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Merger Documentation

Cross-Border Merger

with Calea Nederland N.V.

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- 1. Joint Report of the Management Board of Fresenius SE and the Management of Calea Nederland N.V. pursuant to sec. 122e UmwG in conjunction with sec. 8 UmwG on the Merger between Calea Nederland N.V. and Fresenius SE**
- 2. Common Terms of Merger for the Cross-Border Merger between Fresenius SE and Calea Nederland N. V.**

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M e r g e r R e p o r t

Joint Report

of the Management Board of

Fresenius SE

and the Management of

Calea Nederland N.V.

pursuant to sec. 122e UmwG in conjunction with sec. 8 UmwG

on the Merger between

Calea Nederland N.V. and Fresenius SE

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This merger report is neither an offer to sell voting ordinary limited partner shares nor an invitation to make Fresenius SE an offer to buy voting ordinary limited partner shares. Such an offer requires special publication as the case may be, and, in so far as required by national law, a separate prospectus. This merger report is not an offer to sell securities in the USA. Securities may be sold or offered for purchase in the USA only with prior registration or without prior registration only on the basis of an exception provided.

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I. Introduction

The Management Board of Fresenius SE (hereinafter also referred to as the “*Acquiring Company*” and together with its subsidiaries as “*Fresenius*” or the “*Business*”) and the management of Calea Nederland N.V. (hereinafter also referred to as the “*Company being Acquired*”) drew up common terms of merger on March 31, 2010 in a notarially recorded form. The Supervisory Board of Fresenius SE approved of the planned merger by resolution of March 30, 2010.

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 connected with a change of the legal form of Fresenius SE which is also intended. The General Meeting of Fresenius SE is to resolve on May 12, 2010 on the change of the legal form (secs. 190 et seq. German Conversion Act) of Fresenius SE into a partnership limited by shares (“*KGaA*”). After the change of the legal form becomes effective, the Acquiring Company will be known as Fresenius SE & Co. KGaA. The general partner of Fresenius SE & Co. KGaA will be Fresenius Management SE. The merger is to take effect only once the change of the legal form of Fresenius SE into a KGaA takes effect. The use of the term “Acquiring Company” in this merger report therefore also always designates Fresenius SE in its future legal form of a KGaA insofar as the use of this term relates to points in time at which the intended change of the legal form will already have taken effect.

The cross-border merger leads to the clearing-up and simplification of the group structure. As a result of the cross-border 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 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 German Act on Employee Co-Determination in Case of Cross-Border Mergers (“*MgVG*”), whereby the EU 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.

The Management Board of Fresenius SE and the management of Calea Nederland N.V. jointly present this merger report. It contains comprehensive information on the merger between Calea

Nederland N.V. and Fresenius SE, in particular on the companies involved and the Fresenius Group, the reasons for the merger, the merger process and the provisions of the terms of merger, as well as the consequences of the merger for the shareholders.

In addition, reference is made to the following documents:

- Invitation to the general meeting of Fresenius SE for May 12, 2010, published in the German electronic Federal Gazette (*elektronischer Bundesanzeiger*) on April 1, 2010, and on the internet site of Fresenius SE (www.fresenius.com in the section Investor Relations/Annual General Meeting), including the documents named therein (in particular the financial statements (HGB) of Fresenius SE (stand-alone) for the financial year 2009, the IFRS consolidated financial statements and the IFRS group management report of Fresenius SE for the financial year 2009 and the conversion report of the Management Board of March 31, 2010); these documents are published on the internet site of Fresenius SE (www.fresenius.com in the section Investor Relations/Annual General Meeting);
- IFRS consolidated financial statements and the IFRS group management reports of Fresenius SE for the financial years 2007 and 2008, published on the internet site of Fresenius SE (www.fresenius.com in the section Investor Relations/Financial Reports).

The information contained in the documents named above is included in this merger report by way of reference and is therefore a part of this merger report.

II. Companies Involved in the Merger

1. Fresenius SE

1.1 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.

1.2 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.

1.3 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 merger 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 merger 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.

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.

1.3.1 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 brands, 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.

1.3.2 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.

1.3.3 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.

1.3.4 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.

1.3.5 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.

1.3.6 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.

1.3.7 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.

1.4 Corporate Bodies

The corporate bodies of Fresenius SE 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*).

1.4.1 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>

Name	Age in Years	Year of First Appointment	Responsibility/ Task	Board Memberships
Dr. Francesco de Meo	46	2008	Business segment Fresenius Helios	Memberships on supervisory boards: (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
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	Memberships on management board: 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

1.4.2 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 (German 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	Member- ships since	Other Memberships
Dr. Gerd Krick (former Chairman of the Management Board of Fresenius AG)	Chairman	2003	Committees: Chairman of the Nomination Committee Chairman of the Personnel Committee Member of the Audit Committee Supervisory Boards: Fresenius Medical Care AG & Co. KGaA (Chairman) Fresenius Medical Care Management AG VAMED AG, Austria (Chairman)
Dr. Dieter Schenk (attorney-at-law and tax adviser, Law Firm Noerr LLP, Munich)	Deputy Chairman	1998	Committee: Member of the Nomination Committee 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) Board of Directors: Else Kröner-Fresenius-Foundation (Chairman)

Name (Principal Profession)	Position	Member- ships since	Other Memberships
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	Supervisory Board: HELIOS Kliniken GmbH (Deputy Chairman)
Prof. Dr. h. c. Roland Berger (management consultant, Roland Berger Strategy Consultants)		2008	Committee: Chairman of the Audit Committee 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) 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: Wittelsbacher Ausgleichsfonds
Dario Iossi (Italy) (secretary (<i>Gewerkschaftssekretär</i>) of FEMCA Cisl – energy, fashion and chemical industry)		2007	
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	Committee: Member of the Audit Committee Supervisory Board: VAMED-KMB Krankenhausmanagement und Betriebsführungsges. m.b.H., Austria
Klaus-Peter Müller (Chairman of the supervisory board of Commerzbank AG)		2008	Supervisory Boards: Commerzbank AG (Chairman) Fraport AG Linde AG Board of Directors: Parker Hannifin Corporation, USA Administrative Boards: Assecurazioni Generali S.p.A., Italy Landwirtschaftliche Rentenbank

Name (Principal Profession)	Position	Member- ships 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.

1.5 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.

1.6 Capital

1.6.1 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.

1.6.2 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 Fresenius SE 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 Fresenius SE 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 Fresenius SE'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, Fresenius SE 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 Fresenius SE 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 Fresenius on March 30, 2010. Therewith, the entry of the Authorized Capitals I and II into the commercial register is final and conclusive.

1.6.3 Conditional Capital

Pursuant to Art. 4 para. 6 of the statutes (as of March 12, 2010), the share capital of Fresenius SE 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 Fresenius SE 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 Fresenius SE 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 Fresenius SE 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.

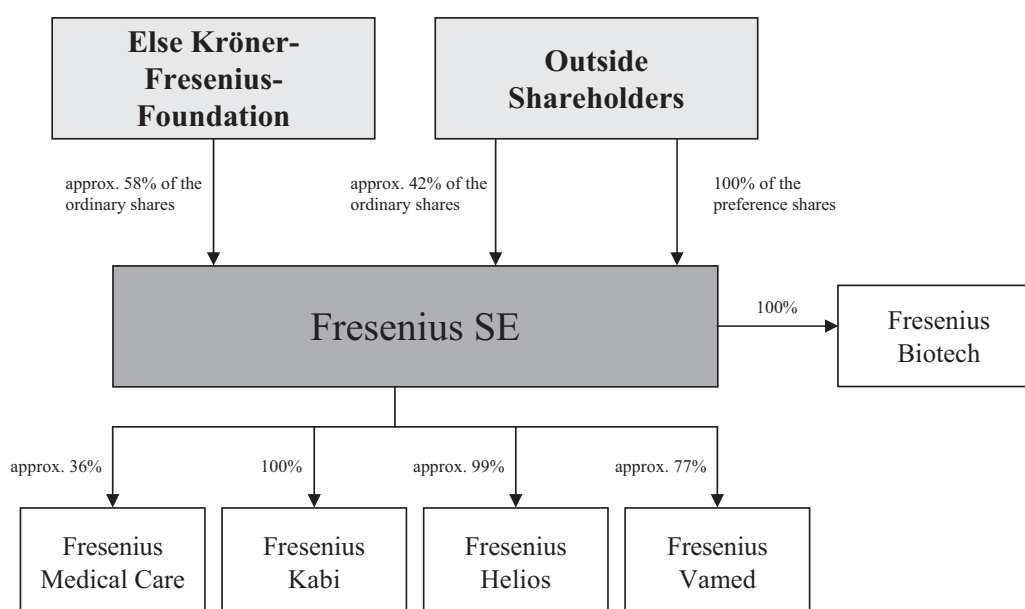
Pursuant to Art. 4 para. 8 of the statutes (as of March 12, 2010), the share capital of Fresenius SE is conditionally increased by up to Euro 3,100,000.00, divided into up to 3,100,000 shares, through the issuance of new ordinary bearer shares (Conditional Capital III Ordinary Shares). The conditional 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 Fresenius SE 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 Fresenius SE 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.

1.7 Group Structure and Participations

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



1.7.1 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 1** to this merger 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%

1.7.2 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).

2. Calea Nederland N.V.

2.1 General Information on Calea Nederland N.V.

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, telephone number +31-30-2428364.

The corporate purpose of Calea Nederland N.V. as set out in its articles of association is (translated correspondingly from the Dutch language) 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 this corporate purpose as it sold and transferred its entire business to Tefa-Portanje B.V. in the year 2008. Calea Nederland N.V. is currently no longer engaged in any business activities or other activities.

2.2 History and Development

Calea Nederland N.V. was formed by Caremark Holding N.V. in Amsterdam on November 9, 1992 with the corporate name Caremark N.V. Its registered office was originally located in Utrecht. The original corporate purpose comprised (translated correspondingly from the Dutch language) the offer of products and services to patients and institutions outside hospitals, in particular patient care at home with intravenous feeding and medication.

With effect from December 1, 1992, Caremark N.V. took over the homecare activities as well as the related assets and liabilities of Baxter B.V. In September 1993, the corporate purpose was changed. It then comprised (translated correspondingly from the Dutch language) the trade in and the offer of services and goods, in particular pharmaceutical products, outside hospitals. In November 1993, the corporate purpose of Caremark N.V. was changed again and has been worded since then as set out in 2.1 above.

In January 1998, Fresenius AG (i.e. today's Fresenius SE) acquired all shares in Caremark N.V.

In October 1999, Fresenius AG sold and transferred its shares in Caremark N.V. to Fresenius Kabi AG.

In September 2000, Caremark N.V. changed its corporate name into the company's current name, Calea Nederland N.V. At the same time, the registered office of Calea Nederland N.V. was transferred from Utrecht to 's-Hertogenbosch.

By purchase and transfer agreement of June 2, 2008, Calea Nederland N.V. sold and transferred its entire homecare business which it had operated up to then to Tefa-Portanje B.V.

Since the sale of its business, Calea Nederland N.V. has no longer engaged in any business activities or other activities.

On February 25, 2010, Fresenius Kabi AG sold and transferred its shares in Calea Nederland N.V. to Fresenius SE.

2.3 No Business Activities of Calea Nederland N.V.

Since the sale of its business to Tefa-Portanje B.V. in the year 2008, Calea Nederland N.V. has no longer engaged in any business activities or other activities.

2.4 Corporate Bodies

The sole managing director of Calea Nederland N.V. is currently Mr. Joseph Maurice Simons (born 1958). Mr. Simons has held this office since June 1, 2006.

A Supervisory Board – not required under mandatory Dutch law – does not exist for Calea Nederland N.V.

2.5 Employees and Co-Determination

Calea Nederland N.V. currently has no employees. Accordingly, there is no co-determination at the level of the operational units or the corporate bodies of Calea Nederland N.V.

2.6 Capital

The company capital (*Maatschappelijk Kapitaal*) of Calea Nederland N.V. amounts to NLG 500,000,00/Euro 226,890.11, divided into 500 registered shares with a nominal value of NLG 1,000.00 each. Under Dutch law, the company capital (*Maatschappelijk Kapitaal*) is the sum of the nominal values of the shares which the company is allowed to issue according to its articles of association.

The subscribed capital (*Geplaatst Kapitaal*) amounts to NLG 100,000.00/Euro 45,378.02. Under Dutch law, the subscribed capital (*Geplaatst Kapitaal*) is the sum of the nominal values of the shares which are taken over by the shareholders at the time of formation and were issued later by the company. The subscribed capital (*Geplaatst Kapitaal*) of Calea Nederland N.V. has been fully paid in.

III. Reasons for the Merger

The cross-border merger serves the purpose of clearing-up and simplifying the group structure. As a result of the cross-border merger, the Acquiring 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.

1. Starting Situation

Fresenius SE is the only shareholder of Calea Nederland N.V. Calea Nederland N.V. sold its entire business activities by purchase and transfer agreement of June 2, 2008. Since then, it no longer has any own business. Calea Nederland N.V. thus no longer has any entrepreneurial functions within the Fresenius Group.

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 Member States of the EU 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 German SE Employee Participation Act and the agreement regarding the participation of employees in Fresenius SE of July 13, 2007.

A prerequisite for the applicability of the SEBG and of 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 KGaA changes the legal basis of the corporate co-determination. As more than 20,000 employees work for Fresenius SE and its group companies in Germany, a 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 Member States of the EU 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 elected exclusively by the employees of the Fresenius Group working in Germany.

2. Advantages of the Merger

Upon the merger taking effect, the group structure will be cleared up and simplified. This will eliminate the expenditures for the management of a company having lost its functions (e.g. the preparation of annual financial statements).

As a result of the cross-border merger, the Acquiring 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. In consequence of the cross-border merger, the German Co-Determination Act will not be applicable and thus no enlargement of the Supervisory Board will be required. Instead, after the cross-border merger between a company from another Member State of the EU and Fresenius SE & Co. KGaA, the German Act on Employee Co-Determination in Case of Cross-Border Mergers will be applicable.

Under the MgVG, the size of the Supervisory Board is determined within the limits of sec. 95 German Stock Corporation Act 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 Acquiring Company and an effective corporate governance, the size of the Supervisory Board shall remain unchanged. Moreover, an enlargement of the Supervisory Board would result in extra costs in the amount of the remuneration for the additional Supervisory Board members.

Furthermore, under the MgVG, employee representatives from other Member States of the EU 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 Acquiring 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 other Member States of the EU 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 Member States of the EU 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. Organizational Structure after the Merger

Calea Nederland N.V. will no longer exist after the merger takes effect. Fresenius SE & Co. KGaA will, like Fresenius SE today, have a Supervisory Board composed on a parity basis with twelve members including employee representatives (so-called employee bench) with an international composition.

No further effects on the organizational structure of Fresenius SE & Co. KGaA will be brought about by the merger. Fresenius SE & Co. KGaA will continue to exist as a partnership limited by shares with Fresenius Management SE as its general partner. The organizational structure of Fresenius SE & Co. KGaA after the change of the legal form of Fresenius SE into a KGaA is described in detail in the conversion report of March 31, 2010 to the General Meeting of Fresenius SE.

4. Costs of the Merger

According to the current rough estimates, the costs of the merger are expected to amount to approx. Euro 500,000. They consist essentially of the costs for auditing the financial statements of Calea Nederland N.V., costs for legal advice and for the required notarization of the terms of merger. These costs are contrasted by the future lasting savings in the amount of the remuneration for eight additional Supervisory Board members which would have to be paid by the Acquiring Company without the merger.

5. Other Disadvantages of the Merger

As explained in more detail in Section V.1 of this merger report, the Acquiring Company will have a non-recurrent merger loss in the amount of the difference between the book value of the shares in Calea Nederland N.V. and the equity capital of Calea Nederland N.V. This merger loss will reduce the annual result of the Acquiring Company for the financial year which began on January 1, 2010 by Euro 144,120.54. No other disadvantages of the merger are apparent.

6. Alternatives to the Merger

The Management Board of Fresenius SE and the management of Calea Nederland N.V. examined whether other measures could be considered apart from the merger which could also achieve the desired results. This examination has shown that other concepts cannot bring about these results.

The liquidation of Calea Nederland N.V. could also achieve a clearing-up and simplification of the group structure as effected through the merger. However, in the case of a liquidation of Calea Nederland N.V., upon the change of the legal form into a KGaA taking effect, the Acquiring Company could not 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 cross-border merger between Calea Nederland N.V. and Fresenius SE by way of forming and merging into a new legal entity not yet existing at the present time – the so-called NewCo Model would also not satisfy the conditions described above. In practice, the NewCo Model is used predominantly in cases where the acquiring company does not yet hold a majority participation in the company being acquired (e.g. in a so-called merger of equals), or where both merging legal entities are listed companies and both have outside shareholders. As all shares in Calea Nederland N.V. are held by Fresenius SE, there was no reason to choose the NewCo structure. On the contrary: The involvement of a further entity would have unnecessarily increased the administrative burden and would additionally have resulted in the undesired expiry of the Acquiring Company.

A merger in the other direction – i.e. a so-called “downstream” merger between Fresenius SE and Calea Nederland N.V. as the acquiring company – would have been legally possible, however this variation would not have done justice to the entrepreneurial concept of the companies involved. The Acquiring Company intends to continue to control the business of the Fresenius Group out of Germany.

IV. Implementation of the Merger

1. Merger by Absorption

The combination between Fresenius SE and Calea Nederland N.V. is to be brought about by way of a cross-border merger of Calea Nederland N.V. into Fresenius SE by absorption with Calea Nederland N.V. being dissolved without winding up pursuant to secs. 122a para. 2, 2 no. 1 of the German Conversion Act and pursuant to Title 2.7 of the Dutch Civil Code.

Through the merger, the assets of Calea Nederland N.V. will be transferred in their entirety to Fresenius SE, trading at that time already as Fresenius SE & Co. KGaA, by way of universal legal succession. The merger – and thus the transfer of assets and liabilities – will take effect upon its entry in the commercial register of the Acquiring Company.

Calea Nederland N.V. will cease to exist when the merger takes effect. As Fresenius SE holds all shares in Calea Nederland N.V., no new shares will be issued by the acquiring company in the course of the merger in accordance with secs. 122a para. 2, 68 para. 1 no. 1 German Conversion Act. Consequently no exchange ratio between the shares in Calea Nederland N.V. and the shares in Fresenius SE needs be determined. It is therefore also not necessary to evaluate the companies involved in the merger. The provisions of the terms of merger underlying the merger will be explained in Section VIII. of this merger report.

2. The Most Important Steps of the Merger

The merger between Calea Nederland N.V. and Fresenius SE will be implemented essentially through the following steps.

2.1 Drawing up of the Terms of Merger

The basis of the merger is formed by the terms of merger drawn up by the Management Board of Fresenius SE and the management of Calea Nederland N.V. on March 31, 2010 in a notarially recorded form. The terms of merger deal in particular with the transfer of the entire assets and liabilities of Calea Nederland N.V. to Fresenius SE by way of universal legal succession.

2.2 Shareholders' Resolution of Calea Nederland N.V.

According to Art. 2:317 para. 1 Dutch Civil Code, the merger requires an approving shareholders' resolution of Calea Nederland N.V. to take effect. Fresenius SE as the sole shareholder of Calea Nederland N.V. is expected to approve the merger on May 13, 2010.

2.3 Dispensability of a Resolution of the General Meeting of Fresenius SE

As Fresenius SE holds all shares in Calea Nederland N.V., a resolution of the General Meeting of Fresenius SE as the Acquiring Company is only necessary according to sec. 122a para. 2, 62 para. 1 and 2 German Conversion Act if shareholders of Fresenius SE who together hold at least 5% of the shares demand that a General Meeting be convened.

The law does not specify a period within which such a demand must be made. However, it is undisputed in the legal literature that the acquiring company may limit the period available to the minority for making the demand. The overwhelming majority of authors believe that this period must not be shorter than the one-month period between the day of the publication of the intended merger (sec. 62 para. 3 sentence 2 German Conversion Act) and the day of the shareholders' meeting of the Company being Acquired.

The Management Board of Fresenius SE has made use of this possibility and has set a time limit for the demand that a general meeting be convened, expiring on May 7, 2010. The publication pursuant to sec. 62 para. 3 sentence 2 German Conversion Act is to be made on April 1, 2010. This period appears to be sufficient for the shareholders of Fresenius SE to be able to inform themselves about the merger of a wholly owned subsidiary with its parent company and to decide on the exercise of their rights.

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.

2.4.1 Disclosure Duties under German Law

According to secs. 122d sentence 1, 122a para. 2, 62 para. 3 German Conversion Act, the terms of merger must be submitted to the commercial register for Fresenius SE one month before the shareholders' meeting of the Company being Acquired. The registry court must then publish, in accordance with sec. 10 of the German Commercial Code (*Handelsgesetzbuch* – “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. This merger report deals in more detail in Section VI. with the creditors' rights.

Also no later than one month before 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 this 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 before 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 location works councils in Bad Homburg, St. Wendel und Friedberg, as well as the executives' committee of the Acquiring Company and the executives' committee of HELIOS Klinikum Schwerin.

2.4.2 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 before 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, this 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*”). In this notice, inter alia the creditors of Calea Nederland N.V. must be given notice of the arrangements made for the exercise of their rights. The publication sets in motion an objection period of one month for the creditors of Calea Nederland N.V. Prior to the expiry of this objection period, the Company being Acquired must not pass the merger resolution. The details of the Dutch arrangements for the protection of creditors are described in Section VI.2 of this merger report.

2.5 Procedure Regarding the Participation of Employees for Determining the Co-Determination in the Supervisory Board

Part of the merger process is a procedure regarding the participation of employees employed in the Member States of the EU and the other states party to the EEA Agreement (hereinafter together the “*Member States*”). The purpose of the procedure regarding the participation of employees is to determine the co-determination in the Supervisory Board of the company resulting from the cross-border merger. It is a precondition for the registration of the merger that the participation procedure be conducted (cf. sec. 1221 paras. 1 and 2 German Conversion Act).

The procedure is based on Art. 16 of the EU Merger Directive and on the MgVG, whereby Art. 16 of the EU Merger Directive was implemented into German law. According to sec. 3 para. 1 sentence 1 MgVG, this Act applies to companies which result from a cross-border merger and have their registered office in Germany. Since Fresenius SE & Co. KGaA as the Acquiring Company will continue to have its registered office in Germany, the employee participation procedure is regulated by the provisions of the MgVG. Some parts of the proceedings are regulated by supplementary national legal provisions of the other Member States concerned in which employees of the Fresenius Group work.

The special provisions of the MgVG regarding corporate co-determination are applicable according to sec. 5 para. 1 MgVG if (i) at least one of the companies directly involved in the merger employed on average, in the six months prior to the publication of the terms of merger, more than 500 employees, and a system of co-determination exists in this company within the meaning of sec. 2 para. 7 MgVG, or (ii) the national law applicable to the company resulting from the cross-border merger does not provide for at least the same level of employee

co-determination as exists in the companies involved in the merger, or (iii) the national law applicable to the company resulting from the cross-border merger does not provide for employees of operational units of the company resulting from the cross-border merger that are situated in other Member States the same entitlement to exercise co-determination rights as is enjoyed by those employees employed in the Member State where the company resulting from the cross-border merger has its registered office. In the present case, because of the principle of territoriality, at least the third of the above alternatives applies, as national German co-determination law (the MitbestG as well as the One Third Participation Act – *Drittelbeteiligungsgesetz*) does not provide for employees of operational units in other Member States the same entitlement to exercise co-determination rights as is enjoyed by the employees employed in Germany.

The most important steps of the procedure regarding the participation of employees are:

2.5.1 Information of Employees about the Merger Project

The procedure regarding the participation of employees is initiated by the Management Board of Fresenius SE and the management of Calea Nederland N.V.; in accordance with sec. 6 paras. 2 to 4 MgVG, they inform the employee representatives and the executives' committees in these companies and in the subsidiaries and operational units concerned and located in the Member States about the cross-border merger project without undue delay after the publication of the terms of merger. This information extends in particular to (i) the identity and structure of the companies involved, subsidiaries and operational units concerned and their location in the Member States, (ii) the employee representations existing in these companies and operational units, (iii) the number of employees employed in these companies and operational units as well as the total number of employees employed in a Member State to be calculated on that basis, and (iv) the number of employees entitled to co-determination rights in the corporate bodies of these companies.

2.5.2 Creation of a Special Negotiating Body and Co-Determination by Agreement

Sec. 6 para. 1 MgVG requires the managements of the companies involved in principle (for the exceptions, see Section 2.5.3 below) not only to inform the employees about the merger project, but also to ask them to establish a special negotiating body. Its task is to conclude a written agreement with the managements on the co-determination of the employees in the company resulting from the cross-border merger.

If a special negotiating body is established, it consists of employee representatives from all Member States in which the companies directly involved and their subsidiaries and operational units employ employees. Regarding the allocation of seats on the special negotiating body among the Member States, sec. 7 para. 1 MgVG stipulates that every Member State in which

employees of the group are employed has at least one seat in the special negotiating body. The number of seats assigned to a Member State rises in each case by one further seat if the number of employees in this Member State exceeds the threshold of 10%, 20%, 30% etc. of all employees of the group employed in the Member States.

The employees and their representatives in the Member States shall elect or appoint the members of the special negotiating body within ten weeks of receipt of the information pursuant to sec. 6 para. 2 and 3 MgVG. The procedure for an election or appointment to the seats in the special negotiating body is determined by the legal provisions applicable in the Member State which the seats are allocated to in each case. Immediately after the appointment of all members of the negotiating body, but no later than upon the end of the 10-week period, the managements of the companies involved convene the constituent meeting of the negotiating body in accordance with Art. 14 para. 1 MgVG.

The MgVG provides two alternatives to the employees for co-determination, namely co-determination by agreement pursuant to sec. 22 MgVG and the statutory subsidiary regulation of co-determination by operation of law in accordance with secs. 23 et seq. MgVG. Co-determination by agreement applies if the special negotiating body conducts negotiations with the management of each company and then concludes a written agreement on the co-determination of the employees. The participation procedure ends either (i) with the conclusion of a co-determination agreement or (ii) with the direct applicability of the statutory subsidiary regulation, unless (iii) the special negotiating body decides pursuant to sec. 18 MgVG not to take up any negotiations or to break off negotiations already in progress. In the first case, the co-determination at the level of the Supervisory Board of a company resulting from the cross-border merger is governed by the co-determination agreement, and in the second case by the provisions in secs. 23 to 27 MgVG. In the last named exceptional case of negotiations not being taken up or being broken off, national German co-determination law would remain applicable.

2.5.3 Co-Determination by Operation of Law

According to sec. 23 para. 1 sentence 1 no. 3 and sentence 2 no. 1 MgVG, the provisions in secs. 23 to 27 MgVG regarding the co-determination by operation of law are applicable from the time of the registration of the company resulting from the cross-border merger if (i) the management of each company involved in the merger decides to apply these provisions without prior negotiations immediately from the time of the registration, and (ii) one or several forms of co-determination existed in at least one of the companies involved prior to the registration, covering at least one third of the total number of employees of all companies involved and subsidiaries concerned. The Management Board of Fresenius SE and the management of Calea Nederland N.V. decided on March 30, 2010 to apply the provisions on co-determination by operation of law immediately as of the time of registration without prior negotiations. Also the further

requirement, i.e. the prior applicability of a co-determination regime for at least one third of the employees, is fulfilled by Fresenius SE. Therefore no negotiations need be conducted with the special negotiating body and no co-determination agreement needs to be concluded.

A special negotiating body shall not be established. Within the framework of the statutory subsidiary regulation, sec. 25 para. 1 sentence 1 MgVG also assigns to the special negotiating body the task of allocating the number of employee representatives on the Supervisory Board to the Member States in which members are to be elected or to be appointed. 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, 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.

2.6 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.

2.7 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 and when all conditions for an entry are fulfilled, 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 becomes effective.

2.8 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. after the entry in the commercial register of Bad Homburg vor der Höhe was first made.

V. Effects on the Balance Sheet and Financial, Corporate and Tax Effects

1. Effects on the Balance Sheet and Financial Effects

The merger between Calea Nederland N.V. and Fresenius SE will take effect economically on January 1, 2010, 00:00 o'clock (Effective Merger Date). For balance sheet purposes, the assets and liabilities of Calea Nederland N.V. will pass over to Fresenius SE with effect already from this time.

The merger balance sheet of Calea Nederland N.V. per December 31, 2009, which was prepared in accordance with Dutch accounting rules, shows the following picture:

Assets	EUR	Liabilities	EUR
Current assets	3,207,100	Equity	2,961,861
		Short-term liabilities	245,239
Total assets	<u>3,207,100</u>	Total liabilities	<u>3,207,100</u>

The balance sheet of Fresenius SE shows an amount of Euro 3,105,981.54 as the book value of the shares in Calea Nederland N.V. It is derived from the costs of acquisition for the shares in accordance with the purchase and transfer agreement of February 25, 2010 with Fresenius Kabi AG including the incidental acquisition expenses in the amount of Euro 5,981.54. The purchase price which was paid corresponds with the market value of the shares at the time of the acquisition.

As a consequence of the merger, the shares in Calea Nederland N.V. will be replaced in the balance sheet of Fresenius SE by the assets and liabilities of Calea Nederland N.V. Applying the method of the continuation of book values, Fresenius SE will take over the assets and liabilities with their values shown in the merger balance sheet of Calea Nederland N.V. per December 31, 2009. The amount of the difference between the book value of the shares and the equity capital of Calea Nederland N.V. as shown in this merger balance sheet is the merger loss. This will reduce the annual result of Fresenius SE for the financial year which began on January 1, 2010 by an amount of Euro 144,120.54.

The ability to pay dividends and the dividend policy of the Acquiring Company will not be affected or changed by the merger.

The financial effects of the merger between Calea Nederland N.V. and the Acquiring Company are negligible. The merger loss is an event with no effect on the cash flow but results only in the balance sheet changes described above.

2. Corporate Effects

2.1 Transfer of the Assets and Liabilities by Universal Legal Succession

The merger will take effect upon the entry in the commercial register of the local court of Bad Homburg vor der Höhe as the competent commercial register of the Acquiring Company. When the merger takes effect, the assets of Calea Nederland N.V. will pass over in their entirety, including all liabilities and contractual relationships, to Fresenius SE (which will by that time have changed its legal form into a KGaA). The Acquiring Company will become a party to the agreements concluded by Calea Nederland N.V. and/or the owner of the rights *in rem* held so far by Calea Nederland N.V.

The merger will take effect *in rem* only upon its entry in the commercial register of the Acquiring Company. Only at that time will the legal consequences in relation to third parties described above arise.

As between Calea Nederland N.V. and the Acquiring Company, the transfer of assets and liabilities will be effective retroactively from the Effective Merger Date fixed in sec. 2 of the terms of merger, e.g. January 1, 2010, 00:00 o'clock. After the merger has taken effect, all actions of Calea Nederland N.V. taken after January 1, 2010, 00:00 o'clock, will be deemed to have been taken for the account of the Acquiring Company.

2.2 Expiry of Calea Nederland N.V.

As explained under VIII.1 of this merger report, the merger will take effect upon the entry in the commercial register of the local court of Bad Homburg vor der Höhe as the commercial register of the Acquiring Company. Calea Nederland N.V. will cease to exist when this entry is effected. The registry court in Bad Homburg vor der Höhe will notify the commercial register of the chamber of commerce Midden-Nederland competent for Calea Nederland N.V. *ex officio* of the merger. The commercial register of the chamber of commerce Midden-Nederland will then delete all entries which concern Calea Nederland N.V. The merger will have the result that Calea Nederland N.V. ceases to exist and its entire assets and liabilities are transferred to the Acquiring Company.

Upon the expiry of Calea Nederland N.V. through the entry into force of the merger, its shares will also cease to exist. Furthermore, the position of the management of Calea Nederland N.V. as a corporate body will also end when the merger takes effect.

3. Tax Effects

3.1 Taxation of the Company Being Acquired and of the Acquiring Company

The merger will have no tax consequences for Calea Nederland N.V. as the Company being Acquired. In particular, the values shown for the assets and liabilities of Calea Nederland N.V. in its merger balance sheet per December 31, 2009 will remain unchanged for tax purposes.

In its tax balance sheet, Fresenius SE will take over the assets and liabilities of Calea Nederland N.V. with their fair market values (*gemeine Werte*) per December 31, 2009, the transfer date for tax purposes. As the book values of the assets and liabilities of Calea Nederland N.V. are identical with the fair market values, as shown by the merger balance sheet under commercial law per December 31, 2009, there is no difference in this respect between the tax balance sheet and the commercial balance sheet of Fresenius SE per January 1, 2010. A transfer loss will arise in the amount of the difference between the book value of the shares in Calea Nederland N.V. as shown in the tax balance sheet (also Euro 3,105,981.54) and the equity capital of Calea Nederland N.V. determined on the basis of the book values of the assets and liabilities. This loss will be disregarded for the purpose of determining the taxable profit of Fresenius SE for 2009 and will thus not diminish its taxable profit.

Expenditures incurred and income achieved from the transferred assets and from any business transactions of Calea Nederland N.V. since the Effective Merger Date in the time from January 1, 2010 will be recorded for tax purposes by Fresenius SE, which will have the legal form of a KGaA after the registration of the change of the legal form.

3.2 Taxation of the Shareholders of Fresenius SE

The merger will have no tax consequences for the shareholders of Fresenius SE. The shares in Fresenius SE and later in Fresenius SE & Co. KGaA held by them will not be affected by the merger. The tax treatments of any dividends distributed later by Fresenius SE & Co. KGaA will not change due to the merger.

VI. Effects on Creditors

Because of the transfer of all assets, liabilities and legal relationships of Calea Nederland N.V. to the Acquiring Company by way of universal legal succession, the Acquiring Company will by operation of law become party to the contracts with the creditors of Calea Nederland N.V. Individual consent by the different creditors to the transfer of their contractual relationships is not necessary.

According to sec. 122e sentence 1 German Conversion Act, the merger report must also describe the effects of the merger on the creditors of the companies involved in the merger. The protection afforded to the creditors of the two companies is regulated by the law of the state in which the respective debtor's registered office is situated.

1. Effects on the Creditors of the Acquiring Company

The Acquiring Company – i.e. Fresenius SE & Co. KGaA at the time when the merger takes effect – will remain its creditors' contractual partner also after the merger takes effect. As conversions can theoretically result in an impairment of creditors' interests, the law provides for a protective mechanism. According to secs. 122a para. 2, 22 of the German Conversion Act, the creditors of the Acquiring Company can demand security from the Acquiring Company for their claims if they make credible that the merger will endanger the satisfaction of their claims. Security must be demanded within six months of the day on which the entry in the register regarding the merger of the Acquiring Company is published.

In principle this protection covers all creditors. However, as certain claims are generally not endangered, e.g. claims *in rem*, sec. 22 German Conversion Act relates in practice primarily to claims under the law of obligations. The nature and the amount of security depend on the creditor's need for security. Security can for example be provided by depositing money or pledging movable things. The Acquiring Company's creditors do not have the right to prevent the merger.

As the merger will have no perceivable financial effects on the ability of the Acquiring Company to satisfy its creditors, given the order of magnitude of the two legal entities involved (for this, see V.1. of this merger report), it is not expected that creditors of the Acquiring Company will be able to make credible a danger to the satisfaction of their claims and to successfully demand security.

2. Effects on the Creditors of Calea Nederland N.V.

According to Art. 2:333e, 2:314 para. 3 Dutch Civil Code, Calea Nederland N.V. as the Company being Acquired must, prior to the approval of the merger by its General Meeting,

publish a notice of the submission of the terms of merger and of other documents to the commercial register of the chamber of commerce Midden-Nederland in a Dutch daily newspaper and in the official Dutch bulletin (“*Staatscourant*”). In this notice, the creditors of Calea Nederland N.V. must inter alia be given notice of the arrangements made for the exercise of their rights.

The publication sets in motion a one-month objection period for the creditors of Calea Nederland N.V. (Art. 2:316 para. 2 Dutch Civil Code). Prior to the expiry of this objection period, the resolution of Calea Nederland N.V.’s general meeting regarding the approval of the merger must not be passed. If no creditor files an objection to the intended merger with the competent district courts of ’s-Hertogenbosch and Utrecht within the objection period, the approving resolution may be passed. If an objection is made, the Company being Acquired can attempt to induce the creditor to take back the objection by offering security. Should an agreement not be possible, the competent Dutch court must decide on the objection after a hearing. These proceedings can take several months. They may be further prolonged through an appeal. The merger proceedings can be blocked by the creditor’s objection until the creditor’s objection is taken back or a final court decision exists on whether Fresenius SE has to provide security to the creditor. The court’s decision depends on whether the satisfaction of the objecting creditor’s claim is endangered by the merger.

As Calea Nederland N.V. has no longer engaged in any business activities since the year 2008, it is not expected that creditors of Calea Nederland N.V. will file an objection.

VII. Consequences on the Employees and for Co-Determination in the Supervisory Board of the Acquiring Company

1. Consequences on the Employees of the Fresenius Group

Calea Nederland N.V. has no employees so that the merger will not result in any consequences for the employees or employee representatives of Calea Nederland N.V.

Fresenius SE has an SE works council which will exist until 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 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 be available unchanged after the merger.

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 councils for the entire location are to be established as so-called location works councils. The works council bodies created on the basis of the agreement of December 15, 2005 will continue to exist unchanged, like all other employee representations of Fresenius SE and its subsidiaries (with the exception of the SE works council), after the change of the legal form and the subsequent merger. The composition and the rights of these employee representative bodies will not change through the change of the legal form and the subsequent merger.

The Supervisory Board of Fresenius SE consists of twelve members, of whom half are employee representatives (regarding the Supervisory Board, see Section VII.2. below).

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.

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.

2. Co-Determination in the Supervisory Board of the Acquiring Company

2.1 Starting Situation

The Supervisory Board set up at Fresenius SE currently has twelve members. It is composed on a parity basis and consists of six shareholder representatives and six employee representatives. In addition to four employee representatives from Germany, the employees are also represented by one representative from Italy and one from Austria.

2.2 Applicability of the MgVG

The company resulting from the cross-border merger between Fresenius SE and Calea Nederland N.V. will have its registered office in Germany. Therefore, pursuant to sec. 3 para. 1 sentence 1 of the MgVG, the provisions of the MgVG will apply to the merger.

The provisions of the MgVG which deal with the corporate co-determination of employees are applicable in any case pursuant to sec. 5 no. 3 of the MgVG. Because of the principle of territoriality, national German co-determination law (the German Co-Determination Act), which will be applicable to Fresenius SE after the entry into force of the change of the legal form to be resolved by the Annual General Meeting of Fresenius SE on May 12, 2010 (and before the cross-border merger takes effect), does not provide for employees in operational units outside Germany the same entitlement to the exercise of co-determination rights as for employees working in Germany.

2.3 Decision for Co-Determination by Operation of Law

In connection with a cross-border merger, a procedure regarding the participation of employees must in principle be conducted. The purpose of such procedure is to conclude an agreement between the management of each company involved in the merger and a special negotiating body representing the interests of the employees on the co-determination of the employees on the Supervisory Board of the company.

However, deviating from the negotiating solution, there is a simplified possibility pursuant to sec. 23 para. 1 sentence 1 no. 3 and sentence 2 no. 1 of the MgVG to determine the co-determination without establishing a special negotiating body. According to said provisions, secs. 23 et seq. MgVG relating to the co-determination by operation of law are applicable if (i) the management of each of the companies involved in the merger decides to apply these provisions immediately as of the registration without prior negotiations and (ii) one or several forms of co-determination existed prior to the registration in at least one of the companies concerned, covering at least one third of the total number of employees of all companies involved and subsidiaries concerned. The Management Board of Fresenius SE and the management of Calea Nederland N.V. passed resolutions to this effect on March 30, 2010. The further condition that at least one third of the employees must have been subject to a co-determination regime, is also fulfilled by Fresenius SE. For this reason, no negotiations need be conducted with a special negotiating body and no co-determination agreement needs to be concluded.

2.4 Number of Employee Representatives on the Supervisory Board of the Acquiring Company

The size of the Supervisory Board of the company resulting from the cross-border merger is determined (within the limits of sec. 95 German Stock Corporation Act) by the articles of association of Fresenius SE & Co. KGaA. The proportional allocation of the Supervisory Board seats to shareholder representatives and employee representatives follows from sec. 24 para. 1 MgVG. Accordingly, under the statutory subsidiary regulation, the proportion of the employee representatives on the Supervisory Board of the company resulting from the cross-border merger is determined by the highest share of employee representatives in any corporate body of the merged companies prior to the merger. As Calea Nederland N.V. is not subject to co-determination at the level of the Supervisory Board, the number of employee representatives in the Supervisory Board of the Acquiring Company after the merger is determined by the relevant legal provisions applicable to the Acquiring Company at the time of the merger taking effect. According to the SEBG in conjunction with the agreement regarding the participation of employees in Fresenius SE of July 13, 2007, and in accordance with the MitbestG, half of the members of the Supervisory Board of the company have to be employee representatives.

Therefore, half of the members of the Supervisory Board of the company resulting from the merger will also be employee representatives. According to its articles of association, the company resulting from the cross-border merger will have twelve Supervisory Board members. Consequently, six members of the Supervisory Board will be employee representatives.

2.5 Allocation of the Number of Employee Seats on the Supervisory Board to the Member States

Sec. 25 para. 1 sentences 1 to 3 MgVG provides for the special negotiating body to allocate the number of seats on the Supervisory Board to the Member States in which members are to be elected or to be appointed. The allocation is based on the 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. In the event that the employees from one or several Member States cannot obtain a seat in such pro-rata allocation, the special negotiating body must assign the last available seat to a Member State not yet having been considered. Thus, in the present case, at least one seat will not be occupied by 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.

2.6 Determination of the Employee Representatives on the Supervisory Board

After the seats have been allocated to the Member States, the employee representatives on the Supervisory Board of the company resulting from the cross-border merger who are to come from a Member State are determined in accordance with the national regulations in each Member State concerned. The election of the employee representatives for Germany will be carried out by an electoral body consisting of the employee representatives of the company resulting from the cross-border merger (i.e. Fresenius SE & Co. KGaA), its subsidiaries and operational units (sec. 25 para. 3 sentence 1 MgVG). Pursuant to secs. 25 para. 3 sentence 2, 8 para. 2 and 3

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. 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 one the companies involved in the merger, a concerned subsidiary or a concerned operational unit. If, as in the case of Fresenius SE, four employee seats should be allocated to Germany also 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 takes effect, the employee representatives shall initially be appointed by the court (sec. 104 German Stock Corporation Act).

VIII. Explanation of the Terms of Merger

The representative bodies of Calea Nederland N.V. and of Fresenius SE drew up the terms of merger on March 31, 2010 in a notarially recorded form. The contents of the terms of merger will be explained hereinafter.

1. Transfer of Assets through the Merger (§ 1)

Calea Nederland N.V. will transfer all of its assets and liabilities to Fresenius SE as the Acquiring Company, which will have the corporate name of Fresenius SE & Co. KGaA when the merger takes effect, together with all rights and duties, being dissolved without winding up by way of a merger by absorption pursuant to sec. 122a para. 2 German Conversion Act in conjunction with sec. 2 no. 1 German Conversion Act and Title 2.7 Dutch Civil Code. The merger will take effect upon its entry in the commercial register of the Acquiring Company. Calea Nederland N.V. will cease to exist when the merger takes effect without being wound up. The Acquiring Company will take over all assets, liabilities, contractual relationships and other legal relationships by way of universal legal succession. As Fresenius SE is the sole shareholder of Calea Nederland N.V., no new shares will be issued. The terms of merger therefore also need not state any exchange ratio, describe a procedure for the conversion of shares or indicate a point in time from which newly issued shares in Fresenius SE grant a right to a share of profits. According to sec. 122f in conjunction with sec. 9 para. 2 German Conversion Act and Art. 2:328, 2:333 para. 1 Dutch Civil Code, there will also be no scrutiny of the merger. After being informed by the registry court of Bad Homburg vor der Höhe that the merger has taken effect, the commercial register of the chamber of commerce Midden-Nederland will cause the registration of Calea Nederland N.V. to be deleted.

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 (§ 2)

The merger will be based on the audited balance sheet of Calea Nederland N.V. per December 31, 2009, which the auditor's unqualified audit opinion is appended to, and also on the separate balance sheet of Fresenius SE per December 31, 2009, which the auditor's unqualified audit opinion is appended to.

The balance sheet dates of the balance sheets referred to above are the relevant dates for the purposes of sec. 122c para. 2 no. 12 German Conversion Act. According to this provision, the terms of merger must state the balance sheet dates of the companies involved in the merger which are used for the determination of the conditions of the merger. The obligation to include this information in the terms of merger applies even if no shares are issued in the course of the

merger and therefore no conditions of the merger are determined. Therefore, the balance sheets and their balance sheet dates are indicated in the terms of merger.

The acquisition of the assets and liabilities of Calea Nederland N.V. by the Acquiring Company will take place as between the parties, i.e. as between the Acquiring Company and Calea Nederland N.V., with effect from December 31, 2009, 24:00 o'clock. From the beginning of January 1, 2010, 00:00 o'clock, all actions and business transactions of Calea Nederland N.V. will be deemed to have been made for the account of the Acquiring Company. This means that the merger will have retroactive effect as between the parties from January 1, 2010 (Effective Merger Date). All business transactions of Calea Nederland N.V. in the time between January 1, 2010 and the day on which the merger takes effect (i.e. the entry in the commercial register of the Acquiring Company) will therefore be taken into account in the first annual financial statements of the Acquiring Company after the merger takes effect. The Acquiring Company will record the assets and liabilities of Calea Nederland N.V. in its commercial balance sheet (*Handelsbilanz*) with the book values shown in the merger balance sheet of Calea Nederland N.V.

The merger has 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, 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, it does influence the annual results of Fresenius SE. The merger loss described in Section V. of this merger report will arise.

3. Probable Effects of the Merger on Employment (§ 3)

In sec. 3 of the terms of merger, the probable effects of the merger on the employees of the Fresenius Group are described as already explained in VII.1 of this merger report.

The existing SE works council of Fresenius SE is linked to the legal form of an SE so that it will cease to exist already when the change of the legal form becomes effective, and not only when the merger takes 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. This possibility will continue to exist unchanged after the merger. Furthermore, the co-determination regime will change such that the German SE Employee Participation Act will no longer apply and instead the Act on Employee Co-Determination in Case of Cross-Border Mergers will be applicable (from the point in time at which the cross-border merger takes effect). Apart from that, no measures are planned in connection with the merger which could have an effect on the employee representatives or employees of the Fresenius Group. In

particular, no measures to reduce staff, changes of the business or transfers to other posts are being planned.

4. Procedure to Regulate the Participation of Employees in Determining their Co-Determination Rights (§ 4)

The terms of merger contain provisions in sec. 4 dealing with the procedure whereby the details of the participation of the employees in the determination of their co-determination rights in Fresenius SE & Co. KGaA, the company resulting from the cross-border merger, are stipulated. For this purpose, co-determination is to be understood in accordance with sec. 2 para 7 MgVG as the right of the employees of a group of companies to elect or appoint a part of the members of the Supervisory Board of the Acquiring Company or to recommend or reject the appointment of some or all members of the Supervisory Board.

For Fresenius SE & Co. KGaA, the company resulting from the cross-border merger, the German Act on Employee Co-Determination in Case of Cross-Border Mergers will be applicable because this company will continue to have its registered office in Germany.

In particular, pursuant to sec. 5 no. 3 MgVG, the provisions of the MgVG dealing with the co-determination of employees on the Supervisory Board are applicable. From the time of the change of the legal form of Fresenius SE into a KGaA taking effect, the German Co-Determination Act would normally be applicable to this company. However, because of the so-called principle of territoriality, this would apply only to employees of the Fresenius Group in Germany, whereas employees in operational units outside Germany would not be covered by co-determination and would in particular not have the right to vote or be elected to the Supervisory Board as an employee representative. However, the applicability of the co-determination provisions of the MgVG also extends the corporate co-determination to employees from other Member States.

The Management Board of Fresenius SE and the management of Calea Nederland N.V. decided on March 30, 2010 to apply the provisions in secs. 23 to 27 MgVG relating to co-determination by operation of law without prior negotiations immediately as of the time of the entry of the merger in the commercial register. It is therefore not necessary to conduct negotiations with a special negotiating body and to conclude an agreement on the participation of the employees in the Supervisory Board of the company. The creation of a special negotiating body can take up to ten weeks according to sec. 13 para. 1 MgVG. The subsequent negotiations on a co-determination agreement can take up to six weeks according to sec. 21 para. 1 and 2 MgVG, and the parties can decide jointly to extend the duration by up to a further six months. Through the intended cross-border merger and the application of the statutory subsidiary regulation under the MgVG, it is possible to maintain the governance structure with a Supervisory Board subject to parity co-determination consisting of twelve members including employee representatives (so-

called employee bench) with an international composition, which has proven successful for Fresenius SE, also for Fresenius SE & Co. KGaA. It is therefore possible to avoid the time-consuming procedure of co-determination by agreement. Under Dutch law, negotiations are also dispensable.

The subsidiary statutory regulation requires the Supervisory Board of the Acquiring Company to be composed on a parity basis pursuant to sec. 24 para. 1 MgVG after the cross-border merger takes effect, i.e. one half of the members to be shareholder representatives and one half to be employee representatives, because the Supervisory Board would also have to be composed on a parity basis according to the German Co-Determination Act prior to the merger becoming effective. The company resulting from the cross-border merger will have twelve Supervisory Board members according to its articles of association, six of whom will be employee representatives.

The statutory provisions provide for a special negotiating body to allocate the number of employee seats on the Supervisory Board among the Member States in which members are to be elected or to be appointed. The allocation is based on the respective number of employees employed in the individual Member States. If employees from one or several Member States cannot be allocated 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. 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, a special negotiating body would have to be established merely for the purpose of the allocation of seats. As explained above, the creation of a special negotiating body consumes considerable time. Furthermore, costs are incurred thereby which must be borne by the companies involved pursuant to sec. 20 MgVG. 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 choice of the individuals to be elected or appointed to the Supervisory Board of the company resulting from the cross-border merger will be made in accordance with the national regulations in each member state concerned. The election of the employee representatives for Germany will be carried out by an electoral body consisting of the employee representatives of Fresenius SE & Co. KGaA, its subsidiaries and operational units. If the proceedings for the appointment of the employee representatives are not completed when the change of the legal form takes effect, the employee representatives shall initially be appointed through court proceedings pursuant to sec. 104 German Stock Corporation Act.

The provisions of the MgVG relating to co-determination by operation of law are applicable from the time of the registration of the merger.

5. Other Securities than Shares and Special Rights (§5)

Calea Nederland N.V. neither has any shareholders with special rights (e.g. preference shareholders) nor any holders of other securities than shares (e.g. holders of bonds or profit-sharing rights), to whom Fresenius SE as the Acquiring Company would have to confer rights within the meaning of sec. 122c para. 2 no. 7 German Conversion Act. There are also no natural persons or legal entities holding special rights within the meaning of Art. 2:320 in conjunction with Art. 2:312 para. 2 lit. c) 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 need be granted. Rights within the meaning of these provisions will therefore also not be granted as compensation in the future. Also 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 become effective 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 Art. 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 (§ 6)

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. The Acquiring Company will at that time have the legal form of a partnership limited by shares. Its business will therefore no longer be managed by a Management Board, but instead by the general partner. Also after the merger takes effect, Fresenius Management SE will remain the general partner of the Acquiring Company.

It is also not intended to make other changes in the composition of the Supervisory Board of the Acquiring Company than those which become necessary because of the change of the co-determination law applicable to the Acquiring Company. These changes are described in detail in Section VII. of this merger report.

7. Special Benefits (§ 7)

Neither the members of the administrative, management, supervisory or controlling bodies of Fresenius SE or Calea Nederland N.V., nor any other party involved in the merger have been or will be granted any special benefits within the meaning of sec. 122c para. 2 no. 8 German Conversion Act or Art. 2:312 para. 2 lit. d) Dutch Civil Code in connection with the merger.

In this connection it should be noted that the position of the general partner existing at the time at which the merger takes effect and the positions of the members of the Supervisory Board of the Acquiring Company holding office at that time will continue to exist also after the merger takes effect.

8. Statutes/Articles of Association (§ 8)

The statutes and articles of association of the two companies involved in the merger 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.

At the point in time when the merger takes effect, the statutes applicable today will no longer apply to the Acquiring Company because the change of the legal form into a KGaA will have taken effect by that time and the Acquiring Company will have the legal form of a KGaA and therefore different articles of association. These statutes and articles of association are attached as annexes to the terms of merger. The entry into force of the merger will not affect the articles of association of the Acquiring Company. It will keep its articles of association as effective at that time.

9. Annual Financial Statements (§ 9)

Sec. 9 indicates that the annual financial statements and management reports of Fresenius SE for the years 2009, 2008 and 2007 including the audit opinions appended thereto by the auditor will be submitted to the commercial register of the chamber of commerce Midden-Nederland

together with the terms of merger. However, these documents do not form a part of the terms of merger and will not be attached thereto as annexes.

10. Costs (§ 10)

According to the provisions dealing with the costs in sec. 10 of the terms of merger, each party will bear its own costs incurred in connection with the preparation and implementation of the merger as well as the costs incurred in connection with the terms of merger. The costs jointly caused will be borne by Fresenius SE.

IX. Consequences for the Shareholders of Fresenius SE

The structure of the Acquiring Company, which will have changed its legal form into a KGaA by the time at which the merger takes effect, and its share capital will not change through the merger. As Calea Nederland N.V. is a wholly owned subsidiary of Fresenius SE, the commercial and financial substance of the Fresenius Group will also remain unaffected. There are no outside shareholders of Calea Nederland N.V. to whom a compensation offer might have to be made. The circle of shareholders of the Acquiring Company and the participation quota held by each shareholder will not change due to the merger, as no shares will be issued for the implementation of the merger. The dividend policy will not be affected by the merger.

Convenience Translation

Bad Homburg/Utrecht, 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 J. Lipps signed Stephan Sturm signed Dr. Ernst Wastler

Calea Nederland N.V.
Management

signed Joseph M. Simons

Annex 1: 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
Europa					
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, Schweiz	100	26.0	0.4	3.9	54
14 Fresenius Kabi Austria GmbH Graz, Austria	100	236.3	35.7	152.3	647

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
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
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.

2. Common Terms of Merger for the Cross-Border Merger between Fresenius SE and Calea Nederland N. V.

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C o m m o n T e r m s o f M e r g e r

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 councils 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. of this Act (“*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 MgVG), 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 Common 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

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 para. 1 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.

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