

**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, 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.

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 Author-

ized 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.

Bad Homburg, March 30, 2010

**Fresenius SE**  
**The Management Board**