

**General Meeting of Fresenius SE & Co. KGaA on 17 May 2013**

**Explanatory Details pursuant to Section 121 Para. 3 Sentence 3 No. 3 of the German Stock Corporation Act regarding the Rights of Shareholders as set forth in**

**Sections 122 Para. 2, 126 Para. 1, 127 and 131 Para. 1 of the German Stock Corporation Act (each in conjunction with Section 278 Para. 3 of the German Stock Corporation Act)**

The invitation to the General Meeting already contains information regarding the rights of shareholders pursuant to sections 122 para. 2, 126 para. 1, 127 and 131 para. 1 of the German Stock Corporation Act (each in conjunction with section 278 para. 3 of the German Stock Corporation Act). The following information shall serve as a further explanation in respect of such provisions.

**I. Addition to the Agenda Pursuant to Section 122 Para. 2 in Conjunction with Section 278 Para. 3 of the German Stock Corporation Act**

Shareholders whose aggregate shareholding equals or exceeds 5% of the share capital or a proportionate amount of EUR 500,000 of the share capital may request that one or several items be included in the agenda. Since, in the case of Fresenius SE & Co. KGaA, the proportionate amount of EUR 500,000 is lower than 5% of the share capital, it is sufficient if the shareholders requesting an addition to the agenda reach the proportionate amount of EUR 500,000. This amount equals 500,000 non-par value shares of the Company with a proportionate amount of the subscribed capital of EUR 1.00 per share. The applicants have to provide a certificate proving that the applicants reach this quorum. In this regard, please note the holding period pursuant to sections 122 para. 2 sentence 1, para. 1 sentence 3, 142 para. 2 sentence 2 in conjunction with section 278 para. 3 of the German Stock Corporation Act.

The request for an addition to the agenda shall be directed in writing to:

Fresenius SE & Co. KGaA  
The Management Board of the General Partner  
Fresenius Management SE  
Attn. Dr. Jürgen Götz

Else-Kröner-Straße 1  
61352 Bad Homburg v.d.H.

The request must be received by the Company at the above mentioned address at least 30 days prior to the General Meeting. Thus, the last permissible day of receipt is 16 April 2013, 24:00 hrs CEST. Each new item must be substantiated or accompanied by a proposal for resolution.

Additions to the agenda which are to be published and have not already been published together with the convening notice will be published in the Federal Gazette (*Bundesanzeiger*) without undue delay following the receipt of the request and transmitted for publication to such media which are reasonably expected to disseminate the information in the entire European Union. Such additions to the agenda – as well as the admissible request for an addition itself – are also published on the website [www.fresenius.com](http://www.fresenius.com) in the area Investor Relations/Annual General Meeting. The Company will notify about the amended agenda in accordance with section 125 para. 1 sentence 3, para. 2 and 3 of the German Stock Corporation Act in conjunction with section 278 para. 3 of the German Stock Corporation Act.

These shareholder rights are based on the following provisions of the German Stock Corporation Act (excerpts):

Section 122 para. 1 and para. 2 of the German Stock Corporation Act

- (1) A general meeting shall be convened if shareholders having an aggregate shareholding amounting to one-twentieth of the share capital request this in writing, stating the purpose and the reasons therefor; the request shall be directed to the management board. The articles of association may provide that the right to request calling of a general meeting shall require a different form and the holding of a lower portion of the share capital. Section 142 para. 2 sentence 2 shall apply analogously.
- (2) In the same way, shareholders with an aggregate shareholding of one-twentieth of the share capital or the proportionate amount of EUR 500,000 may request that items be put on the agenda and be published. Each new item must be substantiated or accompanied by a proposal for resolution. The request within the meaning of sentence 1 must have been received by the company at least 24

days, and in the case of listed companies at least 30 days, prior to the meeting; for the purpose of calculating the above time period, the day of receipt shall not be counted.

Section 142 para. 2 sent. 2 of the German Stock Corporation Act

The applicants must furnish evidence that they have been the holders of the shares for at least three months prior to the date of the general meeting and will continue to hold the shares until a decision on the petition is rendered.

## **II. Motions and Election Proposals by Shareholders (Sections 126 Para. 1 and 127 German Stock Corporation Act)**

Pursuant to section 126 para. 1 of the German Stock Corporation Act in conjunction with section 278 para. 3 of the German Stock Corporation Act, counter motions of shareholders against a proposal of the general partner and/or the Supervisory Board with respect to a certain item on the agenda, including the shareholder's name, a statement of grounds for the motion and any comments of the management, if any, are to be made available on the website of the Company, provided that the shareholder has sent the counter motion to the address set out below no later than 14 days prior to the General Meeting of the Company. Thus, the last permissible day of receipt is 2 May 2013, 24:00 hrs CEST.

A counter motion and the grounds therefor need not be made available if one of the exclusions pursuant to section 126 para. 2 of the German Stock Corporation Act in conjunction with section 278 para. 3 of the German Stock Corporation Act exists. The provisions of section 126 para. 2 German Stock Corporation Act read as follows:

- (2) A counter motion and the grounds therefor need not be made available where
  1. the management board would become criminally liable by reason of making available the counter motion and the grounds therefor,

2. the counter motion would result in a resolution of the general meeting which is illegal or violates the articles of association,
3. the grounds contain statements which are manifestly false or misleading in material respects or which are libellous,
4. a counter motion of such shareholder based on the same facts has already been made available regarding a general meeting of the Company pursuant to section 125,
5. the same counter motion of such shareholder on essentially identical grounds has already been made available pursuant to section 125 in respect of at least two general meetings of the company within the past five years and at such general meetings less than one-twentieth of the share capital represented voted in favour of such counter motion,
6. the shareholder indicates that he will neither attend nor be represented at the general meeting, or
7. the shareholder failed within the past two years at two general meetings to make or cause to be made on his behalf a counter motion communicated by him.

The statement of grounds need not be made available if it exceeds a total of 5,000 characters.

Pursuant to section 126 para. 3 of the German Stock Corporation Act in conjunction with section 278 para. 3 of the German Stock Corporation Act the general partner may combine several counter motions and their statements of grounds if several shareholders make counter motions in respect of the same subject matter to be resolved.

The right of every shareholder to make counter motions regarding the various agenda items during the General Meeting even without prior communication to the Company remains unaffected. This right results from section 124 para. 4 sentence 2 in conjunction with section 278 para. 3 of the German Stock Corporation Act. According to this provision, no publication is required for the adoption of resolutions on motions made in respect of agenda items. Section 126 of the German Stock Corporation Act in conjunction with section 278 para. 3 of the German Stock Corporation Act only stipulates the conditions under which the Company is obliged to make counter motions communicated by shareholders prior to a general meeting available.

We point out 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 meeting.

The above explanations apply accordingly to election proposals regarding a member of the Supervisory Board or an external auditor to be elected at the General Meeting (section 127 of the German Stock Corporation Act in conjunction with section 278 para. 3 of the German Stock Corporation Act). Unlike counter motions, shareholders do not have to provide a statement of grounds for election proposals. Election proposals do not have to be made available in the cases provided for in section 126 para. 2 of the German Stock Corporation Act and if they do not contain the information pursuant to section 124 para. 3 sentence 4 and section 125 para. 1 sentence 5 of the German Stock Corporation Act in conjunction with section 278 para. 3 of the German Stock Corporation Act. Accordingly, an admissible proposal for the election of a natural person has to contain the name, the exercised profession and the place of residence of the nominee, in case of a proposal for the election of a company the corporate name and registered office (section 124 para. 3 sentence 4 of the German Stock Corporation Act in conjunction with section 278 para. 3 of the German Stock Corporation Act). Furthermore, 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 has to be added; information on their membership in comparable domestic and foreign supervisory bodies of business undertakings should be added (section 125 para. 1 sentence 5 of the German Stock Corporation Act in conjunction with section 278 para. 3 of the German Stock Corporation Act).

Any shareholder motions (including the statement of grounds therefor) and election proposals pursuant to section 126 para. 1 and section 127 in conjunction with section 278 para. 3 of the German Stock Corporation Act shall be sent exclusively to:

Fresenius SE & Co. KGaA  
Investor Relations  
Else-Kröner-Straße 1  
61352 Bad Homburg v.d.H.  
Telefax: +49 (0) 61 72 / 608-24 88

E-mail to: [ir-fre@fresenius.com](mailto:ir-fre@fresenius.com)

Any motions and proposals for election of shareholders which are to be made available (including the shareholder's name and – in case of motions – the statement of grounds therefor) will be made available after their receipt on the website [www.fresenius.com](http://www.fresenius.com) under Investor Relations/Annual General Meeting. Any comments of the management, if any, will also be published on that website.

The above shareholder rights are based on the following provisions of the German Stock Corporation Act (in addition to the provisions of section 126 para. 2 German Stock Corporation Act which have already been cited above).

#### Section 126 para. 1 and 3 of the German Stock Corporation Act

- (1) Motions by 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 to be notified in accordance with section 125 para. 1 to 3 German Stock Corporation Act under the conditions set forth therein, provided that the shareholder has sent to the relevant address stated in the convening notice a counter motion against a proposal of the management board and the supervisory board with respect to a particular item of the agenda, including a statement of grounds for the counter motion, no later than 14 days prior to the meeting of the company. For the purposes of calculating such time period, the day of receipt shall not be counted. In the case of listed companies, the aforementioned information must be made available on the website of the company. Section 125 para. 3 shall apply mutatis mutandis.
- (3) If several shareholders make counter motions in respect of the same subject matter to be resolved, the management board may combine such counter motions and the respective statements of grounds.

#### Section 127 of the German Stock Corporation Act

Section 126 shall apply analogously to a proposal by a shareholder for the election of members of the supervisory board or external auditors. Such proposal need not be substantiated. The management board is under no obligation to make available the proposal unless it contains the information required under section 124 para. 3 sentence 3<sup>1</sup> and section 125 para. 1 sentence 5.

### **III. Shareholders' Information Rights (Section 131 Para. 1 of the German Stock Corporation Act in conjunction with section 278 para. 3 of the German Stock Corporation Act)**

In the General Meeting, each shareholder and shareholder's representative may request from the general partner information on 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. section 131 para. 1 of the German Stock Corporation Act in conjunction with section 278 para. 3 of the German Stock Corporation Act). The information right also extends to the Company's legal and business relationships with any affiliated company as well as to the situation of the Group and the companies included in the consolidated financial statements.

Requests for information will in principle be made orally at the General Meeting during the discussion.

The information shall comply with the principles of conscientious and accurate accounting. The general partner may refuse to provide information under the conditions set forth in section 131 para. 3 German Stock Corporation Act. The provisions of section 131 para. 3 of the German Stock Corporation Act read as follows:

- (3) The management board may refuse to provide information
  1. to the extent that the provision of such information is, according to sound business judgement, likely to cause material damage to the company or an affiliated company;

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<sup>1</sup> The law refers to section 124 para. 3 sentence 3 of the German Stock Corporation Act. The correct reference should be section 124 para. 3 sentence 4 of the German Stock Corporation Act.

2. to the extent that such information relates to tax valuations or the amount of certain tax liabilities;
3. regarding the difference between the value at which items are shown in the annual balance sheet and the higher market value of such items, unless the general meeting is to approve the annual financial statements;
4. regarding the accounting and valuation methods, to the extent that disclosure of such methods in the notes suffices to provide a fair view of the actual asset, financial and profit situation of the company within the meaning of section 264 para. 2 of the German Commercial Code; the foregoing shall not apply if the general meeting is to approve the annual financial statements;
5. to the extent that the provision of the information would render the management board criminally liable;
6. to the extent that, in the case of credit institutions or financial services institutions, information on accounting and valuation methods applied and set-offs made need not be given in the annual financial statements, the annual report, the consolidated financial statements or the consolidated annual report;
7. to the extent that the information is continuously accessible on the website of the company for a period of at least seven days prior to and during the general meeting.

The provision of information may not be refused for any other reasons.

Pursuant to Article 17 para. 2 of the Articles of Association, the chairman of the meeting may reasonably restrict the time for shareholders' question right and right to speak; in particular, he has the right to determine a reasonable time frame for the discussions on the individual agenda items, or for individual questions and statements at the beginning or during the General Meeting. However, the shareholders' right to receive answers to questions already raised under the conditions set out in section 131 para. 1 of the German Stock Corporation Act remains unaffected by those restrictions of the question right and the right to speak.

These shareholder rights are based on the following provisions of the German Stock Corporation Act and the Articles of Association (in addition to the



provisions of section 131 para. 3 of the German Stock Corporation Act which have already been cited above):

Section 131 para. 1, 2, 4 and 5 of the German Stock Corporation Act

- (1) 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. The duty to provide information shall also extend to the company's legal and business relations with any affiliated company. If a company makes use of the simplified procedure pursuant to section 266 para. 1 sentence 2, section 276 or section 288 of the German Commercial Code, each shareholder may request that the annual financial statements be presented to him at the general meeting on such annual financial statements in the form that would have been used if such provisions on simplified procedure had not been applied. The duty of the management board of a parent company (section 290 para. 1, 2 of the German Commercial Code) to provide information at the general meeting in which the consolidated financial statements and the consolidated annual report are presented shall also extend to the situation of the group and the companies included in the consolidated financial statements.
- (2) The information provided shall comply with the principles of conscientious and accurate accounting. The articles of association or the rules of procedure pursuant to section 129 German Stock Corporation Act may entitle the chairman of the meeting to set a reasonable time limit for shareholders' questions or speeches, and to determine more detailed rules in this respect.
- (4) If information has been provided to a shareholder outside a general meeting by reason of its status as a shareholder, such information shall be provided to any other shareholder at the general meeting upon request of the respective shareholder, even if such information is not necessary for a proper evaluation of the agenda item. The Management Board may not refuse to provide such information on the grounds of Paragraph (3) sentence 1 Nos. 1 to 4. Sentences 1 and 2 shall not apply if a subsidiary (section 290 para. 1, 2 of the German Commercial Code), a joint venture (section 310 para. 1 of the German Commercial Code) or an associated company (section

311 para. 1 German Commercial Code) provides information to a parent company (section 290 para. 1, 2 German Commercial Code) for purposes of the inclusion of the company into the consolidated financial statements of the parent company and such information is needed for such purposes.

- (5) A shareholder who has been denied information may request that its question and the reason for which the information was denied be recorded in the minutes of the meeting.

Article 17 para. 2 of the Articles of Association of the Company reads as follows:

- (2) The chairman chairs the meeting, determines the order in which the items on the agenda are discussed as well as the order of the speakers and the nature and form of voting. The chairman may reasonably restrict the speaking time, the time for shareholders to ask questions, and the aggregate speaking and questioning time at the beginning or during the General Meeting, for individual items on the agenda and for individual speakers and questions. He orders the close of the deliberations insofar and as soon as that is necessary for the proper conduct of the General Meeting.