

Explanatory Report of the Management Board of Fresenius SE on the Statements pursuant to Sections 289 Para. 4 and 5, Section 315 Para. 2 No. 5 and Para. 4 of the German Commercial Code (*Handelsgesetzbuch – HGB*)

I. Information pursuant to Section 289 Para. 4, Section 315 Para. 4 German Commercial Code

1. Subscribed Capital, Rights and Obligations attaching to Shares

As at 31 December 2009, Fresenius SE had a subscribed capital of € 161,315,376.00, divided into 80,657,688 voting ordinary shares (50%) and 80,657,688 non-voting preference shares (50%). The shares of Fresenius SE are non-par-value bearer shares. Each share represents a proportionate amount of the share capital of € 1.00. Shareholders' rights are regulated by Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European Company (SE) (SE Regulation) and the German Stock Corporation Act (*Aktiengesetz – AktG*). Additionally, the statutes of Fresenius SE (Section 20 Para. 2 to 4) contain the following three provisions for the holders of non-voting preference shares:

- From retained earnings for the year they will receive a € 0.01 higher dividend than for an ordinary share and a minimum dividend of € 0.02 per preference share.
- The minimum dividend payable on preference shares takes precedence over payment of a dividend on ordinary shares.
- If the retained earnings of one or more fiscal years are not sufficient to pay a dividend of € 0.02 per preference share, the amounts not distributed will be paid in arrears without interest from the retained earnings in subsequent fiscal years, after distributing the minimum preference dividend for those fiscal years and before payment of a dividend on the ordinary shares. The deferred payment right is a constituent of the share of profits from retained earnings of that fiscal year for which the deferred payment is made.

2. Restrictions on Voting Rights and on the Transfer of Securities

In principle, the preference shares issued by the Company do not grant any voting right. An exception applies if the preferential amount is not paid or not fully paid in a year and the amount in arrears is not fully paid in the next year in addition to the full preferential amount

for that year. In this case, the preferential shareholders have the voting right until the arrears have been fully paid.

Apart from that, the shares in Fresenius SE are not subject to any restrictions on voting rights or on the transfer of securities under its statutes or by law at the balance sheet date. No restrictions on shareholders' voting rights resulting from agreements between shareholders are known to the Management Board.

3. Holdings relating to more than Ten Percent of Voting Rights

Direct and indirect ownership interests in Fresenius SE are listed on page 162 of the Annual Report 2009 in the Notes. The Else Kröner-Fresenius-Foundation, being the largest shareholder, informed Fresenius SE on December 23, 2009, that it holds 46,871,154 ordinary shares of Fresenius SE. This corresponds to a voting interest of 58.11%. No other direct or indirect holdings in the Company's share capital that exceed 10 percent of the voting rights are known to the Management Board.

4. Securities carrying Special Rights granting Controlling Powers

None of the shares issued by the Company carry special rights granting their holders any controlling powers.

5. How Rights Are Exercised on Shares under an Employee Share Scheme if not Directly by Employees

No information is available on the exercise of voting rights on shares under an employee share scheme where the rights are not directly exercised by employees.

6. Appointment and Replacement of Members of the Management Board; Amendments of the Statutes

The appointment and the replacement of members of the Management Board are governed by the legal provisions in Article 39 SE Regulation, Section 16 SEAG and Sections 84, 85 German Stock Corporation Act as well as Section 7 Para. 2 of the statutes. According to these provisions, the members of the Management Board are appointed and dismissed by the Supervisory Board. The members of the Management Board are appointed for a maximum of five years. They may be reappointed after the end of their term of office. The Supervisory Board may revoke the appointment of a member of the Management Board for cause. Causes are, in particular, a gross breach of the Management Board member's duties

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and a vote of no confidence by the General Meeting. The Supervisory Board decides at its duly exercised discretion on such appointments and dismissals.

Changes to the statutes of Fresenius SE are made in accordance with Article 59 SE Regulation in conjunction with Section 18 Para. 3 of the statutes. 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 share capital is represented, the simple majority of the 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 shall be sufficient, to the extent that this is permitted by law. If the voting results in a tie, a motion is deemed rejected. The statutes of Fresenius SE entitle the Supervisory Board to make such amendments to the statutes which only concern their wording without a resolution of the General Meeting.

7. Powers of the Management Board to Issue and Buy Back Shares

At the Annual General Meeting on May 8, 2009, resolutions were passed revoking the previous Authorized Capitals I and II. At the same time, the Management Board was authorized, subject to the consent of the Supervisory Board:

- to increase the subscribed capital by a total amount of € 12,800,000.00 by May 7, 2014 through a single or multiple issuance of bearer ordinary shares and/or non-voting bearer preference shares against cash contributions (Authorized Capital I), and
- to increase the subscribed capital by a total amount of € 6,400,000.00 by May 7, 2014 through a single or multiple issuance of bearer ordinary shares and/or non-voting bearer preference shares against cash contributions and/or contributions in kind (Authorized Capital II). Shareholders' pre-emptive rights of subscription can be excluded.

In relation to the Authorized Capital I, the shareholders are to be granted pre-emptive rights of subscription. However, the Management Board is authorized to exclude any fractional amounts from the shareholders' pre-emptive rights of subscription and, in the case of a simultaneous issue of ordinary shares and preference shares, to exclude the pre-emptive rights of subscription of the holders of shares of one class with respect to shares of the other class, provided an identical subscription ratio is fixed for both classes of shares.

In relation to the Authorized Capital II, the Management Board is authorized to exclude fractional amounts from the shareholders' pre-emptive rights of subscription and, in case of a simultaneous issue of ordinary shares and preference shares, to exclude the pre-emptive rights of subscription of the holders of shares of one class to subscribe to shares of the other class, provided an identical subscription ratio is fixed for both classes of shares. The Management Board is also authorized, in each case subject to the consent of the Supervisory Board, to decide on the exclusion of the shareholders' pre-emptive rights of subscription. However, the exclusion of pre-emptive rights of subscription is only admissible if, in the case of a capital increase against cash contributions, the issue price is not significantly lower than the stock market price. In the case of a capital increase against contributions in kind, the exclusion of the pre-emptive rights of subscription is only admissible for the purpose of acquiring an enterprise, parts of an enterprise or an interest in an enterprise.

The Authorized Capitals I and II were entered in the commercial register on July 15, 2009. Against the resolutions of the Annual General Meeting dated May 8, 2009 creating Authorized Capitals I and II, two challenging complaints (*Anfechtungsklagen*) were lodged. The Frankfurt Regional Court has decided in favor of one complaint through judgment dated February 2, 2010, the other complaint was rejected. The judgment of the Frankfurt Regional Court dated February 2, 2010 is not yet final and binding. The clearance procedure (*Freigabeverfahren*) pursuant to Section 264a German Stock Corporation Act is pending before the Higher Regional Court in Frankfurt am Main with the view of securing the validity of the authorized capital which has already been registered in the commercial register.

In addition, there is the following conditional capital:

- The subscribed capital is conditionally increased by up to € 1,364,934.00 through the issuance of new bearer ordinary shares and non-voting bearer preference shares (Conditional Capital I). The conditional capital increase will only be executed to the extent that subscription rights for ordinary and preference shares are issued under the 1998 Stock Option Plan and the holders of these subscription rights exercise their rights.
- The subscribed capital is conditionally increased by up to € 4,418,250.00 through the issuance of new bearer ordinary shares and non-voting bearer preference shares (Conditional Capital II). The conditional capital increase will only be executed to the extent that convertible bonds for ordinary and preference shares are issued under the 2003 Stock Option Plan and the holders of these convertible bonds exercise their conversion rights.

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- The subscribed capital is conditionally increased by up to € 6,200,000.00 through the issuance of new bearer ordinary shares and non-voting bearer preference shares (Conditional Capital III). The conditional capital increase will only be executed to the extent that subscription rights for ordinary and preference shares are issued under the 2008 Stock Option Plan and the holders of these subscription rights exercise their rights.

Fresenius SE does not have a share buyback program. The General Meeting of Fresenius SE has not granted any authorization to acquire the Company's own shares, either.

8. Significant Agreements Conditional upon a Change of Control Following a Takeover Bid

A change of control following a takeover bid could under certain circumstances have an effect on some of the long-term financing agreements of Fresenius SE, which contain provisions dealing with a change of control. These are market standard change of control clauses which may grant creditors the right to terminate prematurely in the event of a change of control. However, the right to terminate is generally effective only if the change of control involves a down-grade of the rating of the Company.

There are no other significant agreements between Fresenius SE and other persons that are conditional upon a change of control following a takeover bid.

9. Agreements with Members of the Management Board or Employees Providing for Compensation in the Event of a Takeover Bid

The service contracts of the Management Board members do not contain any express provisions dealing with a change of control. No compensation in the event of a takeover bid has been agreed on with employees.

II. Information Pursuant to Section 289 Para. 5, Section 315 Para. 2 No. 5 German Commercial Code

1. Legal Background

The German Accounting Law Modernization Act (*Bilanzrechtsmodernisierungsgesetz – BilMoG*), which entered into force on May 29, 2009, amended various provisions of German law including Sections 289 and 315 of the German Commercial Code as well as Sections 120

and 175 of the German Stock Corporation Act. The BilMoG required the management board to present to the general meeting a written report containing, among other things, the newly introduced compulsory disclosures in the management report pursuant to Section 289 Para. 5 German Commercial Code and the group management report pursuant to Section 315 Para. 2 Number 5 German Commercial Code, respectively, on the internal control and risk management system in relation to the company and group financial reporting process.

In the subsequent German Act Implementing the Shareholder Rights Directive (*ARUG*), the German legislature concentrated the requirements to submit explanatory disclosures in Section 176 Para. 1 Sentence 1 German Stock Corporation Act and removed the previous provisions of Sections 120 Para. 3 Sentence 2, 175 Para. 2 Sentence 1 German Stock Corporation Act. By doing so, however, the reference to Section 289 Para. 5 German Commercial Code, which had been added by the German Accounting Law Modernization Act and relates to the disclosures in the management report on the internal control and risk management system in relation to the financial reporting process, was not maintained. On the other hand, the German Federal Ministry of Justice has published a statement on Section 175 Para. 2 Sentence 1 German Stock Corporation Act (http://www.gesetze-im-internet.de/aktg/___175.html), stating that the change of Section 175 Para. 2 Sentence 1 German Stock Corporation Act required under the ARUG was not practicable due to an editorial mistake. As a precaution, therefore, an explanatory report on the disclosures made pursuant to Section 289 Para. 5 German Commercial Code (as well as Section 315 Para. 2 No. 5 German Commercial Code) shall be issued for the financial year 2009.

2. Subject Matter of the Report

According to the explanatory memorandum to the German Accounting Law Modernization Act, the internal control system encompasses the principles, procedures and measures to ensure the effectiveness and efficiency of the accounting, the correctness of the accounting, and the compliance with applicable law. This also includes the internal audit system to the extent that it relates to accounting.

The risk management system and the internal control system in relation to the financial reporting process encompass control and monitoring processes for accounting and financial reporting.

3. Main Features of the Risk Management and Internal Control Systems

The main features of the risk management and internal control systems in the Fresenius Group can be described as follows:

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Fresenius risk management is closely linked to corporate strategy. Its substantial component is a control system which allows it to identify and respond to material risks at an early stage.

Responsibilities for the processes and for monitoring risks in the individual business segments have been assigned as follows:

- Using standardized processes, risk situations are evaluated regularly and compared with specific requirements. If negative developments emerge, responses can be initiated at an early stage.
- The managers responsible are required to report without delay any relevant changes in the risk profile to the Management Board.
- Fresenius keeps markets under constant observation and maintains close contacts with customers, suppliers, and the authorities in order to be able to swiftly identify and react to changes in the business environment.

Risk management measures are supported both at group level and in the individual business segments by risk controlling measures and a management information system. Detailed monthly and quarterly reports are used to identify and analyze deviations of the actual compared to the planned business development. In addition, the risk management comprises a control system that oversees organizational processes and measures, as well as internal controls and audits. Fresenius risk management is regularly evaluated and, if necessary, adjusted to allow prompt reaction to changes in the markets. This system has proved effective to date.

The functionality and effectiveness of the risk management is reviewed as part of the audit of the annual financial statements, and regularly by the Management Board and the internal auditing department. Conclusions arising from the audits are taken into account in the ongoing refinement of the risk management system. The control management is also reviewed regularly by the Management Board and the internal auditing department.

Fresenius has ensured that the scope and focus of the organizational structure and systems for identifying and evaluating risks, and for developing counter-measures and for the avoidance of risks, are aligned suitably with the company-specific requirements and that they are properly functional. However, there can be no absolute certainty that this will enable all risks to be fully identified and controlled.

4. Explanation of the Main Features of the Risk Management and Internal Control Systems in View of Financial Reporting

The risk management and internal control systems, the main features of which have just been described, ensure that all business facts and data are properly collected, processed and evaluated and thus included in external accounting. They safeguard that the accounting at Fresenius SE as well as at all companies included in the consolidated financial statements will be uniform and in compliance with the legal and statutory requirements as well as internal guidelines.

The reliability of accounting processes and the correctness of financial reporting, including the preparation of annual financial statements, consolidated financial statements and management reports in compliance with applicable rules, are assured by numerous measures and internal controls. Especially a four-tier reporting process makes for intensive discussion and controls of the financial results. At each reporting level (local entity, region, business segment, group), financial data and key figures are discussed and compared regularly on a monthly and quarterly basis with the prior-year figures, the budget, and the latest forecast. In addition, all parameters, assumptions, and estimates that are of relevance for the externally reported group and segment results are discussed intensively with the department responsible for preparing the group's consolidated financial statements. These matters are also reviewed and discussed quarterly in the Supervisory Board's Audit Committee.

Control mechanisms, such as automated and manual reconciliation procedures, assure that financial reporting is reliable and that transactions are correctly accounted for. To prevent abuse, care is taken to maintain a systematic separation of functions. In addition, management control and evaluations help to ensure that risks having a direct impact on financial reporting are identified and that controls are in place to minimize them. Moreover, changes in accounting rules are monitored and employees involved in financial reporting are instructed regularly and comprehensively.

Fresenius Medical Care, an important group company, is additionally subject to the controls of Section 404 of the Sarbanes-Oxley Act. The Sarbanes-Oxley Act was passed in the USA in the year 2002 and is intended to improve the reliability of reporting by business undertakings. It extended the responsibilities of management and of the Audit Committee as well as the disclosure and auditing duties.

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Bad Homburg, March 30, 2010

Fresenius SE
The Management Board