 (1) shall apply to the new passing of a resolution; the latter may take place on the same day if the chairman of the supervisory board so directs.

- (4) If members of the supervisory board are unable to attend meetings, they may have their written vote submitted by another member of the supervisory board. The submission of a written vote shall count as participation in the passing of the resolution.
- (5) Resolutions of the supervisory board require the majority of the votes cast. In the case of a parity of votes, the vote of the chairman, or, if he does not participate in the passing of the resolution, the vote of the deputy chairman, provided that he is a shareholder representative, shall be decisive. A deputy chairman who is an employee representative shall not be entitled to a casting vote. Section 11 (5) sentence 2 of the statutes also applies to the passing of resolutions in the committees of the supervisory board of which the chairman or his deputy, if he is a shareholder representative, is a member.
- (6) Minutes shall be prepared of the supervisory board meetings which are to be signed by the chairman of the meeting. The chairman of the supervisory board shall sign the records of resolutions passed outside of actual meetings pursuant to Section 11 para. 2 (*Präsenzsitzungen*).

Section 12

Rights and Duties of the Supervisory Board

- (1) The supervisory board has the rights and duties defined by mandatory legal provisions and by these statutes.
- (2) The supervisory board is supposed to issue rules of procedure for the management board in accordance with Section 8 (4).
- (3) The supervisory board is entitled to make such amendments to the statutes which only concern their wording without a resolution of the general meeting. This also applies in the cases of Section 4 para. 1 sentence 1, and paras. 4, 5, 6 and 7.

Section 13

Rules of Procedure of the Supervisory Board

The supervisory board shall issue rules of procedure for itself within the framework of applicable mandatory legal provisions and the statutes.

Section 14

Remuneration of the Supervisory Board

- (1) Each member of the supervisory board shall receive a fixed remuneration of Euro 13,000.00 per annum for every full financial year, payable after the completion of the financial year. For each full financial year, the remuneration shall increase by 10% if the dividend distributed per ordinary share for such financial year (dividend amount according to the resolution of the general meeting – gross dividend) is one percentage point higher than 3.6% of the proportionate amount per individual no-par value share of the subscribed capital; intermediate amounts shall be interpolated. If the general meeting resolves a higher remuneration in view of the results of the financial year, such new amount shall be applicable. The chairman of the supervisory board shall receive twice, his deputies one and a half times the remuneration of a supervisory board member.
- (2) For a membership in the audit committee (*Prüfungsausschuss*) and for a membership in the personnel committee (*Personalausschuss*) of the supervisory board a member shall receive an additional remuneration of Euro 10,000.00 for each membership, while the chairman of such committee shall receive twice the amount.
- (3) If a financial year does not comprise a full calendar year or if a member of the supervisory board is on the supervisory board only for part of a financial year, the remuneration shall be paid on a *pro-rata temporis* basis. This shall apply accordingly to the membership in the audit committee and in the personnel committee of the supervisory board.
- (4) The members of the supervisory board shall be reimbursed for the expenses incurred exercising their office, including applicable value-added tax. The company shall provide insurance coverage to the members of the supervisory board in an extent appropriate with regard to the exercise of the supervisory board office, and with an appropriate deductible (*angemessener Selbstbehalt*).

C. General Meeting of Shareholders

Section 15

Convening the General Meeting

- (1) The general meeting shall be convened at least 30 days prior to the day by the end of which the shareholders have to register for the general meeting.

- (2) The general meeting shall be held at the registered office of the company, or at the place of a German stock exchange, or at the registered office of a domestic associated company (*Beteiligungsgesellschaft*).

Section 16

Participation in the General Meeting

- (1) Shareholders who wish to participate in the general meeting or to exercise their voting right have to register for the general meeting and prove their eligibility. The registration and proof of eligibility must be received by the company at the address stated for this purpose in the invitation no later than on the seventh day prior to the general meeting (registration date). If the end of the period falls on a Saturday, Sunday, or a holiday recognised by statute law at the registered office of the company, the preceding working day shall be relevant for the delivery.
- (2) For the purpose of proving eligibility under para. 1, a special proof of share ownership issued by the custodian institution in text form in the German or English language is sufficient. The proof regarding shares which are not held in a collective custody account may also be issued by the company or by a bank against delivery of the shares. The proof of shareholding has to relate to the point in time as determined by the German Stock Corporation Act (*Aktiengesetz*).

Section 17

Date of the General Meeting of Shareholders

The general meeting which receives the approved annual financial statements or, as the case may be, which resolves upon the approval of the annual financial statements as well as the ratification of the actions of the management board and supervisory board (*Entlastung*), and the appropriation of profits (general meeting of shareholders) shall be held within the first six months after the completion of a financial year.

Section 18

Chairmanship of the General Meeting and Voting

- (1) The general meeting shall be chaired by the chairman of the supervisory board, and, if he is unavailable or at the request of the chairman of the supervisory board, by another member of the supervisory board which the chairman of the supervisory board

determines. If no such determination was made, another member of the supervisory board to be determined by the supervisory board shall chair the meeting if the chairman of the supervisory board is unavailable.

- (2) The chairman shall chair the meeting, determine the order of items to be discussed and of the speakers as well as the manner and form of voting. The chairman may determine appropriate restrictions of the speaking time, of the question time, and of the combined speaking and question time at the beginning or during the general meeting, regarding the discussions on individual items of the agenda, as well as for individual speaking and question contributions. He shall order the end of the debate to the extent that and as soon as this is necessary for an orderly conduct of the general meeting.
- (3) The resolutions of the general meeting shall be passed by a simple majority of votes cast unless the statutes or mandatory legal provisions do require otherwise. Unless mandatory legal provisions require otherwise, amendments of the statutes require a majority of two thirds of the votes cast or, if at least half of the subscribed capital is represented, the simple majority of votes cast. If, for the effectiveness of the passing of resolutions, mandatory legal provisions require that, in addition, a majority of the subscribed capital be represented when the resolution is passed, the simple majority of the subscribed capital represented shall be sufficient, to the extent that this is permitted by law. If the voting results in a tie a motion shall be deemed rejected.
- (4) Each ordinary share grants one vote in the general meeting. The preference shares carry no voting rights unless mandatory legal provisions provide otherwise.

IV. Annual Financial Statements and Distribution of Balance Sheet Profits

Section 19

Financial Year, Accounting

- (1) The financial year shall be the calendar year.
- (2) The management board shall prepare the financial statements and the management report for the respective previous financial year within the first three months of the financial year, however, at the latest within the maximum period set by mandatory legal provisions, and submit them to the auditors.
- (3) The supervisory board mandates the auditor for the audit.

- (4) The management board shall present the annual financial statements and the management report as well as the consolidated financial statements and the group management report to the supervisory board without undue delay after their preparation. At the same time, the management board shall submit to the supervisory board the proposal which it intends to submit to the general meeting concerning the appropriation of balance sheet profits (*Verwendung des Bilanzgewinns*).

Section 20

Appropriation of Profits

- (1) The general meeting shall resolve upon the appropriation of balance sheet profits (*Bilanzgewinn*), subject to the following paragraphs 2 through 4.
- (2) The non-voting preference shares (Section 4) shall receive a dividend from annual balance sheet profits which is Euro 0.01 per preference share higher than the dividend for the ordinary shares, however, the dividend shall amount to at least Euro 0.02 per preference share.
- (3) The minimum dividend in an amount of Euro 0.02 per preference share shall prevail over the distribution of a dividend to ordinary shares.
- (4) If the balance sheet profits of one or more financial years are not sufficient to distribute Euro 0.02 per preference share, the lacking amounts excluding interest shall be paid subsequently from the balance sheet profits of the following financial years, in each case after distribution of the minimum dividend to the preference shares for these financial years and before distributing a dividend to the ordinary shares. The right to the payment of arrears is part of the share in profits for the financial year from the balance sheet profits of which the payment of arrears on the preference shares is made.

Section 21

Formation Expenses/Benefits

- (1) The company shall bear the formation expenses (conversion costs) in connection with the formation of Fresenius AG, especially any corporate taxes, commercial register and notary fees, notification costs and the costs for the audit up to a total amount of DM 5,790.
- (2) In connection with the formation of Fresenius AG, the company shall also bear the formation expenses (costs of the capital increase) especially any corporate taxes,

commercial register and notary fees, notification costs, costs for the audit (audit of contribution in kind and capital increase) and consulting fees up to a total amount of DM 433,000.

- (3) With regard to the conversion of Fresenius AG into Fresenius SE, the formation expenses up to an amount of Euro 3,000,000 shall be borne by the company.
- (4) In connection with the conversion of Fresenius AG into Fresenius SE, the following is pointed out for reasons of legal precaution:

Notwithstanding the statutory competences of the supervisory board of Fresenius SE, it is to be assumed that the acting members of the management board of Fresenius AG will be appointed members of the management board of Fresenius SE. Members of the management board of Fresenius AG are Dr. Ulf M. Schneider (chairman), Rainer Baule, Andreas Gaddum, Dr. Ben J. Lipps and Stephan Sturm.

Furthermore, the shareholders' representatives on the supervisory board of Fresenius AG are to be appointed as members of the supervisory board of Fresenius SE (see Section 9 para. 2).

Annex 2 to the Common Terms of Merger

Articles of Association of Fresenius SE & Co. KGaA

[The Articles of Association are not imprinted at this place. The Articles of Association of Fresenius SE & Co. KGaA are imprinted in Annex 3 to the Conversion Report.]

Annex 2: List of Significant Affiliates

Company	Participating interest held by Fresenius in %	Sales 2009 in USD mn.	Net income*) 2009 in USD mn.	Shareholders' equity 31.12.2009 in USD mn.	Employees 31.12.2009
Europe					
1 Fresenius Medical Care AG & Co. KGaA, Hof an der Saale, Germany (Sub-group/US GAAP)	36	11,247	891	7,030	71,617

*) Annual profit or loss, as the case may be.

Company	Participating interest held by Fresenius in %	Sales 2009 in Euro mn.	Net income*) 2009 in Euro mn.	Shareholders' equity 31.12.2009 in Euro mn.	Employees 31.12.2009
Europe					
1 Helios Group Berlin, Germany	99	2,416	107	1,329	33,364
2 VAMED Group Vienna, Austria	77	618	27	177	2,849
3 Fresenius Kabi Deutschland GmbH Bad Homburg v.d.H., Germany (with profit and loss transfer agreement)	100	810.3	–	363.4	2,045
4 Fresenius HemoCare Deutschland GmbH Bad Homburg v.d.H., Germany (with profit and loss transfer agreement)	100	30.4	–	8.5	28
5 Fresenius Vial S.A.S. Brézins, France	100	90.3	8.6	29.1	325
6 Fresenius Kabi France S.A.S. Sèvres, France	100	180.7	2.7	20.9	604
7 Fresenius Kabi Italia S.p.A. Verona, Italy	100	108.4	3.3	49.9	324
8 Ribbon S.r.l. Cernusco, Italy	100	61.6	5.2	13.7	146
9 Fresenius Kabi Ltd. Runcorn, Cheshire, Great Britain	100	114.0	2.9	13.9	415
10 Fresenius Kabi Nederland B. V. 's-Hertogenbosch, The Netherlands	100	32.9	2.2	2.1	21
11 Fresenius HemoCare Netherlands B.V. Emmen, The Netherlands	100	73.9	1.6	12.7	491
12 Fresenius Kabi N. V. Schelle, Belgium	100	29.2	0.3	3.5	49
13 Fresenius Kabi (Schweiz) AG Stans, Switzerland	100	26.0	0.4	3.9	54
14 Fresenius Kabi Austria GmbH Graz, Austria	100	236.3	35.7	152.3	647
15 Fresenius Kabi Espana S.A. Barcelona, Spain	100	78.2	6.1	33.9	272
16 Labesfal – Laboratório de Especialidades Campo de Besteiros, Portugal	100	81.4	16.3	63.2	405

Convenience Translation

Company	Participating interest held by Fresenius in %	Sales 2009 in Euro mn.	Net income*) 2009 in Euro mn.	Shareholders' equity 31.12.2009 in Euro mn.	Employees 31.12.2009
17 Fresenius Kabi Polska Sp. z o.o. Warsaw, Poland	100	40.1	3.3	20.1	306
18 Fresenius Kabi AB Stockholm, Sweden	100	239.9	52.0	85.4	897
19 Fresenius Kabi Norge A.S. Halden, Norway	100	89.1	16.5	28.4	497
North and South America					
20 Fresenius Kabi Pharmaceuticals Holding, Inc. Wilmington/Delaware, USA	100	637.1	-21.1	374.2	1,783
21 Calea Ltd. Toronto, Canada	100	56.4	5.2	13.9	216
23 Fresenius Kabi Brasil Ltda. São Paulo, Brazil	100	73.3	0.4	43.7	834
24 Fresenius Hemocare Brasil Ltda. São Paulo, Brazil	100	35.7	0.1	16.3	428
25 Fresenius Kabi México S.A. de C.V. Guadalajara, Mexico	100	27.7	2.4	13.9	433
Asia					
26 Beijing Fresenius Kabi Pharmaceutical Co., Ltd. Peking, China	100	108.1	11.0	32.4	717
27 Sino-Swed Pharmaceutical Corporation Ltd. Wuxi, China	51	142.7	28.5	63.9	1,484
28 Fresenius Kabi Oncology Ltd. New Delhi, India	90	58.0	11.5	62.1	895
29 Fresenius Kabi Korea Ltd. Seoul, Korea	100	25.7	-0.8	6.3	80
30 Pharmatel Fresenius Kabi Pty Ltd. Sydney, Australia	100	64.4	2.0	1.1	170
Africa					
31 Fresenius Kabi South Africa Pty Ltd. Midrand, South Africa	100	75.6	-0.6	13.4	204

*) Annual profit or loss, as the case may be.

Annex 3: Articles of Association of Fresenius SE & Co. KGaA

I.

General Provisions

Article 1

Corporate Name and Registered Office

- (1) The Company is a partnership limited by shares (KGaA). The corporate name of the Company is

Fresenius SE & Co. KGaA

- (2) The registered office of the Company is in Bad Homburg vor der Höhe.

Article 2

Corporate Purpose

- (1) The corporate purpose of the Company is:
- a) the development, manufacture and distribution of, as well as trading in, products, systems and processes in the health care sector,
 - b) the construction, development and operation of medical and curative facilities as well as of hospitals,
 - c) consulting in the medical and pharmaceutical fields as well as scientific information and documentation.

The Company will operate directly or through associated companies (*Beteiligungsgesellschaften*) in Germany and abroad.

- (2) The Company is entitled to enter into any and all business transactions and to take any and all measures that are deemed necessary or useful in accomplishing the corporate purpose of the Company and may, in particular, participate in other undertakings of the same or a related kind, take over the management and/or the representation of such undertakings, transfer company divisions, including major company divisions, to undertakings in which the Company holds at least a majority of the voting capital and/or a controlling interest, and establish branch offices in Germany and abroad.

Article 3
Notifications

All notifications of the Company shall be published in the electronic Federal Gazette (elektronischer Bundesanzeiger).

II.
Share Capital and Shares

Article 4
Share Capital

- (1) The share capital (*Grundkapital*) of the Company amounts to Euro 161,315,376.00 and is divided into 161,315,376 ordinary bearer shares.
- (2) The share capital has been paid in
 - a) in the amount of DM 100,000 against an issue of shares in the total nominal amount of DM 100,000 through the conversion of Fresenius Verwaltungs GmbH,
 - b) in the amount of DM 19,538,800 against an issue of shares in the total nominal amount of DM 19,538,800 through a contribution in kind by Mrs. Else Kröner, namely through the contribution of her limited partner's interests
 - aa) in Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG Apparatebau KG,
 - bb) in Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG Klinikbedarf KG,
 - cc) in Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG,
 - c) in the amount of DM 361,200 against an issue of shares in the total nominal amount of DM 361,200 through a contribution in kind by Mr. Detlef Kröner, namely through the contribution of his limited partner's interests
 - aa) in Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG Apparatebau KG,
 - bb) in Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG Klinikbedarf KG,
 - cc) in Dr. Eduard Fresenius Chemisch-pharmazeutische Industrie KG,

- d) in the amount of DM 3,162,100 against an issue of shares in the total nominal amount of DM 3,162,100 through a cash contribution by Mrs. Else Kröner with a premium of 195% and in the amount of DM 837,900 against an issue of shares in the total nominal amount of DM 837,900 through a cash contribution by Mr. Hans Kröner with a premium of 195%,
 - e) in the amount of DM 6,000,000 through the conversion of statutory reserves of DM 6,000,000 through the issuance of new shares with a total nominal amount of DM 6,000,000, with one new share being issued in each case for four old shares.
- (3) The share capital existing at the time of the conversion of the Company into a European Company (SE) was provided by way of the change of the legal form of the legal entity of previous legal form, Fresenius AG with registered office in Bad Homburg vor der Höhe.

The share capital existing at the time of the conversion of the Company into a partnership limited by shares (KGaA) was provided by way of the change of the legal form of the legal entity of previous legal form, Fresenius SE with registered office in Bad Homburg vor der Höhe.

- (4) The General Partner is authorized, in the period until May 7, 2014, with the approval of the Supervisory Board, to increase the share capital of the Company by up to a total of Euro 12,800,000 (Authorized Capital I) through a single or multiple issuance of new ordinary bearer shares against cash contributions. The number of shares must increase in the same proportion as the share capital. The shareholders are to be granted a subscription right; the subscription right can also be granted in such a way that the new shares are taken up by a credit institution or a syndicate of credit institutions with the obligation to offer them to the shareholders of Fresenius SE & Co. KGaA. However, the General Partner is authorized to exclude fractional amounts from the shareholders' subscription right. The General Partner is authorized, with the approval of the Supervisory Board, to determine the further details of the implementation of capital increases out of Authorized Capital I. The Supervisory Board is authorized to amend this Article 4 para. 4 as well as Article 4 para. 1 of the Articles of Association after complete or partial implementation of the capital increase out of Authorized Capital I or after the expiry of the authorization period in accordance with the amount of the capital increase out of Authorized Capital I.
- (5) The General Partner is authorized, in the period until May 7, 2014, with the approval of the Supervisory Board, to increase the share capital of the Company by up to a total of Euro 6,400,000 through a single or multiple issuance of new ordinary bearer shares against cash contributions and/or contributions in kind (Authorized Capital II). The

number of shares must increase in the same proportion as the share capital. The General Partner is authorized to exclude fractional amounts from the shareholders' subscription right. The General Partner is further authorized, in each case with the approval of the Supervisory Board, to decide on the exclusion of the shareholders' subscription right. An exclusion of the subscription right shall, however, be admissible only if, in case of a capital increase against cash contributions, the issue price does not fall substantially short of the stock exchange price. An exclusion of the subscription right is admissible in case of a capital increase for contributions in kind only to acquire an undertaking, parts of an undertaking or a participation in an undertaking. The General Partner is authorized, with the approval of the Supervisory Board, to determine the further details of the implementation of capital increases out of Authorized Capital II. The Supervisory Board is authorized to amend this Article 4 para. 5 as well as Article 4 para. 1 of the Articles of Association after complete or partial implementation of the capital increase out of Authorized Capital II or after the expiry of the authorization period in accordance with the amount of the capital increase out of Authorized Capital II.

- (6) The General Partner is authorized, in the period until May 11, 2015, with the approval of the Supervisory Board, to increase the share capital of the Company by up to a total of Euro 1,313,100 through a single or multiple issuance of new ordinary bearer shares against cash contributions (Authorized Capital III). The number of shares must increase in the same proportion as the capital. The shareholders' subscription right is excluded. The General Partner may use the Authorized Capital III only insofar as subscription rights were issued in accordance with the stock option plan pursuant to the resolution of the General Meeting of Fresenius AG of June 18, 1998, taking account of the amendment resolution of the General Meeting of December 4, 2006, required due to the new division of the share capital, and of the conversion resolution of the General Meeting of May 12, 2010, and the holders of these subscription rights exercise these rights and insofar as no conditional capital is used to satisfy the subscription rights. The new ordinary bearer shares are entitled to profit participation from the beginning of the financial year in which the capital increase becomes effective. The Supervisory Board is authorized to amend this Article 4 para. 6 and Article 4 para. 1 of the Articles of Association after complete or partial implementation of the capital increase out of Authorized Capital III or after the expiry of the authorization period in accordance with the amount of the capital increase out of Authorized Capital III.
- (7) The General Partner is authorized, in the period until May 11, 2015, with the approval of the Supervisory Board, to increase the share capital of the Company by up to a total of Euro 4,298,442 through a single or multiple issuance of new ordinary bearer shares against cash contributions and/or contributions in kind (Authorized Capital IV). The

number of shares must increase in the same proportion as the capital. The shareholders' subscription right is excluded. The General Partner may use the Authorized Capital IV only insofar as subscription rights were issued in accordance with the stock option plan pursuant to the resolution of the General Meeting of Fresenius AG of May 28, 2003, taking account of the amendment resolution of the General Meeting of December 4, 2006, required due to the new division of the share capital and of the conversion resolution of the General Meeting of May 12, 2010, and the holders of these subscription rights exercise these rights and insofar as no conditional capital is used to satisfy the subscription rights. The new ordinary bearer shares are entitled to profit participation from the beginning of the financial year in which the capital increase becomes effective. The Supervisory Board is authorized to amend this Article 4 para. 7 and Article 4 para. 1 of the Articles of Association after complete or partial implementation of the capital increase out of Authorized Capital IV or after the expiry of the authorization period in accordance with the amount of the capital increase out of Authorized Capital IV.

- (8) The General Partner is authorized, in the period until May 11, 2015, with the approval of the Supervisory Board, to increase the share capital of the Company by up to a total of Euro 6,200,000 through a single or multiple issuance of new ordinary bearer shares against cash contributions and/or contributions in kind (Authorized Capital V). The number of shares must increase in the same proportion as the capital. The shareholders' subscription right is excluded. The General Partner may use the Authorized Capital V only insofar as subscription rights were issued or will be issued in accordance with the Stock Option Plan 2008 pursuant to the resolution of the General Meeting of May 21, 2008, taking account of the conversion resolution of the General Meeting of May 12, 2010, and the holders of these subscription rights exercise these rights, and the Company grants no own shares to satisfy the subscription rights nor exercises its right to cash compensation and insofar as no conditional capital is used to satisfy the subscription rights, whereas the General Partner's Supervisory Board shall be exclusively competent regarding the granting and settlement of subscription rights to members of the General Partner's Management Board. The new ordinary bearer shares are entitled to profit participation from the beginning of the financial year in which the capital increase becomes effective. The Supervisory Board is authorized to amend this Article 4 para. 8 and Article 4 para. 1 of the Articles of Association after complete or partial implementation of the capital increase out of Authorized Capital V or after the expiry of the authorization period in accordance with the amount of the capital increase out of Authorized Capital V.
- (9) The share capital of the Company is conditionally increased by up to Euro 1,313,100.00, divided into 1,313,100 shares, by the issue of new ordinary bearer shares (Conditional

Capital I). The conditional capital increase will be implemented only to the extent that, in accordance with the stock option plan resolved on by the General Meeting of Fresenius AG of June 18, 1998, and taking account of the amendment resolution of the General Meeting of December 4, 2006, required due to the new division of the share capital, and of the conversion resolution of the General Meeting of May 12, 2010, subscription rights have been issued and the holders of these subscription rights exercise these rights. The new ordinary bearer shares are entitled to profit participation from the beginning of the financial year in which they are issued.

- (10) The share capital of the Company is conditionally increased by up to Euro 4,298,442.00, divided into 4,298,442 shares, by the issue of new ordinary bearer shares (Conditional Capital II). The conditional capital increase will be implemented only to the extent that, in accordance with the stock option plan resolved on by the General Meeting of Fresenius AG of May 28, 2003, and taking account of the amendment resolution of the General Meeting of December 4, 2006, required due to the new division of the share capital, and of the conversion resolution of the General Meeting of May 12, 2010, convertible bonds have been issued and the holders of these convertible bonds exercise their right of conversion. The new ordinary bearer shares are entitled to profit participation from the beginning of the financial year in which they are issued.
- (11) The capital of the Company is conditionally increased by up to Euro 6,200,000.00, divided into 6,200,000 shares, by the issue of new ordinary bearer shares (Conditional Capital III). The conditional capital increase will be implemented only to the extent that, in accordance with the Stock Option Plan 2008 resolved on by the General Meeting of May 21, 2008, and taking account of the conversion resolution of the General Meeting of May 12, 2010, subscription rights have been issued or will be issued and the holders of these subscription rights exercise their rights, and the Company grants no own shares to satisfy the subscription rights nor exercises its right to cash compensation, whereas the General Partner's Supervisory Board shall be exclusively competent regarding the granting and settlement of subscription rights to members of the General Partner's Management Board. The new ordinary bearer shares are entitled to profit participation from the beginning of the financial year in which they are issued.
- (12) In case of a capital increase, participation in profits (*Gewinnbeteiligung*) may be determined in derogation of sec. 60 German Stock Corporation Act (AktG).

Article 5

Shares

- (1) The shares are no-par value bearer shares.
- (2) The Company is entitled to issue share certificates made out to the bearer, each evidencing a plurality of shares (collective share certificates). The shareholders' right to have their individual shares represented by certificates is excluded, unless a share certificate is required under the rules applicable at a stock exchange to which the shares are admitted.
- (3) The form of the share certificates and of the dividend coupons and renewal coupons shall be determined by the General Partner with the approval of the Supervisory Board.

III.

Constitution of the Company

A.

General Partner

Article 6

General Partner, Special Contribution, Legal Relationships, Resignation

- (1) The General Partner of the Company is

Fresenius Management SE

with registered office in Bad Homburg vor der Höhe.

- (2) The General Partner has not made a special contribution (Sondereinlage). It shall participate neither in the profit or the loss of the Company nor in its assets.
- (3)
 - (a) The General Partner is excluded from the Company if and as soon as all shares in the General Partner are no longer held directly or indirectly by a person holding more than 10% of the share capital of the Company, directly or indirectly via a controlled enterprise within the meaning of sec. 17 German Stock Corporation Act (AktG); this will not apply if and when all shares in the General Partner are held directly or indirectly by the Company.
 - (b) Additionally, the General Partner is excluded from the Company if the shares in the General Partner are acquired by a person who does not, within twelve months after such acquisition takes effect, submit a takeover bid or a compulsory bid to the

shareholders of the Company pursuant to the rules of the German Securities Acquisition and Takeover Act (WpÜG) according to the following stipulations.

The consideration offered to the other shareholders must take account of a payment made by the acquirer to the direct or indirect holder of the shares in the General Partner for the acquisition of the shares in the General Partner and the Company in excess of the sum of the General Partner's equity and of the average stock exchange price of the shares in the Company being acquired, during the last five stock exchange trading days before the day of the conclusion of the agreement on the acquisition of the shares in the General Partner (calculated on the basis of the average final quotations in the XETRA trading system or a comparable successor system) in the following amount:

Payment multiplied by [(50 minus quota) divided by quota].

For the purposes of these stipulations, a "quota" shall mean the quota of the participation expressed in percent held by the direct or indirect holder of the shares in the General Partner directly or indirectly in the share capital of the Company at the time of the conclusion of the agreement on the acquisition of the shares in the General Partner.

(c) Any obligation of the acquirer of the shares in the Company and of the shares in the General Partner to submit a takeover bid or a compulsory bid to the shareholders of Fresenius Medical Care AG & Co. KGaA shall remain unaffected.

(d) The other statutory grounds for withdrawal of the General Partner remain unaffected.

- (4) If the General Partner leaves the Company or if such leave is foreseeable, the Supervisory Board is authorized and obliged to admit promptly, or at the time of the leave of the General Partner, as the case may be, as new General Partner of the Company a corporation whose shares are fully owned by the Company. If the General Partner leaves the Company without any General Partner being admitted at the same time, the Company shall for a transitional period be continued by the limited shareholders alone. In such case, the Supervisory Board shall promptly apply for the appointment of a substitute representative who will represent the Company until the admission of a new General Partner according to sentence 1 of this paragraph, in particular with respect to the acquisition or formation of such new General Partner.

The Supervisory Board is authorized to amend the version of the Articles of Association so as to reflect the change of the General Partner.

- (5) In case the Company is continued pursuant to Article 6 para. 4 of the Articles of Association or in case all shares in the General Partner are held directly or indirectly by the Company, an extraordinary General Meeting or the next Ordinary General Meeting shall decide on the change of the legal form of the Company into a European Company (SE), if legally admissible, and otherwise into a stock corporation. The resolution with respect to such change of the legal form can be taken by simple majority of the votes cast. The General Partner is obliged to consent to such resolution on the change of the legal form adopted by the General Meeting.

Article 7

Management and Representation of the Company, Reimbursement of Expenses and Remuneration

- (1) The Company shall be represented by its General Partner. Vis-à-vis the General Partner the Company shall be represented by the Supervisory Board.
- (2) The General Partner shall be responsible for the management of the Company. The General Partner's management competence also encompasses exceptional management measures. The shareholders' right to consent to exceptional management measures at the General Meeting is excluded.
- (3) The General Partner shall be reimbursed for any and all expenses in connection with the management of the Company's business, which includes remuneration of the members of its corporate bodies. The General Partner shall, in principle, invoice its expenses monthly; it is entitled to claim payment in advance.
- (4) As consideration for assuming the management of the Company and the liability, the General Partner shall receive from the Company an annual remuneration of 4% of its share capital that shall be independent of a profit or loss.
- (5) The General Partner is not authorized to undertake transactions for its own or for another's account outside the scope of its responsibilities within the Company.

B.
Supervisory Board

Article 8
Election and Term of Office of the Supervisory Board

- (1) The Supervisory Board shall consist of twelve members, unless a different number of members is required by mandatory legal provisions.
- (2) Half of the members of the Supervisory Board shall be elected by the General Meeting according to the provisions of the German Stock Corporation Act. The other half of the members of the Supervisory Board shall be elected by the employees.
- (3) Unless expressly otherwise resolved by the General Meeting, the Supervisory Board members shall be appointed for a term ending with the close of the Ordinary General Meeting which resolves on the ratification of actions for the fourth financial year after the term of office commenced. The year in which the term of office commences shall not count for this calculation. The reappointment of Supervisory Board members shall be permissible.
- (4) If a member elected by the General Meeting ceases to be a member of the Supervisory Board before his term of office expires, a new member is to be elected in the next General Meeting in his place. The newly elected member shall hold office for the withdrawing member's remaining term of office.
- (5) The General Meeting may, for the Supervisory Board members to be elected by it, appoint substitute members who will become members of the Supervisory Board in a specific order to be determined at the time of their appointment, if Supervisory Board members cease to be members before the end of their term of office. Their position as substitute members shall revive if and when the General Meeting appoints a new member for a former member of the Supervisory Board replaced by such substitute member. The substitute member's term of office is limited to the period until the close of the General Meeting at which an election according to Article 8 para. 4 takes place.
- (6) Each member of the Supervisory Board may resign from office, even without good cause, by giving one month's written notice to the Chairman of the Supervisory Board. The Chairman of the Supervisory Board shall give notice of his resignation to one of his deputies.

Article 9

Constitution of the Supervisory Board

- (1) Following the General Meeting at which a new Supervisory Board has been appointed, the Supervisory Board shall hold a meeting without special notice in which the Supervisory Board shall elect, if necessary, a Chairman and two deputies from among its members for the duration of their term of office on the Supervisory Board.
- (2) If the Chairman or one of his deputies should cease to hold office before the expiry of his term of office, the Supervisory Board shall promptly (*unverzüglich*) hold a new election to replace the former member.
- (3) The election of the Chairman of the Supervisory Board shall be chaired by the oldest member in terms of age among the shareholder representatives on the Supervisory Board; Article 10 para. 5 sentence 2 shall apply.

Article 10

Meetings and Resolutions of the Supervisory Board

- (1) The meetings of the Supervisory Board must be convened by the Chairman in writing subject to a notice period of 14 days. The individual items of the agenda must be stated in the invitation to the meeting. In urgent cases, the period may be shortened and the meeting may be convened by telegram, telex, telefax, other means of electronic communication (e-mail etc.) or telephone.
- (2) As a rule, resolutions of the Supervisory Board shall be adopted in meetings personally attended by the members. It is, however, permissible that meetings of the Supervisory Board be held by way of a video or telephone conference, or that individual Supervisory Board members participate by means of video transmission or telephone and that in such cases the passing of resolutions or voting takes place by way of video or telephone conference or video transmission or telephone, respectively. Outside of meetings, resolutions in text form (sec. 126b BGB, especially in writing, by telegraph, telex, telefax, other means of electric communication (e-mail etc.)) or by telephone are admissible if the Chairman of the Supervisory Board or, in the event of his being unavailable, his deputy directs to do so.
- (3) The Supervisory Board shall constitute a quorum if half of the total number of members of which it must consist take part in the voting. If the number of Supervisory Board members representing the shareholders who take part in voting is not the same as the number of Supervisory Board members representing the employees who take part in

voting, or if the Chairman of the Supervisory Board does not take part, the voting shall, upon motion of at least two members of the Supervisory Board, be postponed. Article 10 para. 1 shall apply to the new voting; however it can also be held on the same day if so directed by the Chairman of the Supervisory Board.

- (4) If members of the Supervisory Board are unable to attend meetings, they may have another member of the Supervisory Board submit their written vote. The submission of a written vote shall be deemed to be participation in the passing of the resolution.
- (5) Resolutions of the Supervisory Board shall require the majority of the votes cast. In the event of a tie, the vote of the Chairman of the Supervisory Board or, if he does not attend, the vote of the Deputy Chairman, provided he is a shareholder representative, shall be decisive. A deputy who is an employee representative shall not have the right to a casting vote. Article 10 para. 5 sentence 2 of the Articles of Association shall also apply to the passing of resolutions in the committees of the Supervisory Board of which the Chairman or his deputy, if he is a shareholder representative, is a member.
- (6) Minutes of the meeting of the Supervisory Board shall be prepared and shall be signed by the Chairman of the meeting. The Chairman of the Supervisory Board must sign the records of resolutions adopted outside a meeting by personal attendance pursuant to Article 10 para. 2.

Article 11

Rights and Duties of the Supervisory Board

- (1) The Supervisory Board has the rights and duties defined by mandatory legal provisions and by these Articles of Association.
- (2) The Supervisory Board must supervise the management of the General Partner. The Supervisory Board can inspect and audit all books and records as well as the assets of the Company.
- (3) The General Partner shall regularly report to the Supervisory Board. In addition, the Supervisory Board may request the submission of a report if and when there is an important reason for this, also if this relates to a business transaction at an affiliated undertaking which has become known to the General Partner and may substantially affect the situation of the Company.

- (4) If the Company holds a participation in its General Partner, all rights of the Company under and with respect to this participation (e.g. voting rights, information rights etc.) will be exercised by the Supervisory Board.
- (5) The Supervisory Board is entitled, without a resolution of the General Meeting, to make any amendments to the Articles of Association which concern only their wording.

Article 12

Rules of Procedure of the Supervisory Board

The Supervisory Board shall issue rules of procedure for itself within the framework of applicable mandatory legal provisions and the Articles of Association.

Article 13

Remuneration of Supervisory Board Members

- (1) Each member of the Supervisory Board shall receive a fixed annual remuneration of Euro 13,000.00 for every full financial year, payable after the end of the financial year. For each full financial year, the remuneration shall increase by 10% if the dividend distributed per ordinary share for such financial year (dividend amount according to the resolution of the General Meeting – gross dividend) is one percentage point higher than 3.6% of the proportionate amount of the share capital attributable to each individual no-par value share; intermediate amounts shall be interpolated. If the General Meeting resolves a higher remuneration in view of the annual results, the increased amount shall be applicable. The Chairman of the Supervisory Board shall receive twice and his deputies one and a half times the remuneration of a Supervisory Board member.
- (2) For a membership in the Audit Committee (*Prüfungsausschuss*) of the Supervisory Board a member shall receive an additional remuneration of Euro 10,000.00, while the Chairman shall receive twice the amount.
- (3) If a financial year does not comprise a full calendar year or if a member of the Supervisory Board is on the Supervisory Board only for a part of a financial year, the remuneration shall be paid on a *pro rata temporis* basis. This shall apply accordingly to the membership in the Audit Committee of the Supervisory Board.
- (4) The members of the Supervisory Board shall be reimbursed for the expenses incurred in the exercise of their office, including applicable value-added tax. The Company shall

provide insurance coverage to the members of the Supervisory Board to an extent appropriate with regard to the exercise of the Supervisory Board office.

- (5) If a member of the Supervisory Board is at the same time a member of the Supervisory Board of the General Partner Fresenius Management SE and receives remuneration for his service on the Supervisory Board of Fresenius Management SE, the remuneration pursuant to Article 13 para. 1 sentences 1 to 3 shall be reduced by half. The same applies with respect to the additional part of the remuneration for the Chairman or his deputies pursuant to Article 13 para. 1 sentence 4 if they are at the same time the Chairman or one of his deputies on the Supervisory Board of Fresenius Management SE. If a deputy of the Chairman of the Supervisory Board of the Company is at the same time the Chairman of the Supervisory Board of Fresenius Management SE, Article 13 para. 1 sentence 4 shall not apply to him.

C.

General Meeting

Article 14

Convening the General Meeting

- (1) Unless a shorter period is allowed by law, the General Meeting shall be convened at least 30 days prior to the day of the General Meeting. This convocation period shall be extended by the number of days of the registration period. The day of the General Meeting and the day on which the meeting is convened shall not count for this purpose.
- (2) The General Meeting shall be held at the registered office of the Company or at the place of a German stock exchange or at the registered office of a domestic associated company (*Beteiligungsgesellschaft*).

Article 15

Participation in the General Meeting

- (1) Shareholders who wish to participate in the General Meeting or to exercise their voting right must register for the General Meeting and prove their eligibility. The registration and proof of eligibility must be received by the Company at the address stated for this purpose in the invitation no later than six days prior to the General Meeting. A shorter period to be expressed in days can be fixed in the invitation. The day of the General

Meeting and the day of receipt shall not count for this purpose. Shareholders must register in text form (Sec. 126b BGB) and in German or English.

- (2) For the purpose of proving eligibility under Article 15 para. 1, special proof of ownership issued by the custodian institution in text form in the German or English language shall suffice. The proof regarding shares that are not held in a collective custody account may also be issued by the Company or a credit institution against delivery of the shares. The proof of ownership must relate to the point in time determined by the German Stock Corporation Act for this purpose.
- (3) The members of the General Partner's Management Board and of the Supervisory Board of the Company are to participate personally in the General Meeting. If a member of the Supervisory Board is not able to attend at the place of the General Meeting, he can also participate in the General Meeting by way of video and audio transmission.
- (4) The voting right can be exercised by proxy. The power of attorney must be granted or revoked and proof of such authority must be provided to the Company in text form; sec. 135 German Stock Corporation Act shall remain unaffected. The formal requirements may be eased in the invitation to the General Meeting.
- (5) The General Partner is authorized to provide for shareholders to be allowed to cast their votes also without attending the meeting, in writing or by way of electronic communication (postal voting). The General Partner is also authorized to make procedural rules for this purpose.

Article 16

Date of the Ordinary General Meeting

The General Meeting which resolves on the formal approval of the annual financial statements as well as the ratification of the actions of the General Partner and of the Supervisory Board (*Entlastung*) and on the appropriation of profits (Ordinary General Meeting) shall be held within the first eight months of a financial year.

Article 17

Chairmanship of the General Meeting and Voting

- (1) The General Meeting shall be chaired by the Chairman of the Supervisory Board or, if he is unavailable or at the request of the Chairman of the Supervisory Board, by another member of the Supervisory Board whom the Chairman of the Supervisory Board shall

appoint. If no such appointment is made, another member of the Supervisory Board to be determined by the Supervisory Board shall chair the meeting if the Chairman of the Supervisory Board is unavailable.

- (2) The Chairman shall chair the meeting, determine the order of items to be discussed and of the speakers as well as the manner and form of voting. The Chairman may determine appropriate restrictions of the speaking time, of the question time, and of the combined speaking and question time at the beginning or during the General Meeting, regarding the discussions on individual items of the agenda, as well as for individual speaking and question contributions. He shall order the end of the debate to the extent and as soon as this is necessary for an orderly conduct of the General Meeting.
- (3) The resolutions of the General Meeting shall be passed by simple majority of the votes cast unless mandatory provisions of the law or of the Articles of Association require a greater majority. In cases where the law prescribes – in a non-mandatory form – a particular majority of the share capital represented during the passing of the resolution, the simple majority of the represented share capital shall suffice. If the voting results in a tie, a motion shall be deemed rejected.
- (4) Each ordinary share grants one vote in the General Meeting.
- (5) The General Partner as well as the Chairman during the General Meeting may determine that the General Meeting should be partly or completely broadcast by video and/or audio transmission. The transmission can also be effected in any other way which provides unrestricted access to the general public.
- (6) Resolutions of the General Meeting require the approval of the General Partner to the extent the approval of the general partners and the limited partners would be required in case of a limited partnership. Where a resolution of the General Meeting requires the approval of the General Partner, the General Partner shall declare at the General Meeting whether it approves or rejects the resolution.

IV.

Annual Financial Statements and Appropriation of Profits

Article 18

Financial Year, Accounting

- (1) The financial year shall be the calendar year.

- (2) The General Partner shall prepare the annual financial statements and the management report for the respective previous financial year within the first three months of the financial year, however no later than within the maximum period set by mandatory legal provisions, and submit them to the auditors. In preparing the financial statements, the General Partner can transfer a part of the annual profit not exceeding half of the profit to other profit reserves.
- (3) The Supervisory Board mandates the auditor for the audit. The General Partner shall be given an opportunity to comment prior to the submission of the auditor's audit report to the Supervisory Board.
- (4) At the same time as the submission of the annual financial statements and the management report as well as the consolidated financial statements and the group management report, the General Partner shall submit to the Supervisory Board its proposal for the appropriation of the distributable profit.
- (5) The annual financial statements shall be formally approved by resolution of the General Meeting with the consent of the General Partner.
- (6) Article 18 para. 2 and para. 3 shall apply analogously to the consolidated financial statements and a group management report if sec. 170 para. 1 sentence 2 German Stock Corporation Act is applicable to the Company as a parent company.

Article 19

Appropriation of Profits

The General Meeting shall resolve on the appropriation of the distributable profit.

V.

Miscellaneous

Article 20

Severability

Should any of the provisions of these Articles of Association entirely or partly be or later become ineffective, or should these Articles of Association turn out to contain a gap, the validity of the remaining provisions shall not be affected thereby. The parties shall replace any such ineffective provision by, or fill any such gap with, a reasonable provision which to the extent legally possible comes closest to the intent and purpose of the Articles of Association.

Article 21
Formation Expenses

- (1) The Company shall bear the formation expenses (conversion costs) in connection with the formation of Fresenius AG, especially any corporate taxes, commercial register and notarial fees, notification costs and the costs for the conversion audit up to a total amount of DM 5,790.
- (2) In connection with the formation of Fresenius AG, the Company shall also bear the formation expenses (costs of the capital increase), especially any corporate taxes, commercial register and notarial fees, notification costs, costs for the formation audit (audit of contributions in kind and capital increase) and consulting fees up to a total amount of DM 433,000.
- (3) With regard to the conversion of Fresenius AG into Fresenius SE, the formation expenses up to an amount of Euro 3,000,000 shall be borne by the Company.
- (4) In connection with the conversion of Fresenius SE into Fresenius SE & Co. KGaA, the Company shall bear the formation expenses up to a total amount of up to Euro 7,000,000.

Annex 4: Statutes of Fresenius Management SE

I.

General Provisions

Article 1

Corporate Name and Registered Office

- (1) The Company is a European Company having the corporate name

Fresenius Management SE

- (2) The registered office of the Company is in Bad Homburg vor der Höhe.

Article 2

Corporate Purpose

- (1) The corporate purpose of the Company is to participate in Fresenius SE & Co. KGaA as its General Partner, as well as the management of Fresenius SE & Co. KGaA.
- (2) The corporate purpose of Fresenius SE & Co. KGaA is:
- (a) the development, manufacture and distribution of, as well as trading in, products, systems and processes in the health care sector,
 - (b) the construction, development and operation of medical and curative facilities as well as of hospitals,
 - (c) consulting in the medical and pharmaceutical fields as well as scientific information and documentation.
- (3) The Company is entitled to enter into any and all business transactions and to take any and all measures that are deemed necessary or useful in accomplishing the corporate purpose of the Company.

Article 3
Notifications

All notifications of the Company shall be published in the electronic Federal Gazette (*elektronischer Bundesanzeiger*).

II.
Share Capital and Shares

Article 4
Share Capital

The share capital (*Grundkapital*) of the Company amounts to Euro 1,500,000 (in words: one million five hundred thousand Euros) and is divided into 1,500,000 (in words: one million five hundred thousand) registered shares without par value.

Article 5
Shares

- (1) The Company is entitled to issue registered share certificates, each evidencing a plurality of shares (collective share certificates). The shareholders' right to have their individual shares represented by certificates is excluded.
- (2) The Management Board, with the approval of the Supervisory Board, shall determine the form of the share certificates and the form of dividend coupons and renewal coupons.

III.
Constitution of the Company

Article 6
Corporate Bodies

The corporate bodies of the Company are:

- the Management Board,
- the Supervisory Board, and
- the General Meeting.

A.

Management Board

Article 7

Composition

- (1) The Management Board shall consist of at least two persons. The Supervisory Board may fix a higher number. It may appoint a Chairman of the Management Board, as well as deputy members of the Management Board.
- (2) The members of the Management Board are appointed by the Supervisory Board for a maximum term of five years. Reappointments are permissible.
- (3) The resolutions of the Management Board shall be adopted by a simple majority of the votes unless statutory law requires otherwise. If a Chairman of the Management Board has been appointed, he shall have the casting vote in case of a parity of votes (tie).
- (4) If a Chairman of the Management Board has been appointed, he shall have the right to object to a Management Board resolution (veto right). If the Chairman of the Management Board exercises his veto right, the resolution shall be deemed to not have been passed.

Article 8

Representation

- (1) The Company shall be represented by two Management Board members or by one Management Board member jointly with a holder of a general power of attorney (*Prokura*). Such a general power of attorney may only be granted in the form of a joint power of attorney (*Gesamtprokura*) subject to the restrictions set out under Article 8 para. 3.
- (2) The Supervisory Board may grant the right to solely represent the Company (*Einzelvertretung*) to an individual or several members of the Management Board and may revoke such a right at any time.
- (3) The express prior consent of the Supervisory Board is required for the following management measures of the Company in its capacity as the General Partner of Fresenius SE & Co. KGaA:
 - a) the acquisition, disposal and encumbrance of real property and equivalent rights, if in an individual case the amount exceeds Euro 15,000,000.00;

- b) the adoption of new and the discontinuation of existing lines of business;
 - c) the granting of consent to the undertaking of any of the above legal actions by an associated company (*Beteiligungsgesellschaft*).
- (4) Notwithstanding the collective responsibility of the Management Board, the Supervisory Board may assign the duties of the Management Board to individual members of the Management Board, in particular in the form of rules of procedure for the Management Board and, within the scope of mandatory legal provisions and these Statutes, determine the scope of the relationship among the members of the Management Board and towards the Company and define, by way of an extension of Article 8 para. 3, the actions for which the Management Board shall require the express prior consent of the Supervisory Board. The Supervisory Board may also grant consent in accordance with Article 8 para. 3 in a general manner, for limited or unlimited periods, as well as to individual members of the Management Board, in particular to the Chairman of the Management Board. The Supervisory Board may at any time extend, restrict or revoke the rules of procedure for the Management Board.

B.

Supervisory Board

Article 9

Election and Term of Office of the Supervisory Board

- (1) The Supervisory Board shall consist of six members. All six members shall be elected by the General Meeting.
- (2) Unless the General Meeting expressly resolves otherwise, the members of the Supervisory Board shall be appointed for a term ending with the close of the Ordinary General Meeting which resolves on the ratification of actions for the fourth financial year after the term of office commenced. The year in which the term of office commences shall not count for this calculation. The term of office must not exceed six years. Supervisory Board members may be reappointed once or several times.
- (3) If a member appointed by the General Meeting ceases to be a member of the Supervisory Board before his term of office expires, a new member is to be appointed at the next General Meeting in his place. The newly appointed member shall hold office for the withdrawing member's remaining term of office.

- (4) The General Meeting may, for the Supervisory Board members to be elected by it, appoint substitute members who will become members of the Supervisory Board in a specific order to be determined at the time of their appointment, if Supervisory Board members cease to be members before the end of their term of office. Their position as substitute members shall revive if and when the General Meeting appoints a new member for a former member who left office and was replaced by the respective substitute member. The substitute member's term of office is limited to the period until the close of the General Meeting at which an appointment according to Article 9 para. 3 takes place.
- (5) Each member of the Supervisory Board may resign from office, even without good cause, by giving one month's written notice to the Chairman of the Supervisory Board. The Chairman of the Supervisory Board shall give notice of his resignation from office to his deputy.

Article 10

Constitution of the Supervisory Board

- (1) Following the General Meeting at which a new Supervisory Board has been appointed, the Supervisory Board shall hold a meeting without special notice in which the Supervisory Board shall elect, if necessary, a Chairman and a deputy from among its members for the duration of their term of office on the Supervisory Board.
- (2) If the Chairman or his deputy should cease to hold office before the expiry of his term of office, the Supervisory Board shall promptly (*unverzüglich*) hold a new election to replace the former member.
- (3) The election of the Chairman of the Supervisory Board shall be chaired by the oldest member of the Supervisory Board in terms of age.

Article 11

Meetings and Resolutions of the Supervisory Board

- (1) The meetings of the Supervisory Board must be convened by the Chairman in writing subject to a notice period of 14 days. The individual items of the agenda must be stated in the invitation to the meeting. In urgent cases, the period may be shortened and the meeting may be convened by telegram, telex, telefax, other means of electronic communication (e-mail etc.) or telephone.

- (2) As a rule, the meetings of the Supervisory Board shall be held in meetings personally attended by the members (*Präsenzsitzungen*). It is, however, permissible that meetings of the Supervisory Board be held by way of a video or telephone conference, or that individual members of the Supervisory Board participate by means of video transmission or telephone and that in such cases the passing of resolutions takes place by means of video or telephone conference or by means of video transmission or telephone, respectively. Outside of meetings, resolutions in text form (sec. 126b BGB, especially in writing, by telegram, telex, telefax, by other means of electronic communication (e-mail etc.)) or by telephone are admissible if the Chairman of the Supervisory Board or, in the event of his being unavailable, his deputy directs to do so.
- (3) The Supervisory Board shall constitute a quorum if half of the total number of members of which it must consist take part in the voting.
- (4) If members of the Supervisory Board are unable to attend meetings, they may have another member of the Supervisory Board submit their written vote. The submission of a written vote shall be deemed to be participation in the passing of the resolution.
- (5) Resolutions of the Supervisory Board require the majority of the votes cast, unless otherwise provided for by law or by these Statutes. In the event of a tie, a new vote on the same issue is to be taken at the request either of the Chairman of the Supervisory Board or of another Supervisory Board member. If this vote also results in a tie, the Chairman of the Supervisory Board shall have two votes, also – to the extent legally admissible – in committees of the Supervisory Board of which he is a member. Article 11 para. 4 shall apply with regard to the casting of the second vote. The Deputy Chairman of the Supervisory Board shall not have a second vote.
- (6) Minutes of the meetings of the Supervisory Board shall be prepared and shall be signed by the Chairman of the meeting. The Chairman of the Supervisory Board must sign the records of resolutions passed outside a meeting by personal attendance pursuant to Article 11 para. 2.

Article 12

Rights and Duties of the Supervisory Board

- (1) The Supervisory Board has the rights and duties defined by mandatory legal provisions and by these Statutes.
- (2) The Supervisory Board shall issue rules of procedure for the Management Board in accordance with Article 8 para. 4.

- (3) The Supervisory Board is entitled, without a resolution of the General Meeting, to make any amendments to the Statutes which concern only their wording.

Article 13

Rules of Procedure of the Supervisory Board

The Supervisory Board shall issue rules of procedure for itself within the framework of the mandatory legal provisions and the Statutes.

Article 14

Remuneration of the Supervisory Board

- (1) Each member of the Supervisory Board shall receive a fixed annual remuneration of Euro 13,000.00 for every full financial year, payable after the end of the financial year. For each full financial year, the remuneration shall increase by 10% if the dividend distributed per ordinary share of Fresenius SE & Co. KGaA for such financial year (dividend amount according to the resolution of the General Meeting of Fresenius SE & Co. KGaA – gross dividend) is one percentage point higher than 3.6% of the proportionate amount of the share capital attributable to each individual no-par value share of Fresenius SE & Co. KGaA; intermediate amounts shall be interpolated. If the General Meeting resolves a higher remuneration in view of the annual results of Fresenius SE & Co. KGaA, the increased amount shall be applicable. The Chairman of the Supervisory Board shall receive twice and his deputy one and a half times the remuneration of a Supervisory Board member.
- (2) If a financial year does not comprise a full calendar year or if a member of the Supervisory Board is on the Supervisory Board only for a part of a financial year, the remuneration shall be paid on a *pro rata temporis* basis.
- (3) The members of the Supervisory Board shall be reimbursed for the expenses incurred in the exercise of their office, including applicable value-added tax. The Company shall provide insurance coverage to the members of the Supervisory Board to an extent appropriate with regard to the exercise of the Supervisory Board office.
- (4) If a member of the Supervisory Board is at the same time a member of the Supervisory Board of Fresenius SE & Co. KGaA and receives remuneration for his service on the Supervisory Board of Fresenius SE & Co. KGaA, the remuneration pursuant to Article 14 para. 1 sentences 1 to 3 shall be reduced by half. The same applies with respect to the

additional part of the remuneration for the Chairman and his deputy pursuant to Article 14 para. 1 sentence 4 if he is at the same time the Chairman or, as the case may be, his deputy on the Supervisory Board of Fresenius SE & Co. KGaA. If the Deputy Chairman of the Supervisory Board of the Company is at the same time the Chairman of the Supervisory Board of Fresenius SE & Co. KGaA, Article 14 para. 1 sentence 4 shall not apply to him.

C.

General Meeting

Article 15

Convening the General Meeting

- (1) The General Meeting shall be held at the registered office of the Company or in a German city with more than 50,000 inhabitants.
- (2) In addition to the Management Board and the other persons entitled by virtue of the law to do so, the Chairman of the Supervisory Board shall have the right to convene the General Meeting.
- (3) The General Meeting shall be convened by means of a publication in the electronic Federal Gazette. If the names of all shareholders are known by the Company, the General Meeting can also be convened by registered letter to the shareholders; the day on which the letter is mailed shall be deemed to be the day of its publication.
- (4) Unless a shorter period is allowed by law, the General Meeting shall be convened at least thirty days prior to the day of the General Meeting; the day of the publication and the day of the General Meeting shall not count for this purpose.
- (5) The General Meeting can adopt resolutions without observing the provisions in secs. 121 to 128 German Stock Corporation Act if all shareholders are present or represented and no shareholder objects to such passing of a resolution.

Article 16

Date of the Ordinary General Meeting

The General Meeting which receives the approved annual financial statements or, as the case may be, which resolves on the formal approval of the annual financial statements, as well as the ratification of the actions of the Management Board and the Supervisory Board (*Entlastung*) and

the appropriation of profits (Ordinary General Meeting) shall be held within the first six months of a financial year.

Article 17

Chairmanship of the General Meeting and Voting

- (1) The General Meeting shall be chaired by the Chairman of the Supervisory Board or, if he is unavailable or at the request of the Chairman of the Supervisory Board, by another member of the Supervisory Board whom the Chairman of the Supervisory Board shall appoint. If no such appointment is made, another member of the Supervisory Board to be determined by the Supervisory Board shall chair the meeting if the Chairman of the Supervisory Board is unavailable.
- (2) The Chairman shall chair the meeting and determine the order of items to be discussed, as well as the manner and form of voting.
- (3) The majorities of the votes cast and the majorities of the share capital represented in the voting that are necessary for the passing of resolutions of the General Meeting shall be determined by the legal provisions. In the event of a tie, a motion shall be deemed to have been rejected.
- (4) Each share grants one vote in the General Meeting.
- (5) If the right to vote is to be exercised by proxy, the text form (sec. 126b BGB) shall suffice for granting, revoking and proving the power of attorney.

IV.

Miscellaneous

Article 18

Financial Year, Rendering of Accounts

- (1) The financial year shall be the calendar year.
- (2) The Management Board shall prepare the annual financial statements and the management report for the respective previous financial year within the first three months of the financial year, however no later than within the maximum period set by mandatory legal provisions, and submit them promptly to the Supervisory Board.

- (3) At the same time, the Management Board shall submit to the Supervisory Board the proposal which it intends to submit to the General Meeting concerning the appropriation of profits.
- (4) Article 18 para. 2 shall apply analogously to the consolidated financial statements and a group management report if sec. 170 para. 1 sentence 2 German Stock Corporation Act is applicable to the Company as a parent company.

Article 19

Formation Expenses

The formation expenses (notarial and court fees, publication costs) shall be borne by the Company up to an amount of Euro 1,500.00 (in words: one thousand five hundred Euro).

Annex 5: Declaration of Conformity of Fresenius SE

**Declaration by the Management Board and Supervisory Board
of Fresenius SE
on the recommendations of the
“Government Commission on the German Corporate Governance Code”
as amended on 18 June 2009 pursuant to Section 161 of the
German Stock Corporation Act (AktG)**

The Management Board and the Supervisory Board of Fresenius SE declare that the recommendations of the “Government Commission on the German Corporate Governance Code” published by the Federal Ministry of Justice (Justizministerium) in the official section of the electronic Federal Gazette (Bundesanzeiger) are being complied with and that they were complied with in the past. The Management Board and the Supervisory Board also intend to follow the recommendations of the German Corporate Governance Code in the future. Only the following recommendations have not been or are not being adhered to:

- Pursuant to clause 5.4.1 of the Code, an age limit should be determined for the members of the Supervisory Board. According to clause 5.1.2 paragraph 2, the same should apply to the members of the Management Board. As in the past, Fresenius will refrain from introducing an age limit for members of the Management Board and the Supervisory Board, as this would generally limit the selection of qualified candidates.
- Regarding the composition of the Management Board and in respect of the proposals for the election of members to the Supervisory Board (clauses 5.1.2 paragraph 1 and 5.4.1 of the Code), the Supervisory Board of Fresenius SE will, in future, continue to take diversity into account. Already now, the company’s international engagement is borne in mind for both bodies.
- Pursuant to clause 4.2.3 paragraph 4 of the Code, upon termination of an employment agreement for a Management Board member, it should be ensured that the payments to the Management Board member whose service for the company is prematurely terminated shall not, including all ancillary payments, exceed the value of two annual remunerations (compensation cap) and shall remunerate for no more than the remaining term of the service agreement. The service agreements of the Fresenius SE Management Board members do not include a provision dealing with the early termination of service for the company without cause. Such compensation provision would contradict the concept to conclude the service agreements with the Management Board members for the period of their appointment, such concept practiced by Fresenius since long and in accordance with the German Stock

Corporation Act (Aktiengesetz). Applying this concept, any early termination of the service agreement requires cause.

- Pursuant to clause 3.8 paragraph 2 of the Code, any D&O insurance for the Supervisory Board should provide for a deductible which reflects the mandatory deductible for Management Board members as introduced by the Act on the Appropriateness of Executive Board Compensation (VorstAG). Such deductible amounts to 10% of the damage, but up to a maximum amount of one and a half times the fixed annual remuneration. The D&O insurance currently taken out for the Fresenius group is a group insurance for a multitude of individuals which does not contain a deductible in the recommended amount. For the Management Board of Fresenius SE, the next periodic renewal of the D&O insurance in July 1, 2010 will provide for a deductible that complies with the requirements of the Act on the Appropriateness of Executive Board Compensation (VorstAG). It has been decided to introduce a corresponding deductible also for the Supervisory Board as from July 1, 2010.

Since the delivery of the last declaration of conformity in May 2009 with the in May 2009 declared and explained divergences from the recommendations pursuant to clauses 4.2.2 paragraph 1, 4.2.3 paragraph 3, 4.2.3 paragraph 4, 5.1.2 paragraph 2 and 5.4.1, Fresenius SE has complied with the recommendations of the “Government Commission on the German Corporate Governance Code” as amended on 6 June 2008.

Bad Homburg, March 2010

Supervisory Board

Management Board

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