

**Explanatory Report of the General Partner of Fresenius SE & Co. KGaA (Fresenius Management SE) on the Statements pursuant to Section 289a Para. 1, Section 315a Para. 1 of the German Commercial Code (*Handelsgesetzbuch – HGB*)**

## **1. Subscribed Capital, Rights and Obligations attaching to Shares**

The summary below shows the subscribed capital of Fresenius SE & Co. KGaA.

	December 31, 2017		December 31, 2016	
	Number of shares	Subscribed capital in €	Number of shares	Subscribed capital in €
Ordinary shares / capital	554,710,473	554,710,473.00	547,208,371	547,208,371.00

As of December 31, 2017, the subscribed capital of Fresenius SE & Co. KGaA amounted to € 554,710,473.00 divided into 554,710,473 ordinary shares.

The shares of Fresenius SE & Co. KGaA are non-par-value bearer shares. Each share confers one vote in the General Meeting. Each share represents a proportionate amount of the share capital of € 1.00. Shareholders' rights are regulated by the German Stock Corporation Act (*Aktiengesetz – AktG*) and the Articles of Association.

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

The ordinary shares issued by the Company are not subject to any restrictions on voting rights or on the transfer of securities under its articles of association or by law at the balance sheet date. No restrictions on shareholders' voting rights resulting from agreements between shareholders are known to the members of the General Partner's Management Board.

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

The Else Kröner-Fresenius-Stiftung, being the largest shareholder, informed Fresenius SE & Co. KGaA on December 11, 2017 that it holds 145,858,594 ordinary shares of Fresenius SE & Co. KGaA. This corresponds to a voting interest of 26.29%. No other direct or indirect holdings in the Company's share capital that exceed 10% of the voting rights are known to the members of the General Partner's Management Board.

### **4. Securities carrying Special Rights granting Controlling Powers**

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

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

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

### **6. Legal Provisions and Provisions of the Articles of Association on the Appointment and Dismissal of the Management and on Amendments of the Articles of Association**

Pursuant to Article 7 para. 2 of the Articles of Association of Fresenius SE & Co. KGaA, the general partner is responsible for the management of Fresenius SE & Co. KGaA. Fresenius Management SE is the general partner to the Company. Pursuant to Article 6 para. 3 of the Articles of Association of Fresenius SE & Co. KGaA 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 Section 17 German Stock Corporation Act; this will not apply if and when all shares in the general partner are held directly or indirectly by the Company; or

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- 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 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.

The other statutory grounds for withdrawal of the general partner remain unaffected.

The appointment and the replacement of members of the Management Board of the general partner are governed by the legal provisions in Article 39 Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European Company (SE) (SE Regulation), Section 16 SE Implementation Act (SEAG) and Sections 84, 85 of the German Stock Corporation Act as well as Article 7 para. 1, 2 of the Articles of Association of Fresenius Management SE. The members of the Management Board are appointed and dismissed by the Supervisory Board of the general partner, Fresenius Management SE. The Articles of Association of Fresenius Management SE permit that deputy members of the management board are appointed. The members of the Management Board are appointed for a maximum of five years. They may be reappointed.

The Supervisory Board may revoke the appointment of a member of the Management Board for cause. Causes are, in particular, a gross breach of the Management Board member's duties and a vote of no confidence by the General Meeting.

Changes to the Articles of Association are made in accordance with Section 278 Para. 3, Section 179 of the German Stock Corporation Act and Article 17 para. 3 of the Articles of Association of Fresenius SE & Co. KGaA. According to Section 285 Para. 2 Sentence 1 of the German Stock Corporation Act, amendments to the Articles of Association require the consent of the general partner.

## **7. Powers of the General Partner to Issue and Buy Back Shares**

By resolution of the Annual General Meeting, Fresenius Management SE, as general partner, is authorized, subject to the consent of the Supervisory Board of Fresenius SE & Co. KGaA:

- to increase the subscribed capital of Fresenius SE & Co. KGaA by a total amount of up to € 114.851.824.00 until May 15, 2019, through a single or multiple issuance of new bearer ordinary shares against cash contributions and / or contributions in kind (Authorized Capital I). Shareholders' pre-emptive rights of subscription can be excluded.

In addition, there are the following conditional capitals in the context of stock options plans, adjusted for stock options that have been exercised in the meantime:

- The subscribed capital is conditionally increased by up to € 4.735.083.00 through the issuance of new bearer ordinary shares (Conditional Capital I). The conditional capital increase could only be executed to the extent that convertible bonds for ordinary shares have been issued under the 2003 Stock Option Plan and the holders of these convertible bonds exercised their conversion rights. By the expiration of the exercise period, such use is no longer possible.
- The subscribed capital is conditionally increased by up to € 5.141.264.00 through the issuance of new bearer ordinary shares (Conditional Capital II). The conditional capital increase will only be executed to the extent that subscription rights have been or will be issued under the 2008 Stock Option Plan, the holders of these subscription rights exercise their rights, and the Company does not use its own treasury shares to service the subscription rights or does not exercise its right to make payment in cash, whereby the granting of subscription rights to the Management Board of the general partner, and their settlement, shall be solely and exclusively the responsibility of its Supervisory Board.
- The share capital of the Company is conditionally increased by up to Euro 24,928,200.00 by the issuance of up to 24,928,200.00 new ordinary bearer shares (Conditional Capital IV). The conditional capital increase will only be implemented to the extent that subscription rights have been or will be issued in accordance with the Stock Option Program 2013, the holders of subscription rights exercise their rights and the Company does not grant treasury shares 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.

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Finally, there is the following conditional capital in the context of convertible bonds and / or option bonds which have been issued based on the authorization of the general partner by the Annual General Meeting:

- The subscribed capital is conditionally increased by up to € 48,971,202.00 through the issuance of new bearer ordinary shares (Conditional Capital III). The conditional capital increase shall only be implemented to the extent that the holders of convertible bonds issued for cash or of warrants from option bonds issued for cash - which have been issued based on the authorization of the general partner by the Annual General Meeting on May 16, 2014 by Fresenius SE & Co. KGaA or by a group company until May 15, 2019 - exercise their conversion or option rights and as long as no other forms of settlement are used.

The Annual General Meeting authorized the Company to purchase and use its own shares up to a maximum amount of 10% of the capital stock until May 15, 2019, of which a maximum amount of up to 5% of the capital stock may be purchased using equity derivatives. Shareholders' pre-emptive rights of subscription can be excluded. As of December 31, 2017, the Company had not utilized this authorization.

Agenda items 7 to 10 of the Annual General Meeting on May 18, 2018, provide for resolutions on (i) the creation of a new Authorized Capital I amounting to up to EUR 125,000,000 and a corresponding amendment to the Articles of Incorporation, (ii) the creation of a new authorization to issue Option Bonds and / or Convertible Bonds, for the exclusion of subscription rights and for the creation of a Conditional Capital III in the amount of up to EUR 48,971,202.00 and corresponding amendments to the Articles of Association, (iii) an authorization to purchase and use own shares pursuant to § 71 para. 1 No. 8 of the German Stock Corporation Act and on the exclusion of subscription rights; and (iv) a renewed authorization to use equity derivatives to purchase own shares subject to exclusion of any tender rights until May 17, 2023.

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

Under certain circumstances, a change of control as the result of a takeover bid could impact some of our long-term financing agreements embodying change of control provisions. These provisions are customary change of control clauses that grant creditors the right of premature call in the event of a change of control. However, the right of premature call usually only becomes effective if the change of control is followed by a downgrading of the Company's rating.

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

## **9. Agreements of the Company concluded with Members of the Management Board of the General Partner or Employees Providing for Compensation in the Event of a Takeover Bid**

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

Bad Homburg, March 2018

**Fresenius SE & Co. KGaA**  
**represented by its general partner,**  
**Fresenius Management SE**  
**The Management Board**