



## INVITATION TO THE ORDINARY GENERAL MEETING

FRESENIUS SE  
Bad Homburg v. d. H.

**ISIN: DE0005785604 // WKN: 578560**  
**ISIN: DE0005785620 // WKN: 578562**  
**ISIN: DE0005785638 // WKN: 578563**

We hereby invite our shareholders to the

### Ordinary General Meeting

to be held on Wednesday, May 12, 2010, at 10 a.m. at Congress Center Messe Frankfurt, Ludwig-Erhard-Anlage 1, 60327 Frankfurt am Main.

### Agenda

- 1. Presentation of the formally approved annual financial statements of Fresenius SE and the approved consolidated financial statements for the financial year 2009. Presentation of the Management Reports for the Fresenius Group and Fresenius SE for the financial year 2009 and the Report of the Management Board on the disclosures in accordance with sec. 289 paras. 4 and 5 and sec. 315 para. 2 no. 5 and para. 4 German Commercial Code (*Handelsgesetzbuch*) for the financial year 2009. Presentation of the Report of the Supervisory Board.**

In accordance with the statutory provisions, no resolution is to be taken regarding agenda item 1, as the Supervisory Board has formally approved the annual financial statements of Fresenius SE and approved the consolidated financial statements for the financial year 2009. Sec. 175 para. 1 sentence 1 German Stock Corporation Act (*Aktiengesetz*) merely provides that the Management Board shall convene the General Meeting, inter alia, in order to receive the documents stated therein. Pursuant to sec. 176 para. 1 sentences 1 and 2 German Stock Corporation Act, the Management Board shall make available to the General Meeting the documents referred to in sec. 175 para. 2 German Stock Corporation Act and, in case of listed companies, an explanatory report on the disclosures made under secs. 289 para. 4, 315 para 4 German Commercial Code, and comment on the presented documents at the beginning of the meeting; the Chairman of the Supervisory Board shall comment on the report of the Supervisory Board.

- 2. Resolution on the appropriation of the distributable profit.**

The Management Board and the Supervisory Board propose that the distributable profit of Fresenius SE in the amount of Euro 121,841,531.70 shown in the annual financial statements for the financial year 2009 should be used as follows:

Payment of a dividend of Euro 0.75 per ordinary share on the 80,657,688 units of the ordinary shares entitled to dividend	Euro	60,493,266.00
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Payment of a dividend of Euro 0.76 per preference share

on the 80,657,688 units of the preference shares entitled to dividend Euro 61,299,842.88

The dividend is payable on May 13, 2010.

Balance to be carried forward Euro 48,422.82

**Euro 121,841,531.70**

**3. Resolution on the ratification of the actions of the Management Board for the financial year 2009.**

The Management Board and the Supervisory Board propose to ratify the actions of the members of the Management Board who were in office in the financial year 2009 for this financial year.

**4. Resolution on the ratification of the actions of the Supervisory Board for the financial year 2009.**

The Management Board and the Supervisory Board propose to ratify the actions of the members of the Supervisory Board who were in office in the financial year 2009 for this financial year.

**5. Resolution on the approval of the system of remuneration of the members of the Management Board.**

The Act on the Appropriateness of Executive Board Compensation (*Gesetz zur Angemessenheit der Vorstandsvergütung*) of July 31, 2009 provides for the possibility that the General Meeting resolves on the approval of the system of remuneration of the members of the Management Board (sec. 120 para. 4 German Stock Corporation Act). The resolution does not create rights or obligations; in particular, the obligations of the Supervisory Board to independently determine the remuneration of the members of the Management Board remain unaffected. Nonetheless, the Company wants to give its shareholders the opportunity to resolve upon the system of remuneration of the members of the Management Board.

The resolution under this agenda item refers to the system of remuneration of the members of the Management Board as adjusted to the requirements of the Act on the Appropriateness of Executive Board Compensation as applicable as of 2010. It is further described on pages 24 et seq. of the annual report 2009 of Fresenius SE as well as in the declaration with respect to the company management available on the website [www.fresenius.com](http://www.fresenius.com) in the section Who we are/Corporate Governance.

The Management Board and the Supervisory Board propose to approve the system of remuneration of the members of the Management Board of Fresenius SE for the financial year 2010.

**6. Election of the auditor and group auditor for the financial year 2010.**

Upon recommendation of its Audit Committee, the Supervisory Board proposes to elect KPMG AG Wirtschaftsprüfungsgesellschaft, Berlin, as the auditor and the group auditor for the financial year 2010.

Upon the taking of effect of the change of the legal form of the Company into the legal

form of a partnership limited by shares (*Kommanditgesellschaft auf Aktien*) proposed under agenda item 7, the above election of the auditor and the group auditor for the financial year 2010 is to remain effective.

**7. Resolution on the change of the legal form of the Company into the legal form of a partnership limited by shares (*Kommanditgesellschaft auf Aktien*) with accession of Fresenius Management SE.**

***Preliminary Remark***

The Management Board and the Supervisory Board have decided to propose to the General Meeting under agenda item 7 the change of the legal form of the Company from a European Company (*Europäische Gesellschaft* - SE) into a partnership limited by shares (KGaA).

The articles of association of the entity in its new legal form, which form part of this invitation to the General Meeting as **Annex 1**, will provide exclusively for ordinary shares. Under the terms of the conversion resolution, upon the change of the legal form taking effect, the preference shareholders will receive one ordinary share in Fresenius SE & Co. KGaA for each preference share in Fresenius SE.

The unification of the share structure – in combination with the change of the legal form into a partnership limited by shares – is intended to strengthen the position of Fresenius on the capital market and to facilitate potential future capital measures and thus the further development of the business. Furthermore, the highly limited liquidity of the ordinary shares will be significantly increased. The unification of the share structure should also have a positive effect on the weighting in the German equity index (*Deutscher Aktienindex* – “DAX”). The DAX currently includes only the preference shares of the Company. In the future, the inclusion of all (ordinary) shares of the Company can be expected. The overall goal is to significantly increase the attractiveness of the Fresenius share for all investors.

In the course of the change of the legal form, the General Partner of the partnership limited by shares is to be a European Company (SE), in which the Else Kröner-Fresenius-Foundation, which currently holds approx. 58 % of the ordinary shares in Fresenius SE, holds a 100 % stake. As General Partner, the SE will assume, through its Management Board, the management and the representation of the Company. The legal and actual position of the shareholders of Fresenius SE is already at present characterized by the influence the Else Kröner-Fresenius-Foundation exerts by means of its majority shareholding in the voting capital in the General Meeting. Alone with its voting majority, the Else Kröner-Fresenius-Foundation can for instance decide on the election of members of the Supervisory Board and thereby indirectly influence the appointment of the Management Board of Fresenius SE. Upon the change of the legal form taking effect, this de facto allocation of influence will turn into a structural allocation of influence. In the partnership limited by shares the General Partner is responsible for the management and representation of the company. With respect to the relationship between the Else Kröner-Fresenius-Foundation and the outside shareholders, this means: On the one hand, the Foundation can retain its present influence via the General Partner. Through the appointment of the Supervisory Board of Fresenius Management SE it can exert an influence on the appointment of its Management Board. On the other hand, following the change of the legal form and the related conversion of preference shares into ordinary shares the percentage of the Foundation in the ordinary shares will be reduced by half from approx. 58 % to approx. 29 %. The possibilities of the Foundation to exert influence in the General Meeting of the partnership limited by shares are therefore reduced. Correspondingly, the weight of the outside shareholders in the General Meeting increases.

The following are the main considerations in favor of the intended transaction:

- *Strengthening of the position on the capital market.* The free float will no longer be split between preference shares and ordinary shares as before, but will be consolidated in a single class of shares. As a result, the transaction is expected to increase the liquidity of the Fresenius share and to improve the position of the Company in the DAX. Ultimately, the position of Fresenius on the capital market will be strengthened and the operative and financial maneuverability of the business will be increased.
- *Maintenance of the existing corporate governance standards.* The proposed change of the legal form of the Company will maintain and continue today's corporate governance and transparency standards. The long-term strategic policy of the Company endorsed by the majority shareholder will be preserved.

In connection with the change of the legal form of Fresenius SE into a partnership limited by shares, it is intended to merge the Dutch Calea Nederland N.V. into the Company by way of a cross-border merger. The cross-border merger is to become effective immediately upon the change of the legal form taking effect. It serves the purpose of clearing up and simplifying the group structure. As a result of the cross-border merger, the 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. According to sec. 62 para. 1 German Conversion Act (*Umwandlungsgesetz*), no resolution of the General Meeting of Fresenius SE needs to be taken for the cross-border merger, as the Company holds a 100 % stake in Calea Nederland N.V. The only exception would be if shareholders of Fresenius SE whose aggregate shareholding equals or exceeds one-twentieth of the Company's share capital requested the convening of a General Meeting to resolve on the merger. The common terms of merger of the Company and of Calea Nederland N.V. form part of this invitation to the General Meeting as **Annex 2**.

A detailed legal and financial explanation and description of the consequences of the change of the legal form, the future participation of shareholders as well as the entire transaction is contained in the conversion report prepared by the Management Board, which has been available for inspection at the offices of the Company since the convening of the General Meeting. Upon request, each shareholder will receive a copy of the conversion report free of charge. In addition, the German language conversion report is available on the website of the Company [www.fresenius.de](http://www.fresenius.de) in the section Investor Relations/Hauptversammlung. [An English convenience translation of the conversion report is available on the website of the Company [www.fresenius.com](http://www.fresenius.com) in the section Investor Relations/Annual General Meeting.]

### ***Resolution Proposals***

- a) Resolution on the change of the legal form of Fresenius SE into Fresenius SE & Co. KGaA

The Management Board and the Supervisory Board propose to resolve as follows:

- (1) Fresenius SE is converted by way of a change of the legal form in accordance with the provisions of the German Conversion Act (*Umwandlungsgesetz*) into a partnership limited by shares (*Kommanditgesellschaft auf Aktien - KGaA*).

- (2) The corporate name of the entity in its new legal form is Fresenius SE & Co. KGaA.
- (3) The entire share capital of Fresenius SE in the amount existing at the time of entering the change of the legal form in the commercial register becomes the share capital of Fresenius SE & Co. KGaA, and the shareholders who are shareholders of Fresenius SE at the time of entering the change of the legal form in the commercial register become limited liability shareholders (*Kommanditaktionäre*) of Fresenius SE & Co. KGaA. They participate to the same extent and with the same number of no-par value shares in the share capital of Fresenius SE & Co. KGaA as they did in Fresenius SE prior to the change of the legal form taking effect. The notional proportion of each no-par value share in the share capital remains unchanged. Both the ordinary shareholders and the preference shareholders of Fresenius SE participate in Fresenius SE & Co. KGaA with voting ordinary shares. The ordinary shareholders receive the same number of voting ordinary bearer shares which they held in Fresenius SE prior to the change of the legal form taking effect. The preference shareholders receive a number of voting ordinary bearer shares corresponding to the number of non-voting preference bearer shares which they held in Fresenius SE prior to the change of the legal form taking effect.
- (4) The General Partner of Fresenius SE & Co. KGaA will be Asion SE (in future bearing the corporate name Fresenius Management SE) with its registered office in Düsseldorf. Pursuant to sec. 245 para. 2 German Conversion Act, in applying the rules of incorporation of the German Stock Corporation Act, the General Partner takes the position of the incorporator of the entity in its new legal form. In the context of the change of the legal form, the General Partner does not take any participation in the share capital and does therefore not participate in the assets, profit and loss of Fresenius SE & Co. KGaA.
- (5) Special Rights and Benefits

#### Non-Voting Preference Bearer Shares

Under the current legal situation, the preference shares of Fresenius SE receive a dividend from the annual distributable profit of Fresenius SE which is Euro 0.01 per preference share higher than the dividend for the ordinary shares, at least, however, a dividend of Euro 0.02 per preference share. The minimum dividend in the amount 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 distribute Euro 0.02 per preference share, the deficits will be paid in arrears, without interest, from the distributable profit of the following financial years, after distribution of the minimum dividend on the preference shares for those financial years and before the payment of a dividend on the ordinary shares. The right to such payment in arrears is a 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.

The share capital of Fresenius SE & Co. KGaA will be exclusively divided into voting ordinary bearer shares. The preference shareholders of Fresenius SE will receive one voting ordinary bearer share in Fresenius SE & Co. KGaA for each non-voting preference bearer share they held in Fresenius SE prior to the change of the legal form taking effect. The

voting ordinary shares in Fresenius SE & Co. KGaA and the non-voting preference shares in Fresenius SE are equivalent within the meaning of sec. 23 German Conversion Act. On the one hand, the preference shareholders of Fresenius SE will not be entitled to a higher dividend or an (advance) minimum dividend after the change of the legal form into Fresenius SE & Co. KGaA has taken effect; on the other hand, they will, as ordinary shareholders of Fresenius SE & Co. KGaA, obtain the voting right.

#### Special Rights under Existing Employee Participation Programs

By resolution of the General Meeting of June 18, 1998, the Company has issued subscription rights to ordinary shares and to preference shares to members of the Management Board of the Company, members of the managements of affiliates of the Fresenius Group, senior officers (*leitende Angestellte*) (within the meaning of the classification by the Company) of the Company and of German affiliates of the Fresenius Group and executive staff members (*Führungskräfte*) of the foreign affiliates of the Fresenius Group ("Stock Option Plan 1998"); altogether, these subscription rights entitle their holders to subscribe for up to 450,000 ordinary shares and for up to 450,000 preference shares. Excluded are members of the management and employees of Fresenius Medical Care AG (now Fresenius Medical Care AG & Co. KGaA) and of those affiliates that are affiliated with the Company only via Fresenius Medical Care. An option entitles either to the subscription for an ordinary share or for a preference share. To the group of the members of the Management Board, up to 200,000 options are allotted, which grant the right to subscription for up to 100,000 ordinary shares and up to 100,000 preference shares. To the group of the executive staff members, up to 700,000 options are allotted, which grant the right to subscription for up to 350,000 ordinary shares and for up to 350,000 preference shares. The stock options granted under the Stock Option Plan 1998 have a term of ten years. One third of the options can be exercised at the earliest two, three or four years after the date they were granted, respectively. Furthermore, the exercise of the options is subject to the mandatory requirement that within the first two-year vesting period following the granting of the options to the beneficiary, the consolidated earnings of the group before interest, before payments for profit participation capital and for securities similar to profit participation rights and before taxes on income and profit (EBIT) must have increased by at least 15 % (success target). The Management Board and the Supervisory Board are authorized to determine in the terms of the options a higher percentage than 15 as a prerequisite for exercising the options. The exercise price of an option corresponds to the average standard quotation of the ordinary bearer share or the non-voting preference bearer share of the Company on the Frankfurt Stock Exchange on the last 30 trading days prior to the granting of the option to the beneficiaries. As of December 31, 2009, under the Stock Option Plan 1998, stock options in a volume of 457,062 units were issued, all of which were exercisable.

By resolution of May 28, 2003, the Ordinary General Meeting of the Company has authorized the Management Board of the Company, with the consent of the Supervisory Board, to issue convertible bonds in the aggregate nominal amount of Euro 4,608,000.00 to the members of the Management Board of the Company, to members of the management of affiliates of the Company, to employees of the Company and to employees of affiliates of the Company; altogether, the convertible

bonds entitle their holders to subscribe for up to 900,000 ordinary shares and up to 900,000 preference shares ("Stock Option Plan 2003"). Excluded are members of the management and employees of Fresenius Medical Care AG (now Fresenius Medical Care AG & Co. KGaA) and of those affiliates that are affiliated with the Company only via Fresenius Medical Care. Each convertible bond grants the right to subscription for one ordinary share or one preference share. To the group of the members of the Management Board, up to 400,000 convertible bonds are allotted, which grant the right to subscription for up to 200,000 ordinary shares and for up to 200,000 preference shares. To the group of the employees, up to 1,400,000 convertible bonds are allotted, which grant the right to subscription for up to 700,000 ordinary shares and for up to 700,000 preference shares. The beneficiaries are entitled to choose between convertible bonds with a success target (stock price target) and convertible bonds without a success target. If the beneficiaries opt for convertible bonds without a success target, they receive 15 % less stock options than if they opt for convertible bonds with a success target. In the case of convertible bonds with a success target, the exercise of the conversion right depends on the achievement of the following success target: The success target is deemed to be achieved if prior to the conversion of the convertible bonds there is an increase of the joint average stock exchange price of ordinary shares and preference shares compared to the average stock exchange price of ordinary shares and preference shares on the day such convertible bonds were granted ("initial value") that amounted to a minimum of 25 % on at least one day. The initial value is determined based on the joint average stock exchange price of the ordinary and the preference share during the last 30 days preceding the day on which the respective convertible bond has been granted. The conversion price for convertible bonds with a success target corresponds to the stock exchange price of the ordinary shares or the preference shares, respectively, at the time the target is achieved for the first time, less the par value of the converted convertible bond. The conversion price for convertible bonds without a success target corresponds to the average stock exchange price of the ordinary share or the preference share, respectively, during the last 30 trading days at the stock exchange prior to the granting of the relevant convertible bonds, less the par value of the converted convertible bond. As of December 31, 2009, under the Stock Option Plan 2003, convertible bonds in a volume of 2,799,514 units were issued. Thereof, 1,953,308 items were exercisable.

By resolution of May 21, 2008, the Ordinary General Meeting of the Company has authorized the Management Board of the Company, with the consent of the Supervisory Board, to issue up to 6,200,000 subscription rights for up to 3,100,000 ordinary bearer shares as well as for up to 3,100,000 preference bearer shares to members of the Management Board of the Company, to members of the management of affiliates and to executive staff members of the Company and of affiliates ("Stock Option Plan 2008"). Excluded are members of the Management Board of Fresenius Medical Care Management AG in its capacity as General Partner of Fresenius Medical Care AG & Co. KGaA as well as employees of Fresenius Medical Care AG & Co. KGaA and of affiliates which are affiliated with the Company only via Fresenius Medical Care AG & Co. KGaA, to the extent that they are in an exclusive working or service relationship with Fresenius Medical Care AG & Co. KGaA or with an affiliate which is affiliated with the Company only via Fresenius Medical Care AG & Co. KGaA. Each subscription right grants the right to subscription for one ordinary bearer share or one preference

bearer share. To the group of the Management Board, up to 1,200,000 subscription rights are allotted, which grant the right to subscription for up to 600,000 ordinary bearer shares and for up to 600,000 preference bearer shares. To the group of the members of the managements of affiliates, up to 3,200,000 subscription rights are allocated, which grant the right to subscription for up to 1,600,000 ordinary bearer shares and for up to 1,600,000 preference bearer shares. To the group of executive staff members of the Company and of affiliates, up to 1,800,000 subscription rights are allotted, which grant the right to subscription for up to 900,000 ordinary bearer shares and for up to 900,000 preference bearer shares, respectively. Subscription rights may only be exercised if the annual success target has been reached within the three-year vesting period determined in accordance with the regulations of the Stock Option Plan 2008. The success target is achieved in each case if, after the granting of the subscription rights to the respective beneficiary, the adjusted annual profit as compared to the previous financial year has increased by at least 8 %. The exercise price of a subscription right corresponds to the average stock exchange price (closing price) of the ordinary bearer share or the preference bearer share of the Company in the electronic XETRA trading system of Deutsche Börse AG in Frankfurt am Main or a comparable successor system on the last 30 trading days prior to the granting of the subscription right. The minimum exercise price is the pro-rata amount of the share capital of the Company allocable to the ordinary bearer share or the preference bearer share, respectively. As of December 31, 2009, under the Stock Option Plan 2008, subscription rights in the volume of 2,136,876 units were issued, none of which have so far been exercisable.

In the course of the change of the legal form, the beneficiaries under the existing employee participation programs receive subscription rights or conversion rights to shares in Fresenius SE & Co. KGaA instead of shares in Fresenius SE. The number of subscription rights and the number of shares to be delivered remains unaffected by the change of the legal form. As the share capital of Fresenius SE & Co. KGaA will be divided only into voting ordinary bearer shares, only voting ordinary bearer shares will be delivered. For each subscription right or conversion right granted at Fresenius SE for the subscription of a non-voting preference bearer share, the beneficiary will, in case of an exercise of such right – and provided that the relevant prerequisites for the exercise are fulfilled – receive a voting ordinary bearer share instead of a non-voting preference bearer share. The voting ordinary bearer shares in Fresenius SE & Co. KGaA and the non-voting preference bearer shares in Fresenius SE are equivalent within the meaning of sec. 23 German Conversion Act. On the one hand, the entitlement to a higher dividend and an (advance) minimum dividend for the preference shares will cease to exist upon the change of the legal form taking effect; on the other hand, each ordinary share replacing a preference share grants one voting right.

The exercise price or, in case of the Stock Option Plan 2003, the conversion price to be paid, in each case will remain unchanged. As exclusively ordinary shares are delivered, the exercise or conversion price, respectively, refers to the respective applicable stock exchange price of the ordinary shares.

Likewise, the respective success targets of the Stock Option Plans 1998 and 2008 will remain unchanged. With a view to the conversion of the entire share capital of the Company into voting ordinary bearer shares in the context of the change of the legal form, the success target of the



Stock Option Plan 2003 is to be adjusted to the effect that the success target is deemed to be achieved if the price increase of 25 % provided for in the Stock Option Plan 2003 is achieved by the fact that the sum of the following price increases amounts to at least 25 %: (i) increase of the joint average stock exchange price of ordinary shares and preference shares from the day of the issuance until the day when the change of the legal form takes effect; (ii) increase of the stock exchange price of the ordinary shares since the taking of effect of the change of the legal form. To the extent that the success target is or has already been achieved prior to the change of the legal form taking effect, the success target is deemed to be achieved also after the change of the legal form.

The rights under the options will remain unaffected by the change of an employment relationship of a beneficiary with Fresenius SE into an employment relationship with Fresenius SE & Co. KGaA or with Asion SE (which will in future bear the corporate name Fresenius Management SE) which will be acceding to the Company as General Partner.

The conditional capitals, which were created to secure the subscription or conversion rights under the Stock Option Plans 1998, 2003 and 2008, will continue to exist in amended form in Fresenius SE & Co. KGaA. With a view to the conversion of the entire share capital into voting ordinary bearer shares in the context of the change of the legal form of Fresenius SE to Fresenius SE & Co. KGaA, the conditional capitals will be amended in particular to the effect that the conditional capitals will exclusively provide for the issuance of voting ordinary bearer shares. The total amounts of the conditional capitals remain unchanged.

In addition to the conditional capitals, three authorized capitals are created in the articles of association of Fresenius SE & Co. KGaA, which are intended to alternatively service the existing employee participation programs. These authorized capitals also exclusively provide for the issuance of voting ordinary bearer shares.

#### General Partner

As a legal precaution, it is pointed out that Asion SE (in future bearing the corporate name Fresenius Management SE), in which the Else Kröner-Fresenius-Foundation holds a 100 % stake, will accede to the Company as General Partner and will take over the management of the business of the Company.

#### Corporate Body Members

As a legal precaution, it is pointed out that – irrespective of the decision-making authority of the Supervisory Board of Asion SE (which will in the future bear the corporate name Fresenius Management SE) according to German Stock Corporation Act – it can be assumed, that the present members of the Management Board of Fresenius SE will be appointed as members of the Management Board of the General Partner of Fresenius SE & Co. KGaA. The present members of the Management Board of Fresenius SE are the gentlemen Dr. Ulf M. Schneider (Chairman), Rainer Baule, Dr. Francesco De Meo, Dr. Jürgen Götz, Dr. Ben Lipps, Stephan Sturm and Dr. Ernst Wastler.

Furthermore, members of the Supervisory Board of Fresenius SE, namely the gentlemen Dr. Gerd Krick, Prof. Dr. h.c. Roland Berger, Klaus-Peter Müller and Dr. Gerhard Rupprecht, shall be appointed as

members of the Supervisory Board of Fresenius SE & Co. KGaA. The gentlemen Dr. Dieter Schenk and Dr. Karl Schneider shall not be appointed as members of the Supervisory Board of Fresenius SE & Co. KGaA.

Moreover, the gentlemen Dr. Gerd Krick, Prof. Dr. h.c. Roland Berger, Klaus-Peter Müller, Dr. Gerhard Rupprecht, Dr. Dieter Schenk and Dr. Karl Schneider, all of whom are members of the Supervisory Board of Fresenius SE, shall be appointed as members of the Supervisory Board of the General Partner of Fresenius SE & Co. KGaA.

(6) Amendment of the Stock Option Plans 1998, 2003 and 2008

Stock Option Plan 1998

The Stock Option Plan 1998 set up on the basis of the resolution of the General Meeting of June 18, 1998 (taking into account the amendment resolution of the General Meeting of December 4, 2006, required due to the new division of the share capital) is amended because of the conversion of the entire share capital into voting ordinary bearer shares in the context of the change of the legal form of the Company into a partnership limited by shares, so that all outstanding subscription rights are to be serviced, in case of exercise, with voting ordinary bearer shares. The rights under the options will remain unaffected by the change of an employment relationship of a beneficiary with Fresenius SE into an employment relationship with Fresenius SE & Co. KGaA or with Asion SE (which in future will bear the corporate name Fresenius Management SE), which will be acceding to the Company as General Partner.

Upon adoption of the new articles of association of Fresenius SE & Co. KGaA, the Conditional Capital I of the Company intended for the servicing of the Stock Option Plan 1998 (Art. 4 para. 6 of the statutes of Fresenius SE) will be adjusted to the conversion of the subscription rights to the subscription for voting ordinary bearer shares and, upon the change of the legal form of the Company into a partnership limited by shares taking effect, will take the form as set forth in Art. 4 para. 9 of Annex 1 to this invitation to the General Meeting.

Stock Option Plan 2003

The Stock Option Plan 2003 set up on the basis of the resolution of the General Meeting of May 28, 2003 (taking into account the amendment resolution of the General Meeting of December 4, 2006, required due to the new division of the share capital) is amended because of the conversion of the entire share capital into voting ordinary bearer shares in the context of the change of the legal form of the Company into a partnership limited by shares, so that all outstanding subscription rights associated with the issued convertible bonds are to be serviced with voting ordinary bearer shares in so far as the convertible bond holders use their exercise right.

The rights under the convertible bonds will remain unaffected by the change of an employment relationship of a beneficiary with Fresenius SE into an employment relationship with Fresenius SE & Co. KGaA or with Asion SE (which in future will bear the corporate name Fresenius Management SE), which will be acceding to the Company as General Partner.

With a view to the conversion of the entire share capital of the Company into voting ordinary bearer shares in the context of the change of the legal form, the success target of the Stock Option Plan 2003 is to be adjusted to the effect that the success target is deemed to be achieved if the price increase of 25 % provided for in the Stock Option Plan 2003 is achieved by the fact that the sum of the following price increases amounts to at least 25 %: (i) increase of the joint average stock exchange price of ordinary shares and preference shares from the day of the issuance until the day when the change of the legal form takes effect; (ii) increase of the stock exchange price of the ordinary shares since the taking of effect of the change of the legal form. To the extent that the success target is or has already been achieved prior to the change of the legal form taking effect, the success target is deemed to be achieved also after the change of the legal form.

Upon adoption of the new articles of association of Fresenius SE & Co. KGaA, the Conditional Capital II of the Company intended for the servicing of the Stock Option Plan 2003 (Art. 4 para. 7 of the statutes of Fresenius SE) will be adjusted to the conversion of the subscription rights to the subscription of voting ordinary bearer shares and, upon the change of the legal form of the Company into a partnership limited by shares taking effect, will take the form as set forth in Art. 4 para. 10 of Annex 1 to this invitation to the General Meeting.

#### Stock Option Plan 2008

The Stock Option Plan 2008 set up on the basis of the resolution of the General Meeting of May 21, 2008 is amended because of the conversion of the entire share capital into voting ordinary bearer shares in the context of the change of the legal form of the Company into a partnership limited by shares as follows:

- As of the change of the legal form of the Company into a partnership limited by shares taking effect, the beneficiaries under the Stock Option Plan 2008 can be exclusively granted subscription rights for voting ordinary bearer shares. As of the change of the legal form taking effect, subscription rights already granted are to be serviced exclusively by voting ordinary bearer shares.
- With respect to the different corporate body structure of Fresenius SE & Co. KGaA, the circle of beneficiaries will be adjusted so that, as of the change of the legal form taking effect, instead of the members of the then no longer existing Management Board of the Company, the members of the Management Board of the General Partner are the beneficiaries. The rights under the options will remain unaffected by the change of an employment relationship of a beneficiary with Fresenius SE into an employment relationship with Fresenius SE & Co. KGaA or with Asion SE (which in future will bear the corporate name Fresenius Management SE), which will be acceding to the Company as General Partner.
- To the extent that, upon the change of the legal form taking effect, the Management Board (with respect to subscription rights for executive staff members) or the Supervisory Board (with respect to subscription rights for members of the Management Board) has not yet used the authorization under the stock option plan to grant subscription rights, the General Partner (with respect to subscription

rights for executive staff members) or its Supervisory Board (with respect to subscription rights for members of the Management Board of the General Partner) is authorized to grant in such amount subscription rights for voting ordinary bearer shares.

Upon adoption of the new articles of association of Fresenius SE & Co. KGaA, the Conditional Capital III of the Company intended for the servicing of the Stock Option Plan 2008 (Art. 4 para. 8 of the statutes of Fresenius SE) will be adjusted to the conversion of the subscription rights to the subscription for voting ordinary bearer shares and, upon the change of the legal form of the Company into a partnership limited by shares taking effect, will take the form as set forth in Art. 4 para. 11 of Annex 1 to this invitation to the General Meeting.

- (7) The articles of association of Fresenius SE & Co. KGaA are hereby adopted in the wording set forth in Annex 1 to this invitation to the General Meeting.

By adoption of the new articles of association of Fresenius SE & Co. KGaA, the Authorized Capital I and the Authorized Capital II will, as of the change of the legal form into a partnership limited by shares taking effect, be adjusted with respect to the change of the legal form of the Company into a partnership limited by shares and the conversion of the entire share capital into voting ordinary bearer shares and will take the form as set forth in Art. 4 para. 4 (Authorized Capital I) and Art 4 para. 5 (Authorized Capital II) of Annex 1 to this invitation to the General Meeting. With respect to the Authorized Capital I, the General Partner is authorized to exclude the shareholders' subscription right for fractional amounts. With respect to the Authorized Capital II, the General Partner is authorized, pursuant to the wording of Art. 4 para. 5 of Annex 1 to this invitation to the General Meeting, to exclude the shareholders' subscription right with the consent of the Supervisory Board.

Furthermore, by adoption of the new articles of association of Fresenius SE & Co. KGaA, the Authorized Capital III, the Authorized Capital IV and the Authorized Capital V will, as of the change of the legal form into a partnership limited by shares taking effect, be newly created and will take the form as set forth in Art. 4 para. 6 (Authorized Capital III), Art. 4 para. 7 (Authorized Capital IV) and Art. 4 para. 8 (Authorized Capital V) of Annex 1 to this invitation to the General Meeting. With respect to the Authorized Capitals III, IV and V, the shareholders' subscription right is excluded.

The Supervisory Board is authorized to amend the wording of the articles of association prior to entering the resolution on the change of the legal form in the commercial register, insofar as this is required due to an issuance of shares out of existing conditional capital which has occurred in the meantime, to the then applicable amount of the share capital. The Supervisory Board is further authorized to amend the wording of the articles of association prior to entering the resolution on the change of the legal form in the commercial register, insofar as changes regarding the amounts of the respective conditional capitals occur.

- (8) No offer of compensation under sec. 207 German Conversion Act needs to be made as a result of the provision of sec. 250 German Conversion Act.

- (9) The consequences of the change of the legal form for the employees and their representations and the measures planned in this respect are determined as follows (including information on the procedure regarding the participation of the employees in connection with the planned cross-border merger of Calea Nederland N.V. into the Company):

The change of the legal form has no effects for the employees and their employment relationships. The change of the legal form does not involve a change of employer; the employment contracts of the employees continue to apply unchanged. The employer's right to issue instructions will be exercised after the change of the legal form and the subsequent cross-border merger of Calea Nederland N.V. into Fresenius SE & Co. KGaA by Fresenius SE & Co. KGaA, represented by the Management Board of the General Partner, i.e., Asion SE (which will in the future bear the corporate name Fresenius Management SE). This does not involve any changes for the employees.

The change of the legal form and the subsequent cross-border merger of Calea Nederland N.V. into Fresenius SE & Co. KGaA have the following impacts on the employees' representations and the co-determination of employees in the Supervisory Board:

The existing SE works council of Fresenius SE 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 former SE works council in accordance with the provisions of the European Works Councils Act (*Europäisches Betriebsräte-Gesetz* – "EBRG"). Other than that, the existence and composition of the works councils, the executives' committees (*Sprecherausschüsse*) and other employee representations as well as their rights and powers will not be changed by the change of the legal form and the subsequent cross-border merger of Calea Nederland N.V. into Fresenius SE & Co. KGaA. All works agreements remain in effect unchanged in their present form. The binding character of collective bargaining agreements for the Company and its subsidiaries remains likewise unaffected by the change of the legal form.

The change of the legal form changes the corporate co-determination. The corporate co-determination in the Supervisory Board of Fresenius SE is governed by the provisions of the SE Participation Act and the agreement regarding the participation of employees in Fresenius SE of July 13, 2007. The Supervisory Board of Fresenius SE maintains equal representation and consists of six Supervisory Board members of the shareholders and six of the employees. At the moment, four of the employee representatives in the Supervisory Board of Fresenius SE are from Germany and one each from Italy and Austria. The change of the legal form of Fresenius SE into a partnership limited by shares would, in principle, lead to the corporate co-determination being governed by the provisions of the German Co-Determination Act. Based on the number of employees working for the Company and its group companies in Germany, a Supervisory Board with equal representation, consisting of ten members of the Supervisory Board of the shareholders and ten of the employees, would have to be established pursuant to the provisions of the German Co-Determination Act. With respect to the employee representatives in the Supervisory Board of Fresenius SE & Co. KGaA,

out of the employees of the Fresenius Group, only the employees working in Germany would have a right to vote and a right to be elected in accordance with the German Co-Determination Act.

It is planned to implement a cross-border merger of the Dutch Calea Nederland N.V. into the Company in connection with the change of the legal form of the Company into a partnership limited by shares. The Company has a 100 % stake in Calea Nederland N.V. In 2008, Calea Nederland N.V. sold and transferred its entire business to Tefa-Portanje B.V. Since then, it no longer has any own business or any employees. The cross-border merger is to become effective immediately upon the change of the legal form taking effect. As a result of the cross-border merger, the corporate co-determination at Fresenius SE & Co. KGaA will not be governed by the provisions of the German Co-Determination Act, but rather by the provisions of the German Act on Employee Co-Determination in case of Cross-Border Mergers ("MgVG"). If the cross-border merger becomes effective, as planned, immediately after the change of the legal form takes effect, the provisions of the German Co-Determination Act do not apply. Accordingly, the Supervisory Board of the Company for the time after the change of the legal form takes effect will be established not in accordance with the provisions of the German Co-Determination Act, but in accordance with the provisions of the MgVG. The MgVG governs the co-determination of employees in the corporate bodies of a company resulting from a cross-border merger. The Act aims at safeguarding the co-determination rights of employees in the companies involved in the merger.

In connection with a cross-border merger, in principle, a procedure regarding the participation of employees must be conducted. Such procedure would aim at the conclusion of an agreement among the managements of the companies involved in the merger and a special negotiating body representing the interests of the employees on the co-determination of employees in the supervisory board of the company. For the purpose set out above, co-determination means the influence of employees on the matters of a company by exercising the right to elect or appoint part of the members of the supervisory or administrative body of the company, or the exercise of the right to recommend or reject the appointment of some or all members of the supervisory or administrative body of the company (sec. 2 para. 7 MgVG). If no agreement can be reached until the end of the negotiating period provided for in the MgVG, the statutory subsidiary regulation of the MgVG applies, which secures the co-determination of the employees by operation of law ("co-determination by operation of law").

Under the provisions of the MgVG, the managements of the companies involved in the merger, i.e., the Management Board of the Company and the management of Calea Nederland N.V., may decide to apply the regulations on the co-determination by operation of law without prior negotiations with a special negotiating body immediately as of the time of the registration of the company resulting from the cross-border merger (sec. 23 para. 1 sentence 1 no. 3 MgVG). The further requirement that at least a third of all employees of the Company, 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. With respect to the co-determination by operation of law, the corporate co-determination is governed by the provisions of secs. 23 et seq. MgVG. These contain, in particular, regulations on the

scope of the co-determination, the allocation of seats within the employees' representation (so-called employee bench), the removal of employee representatives and the contesting of the election of employee representatives as well as on the legal position of the employee representatives.

The Management Board of the Company and the management of Calea Nederland N.V. decided on March 30, 2010 pursuant to sec. 23 para. 1 sentence 1 no. 3 MgVG that the regulations on the co-determination by operation of law without prior negotiations shall apply to the company resulting from the cross-border merger immediately as of the time of the registration of the merger. For this reason, negotiations with a special negotiating body need not be initiated.

Pursuant to sec. 24 para. 1 MgVG, within the framework of the statutory subsidiary regulation, the number of employee representatives in the supervisory body of the company resulting from the cross-border merger is assessed on the basis of the highest number of employee representatives existing in one of the bodies of the companies involved in the merger prior to such merger. As Calea Nederland N.V. is not subject to any corporate co-determination, the proportionate allocation of the seats of the Supervisory Board between shareholders and employees of the acquiring company following the merger is based on the number of employee representatives existing in the acquiring company prior to the merger taking 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 would, in principle, lead 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 merger will consist of employee representatives. Thus, the principle of equal representation applied in Fresenius SE is continued in effect in the Supervisory Board of Fresenius SE & Co. KGaA.

The size of the Supervisory Board of the company resulting from the cross-border merger will be determined within the limits of sec. 95 German Stock Corporation Act in the articles of association of Fresenius SE & Co. KGaA. The articles of association of Fresenius SE & Co. KGaA to be adopted in the context of the conversion resolution provide that the Supervisory Board is to consist 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 MgVG provides that a special negotiating body is to allocate the number of seats for employee representatives in the Supervisory Board to the Member States of the EU or the states party to the EEA Agreement, in which members are to be elected or 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 of the EU or the states party to the EEA Agreement (sec. 25 para. 1 sentence 2 MgVG). In the event that the

employees from one or several Member States of the EU or the states party to the EEA Agreement cannot obtain a seat in such pro-rata allocation, the last seat to be allocated is to be assigned to a Member State of the EU or a state party to the EEA Agreement that has not yet been allocated any seats (sec. 25 para. 1 sentence 3 MgVG). As the Management Board of the Company 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 purposes of the allocation of seats. The Management Board of the Company and the management of Calea Nederland N.V. are of 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 of the EU and from the states party to the EEA Agreement. For this reason, the SE works council shall allocate the seats, following the consent of the SE works council of Fresenius SE, 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 to be allocated to a Member State of the EU or a state party to the EEA Agreement in the Supervisory Board of Fresenius SE & Co. KGaA is based on the national regulations of the relevant Member State concerned. The election of the employee representatives in the Supervisory Board of Fresenius SE & Co. KGaA to be allocated to Germany is made by an electoral body consisting of the employees' representations of the Company, its subsidiaries and operational units (sec. 25 para. 3 sentence 1 MgVG). Pursuant to secs. 25 para. 3 sentence 2, 8 paras. 2 and 3 MgVG, employees of the German companies and operational units of the Fresenius Group as well as trade union representatives may be elected. Men and women 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 a company involved in the merger, the concerned subsidiaries or a concerned operational unit. Consequently, since it is expected that, as was the case in Fresenius SE, four seats for employee representatives will be allocated to Germany also in the Supervisory Board of the converted Fresenius SE & Co. KGaA, one German trade union representative would have to be elected to the Supervisory Board.

The regulations under the MgVG regarding co-determination by operation of law apply as of the time of registration of the merger.

Irrespective of the fact that the size of the Supervisory Board and the composition of equal representation will not change because of the cross-border merger compared to the situation at Fresenius SE, as a result of the change of the legal form all previous Supervisory Board mandates will cease to exist. All members of the Supervisory Board, i.e., also the employee representatives, will have to be newly elected. The



election of the shareholder representatives is provided for in item 9 of the agenda of the Ordinary General Meeting of the Company to be held on May 12, 2010. In the event that the procedure for the election of the employee representatives has not been completed upon the change of the legal form taking effect, the employee representatives in the Supervisory Board of Fresenius SE & Co. KGaA are to be initially appointed by the court.

With regard to the change of the legal form or the cross-border merger, no other measures are proposed or planned which would affect the situation of the employees.

The resolution of the ordinary shareholders regarding this agenda item also constitutes the special resolution of the ordinary shareholders pursuant to Art. 60 of Council Regulation (EC) No. 2157/2001 of October 8, 2001 on the Statute for a European company (SE).

- b) Consent of Asion SE (which will in future bear the corporate name Fresenius Management SE) to the accession as General Partner of Fresenius SE & Co. KGaA and approval of the articles of association of Fresenius SE & Co. KGaA pursuant to Annex 1 to this invitation to the General Meeting by Asion SE (in future bearing the corporate name Fresenius Management SE).

**8. Separate vote of the preference shareholders on the resolution of the Ordinary General Meeting on the same date on the change of the legal form of the Company into the legal form of a partnership limited by shares (*Kommanditgesellschaft auf Aktien*) with accession of Fresenius Management SE.**

The Management Board and the Supervisory Board propose to resolve as follows:

- (1) Fresenius SE is converted by way of a change of the legal form in accordance with the provisions of the German Conversion Act (*Umwandlungsgesetz*) into a partnership limited by shares (*Kommanditgesellschaft auf Aktien - KGaA*).
- (2) The corporate name of the entity in its new legal form is Fresenius SE & Co. KGaA.
- (3) The entire share capital of Fresenius SE in the amount existing at the time of entering the change of the legal form in the commercial register becomes the share capital of Fresenius SE & Co. KGaA, and the shareholders who are shareholders of Fresenius SE at the time of entering the change of the legal form in the commercial register become limited liability shareholders (*Kommanditaktionäre*) of Fresenius SE & Co. KGaA. They participate to the same extent and with the same number of no-par value shares in the share capital of Fresenius SE & Co. KGaA as they did in Fresenius SE prior to the change of the legal form taking effect. The notional proportion of each no-par value share in the share capital remains unchanged. Both the ordinary shareholders and the preference shareholders of Fresenius SE participate in Fresenius SE & Co. KGaA with voting ordinary shares. The ordinary shareholders receive the same number of voting ordinary bearer shares which they held in Fresenius SE prior to the change of the legal form taking effect. The preference shareholders receive a number of voting ordinary bearer shares corresponding to the number of non-voting preference bearer

shares which they held in Fresenius SE prior to the change of the legal form taking effect.

- (4) The General Partner of Fresenius SE & Co. KGaA will be Asion SE (in future bearing the corporate name Fresenius Management SE) with its registered office in Düsseldorf. Pursuant to sec. 245 para. 2 German Conversion Act, in applying the rules of incorporation of the German Stock Corporation Act, the General Partner takes the position of the incorporator of the entity in its new legal form. In the context of the change of the legal form, the General Partner does not take any participation in the share capital and does therefore not participate in the assets, profit and loss of Fresenius SE & Co. KGaA.

- (5) Special Rights and Benefits

Non-Voting Preference Bearer Shares

Under the current legal situation, the preference shares of Fresenius SE receive a dividend from the annual distributable profit of Fresenius SE which is Euro 0.01 per preference share higher than the dividend for the ordinary shares, at least, however, a dividend of Euro 0.02 per preference share. The minimum dividend in the amount 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 distribute Euro 0.02 per preference share, the deficits will be paid in arrears, without interest, from the distributable profit of the following financial years, after distribution of the minimum dividend on the preference shares for those financial years and before the payment of a dividend on the ordinary shares. The right to such payment in arrears is a 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.

The share capital of Fresenius SE & Co. KGaA will be exclusively divided into voting ordinary bearer shares. The preference shareholders of Fresenius SE will receive one voting ordinary bearer share in Fresenius SE & Co. KGaA for each non-voting preference bearer share they held in Fresenius SE prior to the change of the legal form taking effect. The voting ordinary shares in Fresenius SE & Co. KGaA and the non-voting preference shares in Fresenius SE are equivalent within the meaning of sec. 23 German Conversion Act. On the one hand, the preference shareholders of Fresenius SE will not be entitled to a higher dividend or an (advance) minimum dividend after the change of the legal form into Fresenius SE & Co. KGaA has taken effect; on the other hand, they will, as ordinary shareholders of Fresenius SE & Co. KGaA, obtain the voting right.

Special Rights under Existing Employee Participation Programs

By resolution of the General Meeting of June 18, 1998, the Company has issued subscription rights to ordinary shares and to preference shares to members of the Management Board of the Company, members of the managements of affiliates of the Fresenius Group, senior officers (*leitende Angestellte*) (within the meaning of the classification by the Company) of the Company and of German affiliates of the Fresenius Group and executive staff members (*Führungskräfte*) of the foreign affiliates of the Fresenius Group ("Stock Option Plan 1998"); altogether, these subscription rights entitle their holders to subscribe for up to

450,000 ordinary shares and for up to 450,000 preference shares. Excluded are members of the management and employees of Fresenius Medical Care AG (now Fresenius Medical Care AG & Co. KGaA) and of those affiliates that are affiliated with the Company only via Fresenius Medical Care. An option entitles either to the subscription for an ordinary share or for a preference share. To the group of the members of the Management Board, up to 200,000 options are allotted, which grant the right to subscription for up to 100,000 ordinary shares and up to 100,000 preference shares. To the group of the executive staff members, up to 700,000 options are allotted, which grant the right to subscription for up to 350,000 ordinary shares and for up to 350,000 preference shares. The stock options granted under the Stock Option Plan 1998 have a term of ten years. One third of the options can be exercised at the earliest two, three or four years after the date they were granted, respectively. Furthermore, the exercise of the options is subject to the mandatory requirement that within the first two-year vesting period following the granting of the options to the beneficiary, the consolidated earnings of the group before interest, before payments for profit participation capital and for securities similar to profit participation rights and before taxes on income and profit (EBIT) must have increased by at least 15 % (success target). The Management Board and the Supervisory Board are authorized to determine in the terms of the options a higher percentage than 15 as a prerequisite for exercising the options. The exercise price of an option corresponds to the average standard quotation of the ordinary bearer share or the non-voting preference bearer share of the Company on the Frankfurt Stock Exchange on the last 30 trading days prior to the granting of the option to the beneficiaries. As of December 31, 2009, under the Stock Option Plan 1998, stock options in a volume of 457,062 units were issued all of which were exercisable.

By resolution of May 28, 2003, the Ordinary General Meeting of the Company has authorized the Management Board of the Company, with the consent of the Supervisory Board, to issue convertible bonds in the aggregate nominal amount of Euro 4,608,000.00 to the members of the Management Board of the Company, to members of the management of affiliates of the Company, to employees of the Company and to employees of affiliates of the Company; altogether, the convertible bonds entitle their holders to subscribe for up to 900,000 ordinary shares and up to 900,000 preference shares ("Stock Option Plan 2003"). Excluded are members of the management and employees of Fresenius Medical Care AG (now Fresenius Medical Care AG & Co. KGaA) and of those affiliates that are affiliated with the Company only via Fresenius Medical Care. Each convertible bond grants the right to subscription for one ordinary share or one preference share. To the group of the members of the Management Board, up to 400,000 convertible bonds are allotted, which grant the right to subscription for up to 200,000 ordinary shares and for up to 200,000 preference shares. To the group of the employees, up to 1,400,000 convertible bonds are allotted, which grant the right to subscription for up to 700,000 ordinary shares and for up to 700,000 preference shares. The beneficiaries are entitled to choose between convertible bonds with a success target (stock price target) and convertible bonds without a success target. If the beneficiaries opt for convertible bonds without a success target, they receive 15 % less stock options than if they opt for convertible bonds with a success target. In the case of convertible bonds with a success target, the exercise of the conversion right depends on the achievement of the following success target: The success target is deemed to be

achieved if prior to the conversion of the convertible bonds there is an increase of the joint average stock exchange price of ordinary shares and preference shares compared to the average stock exchange price of ordinary shares and preference shares on the day such convertible bonds were granted ("initial value") that amounted to a minimum of 25 % on at least one day. The initial value is determined based on the joint average stock exchange price of the ordinary and the preference share during the last 30 days preceding the day on which the respective convertible bond has been granted. The conversion price for convertible bonds with a success target corresponds to the stock exchange price of the ordinary shares or the preference shares, respectively, at the time the target is achieved for the first time, less the par value of the converted convertible bond. The conversion price for convertible bonds without a success target corresponds to the average stock exchange price of the ordinary share or the preference share, respectively, during the last 30 trading days at the stock exchange prior to the granting of the relevant convertible bonds, less the par value of the converted convertible bond. As of December 31, 2009, under the Stock Option Plan 2003, convertible bonds in a volume of 2,799,514 units were issued. Thereof, 1,953,308 items were exercisable.

By resolution of May 21, 2008, the Ordinary General Meeting of the Company has authorized the Management Board of the Company, with the consent of the Supervisory Board, to issue up to 6,200,000 subscription rights for up to 3,100,000 ordinary bearer shares as well as for up to 3,100,000 preference bearer shares to members of the Management Board of the Company, to members of the managements of affiliates and to executive staff members of the Company and of affiliates ("Stock Option Plan 2008"). Excluded are members of the Management Board of Fresenius Medical Care Management AG in its capacity as General Partner of Fresenius Medical Care AG & Co. KGaA as well as employees of Fresenius Medical Care AG & Co. KGaA and of affiliates which are affiliated with the Company only via Fresenius Medical Care AG & Co. KGaA, to the extent that they are in an exclusive working or service relationship with Fresenius Medical Care AG & Co. KGaA or with an affiliate which is affiliated with the Company only via Fresenius Medical Care AG & Co. KGaA. Each subscription right grants the right to subscription for one ordinary bearer share or one preference bearer share. To the group of the Management Board, up to 1,200,000 subscription rights are allotted, which grant the right to subscription for up to 600,000 ordinary bearer shares and for up to 600,000 preference bearer shares. To the group of the members of the managements of affiliates, up to 3,200,000 subscription rights are allocated, which grant the right to subscription for up to 1,600,000 ordinary bearer shares and for up to 1,600,000 preference bearer shares. To the group of executive staff members of the Company and of affiliates, up to 1,800,000 subscription rights are allotted, which grant the right to subscription for up to 900,000 ordinary bearer shares and for up to 900,000 preference bearer shares, respectively. Subscription rights may only be exercised if the annual success target has been reached within the three-year vesting period determined in accordance with the regulations of the Stock Option Plan 2008. The success target is achieved in each case if, after the granting of the subscription rights to the respective beneficiary, the adjusted annual profit as compared to the previous financial year has increased by at least 8 %. The exercise price of a subscription right corresponds to the average stock exchange price (closing price) of the ordinary bearer share or the preference bearer share of the Company in the electronic XETRA trading system of Deutsche Börse AG in Frankfurt

am Main or a comparable successor system on the last 30 trading days prior to the granting of the subscription right. The minimum exercise price is the pro-rata amount of the share capital of the Company allocable to the ordinary bearer share or the preference bearer share, respectively. As of December 31, 2009, under the Stock Option Plan 2008, subscription rights in the volume of 2,136,876 units were issued, none of which have so far been exercisable.

In the course of the change of the legal form, the beneficiaries under the existing employee participation programs receive subscription rights or conversion rights to shares in Fresenius SE & Co. KGaA instead of shares in Fresenius SE. The number of subscription rights and the number of shares to be delivered remains unaffected by the change of the legal form. As the share capital of Fresenius SE & Co. KGaA will be divided only into voting ordinary bearer shares, only voting ordinary bearer shares will be delivered. For each subscription right or conversion right granted at Fresenius SE for the subscription of a non-voting preference bearer share, the beneficiary will, in case of an exercise of such right – and provided that the relevant prerequisites for the exercise are fulfilled – receive a voting ordinary bearer share instead of a non-voting preference bearer share. The voting ordinary bearer shares in Fresenius SE & Co. KGaA and the non-voting preference bearer shares in Fresenius SE are equivalent within the meaning of sec. 23 German Conversion Act. On the one hand, the entitlement to a higher dividend and an (advance) minimum dividend for the preference shares will cease to exist upon the change of the legal form taking effect; on the other hand, each ordinary share replacing a preference share grants one voting right.

The exercise price or, in case of the Stock Option Plan 2003, the conversion price to be paid, in each case will remain unchanged. As exclusively ordinary shares are delivered, the exercise or conversion price, respectively, refers to the respective applicable stock exchange price of the ordinary shares.

Likewise, the respective success targets of the Stock Option Plans 1998 and 2008 will remain unchanged. With a view to the conversion of the entire share capital of the Company to voting ordinary bearer shares in the context of the change of the legal form, the success target of the Stock Option Plan 2003 is to be adjusted to the effect, that the success target is deemed to be achieved if the price increase of 25 % provided for in the Stock Option Plan 2003 is achieved by the fact that the sum of the following price increases amounts to at least 25 %: (i) increase of the joint average stock exchange price of ordinary shares and preference shares from the day of the issuance until the day when the change of the legal form takes effect; (ii) increase of the stock exchange price of the ordinary shares since the taking of effect of the change of the legal form. To the extent that the success target is or has already been achieved prior to the change of the legal form taking effect, the success target is deemed to be achieved also after the change of the legal form.

The rights under the options will remain unaffected by the change of an employment relationship of a beneficiary with Fresenius SE into an employment relationship with Fresenius SE & Co. KGaA or with Asion SE (which will in future bear the corporate name Fresenius Management SE) which will be acceding to the Company as General Partner.

The conditional capitals, which were created to secure the subscription or conversion rights under the Stock Option Plans 1998, 2003 and 2008,

will continue to exist in amended form in Fresenius SE & Co. KGaA. With a view to the conversion of the entire share capital into voting ordinary bearer shares in the context of the change of the legal form of Fresenius SE to Fresenius SE & Co. KGaA, the conditional capitals will be amended in particular to the effect that the conditional capitals will exclusively provide for the issuance of voting ordinary bearer shares. The total amounts of the conditional capitals remain unchanged.

In addition to the conditional capitals, three authorized capitals are created in the articles of association of Fresenius SE & Co. KGaA, which are intended to alternatively service the existing employee participation programs. These authorized capitals also exclusively provide for the issuance of voting ordinary bearer shares.

#### General Partner

As a legal precaution, it is pointed out that Asion SE (in future bearing the corporate name Fresenius Management SE), in which the Else Kröner-Fresenius-Foundation holds a 100 % stake, will accede to the Company as General Partner and will take over the management of the business of the Company.

#### Corporate Body Members

As a legal precaution, it is pointed out that – irrespective of the decision making authority of the Supervisory Board of Asion SE (which will in the future bear the corporate name Fresenius Management SE) according to German Stock Corporation Act – it can be assumed, that the present members of the Management Board of Fresenius SE will be appointed as members of the Management Board of the General Partner of Fresenius SE & Co. KGaA. The present members of the Management Board of Fresenius SE are the gentlemen Dr. Ulf M. Schneider (Chairman), Rainer Baule, Dr. Francesco De Meo, Dr. Jürgen Götz, Dr. Ben Lipps, Stephan Sturm and Dr. Ernst Wastler.

Furthermore, members of the Supervisory Board of Fresenius SE, namely the gentlemen Dr. Gerd Krick, Prof. Dr. h.c. Roland Berger, Klaus-Peter Müller and Dr. Gerhard Rupprecht, shall be appointed as members of the Supervisory Board of Fresenius SE & Co. KGaA. The gentlemen Dr. Dieter Schenk and Dr. Karl Schneider shall not be appointed as members of the Supervisory Board of Fresenius SE & Co. KGaA.

Moreover, the gentlemen Dr. Gerd Krick, Prof. Dr. h.c. Roland Berger, Klaus-Peter Müller, Dr. Gerhard Rupprecht, Dr. Dieter Schenk and Dr. Karl Schneider, all of whom are members of the Supervisory Board of Fresenius SE, shall be appointed as members of the Supervisory Board of the General Partner of Fresenius SE & Co. KGaA.

### (6) Amendment of the Stock Option Plans 1998, 2003 and 2008

#### Stock Option Plan 1998

The Stock Option Plan 1998 set up on the basis of the resolution of the General Meeting of June 18, 1998 (taking into account the amendment resolution of the General Meeting of December 4, 2006, required due to the new division of the share capital) is amended because of the conversion of the entire share capital into voting ordinary bearer shares

in the context of the change of the legal form of the Company into a partnership limited by shares, so that all outstanding subscription rights are to be serviced, in case of exercise, with voting ordinary bearer shares. The rights under the options will remain unaffected by the change of an employment relationship of a beneficiary with Fresenius SE into an employment relationship with Fresenius SE & Co. KGaA or with Asion SE (which in future will bear the corporate name Fresenius Management SE), which will be acceding to the Company as General Partner.

Upon adoption of the new articles of association of Fresenius SE & Co. KGaA, the Conditional Capital I of the Company intended for the servicing of the Stock Option Plan 1998 (Art. 4 para. 6 of the statutes of Fresenius SE) will be adjusted to the conversion of the subscription rights to the subscription for voting ordinary bearer shares and, upon the change of the legal form of the Company into a partnership limited by shares taking effect, will take the form as set forth in Art. 4 para. 9 of Annex 1 to this invitation to the General Meeting.

### Stock Option Plan 2003

The Stock Option Plan 2003 set up on the basis of the resolution of the General Meeting of May 28, 2003 (taking into account the amendment resolution of the General Meeting of December 4, 2006, required due to the new division of the share capital) is amended because of the conversion of the entire share capital into voting ordinary bearer shares in the context of the change of the legal form of the Company into a partnership limited by shares, so that all outstanding subscription rights associated with the issued convertible bonds are to be serviced with voting ordinary bearer shares in so far as the convertible bond holders use their exercise right.

The rights under the convertible bonds will remain unaffected by the change of an employment relationship of a beneficiary with Fresenius SE into an employment relationship with Fresenius SE & Co. KGaA or with Asion SE (which in future will bear the corporate name Fresenius Management SE), which will be acceding to the Company as General Partner.

With a view to the conversion of the entire share capital of the Company into voting ordinary bearer shares in the context of the change of the legal form, the success target of the Stock Option Plan 2003 is to be adjusted to the effect, that the success target is deemed to be achieved if the price increase of 25 % provided for in the Stock Option Plan 2003 is achieved by the fact that the sum of the following price increases amounts to at least 25 %: (i) increase of the joint average stock exchange price of ordinary shares and preference shares from the day of the issuance until the day when the change of the legal form takes effect; (ii) increase of the stock exchange price of the ordinary shares since the taking of effect of the change of the legal form. To the extent that the success target is or has already been achieved prior to the change of the legal form taking effect, the success target is deemed to be achieved also after the change of the legal form.

Upon adoption of the new articles of association of Fresenius SE & Co. KGaA, the Conditional Capital II of the Company intended for the servicing of the Stock Option Plan 2003 (Art. 4 para. 7 of the statutes of Fresenius SE) will be adjusted to the conversion of the subscription

rights to the subscription of voting ordinary bearer shares and, upon the change of the legal form of the Company into a partnership limited by shares taking effect, will take the form as set forth in Art. 4 para. 10 of Annex 1 to this invitation to the General Meeting.

#### Stock Option Plan 2008

The Stock Option Plan 2008 set up on the basis of the resolution of the General Meeting of May 21, 2008 is amended because of the conversion of the entire share capital into voting ordinary bearer shares in the context of the change of the legal form of the Company into a partnership limited by shares as follows:

- As of the change of the legal form of the Company into a partnership limited by shares taking effect, the beneficiaries under the Stock Option Plan 2008 can be exclusively granted subscription rights for voting ordinary bearer shares. As of the change of the legal form taking effect, subscription rights already granted are to be serviced exclusively by voting ordinary bearer shares.
- With respect to the different corporate body structure of Fresenius SE & Co. KGaA, the circle of beneficiaries will be adjusted so that, as of the change of the legal form taking effect, instead of the members of the then no longer existing Management Board of the Company, the members of the Management Board of the General Partner are the beneficiaries. The rights under the options will remain unaffected by the change of an employment relationship of a beneficiary with Fresenius SE into an employment relationship with Fresenius SE & Co. KGaA or with Asion SE (which in future will bear the corporate name Fresenius Management SE), which will be acceding to the Company as General Partner.
- To the extent that, upon the change of the legal form taking effect, the Management Board (with respect to subscription rights for executive staff members) or the Supervisory Board (with respect to subscription rights for members of the Management Board) has not yet used the authorization under the stock option plan to grant subscription rights, the General Partner (with respect to subscription rights for executive staff members) or its Supervisory Board (with respect to subscription rights for members of the Management Board of the General Partner) is authorized to grant in such amount subscription rights for voting ordinary bearer shares.

Upon adoption of the new articles of association of Fresenius SE & Co. KGaA, the Conditional Capital III of the Company intended for the servicing of the Stock Option Plan 2008 (Art. 4 para. 8 of the statutes of Fresenius SE) will be adjusted to the conversion of the subscription rights to the subscription for voting ordinary bearer shares and, upon the change of the legal form of the Company into a partnership limited by shares taking effect, will take the form as set forth in Art. 4 para. 11 of Annex 1 to this invitation to the General Meeting.

- (7) The articles of association of Fresenius SE & Co. KGaA are hereby adopted in the wording set forth in Annex 1 to this invitation to the General Meeting.

By adoption of the new articles of association of Fresenius SE & Co. KGaA, the Authorized Capital I and the Authorized Capital II will, as of



the change of the legal form into a partnership limited by shares taking effect, be adjusted with respect to the change of the legal form of the Company into a partnership limited by shares and the conversion of the entire share capital into voting ordinary bearer shares and will take the form as set forth in Art. 4 para. 4 (Authorized Capital I) and Art 4 para. 5 (Authorized Capital II) of Annex 1 to this invitation to the General Meeting. With respect to the Authorized Capital I, the General Partner is authorized to exclude the shareholders' subscription right for fractional amounts. With respect to the Authorized Capital II, the General Partner is authorized, pursuant to the wording of Art. 4 para. 5 of Annex 1 to this invitation to the General Meeting, to exclude the shareholders' subscription right with the consent of the Supervisory Board.

Furthermore, by adoption of the new articles of association of Fresenius SE & Co. KGaA, the Authorized Capital III, the Authorized Capital IV and the Authorized Capital V will, as of the change of the legal form into a partnership limited by shares taking effect, be newly created and will take the form as set forth in Art. 4 para. 6 (Authorized Capital III), Art. 4 para. 7 (Authorized Capital IV) and Art. 4 para. 8 (Authorized Capital V) of Annex 1 to this invitation to the General Meeting. With respect to the Authorized Capitals III, IV and V, the shareholders' subscription right is excluded.

The Supervisory Board is authorized to amend the wording of the articles of association prior to entering the resolution on the change of the legal form in the commercial register, insofar as this is required due to an issuance of shares out of existing conditional capital which has occurred in the meantime, to the then applicable amount of the share capital. The Supervisory Board is further authorized to amend the wording of the articles of association prior to entering the resolution on the change of the legal form in the commercial register, insofar as changes regarding the amounts of the respective conditional capitals occur.

- (8) No offer of compensation under sec. 207 German Conversion Act needs to be made as a result of the provision of sec. 250 German Conversion Act.
- (9) The consequences of the change of the legal form for the employees and their representations and the measures planned in this respect are determined as follows (including information on the procedure regarding the participation of the employees in connection with the planned cross-border merger of Calea Nederland N.V. into the Company):

The change of the legal form has no effects for the employees and their employment relationships. The change of the legal form does not involve a change of employer; the employment contracts of the employees continue to apply unchanged. The employer's right to issue instructions will be exercised after the change of the legal form and the subsequent cross-border merger of Calea Nederland N.V. into Fresenius SE & Co. KGaA by Fresenius SE & Co. KGaA, represented by the Management Board of the General Partner, i.e., Asion SE (which will in the future bear the corporate name Fresenius Management SE). This does not involve any changes for the employees.

The change of the legal form and the subsequent cross-border merger of Calea Nederland N.V. into Fresenius SE & Co. KGaA have the following

impacts on the employees' representations and the co-determination of employees in the Supervisory Board:

The existing SE works council of Fresenius SE 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 former SE works council in accordance with the provisions of the European Works Councils Act (*Europäisches Betriebsräte-Gesetz* – "EBRG"). Other than that, the existence and composition of the works councils, the executives' committees (*Sprecherausschüsse*) and other employee representations as well as their rights and powers will not be changed by the change of the legal form and the subsequent cross-border merger of Calea Nederland N.V. into Fresenius SE & Co. KGaA. All works agreements remain in effect unchanged in their present form. The binding character of collective bargaining agreements for the Company and its subsidiaries remains likewise unaffected by the change of the legal form.

The change of the legal form changes the corporate co-determination. The corporate co-determination in the Supervisory Board of Fresenius SE is governed by the provisions of the SE Participation Act and the agreement regarding the participation of employees in Fresenius SE of July 13, 2007. The Supervisory Board of Fresenius SE maintains equal representation and consists of six Supervisory Board members of the shareholders and six of the employees. At the moment, four of the employee representatives in the Supervisory Board of Fresenius SE are from Germany and one each from Italy and Austria. The change of the legal form of Fresenius SE into a partnership limited by shares would, in principle, lead to the corporate co-determination being governed by the provisions of the German Co-Determination Act. Based on the number of employees working for the Company and its group companies in Germany, a Supervisory Board with equal representation, consisting of ten members of the Supervisory Board of the shareholders and ten of the employees, would have to be established pursuant to the provisions of the German Co-Determination Act. With respect to the employee representatives in the Supervisory Board of Fresenius SE & Co. KGaA, out of the employees of the Fresenius Group, only the employees working in Germany would have a right to vote and a right to be elected in accordance with the German Co-Determination Act.

It is planned to implement a cross-border merger of the Dutch Calea Nederland N.V. into the Company in connection with the change of the legal form of the Company into a partnership limited by shares. The Company has a 100 % stake in Calea Nederland N.V. In 2008, Calea Nederland N.V. sold and transferred its entire business to Tefa-Portanje B.V. Since then, it no longer has any own business or any employees. The cross-border merger is to become effective immediately upon the change of the legal form taking effect. As a result of the cross-border merger, the corporate co-determination at Fresenius SE & Co. KGaA will not be governed by the provisions of the German Co-Determination Act, but rather by the provisions of the German Act on Employee Co-Determination in case of Cross-Border Mergers ("MgVG"). If the cross-border merger becomes effective, as planned, immediately after the change of the legal form takes effect, the provisions of the German Co-Determination Act do not apply. Accordingly, the Supervisory Board of the Company for the time after the change of the legal form takes effect

will be established not in accordance with the provisions of the German Co-Determination Act, but in accordance with the provisions of the MgVG. The MgVG governs the co-determination of employees in the corporate bodies of a company resulting from a cross-border merger. The Act aims at safeguarding the co-determination rights of employees in the companies involved in the merger.

In connection with a cross-border merger, in principle, a procedure regarding the participation of employees must be conducted. Such procedure would aim at the conclusion of an agreement among the managements of the companies involved in the merger and a special negotiating body representing the interests of the employees on the co-determination of employees in the supervisory board of the company. For the purpose set out above, co-determination means the influence of employees on the matters of a company by exercising the right to elect or appoint part of the members of the supervisory or administrative body of the company, or the exercise of the right to recommend or reject the appointment of some or all members of the supervisory or administrative body of the company (sec. 2 para. 7 MgVG). If no agreement can be reached until the end of the negotiating period provided for in the MgVG, the statutory subsidiary regulation of the MgVG applies, which secures the co-determination of the employees by operation of law ("co-determination by operation of law").

Under the provisions of the MgVG, the managements of the companies involved in the merger, i.e., the Management Board of the Company and the management of Calea Nederland N.V., may decide to apply the regulations on the co-determination by operation of law without prior negotiations with a special negotiating body immediately as of the time of the registration of the company resulting from the cross-border merger (sec. 23 para. 1 sentence 1 no. 3 MgVG). The further requirement that at least a third of all employees of the Company, 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. With respect to the co-determination by operation of law, the corporate co-determination is governed by the provisions of secs. 23 et seq. MgVG. These contain, in particular, regulations on the scope of the co-determination, the allocation of seats within the employees' representation (so-called employee bench), the removal of employee representatives and the contesting of the election of employee representatives as well as on the legal position of the employee representatives.

The Management Board of the Company and the management of Calea Nederland N.V. decided on March 30, 2010 pursuant to sec. 23 para. 1 sentence 1 no. 3 MgVG that the regulations on the co-determination by operation of law without prior negotiations shall apply to the company resulting from the cross-border merger immediately as of the time of the registration of the merger. For this reason, negotiations with a special negotiating body need not be initiated.

Pursuant to sec. 24 para. 1 MgVG, within the framework of the statutory subsidiary regulation, the number of employee representatives in the supervisory body of the company resulting from the cross-border merger is assessed on the basis of the highest number of employee representatives existing in one of the bodies of the companies involved in the merger prior to such merger. As Calea Nederland N.V. is not

subject to any corporate co-determination, the proportionate allocation of the seats of the Supervisory Board between shareholders and employees of the acquiring company following the merger is based on the number of employee representatives existing in the acquiring company prior to the merger taking 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 would, in principle, lead 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 merger will consist of employee representatives. Thus, the principle of equal representation applied in Fresenius SE is continued in effect in the Supervisory Board of Fresenius SE & Co. KGaA.

The size of the Supervisory Board of the company resulting from the cross-border merger will be determined within the limits of sec. 95 German Stock Corporation Act in the articles of association of Fresenius SE & Co. KGaA. The articles of association of Fresenius SE & Co. KGaA to be adopted in the context of the conversion resolution provide that the Supervisory Board is to consist 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 MgVG provides that a special negotiating body is to allocate the number of seats for employee representatives in the Supervisory Board to the Member States of the EU or the states party to the EEA Agreement, in which members are to be elected or 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 of the EU or the states party to the EEA Agreement (sec. 25 para. 1 sentence 2 MgVG). In the event that the employees from one or several Member States of the EU or the states party to the EEA Agreement cannot obtain a seat in such pro-rata allocation, the last seat to be allocated is to be assigned to a Member State of the EU or a state party to the EEA Agreement that has not yet been allocated any seats (sec. 25 para. 1 sentence 3 MgVG). As the Management Board of the Company 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 purposes of the allocation of seats. The Management Board of the Company and the management of Calea Nederland N.V. are of 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 of the EU and from the states party to

the EEA Agreement. For this reason, the SE works council shall allocate the seats, following the consent of the SE works council of Fresenius SE, 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 to be allocated to a Member State of the EU or a state party to the EEA Agreement in the Supervisory Board of Fresenius SE & Co. KGaA is based on the national regulations of the relevant Member State concerned. The election of the employee representatives in the Supervisory Board of Fresenius SE & Co. KGaA to be allocated to Germany is made by an electoral body consisting of the employees' representations of the Company, its subsidiaries and operational units (sec. 25 para. 3 sentence 1 MgVG). Pursuant to secs. 25 para. 3 sentence 2, 8 paras. 2 and 3 MgVG, employees of the German companies and operational units of the Fresenius Group as well as trade union representatives may be elected. Men and women 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 a company involved in the merger, the concerned subsidiaries or a concerned operational unit. Consequently, since it is expected that, as was the case in Fresenius SE, four seats for employee representatives will be allocated to Germany also in the Supervisory Board of the converted Fresenius SE & Co. KGaA, one German trade union representative would have to be elected to the Supervisory Board.

The regulations under the MgVG regarding co-determination by operation of law apply as of the time of registration of the merger.

Irrespective of the fact that the size of the Supervisory Board and the composition of equal representation will not change because of the cross-border merger compared to the situation at Fresenius SE, as a result of the change of the legal form all previous Supervisory Board mandates will cease to exist. All members of the Supervisory Board, i.e., also the employee representatives, will have to be newly elected. The election of the shareholder representatives is provided for in item 9 of the agenda of the Ordinary General Meeting of the Company to be held on May 12, 2010. In the event that the procedure for the election of the employee representatives has not been completed upon the change of the legal form taking effect, the employee representatives in the Supervisory Board of Fresenius SE & Co. KGaA are to be initially appointed by the court.

With regard to the change of the legal form or the cross-border merger, no other measures are proposed or planned which would affect the situation of the employees.

## **9. Election of the Supervisory Board of Fresenius SE & Co. KGaA.**

Following the change of the legal form of the Company into a partnership limited by shares proposed under agenda item 7 taking effect, the composition of the Supervisory Board of the Company will be governed by other provisions than those currently applicable. Upon the change of the legal form taking effect, the office of the current members of the

Supervisory Board ceases to exist by operation of law, so that the members of the Supervisory Board of the entity in its new legal form, i.e., Fresenius SE & Co. KGaA, will have to be newly appointed.

Pursuant to Art. 40 para. 2, para. 3 of Council Regulation (EC) No 2157/2001 of October 8, 2001 on the Statute for a European company (SE) (SE Regulation), sec. 17 SE Implementation Act (*SE-Ausführungsgesetz*), sec. 21 para. 3 SE Employee Participation Act (*SE-Beteiligungsgesetz*), Part II, Clause 3.3. of the agreement regarding the participation of employees in Fresenius SE of July 13, 2007 as well as Art. 9 para. 1 of the statutes of Fresenius SE, the Supervisory Board of Fresenius SE currently consists of six shareholder representatives and six employee representatives.

Upon the change of the legal form taking effect, the Supervisory Board of Fresenius SE & Co. KGaA would, in principle, consist of ten shareholder representatives and ten employee representatives in accordance with secs. 95, 96 German Stock Corporation Act, sec. 7 para. 1 no. 3 German Co-Determination Act (*Mitbestimmungsgesetz*). However, it is planned to merge Calea Nederland N.V. into the Company in connection with the change of the legal form. This cross-border merger is to become effective immediately upon the change of the legal form of Fresenius SE into Fresenius SE & Co. KGaA taking effect. Upon the cross-border merger taking effect, the Supervisory Board, pursuant to secs. 95, 96 German Stock Corporation Act, secs. 24, 25 German Act on Employee Co-Determination in case of Cross-Border Mergers (*Gesetz über die Mitbestimmung der Arbeitnehmer bei einer grenzüberschreitenden Verschmelzung*) as well as Art. 8 paras. 1 and 2 of the articles of association of Fresenius SE & Co. KGaA attached as Annex 1, will consist of six shareholder representatives and six employee representatives. The composition of the Supervisory Board may be based on statutory provisions other than those last applied only if the statutory provisions stated in the publication of the Management Board or in the court decision are applicable pursuant to secs. 97 or 98 German Stock Corporation Act (sec. 96 para. 2 German Stock Corporation Act).

Against this background, the Supervisory Board proposes to adopt the following resolution:

The persons set out below are elected as members of the Supervisory Board of Fresenius SE & Co. KGaA for the period until the end of the General Meeting which resolves on the ratification of actions for the fourth financial year after the term of office commenced; for purposes of this calculation, the financial year in which the term of office commences shall not count:

**Prof. Dr. h. c. Roland Berger**

Munich

Management consultant (Roland Berger Strategy Consultants)

**Mandates**

**Supervisory Board**

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 (Verwaltungsrat)**

Wittelsbacher Ausgleichsfonds

**Dr. Gerd Krick**

Königstein

Former Chairman of the Management Board of Fresenius AG

**Mandates**

**Supervisory Board**

Fresenius Medical Care AG & Co. KGaA (Chairman)

Fresenius Medical Care Management AG

VAMED AG, Austria (Chairman)

**Klaus-Peter Müller**

Bad Homburg v.d.H.

Chairman of the Supervisory Board of Commerzbank AG

**Mandates**

**Supervisory Board**

Commerzbank AG (Chairman)

Fraport AG

Linde AG

**Board of Directors**

Parker Hannifin Corporation, U.S.A.

**Administrative Board (Verwaltungsrat)**

Assicurazioni Generali S.p.A., Italy

Landwirtschaftliche Rentenbank

**Dr. Gerhard Rupprecht**

Gerlingen

Member of the Management Board of Allianz SE

Member of the Management Board of Allianz Deutschland AG

**Mandates**

**Supervisory Board**

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

**Prof. Dr. med. D. Michael Albrecht**

Dresden

Medical director and spokesman of the Management Board of the  
Universitätsklinikum Carl Gustav Carus Dresden

**Mandates**

**Supervisory Board**

GÖK Consulting AG

HELIOS Kliniken GmbH

**Gerhard Roggemann**

Hannover

Vice Chairman (*Mitglied der Geschäftsleitung*) von Hawkpoint Partners, Ltd.,

Great Britain

**Mandates**

**Supervisory Board**

Deutsche Börse AG (Deputy Chairman)

GP Günter Papenburg AG (Chairman)

**Board of Directors**

F&C Asset Management plc, Great Britain

Friends Provident plc, Great Britain

**Administrative Board (*Verwaltungsrat*)**

VHV Holding AG

The General Meeting is not bound by election proposals. Pursuant to sec. 31 para. 3 sentence 3 German Stock Corporation Act, sec. 278 para. 3 German Stock Corporation Act, sec. 197 sentence 3 German Conversion Act, the office of the members of the Supervisory Board ceases to exist in accordance with sec. 97 para. 2 sentence 3 German Stock Corporation Act only if the composition of the Supervisory Board is governed by other provisions than those deemed applicable.

It is intended to have the General Meeting decide on the elections to the Supervisory Board of Fresenius SE & Co. KGaA by way of individual votes.

In accordance with Clause 5.4.3., sentence 3 of the German Corporate Governance Code, it is pointed out that, in case of his election to the Supervisory Board, Dr. Gerd Krick is to be proposed as candidate for the chairmanship of the Supervisory Board.

**Written Report of the Management Board to the Ordinary General Meeting of Fresenius SE re. items 7 and 8 of the Agenda pursuant to sec. 186 para. 4 sentence 2 and sec. 203 para. 2 German Stock Corporation Act**

Agenda item 7 of the Ordinary General Meeting to be held on May 12, 2010 contains the proposal regarding the change of the legal form of Fresenius SE into Fresenius SE & Co. KGaA. The adoption of the articles of association of Fresenius SE & Co. KGaA (agenda item 7 no. 7) forms part of the conversion resolution. The change of the legal form requires an approving special resolution of the preference shareholders of Fresenius SE. The wording of this special resolution is provided under agenda item 8 of the Ordinary General Meeting to be held on May 12, 2010.



Upon adoption of the articles of association of Fresenius SE & Co. KGaA pursuant to agenda item 7 of the Ordinary General Meeting to be held on May 12, 2010, the existing Authorized Capitals I and II of the Company (Art. 4 para. 4 and Art. 4 para. 5 of the statutes of Fresenius SE, respectively) are to be amended with respect to the change of the legal form of Fresenius SE into a partnership limited by shares and the corresponding conversion of the entire share capital into voting ordinary bearer shares, so that the General Partner of Fresenius SE & Co. KGaA, which takes the position of the Management Board of Fresenius SE, shall only be entitled to issue new ordinary bearer shares. Apart from the changes resulting from the above, the Authorized Capitals I and II are to remain unchanged in all other respects. The Authorized Capitals I and II are provided for in Art. 4 para. 4 (Authorized Capital I) and Art. 4 para. 5 (Authorized Capital II), respectively, of the proposed articles of association of Fresenius SE & Co. KGaA.

In addition, upon adoption of the articles of association of Fresenius SE & Co. KGaA pursuant to agenda item 7 of the Ordinary General Meeting to be held on May 12, 2010, three new authorized capitals (Authorized Capitals III, IV and V) are to be created. The Authorized Capitals III, IV and V are provided for in Art. 4 para. 6 (Authorized Capital III), Art. 4 para. 7 (Authorized Capital IV) and Art. 4 para. 8 (Authorized Capital V) of the articles of association of Fresenius SE & Co. KGaA. They serve the purpose of servicing the stock options and convertible bonds under the existing employee participation programs of the Company (Stock Option Plans 1998, 2003 and 2008, in each case taking account of the amendment resolutions). The Authorized Capitals III, IV and V are to coexist with the Conditional Capitals I, II and III created for these employee participation programs (Art. 4 paras. 6, 7 and 8 of the statutes of Fresenius SE and Art. 4 paras. 9, 10 and 11 of the articles of association of Fresenius SE & Co. KGaA, respectively). Their utilization for the servicing of the employee participation programs is to be an alternative to the utilization of the Conditional Capitals I, II and III. To the extent that the stock options and the convertible bonds are serviced out of the Conditional Capitals I, II or III, the Authorized Capitals III, IV and V are not used. They cannot be used for any other purposes than the servicing of the existing employee participation programs. In addition, reference is made to the details set forth in Section 6.2.1 of the conversion report.

The new creation of the Authorized Capitals III, IV and V shall be effected as a mere precautionary measure in light of the change of sec. 193 para. 2 no. 4 German Stock Corporation Act by the German Act on the Appropriateness of Executive Board Compensation (VorstAG) of July 31, 2009. Sec. 193 para. 2 no. 4 German Stock Corporation Act now provides that the vesting period prior to the first exercise of stock options must amount to four (instead of previously two) years. The provision also applies to conversion rights and is to be applied to resolutions passed in general meetings convened after August 5, 2009. The existing employee participation programs provide, in accordance with the former legal situation, for vesting periods of less than four years, which means that a new employee participation program in such form could no longer be adopted by the General Meeting. Since in the course of the change of the legal form of Fresenius SE into a partnership limited by shares the articles of association have to be newly adopted (agenda item 7 no. 7), it cannot be excluded altogether that sec. 193 para. 2 no. 4 German Stock Corporation Act in the version of the German Act on the Appropriateness of Executive Board Compensation will apply to the conditional capitals adjusted in the context of the conversion of all preference shares into ordinary shares. As a consequence the employee participation programs would stay in force, conditional capitals for servicing the stock options and convertible bonds would, however, be no longer available since they could not be incorporated in the new articles of

association with their present terms. Under the correct interpretation, sec. 193 para. 2 no. 4 German Stock Corporation Act, in the version of the German Act on the Appropriateness of Executive Board Compensation, cannot be applicable to the inclusion of the existing conditional capitals in the articles of association of the entity in its new legal form, irrespective of the necessary amendments in the context of the conversion of preference shares into ordinary shares. Firstly, in the present case there is a mere continuation of existing conditional capitals, the total volume of which remains unchanged. Solely an adjustment to the conversion of the entire share capital into ordinary shares takes place. Secondly, with the German Act on the Appropriateness of Executive Board Compensation, the legislator precisely did not intend to intervene in existing employee participation programs. Such goal would be thwarted if, while the employee participation programs were continuing, the conditional capitals adopted for such programs would cease to exist. This applies both to the issue of new stock options under the current Stock Option Plan 2008 as well as – and even more so – to the servicing of options already issued under this or another employee participation program which is still running. In addition, it has to be taken into account that the holders of options already issued are to be granted, pursuant to sec. 23 German Conversion Act, equivalent rights in the entity in its new legal form. This also requires that the existing conditional capitals can be included in the articles of association of the entity in its new legal form. Correspondingly, it can be assumed that the conditional capitals will be validly included in the articles of association of the entity in its new legal form.

#### Authorized Capital I

Pursuant to Art. 4 para. 4 of the articles of association of Fresenius SE & Co. KGaA – as so far at Fresenius SE – the Authorized Capital I amounts to Euro 12,800,000.00. This corresponds to 7.9 % of the share capital of the Company at the time the General Meeting is convened. Due to the different corporate body structure of the partnership limited by shares as compared to that of a European company, the General Partner of Fresenius SE & Co. KGaA – instead of the hitherto authorized Management Board of Fresenius SE – is now authorized to increase the share capital, with the approval of the Supervisory Board of the Company, on one or several occasions. The current term of the Authorized Capital I until May 7, 2014 remains unchanged. Under the present regulation, the Management Board of Fresenius SE is authorized to issue new ordinary bearer shares and/or non-voting preference bearer shares against cash contributions. As a result of the conversion of the entire share capital of the Company into ordinary bearer shares, the General Partner of Fresenius SE & Co. KGaA is now exclusively authorized to issue ordinary bearer shares against cash contributions.

The inclusion of the Authorized Capital I in the articles of association of Fresenius SE & Co. KGaA is to ensure that the Company can strengthen its equity in case of favorable capital market conditions. If the General Partner of Fresenius SE & Co. KGaA exercises such authorization, it will – as under the current regulations the Management Board of Fresenius SE – in principle offer the new ordinary bearer shares out of the Authorized Capital I to the shareholders for subscription. In this case, the subscription price will in due time be set in such a way that the interests of the shareholders and of the Company are reasonably taken into account under due consideration of the respective capital market situation.

The present regulation at Fresenius SE provides for the authorization of the Management Board to exclude the subscription right of the shareholders for fractional amounts in order to achieve a round issue amount and an even subscription ratio. This regulation is to be maintained also in the articles of

association of Fresenius SE & Co. KGaA. The exclusion of the subscription right for fractional amounts in the case of the Authorized Capital I is necessary in order to present a practicable subscription ratio for capital increase amounts below the amount of the share capital. The shares excluded as free fractions from the shareholders' subscription right are either sold on the stock exchange or are otherwise sold for the Company on best possible terms. As a possible exclusion of the subscription right here is limited to fractional amounts, a potential dilution effect is minimal.

In addition, the Authorized Capital I at Fresenius SE contains the authorization to exclude – when ordinary shares and preference shares are issued at the same time – the subscription right of the holders of shares of one class of shares for shares in the other class, provided that the subscription ratio is determined to be the same for both classes. As the entire share capital of the Company will be converted into voting ordinary bearer shares upon the change of the legal form taking effect, and also only ordinary shares may be issued out of the Authorized Capital I, a corresponding regulation at Fresenius SE & Co. KGaA is obsolete, so that it was not included in the proposed articles of association of Fresenius SE & Co. KGaA.

At Fresenius SE, the authorization also includes the right to issue additional preference shares which are equal to the non-voting preference shares previously issued in respect of the distribution of profits or of the Company's assets. This authorization may only be exercised insofar as –in case all authorized capitals which are entered in the commercial register on the basis of the resolutions adopted by the General Meeting of Fresenius SE of May 8, 2009, are fully utilized – the number of ordinary shares issued may not exceed the number of non-voting preference shares issued. This regulation has also become obsolete with a view to the conversion of the entire share capital of the Company into voting ordinary bearer shares, so that it was not included in the articles of association of Fresenius SE & Co. KGaA, either.

#### Authorized Capital II

Pursuant to Art. 4 para. 5 of the articles of association of Fresenius SE & Co. KGaA – as so far at Fresenius SE – the Authorized Capital II amounts to Euro 6,400,000.00. The authorization thereby corresponds to a maximum of 4.0 % of the share capital of the Company at the time the General Meeting is convened. Also with respect to the Authorized Capital II, the General Partner of Fresenius SE & Co. KGaA – instead of the hitherto authorized Management Board of Fresenius SE – is authorized to increase the share capital, with the approval of the Supervisory Board of the Company, as of the change of the legal form into a partnership limited by shares taking effect. The term of the Authorized Capital II, as presently at Fresenius SE, ends on May 7, 2014. Under the present regulation, the Management Board of Fresenius SE is authorized to issue new ordinary bearer shares and/or non-voting preference bearer shares against cash contributions and/or contributions in kind. As a result of the conversion of the entire share capital of the Company into ordinary bearer shares, the General Partner of Fresenius SE & Co. KGaA is now exclusively authorized to issue ordinary bearer shares against cash contributions and/or contributions in kind.

The inclusion of the Authorized Capital II in the articles of association of Fresenius SE & Co. KGaA is to enable the Company to strengthen its equity base at the most favorable conditions and to grant ordinary shares against contributions in kind for the purpose of acquisitions. The authorization to grant ordinary shares of the Company against contributions in kind is intended to give the Company the necessary room for maneuver to seize opportunities that

may arise for the acquisition of companies or participations in companies swiftly and flexibly. The inclusion of the Authorized Capital II in the articles of association of Fresenius SE & Co. KGaA (while maintaining the possibility to exclude the shareholders' subscription right in case of contributions in kind) allows for this, because a capital increase by way of the adoption of a resolution of the General Meeting would not be possible when opportunities for acquisitions arise or, respectively, would not afford the flexibility required in the course of takeovers.

In case of a utilization of the Authorized Capital II, the General Partner of Fresenius SE & Co. KGaA – as presently the Management Board of Fresenius SE – is authorized to decide on the exclusion of the subscription right of the shareholders with the approval of the Supervisory Board of the Company. The authorization to exclude the subscription right may be exercised in case of an acquisition of a company or a participation in a company; in the case of cash contributions, the subscription right may only be excluded if the issue price is not significantly lower than the stock exchange price. Without the exclusion of the subscription right, the Authorized Capital II could in case of capital increases against contributions in kind not be used for the intended purpose as acquisition currency. The financial interests of the shareholders are safeguarded by the General Partner's obligation, when exercising the authorization, to issue the new shares in accordance with sec. 255 para. 2 German Stock Corporation Act at an issue price that is in reasonable proportion to the value of the contribution in kind. In determining the value of the shares granted as consideration, their stock exchange price will be of relevance. However, a schematic tying to the stock exchange price is not planned, in particular to avoid that achieved negotiation results are put into question by fluctuations of the stock exchange price. The exclusion of the subscription right in case of a capital increase against cash contributions requires an issue price which is not significantly lower than the stock exchange price of the ordinary shares; this corresponds to the intention of the legislator in sec. 186 para. 3 sentence 4 German Stock Corporation Act, according to which a dilution of the value of the interests held by the current shareholders shall be largely excluded. A placement with an exclusion of the subscription right enables the Company to have a higher inflow of funds than in case of an issue with subscription right. It allows to set a price close to market levels and thereby to achieve selling profits as high as possible, because the placement can be made immediately after the determination of the issue price. In the event of an offer for sale made to all shareholders, the subscription price could, pursuant to sec. 186 para. 2 sentence 2 German Stock Corporation Act, at the latest be announced three days prior to the expiration of the subscription period. However, even when fully using this scope, there would be a risk of stock price change for several days, which would result in safety margins being deducted when determining the sales price. Due to the length of the subscription period, the Company would, furthermore, not be able to respond quickly to favorable market conditions. The possibility of a capital increase with exclusion of subscription rights shall enable the General Partner of Fresenius SE & Co. KGaA to make flexible use of favorable market conditions and thereby to carry out the strengthening of the equity base necessary for the future development of the business at the best possible conditions. A possible sales discount on the stock exchange price will presumably amount to less than 3 %, but not exceed 5 % in any event. The relevant market price shall be the current stock exchange price at the time the sales price is determined by the General Partner. Since, due to the volatility of the markets, fluctuations in prices within shortest periods cannot be excluded, it shall not be determined in advance whether rather an average market price over a period of only a few days, or the current market price at a specific point in time shall apply. This must be determined in each individual case.

In addition, the General Partner of Fresenius SE & Co. KGaA – as currently the Management Board of Fresenius SE – is authorized to exclude the shareholders' subscription right for fractional amounts. As with the Authorized Capital I (see above), the exclusion of the subscription right for fractional amounts is necessary also in this case in order to present a practicable subscription ratio for capital increase amounts below the amount of the share capital.

The Authorized Capital II at Fresenius SE also contains the authorization to exclude – when ordinary shares and preference shares are issued at the same time – the subscription right of the holders of shares of one class of shares for shares in the other class, provided that the subscription ratio is determined to be the same for both classes. As at Fresenius SE, the authorization in this case also includes the right to issue additional preference shares which are equal to the non-voting preference shares previously issued in respect of the distribution of profits or of the Company's assets. As in case of the Authorized Capital I (see above), these regulations have become obsolete with a view to the conversion of the entire share capital of the Company into voting ordinary bearer shares, so that they were not included in the articles of association of Fresenius SE & Co. KGaA.

#### Authorized Capital III

Within the framework of the Authorized Capital III, the General Partner of Fresenius SE & Co. KGaA is to be authorized to increase the share capital of the Company, with the approval of the Supervisory Board of the Company, until May 11, 2015 by a total of up to Euro 1,313,100.00 through a single or multiple issuance of new ordinary bearer shares against cash contributions. This corresponds to 0.8 % of the share capital of the Company at the time the General Meeting is convened. The General Partner of Fresenius SE & Co. KGaA may only make use of the Authorized Capital III to the extent that – pursuant to the Stock Option Plan in accordance with the resolution of the General Meeting of Fresenius AG of June 18, 1998 (Stock Option Plan 1998) and taking into account the amendment resolution of the General Meeting of December 4, 2006, required due to the new division of the share capital, as well as the conversion resolution of the General Meeting to be held on May 12, 2010 – subscription rights to shares in the Company have been issued, the holders of such subscriptions rights have made use of their exercise right and insofar as no conditional capital is used to satisfy the subscription rights. The number of shares must increase in each case in the same proportion as the share capital. The new ordinary bearer shares are entitled to profit participation from the beginning of the financial year in which the capital increase becomes effective in each case.

The subscription right of the shareholders is excluded with regard to the Authorized Capital III. As the Authorized Capital III is to be used exclusively for the servicing of the Stock Option Plan 1998, a subscription right of the shareholders to the newly to be issued ordinary bearer shares is out of the question. The exclusion of the subscription right will not lead to an additional dilution for the shareholders, as the Authorized Capital III is provided exclusively as an alternative to the existing Conditional Capital I. If the subscription rights issued under the Stock Option Plan 1998 are serviced out of the Conditional Capital I, the Authorized Capital III is not used; to the extent that, conversely, the Authorized Capital III is used, the increase in capital out of the Conditional Capital I will not be implemented.

#### Authorized Capital IV

Within the framework of the Authorized Capital IV, the General Partner of Fresenius SE & Co. KGaA is to be authorized to increase the share capital of the Company, with the approval of the Supervisory Board of the Company, until May 11, 2015 by a total of up to Euro 4,298,442.00 through a single or multiple issuance– of new ordinary bearer shares against cash contributions and/or contributions in kind. This corresponds to 2.7 % of the share capital of the Company at the time the General Meeting is convened. The General Partner of Fresenius SE & Co. KGaA may only make use of the Authorized Capital IV to the extent that – pursuant to the stock option plan in accordance with the resolution of the General Meeting of Fresenius AG of May 28, 2003 (Stock Option Plan 2003) and taking into account the amendment resolution of the General Meeting of December 4, 2006, required due to the new division of the share capital, and of the conversion resolution of the General Meeting to be held on May 12, 2010 – convertible bonds with subscription rights to shares in the Company have been issued, the holders of such convertible bonds have exercised their conversion right and provided that the servicing of the conversion rights is not effected using conditional capital. The number of shares must increase in each case in the same proportion as the share capital. The new ordinary bearer shares are entitled to profit participation from the beginning of the financial year in which the capital increase becomes effective in each case. In case that the conversion of the convertible bonds into shares in the Company constitutes a contribution in kind, this is accounted for by the wording of the authorization.

The subscription right of the shareholders is excluded with regard to the Authorized Capital IV. As the Authorized Capital IV is to be used exclusively for the servicing of the Stock Option Plan 2003, a subscription right of the shareholders to the newly to be issued ordinary bearer shares is out of the question. The exclusion of the subscription right will not lead to an additional dilution for the shareholders, as the Authorized Capital IV is provided exclusively as an alternative to the existing Conditional Capital II. If the subscription rights issued under the Stock Option Plan 2003 are serviced out of the Conditional Capital II, the Authorized Capital IV is not used; to the extent that, conversely, the Authorized Capital IV is used, the capital increase out of the Conditional Capital II will not be implemented.

#### Authorized Capital V

Within the framework of the Authorized Capital V, the General Partner of Fresenius SE & Co. KGaA is to be authorized to increase the share capital of the Company, with the approval of the Supervisory Board of the Company, until May 11, 2015 by a total of up to Euro 6,200,000.00 through a single or multiple issuance of new ordinary bearer shares against cash contributions. This corresponds to 3.8 % of the share capital of the Company at the time the General Meeting is convened. The General Partner of Fresenius SE & Co. KGaA may only make use of the Authorized Capital V to the extent that – pursuant to the stock option plan in accordance with the resolution of the General Meeting of May 21, 2008 (Stock Option Plan 2008) and taking into account the conversion resolution of the General Meeting to be held on May 12, 2010 – subscription rights are issued and the holders of such subscription rights make use of their exercise right, the Company grants no own shares to satisfy the subscription rights nor exercises its right to cash compensation and insofar as no conditional capital is used to satisfy the subscription rights, whereas the General Partner's Supervisory Board shall be exclusively competent regarding the granting and settlement of subscription rights to members of the General Partner's Management Board. The number of shares must increase in each case

in the same proportion as the share capital. The new ordinary bearer shares are entitled to profit participation from the beginning of the financial year in which the capital increase becomes effective in each case.

The subscription right of the shareholders is excluded with regard to the Authorized Capital V. As the Authorized Capital V is to be used exclusively for the servicing of the Stock Option Plan 2008, a subscription right of the shareholders to the newly to be issued ordinary bearer shares is out of the question. The exclusion of the subscription right will not lead to an additional dilution for the shareholders, as the Authorized Capital V is provided exclusively as an alternative to the existing Conditional Capital III. If the subscription rights issued under the Stock Option Plan 2008 are serviced out of the Conditional Capital III, the Authorized Capital V is not used; to the extent that, conversely, the Authorized Capital V is used, the capital increase out of the Conditional Capital III will not be implemented.

### **Total Number of Shares and Voting Rights**

80,657,688 units of ordinary shares and 80,657,688 units of preference shares are outstanding at the time of the invitation to the General Meeting. Thereof, 80,657,688 units of ordinary shares have the right of participation and the voting right, and 80,657,688 units of preference shares have the right of participation as well as the voting right in the special vote of the preference shareholders (agenda item 8).

### **Participation in the General Meeting and the Exercise of the Voting Right (with Record Date pursuant to sec. 123 para. 3 sentence 3 German Stock Corporation Act and its Impact)**

Shareholders who wish to participate in the Ordinary General Meeting or to exercise their voting right have to register for the Ordinary General Meeting and prove their eligibility.

The registration and proof of eligibility must be received by the Company at

Fresenius SE  
c/o Commerzbank AG  
WASHV dwpbank AG  
Wildunger Straße 14  
60487 Frankfurt am Main  
Telefax: +49 (0) 69 / 50 99-11 10  
E-Mail: hv-eintrittskarten@dwpbank.de

in each case no later than on the seventh day before the General Meeting, i.e., no later than May 5, 2010, 24:00 hours CEST. For the purpose of proving eligibility, a special proof of share ownership issued by the custodian institution in text form in the German or English language is sufficient. The proof of share ownership has to relate to the beginning of April 21, 2010, i.e., 0:00 hrs. CEST (record date). The shareholder or his authorized representative will receive an admission ticket for the Ordinary General Meeting against submission of the proof of share ownership.

A shareholder will only be deemed a shareholder entitled to participate in the meeting and to exercise voting rights in relation to the Company if the shareholder has submitted a special proof of share ownership. The entitlement to participate in the meeting and the scope of the voting rights are exclusively determined by the shares owned on the record date. The record date will not lead to a block of a sale of the shareholding. Even in the event of a full or partial sale of the shareholding following the record date, solely the shares owned by the shareholder on the record date will be relevant for participation in the meeting and the scope of the voting rights, i.e., the sale of shares after the record date will not affect the entitlement to participate in the meeting and the scope of the

voting rights. This also applies *mutatis mutandis* if (additional) shares are purchased after the record date. Persons who do not own any shares on the record date and become shareholders only after the record date, are not entitled to participate in the meeting and to exercise voting rights. The record date does not constitute a relevant date with respect to the dividend entitlement.

Each ordinary share grants one vote in the Ordinary General Meeting. The preference shares have voting rights with respect to agenda item 8 only (special vote of the preference shareholders). Each preference share grants one vote for this agenda item.

## **Voting Procedure**

### ***Voting by Proxies***

A shareholder may have his voting right or his right to participate in the Ordinary General Meeting, respectively, also exercised by an authorized representative, e.g. the custodian bank, an association of shareholders or any other person of his choice. Registration, including provision of proof of share ownership, in due time in accordance with the aforesaid provisions is also necessary in case of proxy authorizations.

Pursuant to sec. 134 para. 3 sentence 3 German Stock Corporation Act, the granting of the power of attorney, its revocation and the evidence of the authorization towards the Company require the text form (sec. 126b German Civil Code (*Bürgerliches Gesetzbuch*)). Shareholders who wish to authorize a proxy are asked to use the form of the power of attorney they will receive together with the admission ticket. Pursuant to sec. 134 para. 3 sentence 4 German Stock Corporation Act, the Company additionally offers its shareholders to send the proof of the appointment of a proxy by e-mail to the Company (ir-fre@fresenius.com). Such a submission by e-mail should preferably be made until Monday, May 10, 2010, 6:00 p.m. CEST.

If the power of attorney is granted to a credit institution, an association of shareholders or any other individual or institution treated as equivalent to the aforesaid pursuant to sec. 135 para. 8 and para. 10 in conjunction with sec. 125 para. 5 German Stock Corporation Act, it suffices if the power of attorney is kept by the proxy in a verifiable form. Such power of attorney must be complete and may only contain declarations associated with the exercising of the voting rights. Shareholders wishing to appoint as proxy a credit institution, an association of shareholders or any other individual or institution treated as equivalent to the aforesaid are asked to agree with the same on the form of the power of attorney.

### ***Voting by Company Proxies***

In addition, the Company offers to its shareholders to authorize, already prior to the Ordinary General Meeting, Company-nominated employees as proxies for the exercise of voting rights, who are bound to the instructions given to them (*weisungsgebundene Stimmrechtsvertreter*). Those shareholders who wish to grant a power of attorney to the Company-nominated proxies also have to register for the Ordinary General Meeting and prove their eligibility as aforesaid. The power of attorney of the proxies and the instructions to them shall have been received preferably by Monday, May 10, 2010, 6:00 p.m. CEST; they require text form. The shareholders will receive the documents and information in this regard together with the admission ticket to the Ordinary General Meeting.

The power of attorney and the instructions to the Company-nominated proxies are to be addressed by mail, telefax or by electronic means of communication (by e-mail) exclusively to the following address:

Fresenius SE  
Investor Relations



Else-Kröner-Straße 1  
61352 Bad Homburg v.d.H.  
Telefax: +49 (0) 61 72 / 608-24 88  
E-Mail: ir-fre@fresenius.com

## **Shareholder Rights**

### ***Motions of Shareholders for an Addition to the Agenda pursuant to Art. 56 SE Regulation; sec. 50 para. 2 SE Implementation Act, sec. 122 para. 2 German Stock Corporation Act***

Shareholders whose aggregate shareholding equals or exceeds 5 % of the share capital or a pro rata amount of Euro 500,000 may request that items be included in the agenda and published. Any such request must be made in writing to the Management Board of the Company (Fresenius SE, Investor Relations, Else-Kröner-Straße 1, 61352 Bad Homburg v.d.H.). The request must have been received by the Company at least 30 days prior to the meeting; for the purpose of calculating the above time period, the day of the General Meeting and the day of receipt shall not be counted, i.e., the request must have been received by April 11, 2010, 24:00 hours CEST. Each new item must be substantiated or accompanied by a proposal for resolution.

### ***Motions and Election Proposals by Shareholders pursuant to secs. 126 para. 1 and 127 German Stock Corporation Act***

Shareholders may make motions regarding individual agenda items (cf. sec. 126 para. 1 German Stock Corporation Act); this also applies to proposals for the election of members of the Supervisory Board or of auditors (cf. sec. 127 German Stock Corporation Act).

Pursuant to sec. 126 para. 1 German Stock Corporation Act, motions of shareholders, including the shareholder's name, a statement of grounds for the motion and any comments of the management, are to be made available to the relevant persons listed in sec. 125 paras. 1 to 3 German Stock Corporation Act (inter alia shareholders who so request) under the conditions set forth therein, provided that the shareholder has sent a counter-motion against the proposal of the Management Board and/or the Supervisory Board with respect to a certain agenda item, including a statement of grounds for the counter-motion, to the Company under the address set forth below, no later than 14 days prior to the General Meeting of the Company; in this context the day of the General Meeting and the day of receipt shall not be counted, i.e., the counter-motion must be received by April 27, 2010, 24:00 hours CEST. The aforementioned information must be made available on the website of the Company. A counter-motion need not be made available if one of the exclusions pursuant to sec. 126 para. 2 German Stock Corporation Act applies. The statement of the grounds need not be made available if it exceeds a total of 5,000 characters.

The right of each shareholder to make counter-motions regarding the various agenda items without prior communication to the Company during the General Meeting remains unaffected. Please note that any counter-motions which have been sent to the Company in advance in due time will be considered only if they are made orally during the General Meeting.

No statement of grounds needs to be provided for election proposals made by shareholders pursuant to sec. 127 German Stock Corporation Act. Election proposals need not be made available if they do not contain the name, the exercised profession and the place of residence of the nominees and, in case of an election of members of the Supervisory Board, information on their membership in other supervisory boards, the constitution of which is required by law (cf. sec. 127 sentence 3 in conjunction with sec. 124 para. 3 and sec. 125 para. 1 sentence 5 German Stock Corporation Act). Pursuant to sec. 127 sentence 1 in conjunction with sec. 126 para. 2 German Stock

Corporation Act, there are further conditions under which election proposals need not be made available via the website. In all other respects, the requirements and provisions for the making available of motions apply *mutatis mutandis*.

Any motions and election proposals of shareholders pursuant to sec. 126 para. 1 and sec. 127 German Stock Corporation Act shall be sent exclusively to:

Fresenius SE  
Investor Relations  
Else-Kröner-Straße 1  
61352 Bad Homburg v.d.H.  
Telefax: +49 (0) 61 72 / 608-24 88  
E-Mail: ir-fre@fresenius.com

Any motions and election proposals of shareholders to be made available will be published under the aforesaid conditions on the website [www.fresenius.com](http://www.fresenius.com) in the section Investor Relations/Annual General Meeting. Any comments of the management will also be published on the above website.

***Information Right pursuant to sec. 131 para. 1 German Stock Corporation Act***

At the General Meeting, each shareholder shall upon request be provided with information by the Management Board regarding the matters of the Company to the extent that such information is necessary for a proper evaluation of the relevant item on the agenda (cf. sec. 131 para. 1 German Stock Corporation Act). The Management Board's duty to provide information also extends to the Company's legal and business relationships with any affiliate as well as to the situation of the group and the companies included in the consolidated financial statements. Requests for information must in principle be made orally at the General Meeting during the discussion.

The information provided shall comply with the principles of diligent and accurate reporting. The Management Board may refuse to provide information under the conditions set forth in sec. 131 para. 3 German Stock Corporation Act. Pursuant to Art. 18 para. 2 of the statutes, the Chairman of the meeting may, with regard to time, reasonably restrict the shareholders' questions right and speaking right; in particular, he has – at the beginning or during the General Meeting – the right to determine a reasonable time frame for the conduct of the General Meeting, for individual items, or for individual speakers.

**General Meeting Documents**

As from the day of publication of this convening notice, the following documents are available, together with this notice, for inspection by the shareholders at the offices of Fresenius SE (Else-Kröner-Straße 1, 61352 Bad Homburg v.d.H.):

- Annual financial statements of Fresenius SE as of December 31, 2009, approved by the Supervisory Board and thereby adopted
- Management Report of Fresenius SE for the financial year 2009
- IFRS consolidated financial statements of Fresenius SE as of December 31, 2009, approved by the Supervisory Board
- IFRS Group Management Report of Fresenius SE for the financial year 2009
- US GAAP Annual Report 2009 of the Fresenius Group including the report of the Supervisory Board, the corporate governance declaration and the compensation report for the financial year 2009
- List of investments (*Aufstellung des Anteilsbesitzes*) of Fresenius SE for the financial year 2009
- Proposal of the Management Board on the appropriation of the distributable profit for the financial year 2009 ended on December 31, 2009

- Explanatory report of the Management Board to the statements under secs. 289 paras. 4 and 5, 315 para. 2 no. 5 and para. 4 German Commercial Code
- Report of the Management Board on agenda items 7 and 8
- Conversion report of the Management Board on the change of the legal form of Fresenius SE into a partnership limited by shares
- Resolutions of the General Meeting of Fresenius AG or Fresenius SE, respectively, on the Stock Option Plans 1998, 2003 and 2008
- Statutes of Fresenius SE (as of March 12, 2010)
- Common terms of merger for the merger of Calea Nederland N.V. into Fresenius SE
- Joint report of the Management Board of Fresenius SE and the management of Calea Nederland N.V. pursuant to sec. 122e German Conversion Act in connection with sec. 8 German Conversion Act on the merger of Calea Nederland N.V. into Fresenius SE (including the incorporated invitation to the general meeting of Fresenius SE on May 12, 2010 and the documents named in the invitation to the general meeting as well as the IFRS consolidated financial statements and Group Management Reports of Fresenius SE for the financial year 2007 and 2008)
- Annual financial statements and management reports of Fresenius SE for the financial years 2007 and 2008
- List of investments of Fresenius SE for the financial years 2007 and 2008
- Annual financial statements of Calea Nederland N.V. for the financial years 2007, 2008 and 2009

#### **Publications on the Website**

The information pursuant to sec. 124a German Stock Corporation Act regarding the General Meeting (inter alia, convening notice, documents to be made available, forms for proxy authorization and the issuance of instructions, motions of shareholders, if applicable) as well as further explanations with respect to the rights of the shareholders pursuant to Art. 56 SE Regulation, sec. 50 para. 2 SE Implementation Act, sec. 122 para. 2 German Stock Corporation Act as well as pursuant to secs. 126 para. 1, 127 and 131 para. 1 German Stock Corporation Act are made available to the shareholders on the website of the Company [www.fresenius.com](http://www.fresenius.com) in the section Investor Relations/Annual General Meeting. It is intended to broadcast the speech of the Chairman of the Management Board in sound and vision on the internet.

Bad Homburg v.d.H., in March 2010

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

**Annex 1** to the invitation to the Ordinary General Meeting of Fresenius SE on May 12, 2010

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 (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.

**Annex 2** to the invitation to the Ordinary General Meeting of Fresenius SE on May 12, 2010

## **Common Terms of Merger**

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-tried 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 of the act), 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 (*Aktiengesetz*).

## **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

[The Articles of Association are not imprinted at this place. The Articles of Association of Fresenius SE & Co. KGaA are imprinted in Annex 1 to the invitation to the Ordinary General Meeting of Fresenius SE on May 12, 2010.]