

PROSPECTUS/OFFERING MEMORANDUM

NOT FOR GENERAL DISTRIBUTION  
IN THE UNITED STATES



## Fresenius Finance B.V.

€500,000,000 4.25% Senior Notes due 2019

guaranteed on a senior basis by Fresenius SE & Co. KGaA, Fresenius Kabi AG and Fresenius ProServe GmbH

Fresenius Finance B.V. (the “**Issuer**”, and together with Fresenius SE & Co. KGaA and its other subsidiaries, the “**Fresenius Group**” or the “**Group**”) is offering €500,000,000 aggregate principal amount of its 4.25% senior notes due 2019 (the “**Notes**”). The Issuer will pay interest on the Notes semi-annually on April 15 and October 15 of each year, commencing October 15, 2012. The Notes will mature on April 15, 2019.

The Notes will be senior unsecured obligations of the Issuer and will rank equally with all of its existing and future senior unsecured indebtedness. The Notes will be guaranteed on a senior unsecured basis (the “**Guarantees**”) by Fresenius SE & Co. KGaA (the “**Parent Guarantor**” or the “**Company**”), as well as Fresenius Kabi AG and Fresenius ProServe GmbH (together, the “**Subsidiary Guarantors**” and, together with the Parent Guarantor, the “**Guarantors**”). Other subsidiaries of the Parent Guarantor will not guarantee the Notes. The Notes and the Guarantees will be effectively subordinated to all secured indebtedness of the Issuer and the Guarantors to the extent of the value of the collateral securing such indebtedness and structurally subordinated to all liabilities of the Parent Guarantor’s subsidiaries that are not guaranteeing the Notes.

The Notes are subject to the redemption provisions as set out elsewhere in this prospectus/offering memorandum.

This prospectus constitutes a prospectus within the meaning of Article 5 para. 3 of the Directive 2003/71/EC of the European Parliament and of the Council of November 4, 2003 (as amended, inter alia, by Directive 2010/73/EU of the European Parliament and of the Council of November 24, 2010) (the “**Prospectus Directive**”) and has been drafted in accordance with the Luxembourg law on prospectuses for securities of July 10, 2005 (*Loi relative aux prospectus pour valeurs mobilières*, the “**Luxembourg Prospectus Law**”), which implements the Prospectus Directive into Luxembourg law.

This prospectus has been approved by the Commission de Surveillance du Secteur Financier (the “**CSSF**”), in its capacity as competent authority under the Luxembourg Prospectus Law, and will be published in electronic form on the website of the Luxembourg Stock Exchange (<http://www.bourse.lu>) and on the website of the Group (<http://www.fresenius.com>). We have requested the CSSF to provide the competent authority in the Federal Republic of Germany (“**Germany**”) with a certificate of approval attesting that this prospectus has been prepared in accordance with the Luxembourg Prospectus Law (the “**Notification**”). Until such Notification is given in Germany, and at all times in other member states of the European Economic Area (the “**EEA**”), offers will be made only pursuant to an exception under Section 3 of the German Securities Prospectus Act (*Wertpapierprospektgesetz*, “**WpPG**”) or an applicable exception under the national legislation of the relevant member state of the EEA implementing the Prospectus Directive, as the case may be. The CSSF assumes no responsibility with regard to the economic and financial soundness of the transaction and the quality and solvency of the Issuer.

Application has been made to list the Notes on the official list of the Luxembourg Stock Exchange and to admit the Notes to trading on the regulated market of the Luxembourg Stock Exchange, a market appearing on the list of regulated markets issued by the European Commission pursuant to Directive 2004/39/EC of April 21, 2004 on markets in financial instruments.

**Investing in the Notes involves risks. See “Risk Factors” beginning on page 21.**

**Notes Issue Price: 4.25% plus accrued interest from the issue date.**

Delivery of the Notes in book-entry form will be made through Euroclear and Clearstream, in each case, on or about March 28, 2012.

The Notes and the Guarantees have not been, and will not be, registered under the U.S. Securities Act of 1933, as amended (the “**Securities Act**”). The Notes may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons, except to qualified institutional buyers in reliance on the exemption from registration provided by Rule 144A under the Securities Act (“**Rule 144A**”) and to certain persons in offshore transactions in reliance on Regulation S under the Securities Act (“**Regulation S**”). You are hereby notified that sellers of the Notes may be relying on the exemption from the provisions of Section 5 of the Securities Act provided by Rule 144A. See “**Notice to Investors**” for additional information about eligible offerees and transfer restrictions.

### *Joint Lead Managers and Bookrunners*

Deutsche Bank    BayernLB    Commerzbank    Landesbank Baden-Württemberg    The Royal Bank of Scotland

### *Co-Lead Managers*

|            |                                                 |                   |                                  |        |
|------------|-------------------------------------------------|-------------------|----------------------------------|--------|
| BBVA       | BNP PARIBAS                                     | DNB Markets       | DZ BANK AG                       | Helaba |
| HSBC       | Mediobanca                                      | Mizuho Securities | Raiffeisen Bank International AG |        |
| SMBC Nikko | Société Générale Corporate & Investment Banking |                   | WestLB AG                        |        |

The date of this prospectus/offering memorandum is March 22, 2012

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You should rely only on the information contained in this prospectus/offering memorandum. We have not authorized anyone to provide you with any information that is different or represent anything about us or this offering that is not contained in this prospectus/offering memorandum. If given or made, any such other information or representation should not be relied upon as having been authorized by us or the Initial Purchasers. We are not, and the Initial Purchasers are not, making an offer to sell these Notes in any jurisdiction where an offer or sale is not permitted. You should not assume that the information contained in this prospectus/offering memorandum is accurate as of any date other than the date hereof. The business, financial condition, results of operations and prospects of the Issuer or the Guarantors or any of their subsidiaries may have changed since that date.

IN CONNECTION WITH THIS OFFERING, DEUTSCHE BANK AG, LONDON BRANCH (THE "STABILIZING MANAGER"), AND ANY PERSON ACTING FOR IT MAY OVER-ALLOT OR EFFECT TRANSACTIONS WITH A VIEW TO SUPPORTING THE MARKET PRICE OF THE NOTES, IN EACH CASE AT A LEVEL HIGHER THAN THAT WHICH MIGHT OTHERWISE PREVAIL FOR A LIMITED PERIOD AFTER THE ISSUE DATE. HOWEVER, THERE MAY BE NO OBLIGATION ON THE STABILIZING MANAGER OR ANY AGENT FOR IT TO DO THIS. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME, AND MUST BE BROUGHT TO AN END AFTER A LIMITED PERIOD. SUCH STABILIZATION SHALL BE IN COMPLIANCE WITH ALL APPLICABLE LAWS, REGULATIONS AND RULES.

## IMPORTANT INFORMATION ABOUT AND DEFINITIONS USED IN THIS PROSPECTUS/OFFERING MEMORANDUM

You should not assume that the information contained in this prospectus/offering memorandum is accurate as of any date other than the date hereof. The business, financial condition, results of operations and prospects of the Issuer, the Parent Guarantor or any of its other subsidiaries, or the Group may have changed since that date.

In this prospectus/offering memorandum, unless otherwise indicated or the context so requires:

- *"Fresenius SE & Co. KGaA", the "Parent Guarantor" and the "Company" refer to Fresenius SE & Co. KGaA (until January 28, 2011, known as Fresenius SE and previously, until July 13, 2007, known as Fresenius AG) only and not to any of its subsidiaries;*
- *"we", "us", "our", the "Fresenius Group", the "Group" and "Fresenius" refer to Fresenius SE & Co. KGaA and its subsidiaries on a consolidated basis;*
- *"2008 Senior Credit Agreement" refers to the syndicated credit agreement that the Guarantors and certain other Fresenius Group companies entered into with several lenders in 2008 in connection with the acquisition of APP Pharmaceuticals;*
- *"2008 Senior Credit Facilities" refers collectively to the 2008 Senior Revolving Credit Facilities and the 2008 Senior Term Facilities;*
- *"2008 Senior Revolving Credit Facilities" refers to the revolving credit facilities governed by the 2008 Senior Credit Agreement;*
- *"2008 Senior Term Facilities" refers to the senior term loan facilities governed by the 2008 Senior Credit Agreement;*
- *"APP Pharmaceuticals" refers to APP Pharmaceuticals, Inc. and its subsidiaries on a consolidated basis;*
- *"CVR" refers to the contingent value rights that were issued in connection with the acquisition of APP Pharmaceuticals and were delisted in the first quarter of 2011;*
- *"Damp Group" refers collectively to Damp Holding AG and those of its affiliates that together constitute a group of companies acquired by HELIOS on March 19, 2012;*

- “euro” or “€” refers to Euro, the currency of the European Union member states participating in the European Monetary Union;
- “FMCH” refers to Fresenius Medical Care Holdings, Inc., only;
- “FMC Management AG” refers to Fresenius Medical Care Management AG, only;
- “Fresenius AG” was the legal name of the Company until July 13, 2007;
- “Fresenius Finance B.V.” or the “Issuer” refers to Fresenius Finance B.V., only;
- “Fresenius Finance I S.A.” refers to Fresenius Finance I S.A., only;
- “Fresenius Helios” and “HELIOS” refer to HELIOS Kliniken GmbH and its subsidiaries on a consolidated basis;
- “Fresenius Kabi” refers to Fresenius Kabi AG and its subsidiaries on a consolidated basis;
- “Fresenius Kabi AG” refers to Fresenius Kabi AG and not to any of its subsidiaries;
- “Fresenius Medical Care” refers to Fresenius Medical Care AG & Co. KGaA and its subsidiaries on a consolidated basis, as a standalone company and/or as our consolidated subsidiary and business segment, as the context may require;
- “FMC AG & Co. KGaA” refers to Fresenius Medical Care AG & Co. KGaA only and not to any of its subsidiaries and, as the context may require, to the predecessor company of Fresenius Medical Care AG & Co. KGaA prior to its transformation into a partnership limited by shares under German law in February 2006, Fresenius Medical Care AG, a stock corporation (Aktiengesellschaft) under German law;
- “FMC Germany” refers to Fresenius Medical Care Deutschland GmbH;
- “Fresenius ProServe” refers to Fresenius ProServe GmbH and its subsidiaries on a consolidated basis;
- “Fresenius ProServe GmbH” refers to Fresenius ProServe GmbH and not to any of its subsidiaries;
- “Fresenius SE” was the legal name of the Company between July 13, 2007, until January 28, 2011;
- “Fresenius US Finance I” refers to Fresenius US Finance I, Inc., only;
- “Fresenius US Finance II” refers to Fresenius US Finance II, Inc., only;
- “Fresenius Vamed” and “VAMED” refer to VAMED AG and its subsidiaries on a consolidated basis;
- “German GAAP” refers to accounting principles generally accepted in Germany pursuant to the German Commercial Code (Handelsgesetzbuch — HGB);
- “Guarantors” refers to the Parent Guarantor and the Subsidiary Guarantors;
- “IFRS” refers to International Financial Reporting Standards of the International Accounting Standards Board, as adopted by the European Union;
- “Initial Purchasers” refers to Deutsche Bank AG, London Branch, Bayerische Landesbank, Commerzbank Aktiengesellschaft, Landesbank Baden-Württemberg, The Royal Bank of Scotland plc, Banco Bilbao Vizcaya Argentaria, S.A., BNP Paribas, DNB Markets, Inc., DZ BANK AG Deutsche Zentral-Genossenschaftsbank, Frankfurt am Main, Landesbank Hessen-Thüringen, Girozentrale, HSBC Bank plc, Mediobanca — Banca di Credito Finanziario S.p.A., Mizuho International plc, Raiffeisen Bank International AG, SMBC Nikko Capital Markets Limited, Société Générale and WestLB AG, in their respective capacities as initial purchasers of Notes to be offered pursuant to private placements;
- “Indenture” refers to the indenture under which the Notes are issued;

- *"Luxembourg Listing Agent" refers to BNP Paribas Securities Services, 33 rue de Gasperich, Howald-Hesperange, 2085 Luxembourg;*
- *"MEB" refers to the mandatory exchangeable bonds that were issued in connection with the acquisition of APP Pharmaceuticals and matured on August 14, 2011;*
- *"Notes" refers to the Notes that are the subject of this prospectus/offering memorandum;*
- *"Outstanding Senior Notes" refers to the various outstanding senior unsecured notes to which the Guarantors are parties as guarantors thereof;*
- *"Principal Paying and Transfer Agent" refers to Deutsche Bank AG Frankfurt, Grosse Gallusstrasse 10-14, 60262 Frankfurt am Main, Germany;*
- *"RCG" refers to Renal Care Group, Inc. and its subsidiaries on a consolidated basis;*
- *"Subsidiary Guarantors" refers to Fresenius Kabi AG and Fresenius ProServe GmbH;*
- *"Trustee" refers to Deutsche Trustee Company Limited, Winchester House, 1 Great Winchester Street, London EC2N 2DB, United Kingdom;*
- *"U.S. dollar" or "US\$" refers to the U.S. dollar, the currency of the United States of America; and*
- *"U.S. GAAP" refers to accounting principles generally accepted in the United States of America.*

Under the caption "Glossary" we have included the definitions of certain technical terms used in this prospectus/offering memorandum.

## RESPONSIBILITY STATEMENT

Fresenius Finance B.V., Amersfoortseweg 10E, 3705 GJ, Zeist, Netherlands, along with Fresenius SE & Co. KGaA, Fresenius Kabi AG and Fresenius ProServe GmbH, all located at Else-Kröner-Strasse 1, 61352 Bad Homburg vor der Höhe, Germany, assume responsibility for the content of this prospectus/offering memorandum and hereby declare that the information contained in this prospectus/offering memorandum is, to the best of their knowledge, in accordance with the facts and that no material circumstances are omitted, and that they have taken all reasonable care to ensure that the information contained in this prospectus/offering memorandum is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.

The information contained under the headings "Summary", "Exchange Rates" and "Business" includes extracts from information and data publicly released by official and other sources. Although we accept responsibility for the accurate extraction and summarization of such information and data, we accept no further responsibility in respect of such information. In addition, the information set out in relation to sections of this prospectus/offering memorandum describing clearing arrangements, including the section entitled *"Description of the Notes — General — Global Clearance and Settlement Under the Book-Entry System"*, is subject to any change in or reinterpretation of the rules, regulations and procedures of Euroclear Bank S.A./N.V., as operator of the Euroclear System ("**Euroclear**"), and Clearstream Banking Société Anonyme ("**Clearstream**") currently in effect. While we accept responsibility for accurately summarizing the information concerning Euroclear and Clearstream, we accept no further responsibility in respect of such information.

Neither the Initial Purchasers nor any other person mentioned in this prospectus/offering memorandum or the incorporated documents, except for the Issuers and the Guarantors, is responsible for the information contained in this prospectus/offering memorandum, and accordingly, and to the extent permitted by the laws of any relevant jurisdiction, none of these persons accepts any responsibility for the accuracy and completeness of the information contained herein.

## **NOTICE TO NEW HAMPSHIRE RESIDENTS**

**NEITHER THE FACT THAT A REGISTRATION STATEMENT OR AN APPLICATION FOR A LICENSE HAS BEEN FILED UNDER CHAPTER 421-B WITH THE STATE OF NEW HAMPSHIRE NOR THE FACT THAT A SECURITY IS EFFECTIVELY REGISTERED OR A PERSON IS LICENSED IN THE STATE OF NEW HAMPSHIRE CONSTITUTES A FINDING BY THE SECRETARY OF STATE OF THE STATE OF NEW HAMPSHIRE THAT ANY DOCUMENT FILED UNDER RSA 421-B IS TRUE, COMPLETE AND NOT MISLEADING. NEITHER ANY SUCH FACT NOR THE FACT THAT AN EXEMPTION OR EXCEPTION IS AVAILABLE FOR A SECURITY OR A TRANSACTION MEANS THAT THE SECRETARY OF STATE HAS PASSED IN ANY WAY UPON THE MERITS OR QUALIFICATIONS OF, OR RECOMMENDED OR GIVEN APPROVAL TO, ANY PERSON, SECURITY OR TRANSACTION. IT IS UNLAWFUL TO MAKE, OR CAUSE TO BE MADE, TO ANY PROSPECTIVE PURCHASER, CUSTOMER OR CLIENT ANY REPRESENTATION INCONSISTENT WITH THE PROVISIONS OF THIS PARAGRAPH.**

## **NOTICE TO INVESTORS**

Neither we nor the Initial Purchasers nor any of our affiliates or representatives are making any representation to you regarding the legality of an investment in the Notes, and you should not construe anything in this prospectus/offering memorandum as legal, business, tax or other advice. You should consult your own advisors as to the legal, tax, business, financial and related aspects of an investment in the Notes. Laws in certain jurisdictions may restrict the distribution of this prospectus/offering memorandum and the offer and/or sale of the Notes. You must comply with all laws applicable in any jurisdiction in which you buy, offer or sell the Notes or possess or distribute this prospectus/offering memorandum, and you must obtain all applicable consents and approvals; we shall not have any responsibility for any of the foregoing legal requirements.

The Initial Purchasers make no representation or warranty, express or implied, as to the accuracy or completeness of the information contained in this prospectus/offering memorandum. Nothing contained in this prospectus/offering memorandum is or should be relied upon as a promise or representation by the Initial Purchasers as to the past or the future. You agree to the foregoing by accepting this prospectus/offering memorandum.

Neither the Notes nor the Guarantees have been registered under the Securities Act or the securities laws of any state of the United States, and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (as defined in Regulation S under the Securities Act) except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act. We have not registered, and do not intend to register, the Notes or the Guarantees under the Securities Act. Notwithstanding anything in this prospectus/offering memorandum to the contrary, you (and each of your employees, representatives or other agents) may disclose to any and all persons, without limitation of any kind, the U.S. federal tax treatment and U.S. tax structure of the offering and all materials of any kind (including opinions or other tax analyses) that are provided to you relating to such U.S. federal tax treatment and U.S. tax structure. However, any such disclosure of the U.S. federal tax treatment or U.S. tax structure may be subject to restrictions reasonably necessary to comply with any applicable securities laws.

The Notes are being offered and sold outside the United States in reliance on Regulation S and within the United States to “qualified institutional buyers” in reliance on Rule 144A under the Securities Act. Prospective purchasers are hereby notified that the sellers of the Notes may be relying on the exemption from the provisions of Section 5 of the Securities Act provided by



Rule 144A. For a description of these and certain other restrictions on offers, sales and transfers of the Notes and the distribution of this prospectus/offering memorandum, see *"Notice to New Hampshire Residents"*, *"Notice to Investors in the European Economic Area"*, *"Notice to Investors in the United Kingdom"*, *"Notice to Investors in Germany and Luxembourg"* and *"Notice to Investors"*. By purchasing any Notes, you will be deemed to have represented and agreed to all of the provisions contained in those sections of this prospectus/offering memorandum. You may be required to bear the financial risks of this investment for an indefinite period of time.

Each person receiving this prospectus/offering memorandum acknowledges that (1) we have afforded it an opportunity to request and to review, and it has received, all additional information considered by it to be necessary to verify the accuracy of or to supplement the information contained in this prospectus/offering memorandum, (2) investing in the Notes involves risks, (3) it has not relied upon the Initial Purchasers or any person affiliated with the Initial Purchasers in connection with its investigation of the accuracy of such information or its investment decision, (4) this prospectus/offering memorandum relates to offerings exempt from registration under the Securities Act and does not comply in important respects with Securities and Exchange Commission ("**SEC**") rules that would apply to an offering document relating to a public offering of securities and (5) no person has been authorized to give information or to make any representation concerning us, this offering or the Notes, other than as contained in this prospectus/offering memorandum and the incorporated documents, in connection with an investor's examination of us and the terms of this offering.

**Neither the U.S. Securities and Exchange Commission, any state securities commission nor any non-U.S. securities authority has approved or disapproved of these securities or determined that this prospectus/offering memorandum is accurate or complete. Any representation to the contrary is a criminal offense.**

You may not use any information herein for any purpose other than considering an investment in the Notes. We reserve the right to withdraw this offering of the Notes at any time. We and the Initial Purchasers also reserve the right to reject any offer to purchase the Notes in whole or in part for any reason or no reason and to allot to any prospective purchaser less than the full amount of the Notes sought by it.

## **NOTICE TO INVESTORS IN THE EUROPEAN ECONOMIC AREA**

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a "Relevant Member State"), each Initial Purchaser has represented and agreed that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the "Relevant Implementation Date") it has not made and will not make an offer of Notes to the public in that Relevant Member State, unless and until a prospectus has been approved by the competent regulatory authority and, as applicable, published and notified to the relevant competent authority in another Relevant Member State in accordance with the Prospectus Directive as implemented in such other Relevant Member State, except that it may make an offer of such Notes in such Relevant Member State:

- (a) to any legal entity which is a qualified investor as defined in the Prospectus Directive;
- (b) to fewer than 100 or, if the Relevant Member State has already implemented the relevant provision of the 2010 PD Amending Directive, 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the relevant Initial Purchaser or Initial Purchasers nominated by the relevant Issuer for any such offer; or
- (c) in any other circumstances falling within Article 3 para.(2) of the Prospectus Directive,

provided that no such offer of Notes shall require the Issuer or any Initial Purchaser to publish a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an “offer of the Notes to the public” in relation to any of the Notes in any relevant member state means the communication in any form and by any means of sufficient information on the terms of the offering and the Notes to be offered so as to enable an investor to decide to purchase or subscribe for the Notes, as the same may be varied in that member state by any measure implementing the Prospectus Directive in that member state, and the expression “Prospectus Directive” means Directive 2003/71/EC (as amended, inter alia, by the 2010 PD Amending Directive) and includes any relevant implementing measure in each relevant member state. The expression “2010 PD Amending Directive” means Directive 2010/73/EU.

## **NOTICE TO INVESTORS IN THE UNITED KINGDOM**

This prospectus/offering memorandum is for distribution only to, and is only directed at, persons who (i) have professional experience in matters relating to investments falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended, (the “Financial Promotion Order”), (ii) are persons falling within Article 49(2)(a) to (d) (high net worth companies, unincorporated associations, etc.) of the Financial Promotion Order or (iii) are persons to whom an invitation or inducement to engage in investment activity (within the meaning of section 21 of the Financial Services and Markets Act 2000) in connection with the issue or sale of any Notes may otherwise lawfully be communicated or caused to be communicated (all such persons together being referred to as “relevant persons”). This prospectus/offering memorandum is directed only at relevant persons and must not be acted on or relied on by persons who are not relevant persons. Any investment or investment activity to which this document relates is available only to relevant persons and will be engaged in only with relevant persons. The Notes are being offered solely to “qualified investors” as defined in the Prospectus Directive and accordingly the offer of Notes is not subject to the obligation to publish a prospectus within the meaning of the Prospectus Directive.



## DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus/offering memorandum contains forward-looking statements. Any statements about our expectations, beliefs, plans, objectives, assumptions or future events or performance are not historical facts and may be forward-looking. These statements are often, but not always, made through the use of words or phrases such as “believes”, “anticipates”, “estimates”, “intends”, “expects”, “predicts”, “plans”, “seeks”, “projects”, “could” or “will” and similar formulations. These statements involve estimates, assumptions and uncertainties which could cause actual results, performance or events to differ materially from those expressed in them. Although we believe that the expectations reflected in such forward-looking statements are reasonable, forward-looking statements are inherently subject to risks and uncertainties, many of which cannot be predicted with accuracy and some of which might not even be anticipated, and future events and actual results, financial and otherwise, could differ materially from those set forth in or contemplated by the forward-looking statements contained elsewhere in this prospectus/offering memorandum. We have based these forward-looking statements on current estimates and assumptions made to the best of our knowledge. By their nature, such forward-looking statements involve risks, uncertainties, assumptions and other factors which could cause actual results, including our financial condition and profitability, to differ materially and be more negative than the results expressly or implicitly described in or suggested by these statements. Moreover, forward-looking estimates or predictions derived from third parties’ studies or information may prove to be inaccurate. Consequently, we cannot give any assurance regarding the future accuracy of the opinions set forth in this prospectus/offering memorandum or the actual occurrence of the developments described herein. In addition, even if our future results meet the expectations expressed here, those results may not be indicative of our performance in future periods. These risks, uncertainties, assumptions, and other factors that could cause actual results to differ from our projected results include, among others, the following:

- changes in general economic conditions, particularly economic conditions in our core markets;
- changes in the markets in which we operate;
- changes affecting interest rates;
- changes affecting currency exchange rates;
- changes in levels of competition;
- changes in governmental and commercial insurer reimbursement for our complete products and services portfolio, including the new expanded Medicare reimbursement system for dialysis services;
- changes in utilization patterns for pharmaceuticals and in our costs of purchasing pharmaceuticals;
- the outcome of ongoing government investigations;
- the influence of private insurers and managed care organizations;
- the impact of recently enacted and possible future healthcare reforms;
- product liability risks;
- the outcome of ongoing potentially material litigation;
- risks relating to the integration of acquisitions and our dependence on additional acquisitions;
- introduction of generic or new pharmaceuticals that compete with our pharmaceutical products;

- changes in supply costs; and
- the financial stability and liquidity of our governmental and commercial payors.

Important factors that could contribute to such differences are noted in this prospectus/offering memorandum in the sections entitled “*Risk Factors*”, “*Management’s Discussion and Analysis of Financial Condition and Results of Operations*”, “*Business*” and “*Business — Legal Proceedings*”.

Our business is also subject to other risks and uncertainties that we describe from time to time in our public filings. Developments in any of these areas could cause our results to differ materially from the results that we or others have projected or may project. Our reported financial condition and results of operations are sensitive to accounting methods, assumptions and estimates that are the basis of our financial statements. The actual accounting policies, the judgments made in the selection and application of these policies, and the sensitivities of reported results to changes in accounting policies, assumptions and estimates, are factors to be considered along with our financial statements and the discussion below under “*Results of Operations*”. For a discussion of our critical accounting policies, see “*Management’s Discussion and Analysis of Financial Condition and Results of Operations — Critical Accounting Policies*”.

Any forward-looking statements are qualified in their entirety by reference to the factors discussed throughout this prospectus/offering memorandum. Key factors that have a direct bearing on our results of operations include, but are not limited to, those factors indicated in this prospectus/offering memorandum under the caption “*Risk Factors*”.

Because the risk factors referred to in this prospectus/offering memorandum could cause actual results or outcomes to differ materially from those expressed in any forward-looking statements made in this prospectus/offering memorandum by us or on our behalf, you should not place undue reliance on any forward-looking statements. Further, any forward-looking statement speaks only as of the date on which it is made, and we undertake no obligation to update any forward-looking statement to reflect events or circumstances after the date on which the statement is made or to reflect the occurrence of unanticipated events. New factors will emerge in the future that could cause our actual development, results of operations or performance to be materially different from what may be expressly or implicitly assumed in forward-looking statements. It is not possible for us to predict what these new factors will be.

## INDUSTRY INFORMATION

This prospectus/offering memorandum contains or refers to numerical data, market data, analyst reports and other publicly available information about our industry, or our estimates based largely on published market data or on numerical data derived from publicly accessible sources. We believe that the estimates based on information that is not available from publicly accessible sources are accurate and impartial. We have accurately reproduced and indicated the respective source of the information in this prospectus/offering memorandum from publicly accessible sources or otherwise acquired from third parties. Where information in this prospectus/offering memorandum has been specifically identified as having been extracted from third party documents, each of the Issuers and the Guarantors confirms that this information has been accurately reproduced and that as far as the Issuers and the Guarantors are aware and are able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. You should bear in mind that we have not verified and assume no liability for the numerical data, market data and other information from public sources. None of the Issuer, the Guarantors or the Initial Purchasers makes any representation as to the accuracy of such information. In addition, you should bear in mind that market studies are based on information and assumptions that may not be accurate or factually correct, and may be forward-looking or speculative in nature.

## PRESENTATION OF FINANCIAL INFORMATION

Our consolidated financial statements and other financial information contained herein have been prepared in accordance with accounting principles generally accepted in the United States of America ("**U.S. GAAP**"), unless it is expressly indicated herein that financial statements or other financial information have been prepared in accordance with the International Financial Reporting Standards of the International Accounting Standards Board (IASB) as adopted by the European Union ("**IFRS**"). We use IFRS to comply with the reporting requirements of the German Commercial Code (Handelsgesetzbuch) and other German laws. In addition, we voluntarily prepare and publish our consolidated financial statements in accordance with U.S. GAAP. The unconsolidated financial statements of the Issuer included in this prospectus/offering memorandum have been prepared in accordance with accounting principles generally accepted in the Netherlands ("**Dutch GAAP**"). The unconsolidated financial statements of both Subsidiary Guarantors included in this prospectus/offering memorandum have been prepared in accordance with accounting principles generally accepted in Germany ("**German GAAP**").

Financial statements and other financial information prepared in accordance with IFRS or national GAAP are not comparable to, and could differ from, financial statements and other financial information prepared in accordance with U.S. GAAP. For a discussion of some of the significant differences between IFRS and U.S. GAAP that affect us, see "*Selected Consolidated Financial Information*".

The Company owned 30.74% of the ordinary voting shares of Fresenius Medical Care AG & Co. KGaA ("**FMC AG & Co. KGaA**") and 30.34% of the total subscribed capital of FMC AG & Co. KGaA as at December 31, 2011 (31.44% and 31.03%, respectively, as of February 29, 2012). FMC AG & Co. KGaA is a German partnership limited by shares. Fresenius Medical Care Management AG, the general partner of FMC AG & Co. KGaA, is a wholly owned subsidiary of the Company. Because corporate decisions are taken by the general partner for German partnerships limited by shares, the Company has, and as long as it maintains ownership of more than 25% of the share capital of FMC AG & Co. KGaA will retain, a factual controlling position (*faktische Kontrolle*) in FMC AG & Co. KGaA under the articles of association of FMC AG & Co. KGaA. Since this factual controlling position (*faktische Kontrolle*) meets the control test for purposes of consolidation, the Company fully consolidates Fresenius Medical Care in its consolidated financial statements. As of December 31, 2011, the Company had a market capitalization of €11,668 million, and FMC AG & Co. KGaA had a market capitalization of €15,929 million.

## NON-GAAP AND NON-IFRS FINANCIAL MEASURES

### Constant currency

Changes in our revenue include the impact of changes in foreign currency exchange rates. We use the non-GAAP financial measure "at constant exchange rates" in this prospectus/offering memorandum to show changes in our revenue without giving effect to period-to-period currency fluctuations. Under U.S. GAAP, sales received in local (non-euro) currency are translated into euro at the average exchange rate for the period presented. In calculating constant currency comparisons, we apply the relevant exchange rates used in our financial statements for the previous year — end-of-period exchange rates in the case of balance sheet data and period average exchange rates in the case of profit and loss statement data — to generate numbers for the current year as if the exchange rates for the current year had been the same as those in the previous year, then compare the resulting "constant currency" data with the corresponding actual data from the previous year in order to measure the increase or decrease on a constant currency basis. This resulting percentage is a non-GAAP measure referring to a change as a percentage "at constant exchange rates".

We believe that revenue growth is a key indication of how a company is progressing from period to period and that the non-GAAP financial measure constant currency is useful to investors, lenders, and other creditors, because such information enables them to gauge the impact of currency fluctuations on a company's revenue from period to period. However, we also believe that

data on constant currency period-over-period changes have limitations, particularly since the currency effects that are eliminated could constitute a significant element of our revenue and could significantly impact our performance. We therefore limit our use of constant currency period-over-period changes. Unless otherwise indicated, our financial information in this prospectus/offering memorandum complies with U.S. GAAP applicable at the relevant date (i.e., the reporting date of the respective annual or interim financial statements).

## **EBITDA**

“EBIT” refers to earnings before interest and income taxes.

In this prospectus/offering memorandum, we present EBITDA. “EBITDA” refers to earnings before interest, income taxes, depreciation and amortization and noncontrolling interest. We do not present EBITDA as a measure of our operating results. Our management believes that the presentation of EBITDA is helpful to investors as a measure of our ability to service debt. However, you should not construe EBITDA as an alternative expression of net income determined in accordance with U.S. GAAP or cash flows from operations, investing activities or financing activities as a measure of cash flows. It should be noted that the definition of EBITDA described above differs from the definition of EBITDA in certain provisions of the Indenture, our 2008 Senior Credit Agreement and our other financing arrangements.

We show EBITDA for each of our business segments before giving effect to the segment Corporate/Other, to which certain sales and costs are allocated. For this reason, the EBITDA contributions of each of our business segments when added together may add up to more than 100% of our total EBITDA.

Certain numerical data, financial information and market data in this prospectus/offering memorandum are subject to rounding adjustments that were carried out according to customary commercial standards. As a result, the aggregate amounts herein may not correspond in all cases to the data contained in the underlying sources.

## EXCHANGE RATES

The table below shows for the period from January 1, 2007 through March 21, 2012, the period end, average, high, and low buying rates in for euro expressed as U.S. dollars per €1.00, referred to here as the “dollar-euro exchange rate”. These rates may differ from actual rates used in the preparation of the consolidated financial statements and other financial information appearing in this prospectus/offering memorandum. We make no representation that the euro or U.S. dollar amounts referred to in this prospectus/offering memorandum have been, could have been or could, in the future, be converted into U.S. dollars or euro, as the case may be, at any particular rate, if at all. On March 21, 2012, the dollar-euro exchange rate was 1.3225.

| <u>Year</u>                                 | <u>Period end</u> | <u>Average<sup>(1)</sup></u> | <u>High</u> | <u>Low</u> |
|---------------------------------------------|-------------------|------------------------------|-------------|------------|
| 2007 .....                                  | 1.46              | 1.38                         | 1.47        | 1.30       |
| 2008 .....                                  | 1.39              | 1.47                         | 1.60        | 1.25       |
| 2009 .....                                  | 1.43              | 1.40                         | 1.51        | 1.26       |
| 2010 .....                                  | 1.33              | 1.32                         | 1.45        | 1.20       |
| 2011 .....                                  | 1.30              | 1.39                         | 1.49        | 1.29       |
| <u>Month</u>                                |                   |                              |             |            |
| January 2012 .....                          | 1.3053            | 1.2910                       | 1.3192      | 1.2682     |
| February 2012 .....                         | 1.3443            | 1.3224                       | 1.3454      | 1.2982     |
| March 2012 (March 1 through March 21) ..... | 1.3225            | 1.3163                       | 1.3312      | 1.3057     |

(1) With respect to each year, the average of the dollar-euro exchange rates on the last day of each month during such year. With respect to the period from March 1 through March 21, 2012, the average of the dollar-euro exchange rates for each business day during such period.

In preparing our consolidated financial statements and in converting certain U.S. dollar amounts in this prospectus/offering memorandum, we have used the following exchange rates, expressed as U.S. dollars per €1.00, which are based on the euro foreign exchange rates of the European Central Bank:

|                      | <u>January 1 to<br/>March 21,<br/>2012</u> | <u>January 1 to December 31,</u> |             |             |
|----------------------|--------------------------------------------|----------------------------------|-------------|-------------|
|                      |                                            | <u>2011</u>                      | <u>2010</u> | <u>2009</u> |
| Period-end .....     | 1.3225                                     | 1.2939                           | 1.3362      | 1.4406      |
| Period average ..... | 1.3087                                     | 1.3920                           | 1.3259      | 1.3948      |

We have also converted certain U.S. dollar amounts in this prospectus/offering memorandum at the rates set forth in the table above for the relevant period-end or period to which the amount being converted relates.

## SUMMARY

*The following constitutes the summary of certain characteristics associated with the Issuer, the Guarantors and the Notes. This summary should be read as an introduction to this prospectus/offering memorandum. It does not purport to be complete and is taken from and qualified in its entirety by the remainder of this prospectus/offering memorandum. Investors should read carefully this entire prospectus/offering memorandum, including the sections entitled "Risk Factors", "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business", the financial statements and the related notes. Any decision by an investor to invest in the Notes should be based on consideration of this prospectus/offering memorandum as a whole. Where a claim relating to the information contained in this prospectus/offering memorandum is brought before a court, the plaintiff investor might, under the national legislation of such court, have to bear the costs of translating the prospectus/offering memorandum before the legal proceedings are initiated. Civil liability attaches to the Issuer and to the Guarantors who have tabled this summary including any translation thereof, and applied for its notification, but only if this summary is misleading, inaccurate or inconsistent when read together with the other parts of this prospectus/offering memorandum.*

*In the following summary, the "Company" refers to Fresenius SE & Co. KGaA, the Parent Guarantor in respect of the Notes that are the subject of the offering described in this prospectus/offering memorandum (and, as the context may require, to its predecessor companies, Fresenius SE until January 28, 2011, and previously, until July 13, 2007, Fresenius AG) only and not to any of its subsidiaries; "we", "us", "our", the "Fresenius Group", the "Group" and "Fresenius" refer to Fresenius SE & Co. KGaA and its subsidiaries on a consolidated basis.*

### SUMMARY IN RESPECT OF OUR COMPANY AND OUR GROUP

#### Overview

Fresenius is an international healthcare group with products and services for dialysis, hospitals and out-patient care. In addition, we focus on hospital operations and offer engineering and services for hospitals and other healthcare facilities. We are active in about 170 countries and have an international marketing and production network of more than 80 production sites worldwide. We have four business segments: Fresenius Medical Care, Fresenius Kabi, Fresenius Helios and Fresenius Vamed. In 2011, we generated sales of €16,522 million and EBITDA of €3,237 million. The Company had a market capitalization of €12,673 million as of February 29, 2012.

*Fresenius Medical Care.* Fresenius Medical Care operates in the fields of dialysis products and dialysis services. Based on publicly reported sales and number of patients, Fresenius Medical Care is the world's largest provider of dialysis products and dialysis services for patients with chronic kidney failure. Fresenius Medical Care's dialysis business is vertically integrated, providing therapy services at its own dialysis clinics and supplying these clinics with a full range of products. In addition, Fresenius Medical Care sells dialysis products to other dialysis service providers. In 2011, Fresenius Medical Care generated approximately 64% of its sales in North America, approximately 21% in Europe and approximately 15% throughout the rest of the world. Fresenius Medical Care sells its products in over 120 countries. Fresenius Medical Care had 233,156 patients (234,516 patients including those at 21 clinics in the United States that are managed by Fresenius Medical Care but not consolidated) under treatment at 2,898 dialysis clinics in about 40 countries at December 31, 2011, and provided approximately 34.4 million treatments in 2011. Fresenius Medical Care's sales and EBITDA in 2011 were US\$12,795 million (€9,192 million) and US\$2,632 million (€1,891 million), respectively, and represented approximately 56% of our Group's sales and 58% of our Group's EBITDA. FMC AG & Co. KGaA had a market capitalization of €15,962 million as of February 29, 2012.

*Fresenius Kabi.* Fresenius Kabi is focused on the therapy and care of chronically and critically ill patients in hospitals and in the out-patient setting. Fresenius Kabi has four product businesses: infusion therapy, IV drugs, clinical nutrition and medical devices/transfusion technology. For infusion therapy, Fresenius Kabi provides products for fluid and blood volume replacement. In its IV drug business, Fresenius Kabi offers a comprehensive range of intravenously administered drugs in

the anaesthesia, analgesia, infectious diseases, oncology and critical care categories. Within clinical nutrition, Fresenius Kabi supplies parenteral (administration via the vein) and enteral (administration via the gastrointestinal tract) nutrition. The medical devices/transfusion technology product group includes infusion technologies, nutrition pumps, disposables and infusion management systems, as well as products used by blood banks and blood donation units to produce blood products. In 2011, Fresenius Kabi generated 46% of its sales in Europe, 25% in North America, 18% in Asia-Pacific, and 11% in Latin America/Africa. In 2011, Fresenius Kabi's sales and EBITDA were €3,964 million and €955 million, respectively, and represented approximately 24% of our Group's sales and 30% of our Group's EBITDA.

*Fresenius Helios.* Fresenius Helios is one of the largest German private hospital operators. The HELIOS Group operates 65 proprietary clinics (as of December 31, 2011) almost exclusively in Germany, including six maximum care hospitals in the German cities of Berlin-Buch, Duisburg, Erfurt, Krefeld, Schwerin and Wuppertal, and post-acute care clinics. Fresenius Helios provides expertise in all areas (except transplantation medicine) and at all levels of clinical care. Fresenius Helios had more than 20,000 beds as of December 31, 2011, and treated more than two million patients — including approximately 700,000 inpatients — during 2011. Fresenius Helios's sales and EBITDA in 2011 were €2,665 million and €369 million, respectively, and represented approximately 16% of our Group's sales and 11% of our Group's EBITDA.

*Fresenius Vamed.* Fresenius Vamed is a market leader for engineering and other project development, planning, construction and technical management services for hospitals and other healthcare facilities worldwide, as well as in the general management of healthcare facilities in selected key markets. VAMED has successfully completed approximately 600 health projects in more than 60 countries, including hospitals, university clinics, health and rehabilitation centers, thermal spa and medical wellness resorts, laboratories and research facilities and other healthcare facilities in Europe, Africa, the Middle East, Asia and Latin America. Fresenius Vamed is also a pioneer in public-private partnership ("PPP") models for the healthcare sector and has developed and implemented several PPP models in Central Europe. Fresenius Vamed's sales and EBITDA in 2011 were €737 million and €51 million, respectively, and represented approximately 4% of our Group's sales and 2% of our Group's EBITDA.

## Summary of Our Key Strengths

Our business benefits from a number of key strengths, including:

**Leading market positions.** We are among the market leaders in each of the key markets in which our business segments operate. Based on publicly reported sales and number of patients treated, Fresenius Medical Care is the world's largest provider of dialysis products and dialysis care for patients with chronic kidney failure. We believe Fresenius Kabi is the market leader in Europe in clinical nutrition and infusion therapy and has strong market positions in the growth regions of Asia-Pacific, Latin America and South Africa, as well as being a leading supplier of generic IV drugs in the United States. Fresenius Helios is one of the three largest private hospital operators in Germany. Fresenius Vamed is a market leader for engineering and other project development, planning, construction and technical management of healthcare facilities worldwide, as well as in the general management of healthcare facilities in selected key markets. We believe our leading positions and the scale and spread of our operations provide us with negotiating power with suppliers and with a cost-competitive advantage compared with our smaller competitors.

**Globally diversified presence in growing non-cyclical markets.** Our markets are relatively independent of economic cycles due to the intrinsic importance of the life-saving and life-sustaining products and treatments that we provide. These markets are also expanding due to demographic trends, the growing demand for innovative therapies in industrialized countries and the increasing availability of high-quality healthcare in developing and newly industrializing countries. We are one of the few globally active companies in our business areas and have subsidiaries in about 80 countries, providing us with the local presence needed to respond to differing national healthcare systems. Fresenius Medical Care sells its dialysis products to its own clinics, as well as to external



dialysis providers. Fresenius Medical Care sells its products in over 120 countries, and Fresenius Kabi sells its products to hospitals and other purchasers in more than 160 countries. We operate a marketing and production network of more than 80 production sites worldwide. Our key production facilities are in the United States, Germany, Sweden, China, Japan and India. We also have production facilities in other European and Asia-Pacific countries, Latin America and South Africa.

**Comprehensive product range.** With a comprehensive product portfolio, we believe we are one of a few companies able to meet our customers' needs for a broad range of therapies. Fresenius Medical Care offers a comprehensive range of products for both hemodialysis (i.e., the removal of impurities and waste products from the bloodstream through a dialyzer before returning the blood to the patient's body) and peritoneal dialysis (i.e., the removal of toxins from the blood using the peritoneum). Fresenius Kabi is one of the few healthcare companies that offers a complete range of both enteral and parenteral nutrition therapies. Fresenius Kabi also offers a broad range of fluid and blood volume substitution products and a comprehensive portfolio of IV drugs and has a strong registration pipeline.

**High barriers to entry.** Most of our healthcare products and service businesses are characterized by high barriers to entry. High regulatory standards and quality requirements, as well as the need for an international production and distribution network and established relationships with suppliers and customers make it difficult for companies to enter and be competitive in our markets. An existing platform of hospitals, in-depth experience and a proven track record are needed to participate successfully in the privatization of the German hospital market and to successfully manage the economic turnaround of acquired hospitals.

**Integrated businesses.** Within the framework of our vertically integrated business model, each of our business segments operates at various stages of the value chain. Fresenius Medical Care provides its customers and patients with products and services for dialysis. By combining the development and manufacture of dialysis products with dialysis services for patients, Fresenius Medical Care gains valuable medical insights that it uses to improve both treatments and product quality. Fresenius Kabi also pursues an integrated product strategy in the areas of infusion therapy and clinical nutrition. In addition to infusion solutions, IV drugs and clinical nutrition, Fresenius Kabi also offers the corresponding application systems for the administration of these products to patients. We believe Fresenius Kabi has a strong market position as a vertically integrated supplier of generic IV drugs, with a reliable supply of active pharmaceutical ingredients for the manufacture of antibiotics and oncology drugs.

**Strong and stable cash flow and proven deleveraging track record.** Our business has strong, recurring cash flow streams generated by sales of life-saving and life-sustaining products and services. Our operating cash flow in the year ended December 31, 2011 amounted to €1,689 million, compared with €1,911 million in 2010 and €1,553 million in 2009. As a result of our strong cash flow generation and EBITDA growth, we were able to reduce our net debt to EBITDA ratio following the acquisition of APP Pharmaceuticals from 3.6 as of December 31, 2008 to 2.8 as of December 31, 2011, and kept within the target range of 2.5 to 3.0 despite intensified acquisition activity in 2011. Calculated at comparable exchange rates (using the average exchange rate over the previous 12 months to calculate the principal amount of debt, cash and cash equivalents, and EBITDA), our net debt to EBITDA ratio was 2.7 as of December 31, 2011.

**Experienced management team.** Fresenius has one of the most experienced management teams in the industry with a proven track record for organic growth, as well as completing and successfully integrating acquisitions, including the €1.5 billion acquisition of HELIOS Kliniken GmbH in 2005, the US\$4.2 billion acquisition of Renal Care Group (RCG) in 2006, and the US\$4.7 billion acquisition of APP Pharmaceuticals in 2008. Fresenius Medical Care's executive management boasts a combined experience in the dialysis sector of more than 150 years. Fresenius Kabi's executive management has about 185 years of combined experience in healthcare. Fresenius Helios's executive management has more than 85 years of combined experience in hospital management. Fresenius Vamed's executive management has more than 65 years of combined experience in providing services to the healthcare industry.

## Summary of Our Strategy

The following is a summary of the key elements of our business strategy:

**Expand our market position.** Fresenius' goal is to ensure the long-term future of the Company as a leading international provider of products and services in the healthcare industry and to grow its market share. Future opportunities in dialysis will arise from further international expansion in dialysis care and products and in renal pharmaceuticals. To strengthen its position, Fresenius Kabi plans to roll out more products from its portfolio to new markets. Market share is also to be expanded through the launch of new products in the field of IV drugs and new medical devices for infusion therapy and clinical nutrition. In addition, products from the existing portfolio are to be launched in the U.S. market. Fresenius Helios is in a strong position to take advantage of the further growth opportunities offered by the continuing privatization process in the German hospital market. Investment decisions are based on the continued existence and long-term potential of the hospitals to be acquired. Fresenius Vamed will be further strengthening its position as a global specialist provider of engineering and services for hospitals and other healthcare facilities.

**Extend our global presence.** In addition to sustained organic growth in markets where Fresenius is already established, our strategy is to diversify into new growth markets worldwide, especially in the Asia-Pacific region and in Latin America. With our brand name, product portfolio, and existing infrastructure, we intend to focus on markets that offer attractive growth potential. Apart from organic growth, Fresenius also plans to make further small to mid-sized selective acquisitions to improve the Group's market position and to diversify its business geographically.

**Strengthen innovation.** Fresenius' strategy is to continue building on its strength in technology, its competence and quality in patient care, and its ability to manufacture cost-effectively. We intend to leverage our competence in research and development in our operations to develop products and systems that provide a high level of safety and user-friendliness and enable tailoring to individual patient needs. We intend to continue to meet the requirements of best-in-class medical standards by developing and producing more effective products and treatment methods for the critically and chronically ill. Fresenius Helios's goal is to widen brand recognition for its healthcare services and innovative therapies. Fresenius Vamed's goal is to realize further projects in integrated healthcare services and to support patient-oriented healthcare systems more efficiently.

**Enhance profitability.** Our goal is to continue to improve Group profitability. To contain costs, we are concentrating particularly on making our production plants more efficient, exploiting economies of scale, leveraging the existing marketing and distribution infrastructure more intensively, and practicing strict cost control. We have set ourselves an ambitious earnings goal. We aim to achieve Group net income of more than €1 billion by 2014. We also have set ourselves a mid-term target aiming to achieve average organic sales growth of 6% to 9% per year for the Group. By focusing on our operating cash flow and employing efficient working capital management, we will increase our investment flexibility and improve our balance sheet ratios. Another goal is to optimize our weighted average cost of capital (WACC) by deliberately employing a balanced mix of equity and debt funding. In present capital market conditions, we optimize our cost of capital if we maintain our net debt to EBITDA ratio in a range between 2.5 and 3.0. It was 2.8 as of December 31, 2011. At the end of 2012 we target Group leverage to be 3.0 or lower.

## Summary of Recent Developments

In October 2011, HELIOS agreed to acquire 94.7% of the share capital in Damp Group. Damp operates seven acute care hospitals and four post-acute care hospitals with a total of 4,112 beds (including 2,649 in acute care) and is among the ten largest private hospital operators in Germany. In addition, Damp operates eight outpatient medical care centers, two nursing care facilities with a total of 606 beds and a wellness resort. The company has approximately 6,000 full-time employees. The acquisition of Damp is an excellent geographic fit with the Fresenius Helios hospital network in the north and northeast of Germany. In 2010, Damp achieved sales of €487 million and operating profit (EBIT) of €21 million. Due to the geographic proximity of HELIOS hospital, Schwerin, Fresenius Helios was required to divest Damp hospital Wismar (505 beds, sales of approximately

€60 million in 2010) to secure regulatory clearance and complete the transaction. The acquisition of Damp Group was completed on March 19, 2012. Damp will be consolidated as of March 31, 2012.

On February 29, 2012, Fresenius Medical Care closed the acquisition of Liberty Dialysis Holdings, Inc., the holding company of Liberty Dialysis and Renal Advantage. The closing of this acquisition follows the completion of the review of the transaction and issuance of a consent decree by the United States Federal Trade Commission. In connection with the consent decree, Fresenius Medical Care intends to divest 62 dialysis clinics. We expect that the acquisition of Liberty Dialysis Holdings, Inc. will add annual revenues of approximately US\$700 million (net of divestitures) and 201 clinics to Fresenius Medical Care's network for an investment (net of proceeds from the divestiture of certain clinics divested in connection with obtaining the consent decree) of approximately US\$1.5 billion.

On February 27, 2012, Standard & Poor's Credit Market Services Europe Limited increased its credit rating of Fresenius SE & Co. KGaA from BB to BB+.

On March 8, 2012, the Supervisory Board of Fresenius Management SE appointed Rice Powell and Mats Henriksson as new Management Board members, effective January 1, 2013. On the same date, Rice Powell, 56, will succeed Dr. Ben Lipps, 71, as CEO of Fresenius Medical Care, and Mats Henriksson, 44, will succeed Rainer Baule, 63, as CEO of Fresenius Kabi. Dr. Ben Lipps and Rainer Baule will both retire from the Management Board at the end of 2012. Rice Powell, who currently serves as CEO of Fresenius Medical Care North America, joined Fresenius Medical Care in 1997 and has been a member of the management board of Fresenius Medical Care since 2004, from January 1, 2010 as Deputy Chairman. Rice Powell has more than 30 years of experience in the health care industry, and from 1978 to 1996, he held various management positions, among others at Baxter International Inc. and Biogen Inc. Mats Henriksson joined Fresenius Kabi in 1999 as a member of its management board, and has served as President of the Asia Pacific region since 2001. Before joining the Fresenius Group, Mats Henriksson held several positions in controlling and finance at Pharmacia & Upjohn.

On March 16, 2012, Fresenius SE & Co. KGaA issued senior unsecured euro denominated notes (*Schuldscheindarlehen*) totalling €400 million (the "**New Fresenius Euro Notes**"). The proceeds of the New Fresenius Euro Notes will accrue to the Fresenius Group on April 2, 2012 and will be used to refinance two tranches of the euro notes (*Schuldscheindarlehen*) issued by Fresenius Finance B.V., each as of April 2, 2008 and with maturity on April 2, 2012, in an aggregate amount of €200 million, and for general corporate purposes.

## Overview Corporate and Finance Structure

The diagram below depicts, in abbreviated form, our corporate structure and certain debt obligations as of December 31, 2011<sup>(1)</sup> after giving effect to the offering of the Notes. Fresenius SE & Co. KGaA, Fresenius Kabi AG and Fresenius ProServe GmbH and certain of their respective subsidiaries will be subject to the restrictive covenants in the Indenture.



<sup>(1)</sup> Our corporate structure as of the date of this prospectus/offering memorandum did not materially change from our corporate structure as of December 31, 2011.

<sup>(2)</sup> Each of Fresenius SE & Co. KGaA, Fresenius Kabi AG and Fresenius ProServe GmbH have given senior guarantees of the Outstanding Senior Notes and the Notes offered hereby. Except as provided under "Description of the Notes — Certain Covenants", the Notes will not be guaranteed by any of the other subsidiaries of Fresenius SE & Co. KGaA. See "Risk Factors — Risks Relating to the Notes — The Notes are subordinate to other creditors of non-guarantors and to our subsidiaries' secured debt, and enforcement of guarantees by our subsidiaries may be limited" and "Description of the Notes". Fresenius SE & Co. KGaA is the holding company for the Group. Fresenius Kabi AG acts as the holding company for our business segment Fresenius Kabi, and Fresenius ProServe GmbH acts as the holding company for our business segments Fresenius Helios and Fresenius Vamed.

<sup>(3)</sup> As of December 31, 2011, an aggregate amount of €1,326 million was outstanding under the 2008 Senior Term Facilities. Fresenius SE & Co. KGaA, Fresenius Kabi AG and Fresenius ProServe GmbH have each given senior guarantees under the 2008 Senior Term Facilities. Fresenius Finance I S.A. has given a senior guarantee in relation to the obligations of Fresenius US Finance I, Inc. under the 2008 Senior Term Facilities. See "Description of Other Financing Arrangements".

- (4) On January 21, 2009, Fresenius US Finance II, Inc. ("**Fresenius US Finance II**"), a wholly-owned subsidiary of Fresenius SE & Co. KGaA issued US\$500 million aggregate principal amount of 9.00% senior notes and €275 million aggregate principal amount of 8.75% senior notes. See "*Description of Other Financing Arrangements*".
- (5) The 2008 Senior Revolving Credit Facilities are available in an aggregate amount of up to US\$550 million of which none was drawn as of December 31, 2011. Fresenius US Finance I, Inc. has given a senior guarantee in relation to the obligations of Fresenius Finance I S.A. under the 2008 Senior Revolving Credit Facilities. For a description of the 2008 Senior Credit Agreement, see "*Description of Other Financing Arrangements — Fresenius SE & Co. KGaA and Its Subsidiaries Other Than Fresenius Medical Care — 2008 Senior Credit Agreement*".
- (6) On January 20, 2006, Fresenius Finance B.V. issued €500 million aggregate principal amount of 5.00% senior notes due 2013. See "*Description of Other Financing Arrangements*".
- (7) On January 20, 2006, Fresenius Finance B.V. issued €500 million aggregate principal amount of 5.50% senior notes due 2016. In June 2009, Fresenius Finance B.V. placed a tap to its 5.50% senior notes by issuing an aggregate principal amount of €150 million senior notes. See "*Description of Other Financing Arrangements*".
- (8) Fresenius SE & Co. KGaA owned 30.74% of the ordinary voting shares of FMC AG & Co. KGaA and 30.34% of the total subscribed capital of FMC AG & Co. KGaA as at December 31, 2011 (31.44% and 31.03%, respectively, as of February 29, 2012). FMC AG & Co. KGaA is a German partnership limited by shares. Fresenius Medical Care Management AG, the general partner of FMC AG & Co. KGaA, is a wholly owned subsidiary of Fresenius SE & Co. KGaA. Because corporate decisions are taken by the general partner for German partnerships limited by shares, Fresenius SE & Co. KGaA has, and as long as it maintains ownership of more than 25% of the share capital of FMC AG & Co. KGaA will retain, a factual controlling position (*faktische Kontrolle*) in FMC AG & Co. KGaA under the articles of association of FMC AG & Co. KGaA. Since this factual controlling position (*faktische Kontrolle*) meets the control test for purposes of consolidation, Fresenius SE & Co. KGaA fully consolidates Fresenius Medical Care in its consolidated financial statements. See "*General Information on Group Structure, Issuer and Guarantors — Interest of the Company in Fresenius Medical Care AG & Co. KGaA*".

Although Fresenius SE & Co. KGaA fully consolidates Fresenius Medical Care in its consolidated financial statements, in line with the Group's structure, financing for Fresenius Medical Care and for the rest of our Group is conducted separately. There are no external joint financing facilities and no mutual guarantees. Fresenius Kabi, Fresenius Helios and Fresenius Vamed business segments are financed primarily through Fresenius SE & Co. KGaA in order to minimize any structural subordination. Fresenius Medical Care is not a guarantor in respect of the 2008 Senior Credit Facilities or the senior notes issued by Fresenius SE & Co. KGaA's financing subsidiaries, including the Notes offered hereby. As such, Fresenius Medical Care will not be bound by the terms of the Notes issued hereunder, and neither it nor its subsidiaries will be subject to the covenants of the Indenture or the terms of the Outstanding Senior Notes.

## **SUMMARY FINANCIAL INFORMATION**

### **Summary Selected Consolidated Financial Data**

*The summary consolidated financial information below (including ratios) reflects the full consolidation of Fresenius Medical Care's financial statements in our financial statements. Fresenius Medical Care Management AG, a wholly owned subsidiary of the Company in the legal form of a stock corporation under German law (Aktiengesellschaft), is the general partner of FMC AG & Co. KGaA. Fresenius Medical Care Management AG, acting through its management board, is responsible for the management of FMC AG & Co. KGaA. Because corporate decisions are taken by the general partner for German partnerships limited by shares, the Company has, and as long as it maintains ownership of Fresenius Medical Care Management AG and more than 25% of the share capital of FMC AG & Co. KGaA will retain, a controlling position in FMC AG & Co. KGaA under the articles of association of FMC AG & Co. KGaA. Since this controlling position meets the control test for purposes of consolidation under U.S. GAAP, the Company fully consolidates Fresenius Medical Care in its consolidated financial statements under U.S. GAAP. Noncontrolling interest and assets attributable to other shareholders of FMC AG & Co. KGaA are eliminated and recorded under noncontrolling interests in the Company's consolidated statement of income and balance sheet. However, the Company receives cash flows generated by Fresenius Medical Care only to the extent they are distributed to the Company as dividends, or as payments under existing agreements, such as rental and service agreements. Dividends are received by the Company only in proportion to its economic interest in Fresenius Medical Care and are also limited by the terms of certain of Fresenius Medical Care's debt instruments. At December 31, 2011, the Company owned 30.74% of the ordinary voting shares of FMC AG & Co. KGaA, constituting 30.34% of the total subscribed capital. See also "Management's Discussion and Analysis of Financial Condition and Results of Operations — Key Factors Affecting Our Results of Operations and Financial Condition" and "General Information on Group Structure, Issuer and Guarantors — Interest of the Company in Fresenius Medical Care AG & Co. KGaA".*

*You should regard the summary financial and business data below only as an introduction and should base your investment decision on a review of the entire prospectus/offering memorandum.*

### **U.S. GAAP**

*The following tables present summary consolidated financial information and business segment data for our Group for each of the financial years ended December 31, 2011, 2010 and 2009. We derived the summary financial data from our consolidated financial statements prepared in accordance with U.S. GAAP. Business segment data is clearly identified as such in the tables. KPMG AG Wirtschaftsprüfungsgesellschaft, The Squire, Am Flughafen, 60549 Frankfurt am Main, Germany, audited and issued an auditors' report with respect to each of these consolidated financial statements. These auditors' reports are included elsewhere in this prospectus/offering memorandum.*

## Summary Selected Consolidated Financial Data

### Summary Selected Consolidated Statement of Income Data

|                                                                                       | Year ended December 31, |          |         |
|---------------------------------------------------------------------------------------|-------------------------|----------|---------|
|                                                                                       | 2011                    | 2010     | 2009    |
|                                                                                       | (million €)             |          |         |
| Sales . . . . .                                                                       | 16,522                  | 15,972   | 14,164  |
| Cost of sales . . . . .                                                               | (10,883)                | (10,646) | (9,528) |
| Gross profit . . . . .                                                                | 5,639                   | 5,326    | 4,636   |
| Selling, general and administrative expenses . . . . .                                | (2,809)                 | (2,664)  | (2,342) |
| Research and development expenses . . . . .                                           | (267)                   | (244)    | (240)   |
| Operating income (EBIT) . . . . .                                                     | 2,563                   | 2,418    | 2,054   |
| Net interest expense . . . . .                                                        | (531)                   | (566)    | (580)   |
| Other financial result <sup>(1)</sup> . . . . .                                       | (100)                   | (66)     | (31)    |
| Income taxes . . . . .                                                                | (604)                   | (581)    | (452)   |
| Noncontrolling interest <sup>(2)</sup> . . . . .                                      | (638)                   | (583)    | (497)   |
| Net income attributable to Fresenius SE & Co. KGaA . . . . .                          | 690                     | 622      | 494     |
| Net income attributable to Fresenius SE & Co. KGaA, adjusted <sup>(3)</sup> . . . . . | 770                     | 660      | 514     |

### Summary Selected Consolidated Statement of Financial Position Data

|                                                                 | At December 31, |                 |                 |
|-----------------------------------------------------------------|-----------------|-----------------|-----------------|
|                                                                 | 2011            | 2010            | 2009            |
|                                                                 | (million €)     |                 |                 |
| Cash and cash equivalents . . . . .                             | 635             | 769             | 420             |
| Current assets . . . . .                                        | 7,151           | 6,435           | 5,363           |
| Non-current assets . . . . .                                    | 19,170          | 17,142          | 15,519          |
| <b>Total assets . . . . .</b>                                   | <b>26,321</b>   | <b>23,577</b>   | <b>20,882</b>   |
| Short-term liabilities . . . . .                                | (5,988)         | (5,711)         | (3,528)         |
| Long-term liabilities . . . . .                                 | (9,439)         | (8,813)         | (9,702)         |
| Noncontrolling interest subject to put provisions . . . . .     | (317)           | (209)           | (161)           |
| Noncontrolling interest not subject to put provisions . . . . . | (4,606)         | (3,879)         | (3,257)         |
| Total of Fresenius SE & Co. KGaA shareholders' equity . . . . . | (5,971)         | (4,965)         | (4,234)         |
| <b>Total liabilities and shareholders' equity . . . . .</b>     | <b>(26,321)</b> | <b>(23,577)</b> | <b>(20,882)</b> |

### Summary Selected Consolidated Cash Flow Statement Data

|                                                           | Year ended December 31, |         |       |
|-----------------------------------------------------------|-------------------------|---------|-------|
|                                                           | 2011                    | 2010    | 2009  |
|                                                           | (million €)             |         |       |
| Cash provided by operating activities . . . . .           | 1,689                   | 1,911   | 1,553 |
| Cash used in investing activities . . . . .               | (2,072)                 | (1,237) | (889) |
| Cash provided by (used in) financing activities . . . . . | 242                     | (352)   | (611) |



### Summary Selected Other Consolidated Financial Information

|                                            | Year ended and at<br>December 31, |       |       |
|--------------------------------------------|-----------------------------------|-------|-------|
|                                            | 2011                              | 2010  | 2009  |
|                                            | (million €, except ratios)        |       |       |
| EBITDA <sup>(4)(5)(6)</sup>                | 3,237                             | 3,057 | 2,616 |
| Net debt <sup>(7)</sup>                    | 9,164                             | 8,015 | 7,879 |
| Net interest expense                       | (531)                             | (566) | (580) |
| Capital expenditure                        | (783)                             | (758) | (671) |
| Acquisitions                               | (1,612)                           | (644) | (260) |
| Ratio of EBITDA to net interest expense    | 6.1                               | 5.4   | 4.5   |
| Ratio of net debt to EBITDA <sup>(8)</sup> | 2.8                               | 2.6   | 3.0   |

### Summary Selected Consolidated Business Segment Data

#### Fresenius Medical Care

|                                                                 | Year ended December 31,       |        |        |
|-----------------------------------------------------------------|-------------------------------|--------|--------|
|                                                                 | 2011                          | 2010   | 2009   |
|                                                                 | (million €, except employees) |        |        |
| Sales                                                           | 9,192                         | 9,091  | 8,064  |
| EBITDA <sup>(4)(5)</sup>                                        | 1,891                         | 1,830  | 1,586  |
| EBIT                                                            | 1,491                         | 1,451  | 1,259  |
| Net interest expense                                            | (213)                         | (211)  | (215)  |
| Net income attributable to Fresenius Medical Care AG & Co. KGaA | 770                           | 738    | 639    |
| Operating cash flow                                             | 1,039                         | 1,032  | 960    |
| Capital expenditure                                             | (429)                         | (395)  | (411)  |
| Acquisitions                                                    | (1,429)                       | (596)  | (138)  |
| Research and development expenses                               | (80)                          | (73)   | (67)   |
| Employees (headcount as of December 31)                         | 83,476                        | 77,442 | 71,617 |
| Dividends paid                                                  | 197                           | 183    | 173    |
| thereof to Fresenius SE & Co. KGaA                              | 69                            | 65     | 62     |

#### Fresenius Kabi

|                                              | Year ended December 31,       |        |        |
|----------------------------------------------|-------------------------------|--------|--------|
|                                              | 2011                          | 2010   | 2009   |
|                                              | (million €, except employees) |        |        |
| Sales                                        | 3,964                         | 3,672  | 3,086  |
| EBITDA <sup>(4)(5)</sup>                     | 955                           | 893    | 742    |
| EBIT                                         | 803                           | 737    | 607    |
| Net interest expense                         | (278)                         | (279)  | (302)  |
| Net income attributable to Fresenius Kabi AG | 354                           | 294    | 200    |
| Operating cash flow                          | 462                           | 567    | 397    |
| Capital expenditure                          | (177)                         | (174)  | (125)  |
| Acquisitions                                 | (11)                          | (31)   | (32)   |
| Research and development expenses            | (162)                         | (143)  | (129)  |
| Employees (headcount as of December 31)      | 24,106                        | 22,851 | 21,872 |

### Fresenius Helios

|                                                       | Year ended December 31,       |        |        |
|-------------------------------------------------------|-------------------------------|--------|--------|
|                                                       | 2011                          | 2010   | 2009   |
|                                                       | (million €, except employees) |        |        |
| Sales .....                                           | 2,665                         | 2,520  | 2,416  |
| EBITDA <sup>(4)(5)</sup> .....                        | 369                           | 318    | 286    |
| EBIT .....                                            | 270                           | 235    | 205    |
| Net interest expense .....                            | (51)                          | (55)   | (55)   |
| Net income attributable to HELIOS Kliniken GmbH ..... | 163                           | 131    | 107    |
| Operating cash flow .....                             | 294                           | 311    | 219    |
| Capital expenditure .....                             | (157)                         | (166)  | (124)  |
| Acquisitions .....                                    | (45)                          | (13)   | (79)   |
| Research and development expenses .....               | —                             | —      | —      |
| Employees (headcount as of December 31) .....         | 37,198                        | 33,321 | 33,364 |

### Fresenius Vamed

|                                               | Year ended December 31,       |       |       |
|-----------------------------------------------|-------------------------------|-------|-------|
|                                               | 2011                          | 2010  | 2009  |
|                                               | (million €, except employees) |       |       |
| Sales .....                                   | 737                           | 713   | 618   |
| EBITDA <sup>(4)(5)</sup> .....                | 51                            | 49    | 42    |
| EBIT .....                                    | 44                            | 41    | 36    |
| Net interest income .....                     | 2                             | 2     | 3     |
| Net income attributable to VAMED AG .....     | 34                            | 30    | 27    |
| Operating cash flow .....                     | (83)                          | 47    | 29    |
| Capital expenditure .....                     | (7)                           | (9)   | (5)   |
| Acquisitions .....                            | (3)                           | (5)   | (2)   |
| Research and development expenses .....       | 0                             | 0     | 0     |
| Employees (headcount as of December 31) ..... | 3,724                         | 3,110 | 2,849 |

- (1) Other financial result includes effects of mark-to-market accounting of the Mandatory Exchangeable Bonds ("MEB") and the Continent Value Rights ("CVR") relating to the acquisition of APP Pharmaceuticals. Both are non-cash items. The CVR were delisted in the first quarter of 2011. The MEB matured on August 14, 2011.

The following table shows how the effects of mark-to-market accounting in respect of the MEB and the CVR comprised the line item "Other financial result" for 2011, 2010 and 2009:

|                                     | Year ended December 31, |             |             |
|-------------------------------------|-------------------------|-------------|-------------|
|                                     | 2011                    | 2010        | 2009        |
|                                     | (million €)             |             |             |
| MEB .....                           | (105)                   | (98)        | (37)        |
| CVR .....                           | 5                       | 32          | 6           |
| <b>Other financial result</b> ..... | <b>(100)</b>            | <b>(66)</b> | <b>(31)</b> |

- (2) Noncontrolling interest represents net income attributable to third parties. In 2011, 92% of Noncontrolling interest was attributable to the noncontrolling interest in Fresenius Medical Care.
- (3) 2011, 2010 and 2009 adjusted for the effects of the mark-to-market accounting of the MEB and the CVR related to the acquisition of APP Pharmaceuticals. Both are non-cash items.

The following table shows the adjustments to net income made in respect of the MEB and CVR for 2011, 2010 and 2009:

|                                       | Year ended<br>December 31, |                  |                  |
|---------------------------------------|----------------------------|------------------|------------------|
|                                       | 2011                       | 2010             | 2009             |
|                                       | (million €)                |                  |                  |
| MEB .....                             | 85                         | 70               | 26               |
| CVR .....                             | (5)                        | (32)             | (6)              |
| <b>Adjustment to net income</b> ..... | <b><u>80</u></b>           | <b><u>38</u></b> | <b><u>20</u></b> |

- (4) EBITDA means operating income plus depreciation and amortization and is derived from our operating income determined in accordance with U.S. GAAP.
- (5) We are presenting this figure on the basis that investors may find it helpful as a measure of our performance. This figure is not recognized as a measure under U.S. GAAP or IFRS and should not be construed as a substitute for income statement or cash flow data, as determined in accordance with U.S. GAAP or IFRS, or as a measure of profitability or liquidity. It does not necessarily indicate whether cash flow will be sufficient or available for our cash requirements, nor is it necessarily indicative of our historical or future operating results. Because not all companies define this measure in the same way, our presentation of it is not necessarily comparable to similarly-titled measures used by other companies.
- (6) You should not consider EBITDA to be an alternative to net earnings determined in accordance with U.S. GAAP or IFRS or to cash flow from operations, investing activities or financing activities.

Group EBITDA can be reconciled to operating income as follows for 2011, 2010 and 2009:

|                                     | Year ended<br>December 31, |                     |                     |
|-------------------------------------|----------------------------|---------------------|---------------------|
|                                     | 2011                       | 2010                | 2009                |
|                                     | (million €)                |                     |                     |
| Operating income (EBIT) .....       | 2,563                      | 2,418               | 2,054               |
| Depreciation and amortization ..... | <u>674</u>                 | <u>639</u>          | <u>562</u>          |
| <b>EBITDA</b> .....                 | <b><u>3,237</u></b>        | <b><u>3,057</u></b> | <b><u>2,616</u></b> |

The EBITDA measure used in determining compliance with certain covenants contained in our 2008 Senior Credit Agreement and other financing arrangements is subject to a number of adjustments according to the terms of these agreements and therefore differs from the EBITDA figures presented here.

Since we fully consolidate FMC AG & Co. KGaA, EBITDA includes EBITDA of Fresenius Medical Care.

- (7) Net debt includes short-term borrowings (including Fresenius Medical Care's accounts receivable facility), short-term borrowings from related parties, long term debt (including current portion) and Fresenius Medical Care's trust preferred securities (until June 15, 2011), less cash and cash equivalents.

The net debt measure used in determining compliance with certain covenants contained in our 2008 Senior Credit Agreement and other financing arrangements is subject to a number of adjustments according to the terms of these agreements and therefore differs from the net debt figures presented here.

Net debt does not include the MEB or the CVR for any period during which the MEB or CVR were outstanding.

Since we fully consolidate FMC AG & Co. KGaA, net debt includes net debt of Fresenius Medical Care.

- (8) One of the measures used in determining compliance with certain covenants contained in our 2008 Senior Credit Agreement and other financing arrangements is the ratio of net debt to EBITDA. This ratio differs from the net debt to EBITDA ratio presented here due to certain adjustments that are prescribed by the respective governing agreements.

## IFRS

*The Company uses the International Financial Reporting Standards of the International Accounting Standards Board (IASB) as adopted by the European Union ("IFRS") to comply with the reporting requirements of the German Commercial Code (Handelsgesetzbuch) and other German laws. The following tables present summary consolidated financial information and business segment data for our Group prepared in accordance with IFRS for each of the financial years ended December 31, 2011, December 31, 2010 and December 31, 2009. For the years presented, we derived the selected financial information from our audited consolidated financial statements prepared in accordance with IFRS. KPMG AG Wirtschaftsprüfungsgesellschaft, The Squire, Am Flughafen, 60549 Frankfurt am Main, Germany, audited and issued an auditors' report with respect to each of these consolidated financial statements. For information regarding the exchange rate between the U.S. Dollar and the Euro for selected time periods preceding the date of this prospectus/offering memorandum, see "Exchange Rates".*

### Summary Selected Statement of Operations Data

|                                                                                   | Year ended December 31, |        |        |
|-----------------------------------------------------------------------------------|-------------------------|--------|--------|
|                                                                                   | 2011                    | 2010   | 2009   |
|                                                                                   | (million €)             |        |        |
| Sales .....                                                                       | 16,522                  | 15,972 | 14,165 |
| Operating income (EBIT) .....                                                     | 2,546                   | 2,410  | 2,004  |
| Net income attributable to Fresenius SE & Co. KGaA .....                          | 678                     | 619    | 476    |
| Net income attributable to Fresenius SE & Co. KGaA, adjusted <sup>(1)</sup> ..... | 758                     | 657    | 496    |

### Summary Selected Other Financial Data

|                                                              | Year ended December 31,    |       |       |
|--------------------------------------------------------------|----------------------------|-------|-------|
|                                                              | 2011                       | 2010  | 2009  |
|                                                              | (million €, except ratios) |       |       |
| EBITDA <sup>(2)(3)</sup> .....                               | 3,263                      | 3,072 | 2,628 |
| Depreciation and amortization .....                          | (717)                      | (662) | (624) |
| Net interest expense .....                                   | (531)                      | (566) | (580) |
| Net debt <sup>(4)</sup> .....                                | 9,068                      | 7,908 | 7,776 |
| Ratio of EBITDA to net interest expense <sup>(3)</sup> ..... | 6.1                        | 5.4   | 4.5   |
| Ratio of net debt to EBITDA <sup>(3)</sup> .....             | 2.8                        | 2.6   | 3.0   |
| Capital expenditure .....                                    | (797)                      | (768) | (681) |
| Acquisitions .....                                           | (1,608)                    | (643) | (259) |

### Summary Selected Balance Sheet Data

|                                  | At December 31, |        |        |
|----------------------------------|-----------------|--------|--------|
|                                  | 2011            | 2010   | 2009   |
|                                  | (million €)     |        |        |
| Total assets .....               | 26,510          | 23,831 | 21,148 |
| Total shareholders' equity ..... | 11,031          | 9,219  | 7,908  |

(1) 2011, 2010 and 2009 adjusted for the effects of the mark-to-market accounting of the MEB and the CVR related to the acquisition of APP Pharmaceuticals. Both are non-cash items.

The following table shows the adjustments to net income made in respect of the MEB and CVR for 2011, 2010 and 2009:

|                                       | Year ended December 31, |                  |                  |
|---------------------------------------|-------------------------|------------------|------------------|
|                                       | 2011                    | 2010             | 2009             |
|                                       | (million €)             |                  |                  |
| MEB .....                             | 85                      | 70               | 26               |
| CVR .....                             | (5)                     | (32)             | (6)              |
| <b>Adjustment to net income .....</b> | <b><u>80</u></b>        | <b><u>38</u></b> | <b><u>20</u></b> |

(2) We are presenting this figure for comparison with EBITDA calculated on the basis of our U.S. GAAP financial information. You should not consider EBITDA to be an alternative to net earnings determined in accordance with U.S. GAAP or IFRS or to cash flow from operations, investing activities or financing activities.

Since we fully consolidate FMC AG & Co. KGaA, EBITDA includes EBITDA of Fresenius Medical Care.

(3) We are presenting this figure on the basis that investors may find it helpful as a measure of our performance. This figure is not recognized as a measure under U.S. GAAP or IFRS and should not be construed as a substitute for income statement or cash flow data, as determined in accordance with U.S. GAAP or IFRS, or as a measure of profitability or liquidity. It does not necessarily indicate whether cash flow will be sufficient or available for our cash requirements, nor is it necessarily indicative of our historical or future operating results. Because not all companies define this measure in the same way, our presentation of it is not necessarily comparable to similarly-titled measures used by other companies.

(4) Net debt includes short-term borrowings (including Fresenius Medical Care's accounts receivable facility), short-term borrowings from related parties, long term debt (including current portion) and Fresenius Medical Care's trust preferred securities (until June 15, 2011), less cash and cash equivalents.

Net debt does not include the MEB or the CVR for any period during which the MEB or CVR were outstanding.

Since we fully consolidate FMC AG & Co. KGaA, net debt includes net debt of Fresenius Medical Care.

### **Summary Exchange Rate Information**

The summary historical consolidated financial data set forth above under *"Summary Historical Consolidated Data and Other Data — U.S. GAAP"* are partially derived from the financial statements of Fresenius Medical Care, prepared in accordance with U.S. GAAP, and for which the reporting currency is the U.S. Dollar. The summary historical consolidated financial data set forth above under *"Summary Historical Consolidated Data and Other Data — IFRS"* are derived from our consolidated financial statements prepared in accordance with IFRS, for which our reporting currency is the euro. For more information, see *"Management's Discussion and Analysis of Financial Condition and Results of Operations — Quantitative and Qualitative Disclosures about Market Risk — Management of Foreign Exchange and Interest Rate Risks — Foreign Exchange Risk Management"*.

### **Differences between U.S. GAAP and IFRS Financial Information**

Financial statements and other financial information prepared in accordance with U.S. GAAP are not comparable to, and could differ from, financial statements and other financial information prepared in accordance with IFRS. See *"Selected Consolidated Financial Information — Differences between U.S. GAAP and IFRS Financial Information"*.

### **Summary Selected Unconsolidated Financial Data for the Issuer**

Under Dutch GAAP, at December 31, 2011, the Issuer had total assets of €1,794 million, mainly consisting of financial fixed assets of €1,429 million and receivables from affiliated companies of €365 million, cash and cash equivalents of €86,278 and shareholders' equity of negative €2 million.

|                                             | Year ended<br>December 31, |       |
|---------------------------------------------|----------------------------|-------|
|                                             | 2011                       | 2010  |
|                                             | (million €)                |       |
| Sales .....                                 | 0                          | 0     |
| Profit from operations .....                | 3                          | 2     |
| Cash provided by operating activities ..... | 4                          | 4     |
|                                             |                            |       |
|                                             | At December 31,            |       |
|                                             | 2011                       | 2010  |
|                                             | (million €)                |       |
| Total assets .....                          | 1,794                      | 2,359 |
| Equity .....                                | 2                          | 8     |

### **Summary Selected Unconsolidated Financial Data of Fresenius Kabi AG and Fresenius ProServe GmbH**

#### *Fresenius Kabi AG*

In accordance with German GAAP as of December 31, 2011, Fresenius Kabi AG had total assets of €2,044 million, total liabilities of €530 million and, for the full fiscal year ended December 31, 2011, a net income of €122 million (including income from participations).

|                                             | Year ended<br>December 31, |      |
|---------------------------------------------|----------------------------|------|
|                                             | 2011                       | 2010 |
|                                             | (million €)                |      |
| Sales .....                                 | 0                          | 0    |
| Profit from operations .....                | 148                        | 218  |
| Cash provided by operating activities ..... | 161                        | 206  |

|                    | At December 31, |         |
|--------------------|-----------------|---------|
|                    | 2011            | 2010    |
|                    | (million €)     |         |
| Total assets ..... | 2,044           | 2,738   |
| Equity .....       | (1,488)         | (1,488) |

*Fresenius ProServe GmbH*

In accordance with German GAAP as of December 31, 2011, Fresenius ProServe GmbH had total assets of €2,057 million, total liabilities of €462 million and, for the full fiscal year ended December 31, 2011, a net income of €126 million (including income from participations).

|                                             | Year Ended<br>December 31, |      |
|---------------------------------------------|----------------------------|------|
|                                             | 2011                       | 2010 |
|                                             | (million €)                |      |
| Sales .....                                 | 0                          | 0    |
| Profit from operations .....                | 153                        | 129  |
| Cash provided by operating activities ..... | 153                        | 127  |

|                    | At December 31, |         |
|--------------------|-----------------|---------|
|                    | 2011            | 2010    |
|                    | (million €)     |         |
| Total assets ..... | 2,057           | 1,975   |
| Equity .....       | (1,587)         | (1,587) |

## SUMMARY OF THE OFFERING

*The summary below describes the principal terms of the Notes and the Guarantees. Certain of the terms and conditions described below are subject to important limitations and exceptions. The "Description of the Notes" section of this prospectus/offering memorandum contains a more detailed description of the terms and conditions of the Notes and the Guarantees, including the definitions of certain terms used in this summary.*

|                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|---------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Issuer .....                    | Fresenius Finance B.V.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Parent Guarantor .....          | Fresenius SE & Co. KGaA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Subsidiary Guarantors .....     | Fresenius Kabi AG and Fresenius ProServe GmbH                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Notes Offered .....             | €500,000,000 aggregate principal amount of 4.25% senior notes.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Issue Date .....                | March 28, 2012                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Denomination of the Notes ..... | Each Note will have a denomination of €1,000 and will be offered only in increments of €1,000.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Form of the Notes .....         | The Notes will be represented by one or more global notes without interest coupons attached.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Delivery of the Notes .....     | Delivery of the Notes to investors in book-entry form will be made through Euroclear and Clearstream, in each case on or about March 28, 2012.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Maturity Date .....             | April 15, 2019                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Interest Rate .....             | Interest on the Notes will accrue at the rate of 4.25% per annum, payable semi-annually in cash in arrears.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Interest Payment Dates .....    | April 15 and October 15 of each year, commencing October 15, 2012. Interest will accrue from the issue date of the Notes.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Yield to Maturity .....         | 4.25%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Ranking of the Notes .....      | <p>The Notes will be senior unsecured obligations of the Issuer and will:</p> <ul style="list-style-type: none"> <li>• rank equally in right of payment with all of the Issuer's existing and future indebtedness that is not subordinated in right of payment to the Notes, including the Outstanding Senior Notes of which it is the issuer;</li> <li>• rank senior in right of payment to all of the Issuer's existing and future indebtedness that is subordinated in right of payment to the Notes;</li> <li>• be effectively subordinated in right of payment to all of the Issuer's existing and future indebtedness that is secured by liens on assets to the extent of the value of the assets securing such indebtedness; and</li> <li>• be structurally subordinated in right of payment to any obligations of the Parent Guarantor's subsidiaries (other than the Subsidiary Guarantors).</li> </ul> |
| Guarantees .....                | The payments of all amounts payable under the Notes, including principal, premium, if any, and interest will be guaranteed on a senior unsecured basis by the Guarantors. For information regarding limitations on the enforceability of                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |



the Guarantees, see *"Risk Factors — Risks Relating to the Notes — The Notes are subordinate to other creditors of non-guarantors and to our subsidiaries' secured debt, and enforcement of guarantees by our subsidiaries may be limited"* and *"Description of the Notes — Guarantees"*.

|                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ranking of the Guarantees . . . . . | <p>The Guarantees will:</p> <ul style="list-style-type: none"> <li>• rank equally in right of payment with each of the Guarantors' existing and future indebtedness that is not subordinated in right of payment to the Guarantees (including obligations in respect of the 2008 Senior Credit Agreement and the Outstanding Senior Notes), subject to legal limitations on their enforceability;</li> <li>• rank senior in right of payment to all of the Guarantors' existing and future indebtedness that is subordinated in right of payment to the Guarantees; and</li> <li>• be effectively subordinated in right of payment to all of the Guarantors' existing and future indebtedness that is secured by liens on assets to the extent of the value of the assets securing such indebtedness.</li> </ul> |
| Optional Redemption . . . . .       | At any time, the Issuer may redeem all or part of the Notes at a redemption price equal to 100% of the principal amount thereof, together with accrued and unpaid interest, if any, to the date of redemption and plus a "makewhole" premium as set forth in this prospectus/offering memorandum. See <i>"Description of the Notes — Optional Redemption"</i> .                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Tax Redemption . . . . .            | If certain changes in the law of any relevant taxing jurisdiction become effective that would impose withholding taxes or other deductions on the payments on the Notes, the Issuer may redeem the Notes in whole, but not in part, at a redemption price of 100% of the principal amount, together with accrued and unpaid interest, if any, and plus additional amounts, if any, to the date of redemption. See <i>"Description of the Notes — Redemption for Changes in Withholding Taxes"</i> .                                                                                                                                                                                                                                                                                                              |
| Change of Control . . . . .         | Upon the occurrence of a "Change of Control" and a "Ratings Decline" (each as defined herein), noteholders have the right to require us to redeem all or any part of your Notes at a redemption price in cash equal to 101% of their principal amount, together with accrued and unpaid interest, if any. See <i>"Description of the Notes — Change of Control"</i> .                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Certain Covenants . . . . .         | <p>We will issue the Notes under a separate indenture with Deutsche Bank Trustee Company Limited, Winchester House, 1 Great Winchester Street, London EC2N 2DB, United Kingdom, as trustee, to be dated on or about March 28, 2012. The indenture contains various covenants that will limit our ability and the ability of our subsidiaries to, among other things:</p> <ul style="list-style-type: none"> <li>• incur debt;</li> <li>• incur liens;</li> <li>• engage in sale-leaseback transactions; and</li> </ul>                                                                                                                                                                                                                                                                                           |

- merge or consolidate with other companies or sell our or our subsidiaries' assets.

We will also be required to provide periodic financial reports to the trustee under the indenture.

These covenants are subject to significant exceptions and limitations. For more details, see "*Description of the Notes — Certain Covenants*".

Governing Law . . . . . The Notes will be governed by New York law, except that certain matters concerning the limitations of the Guarantees will be construed in accordance with German law.

Listing and Admission to Trading;  
No Prior Market . . . . . Application has been made to list the Notes on the official list of the Luxembourg Stock Exchange and to admit them to trading on the regulated market of the Luxembourg Stock Exchange. Prior to this listing and admission of the Notes by the Luxembourg Stock Exchange, there will be no market for the Notes. Although the Initial Purchasers have informed the Issuer that they intend to make a market in the Notes, they are not obligated to do so and they may discontinue market-making at any time without notice. Accordingly, the Issuer cannot assure you that a liquid market for the Notes will develop or be maintained.

Transfer Restrictions . . . . . The Notes have not been and will not be registered under the Securities Act and may not be offered or sold except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

Trustee . . . . . Deutsche Trustee Company Limited, Winchester House, 1 Great Winchester Street, London EC2N 2DB, United Kingdom

Principal Paying and Transfer  
Agent . . . . . Deutsche Bank AG Frankfurt, Grosse Gallusstrasse 10-14, 60262 Frankfurt am Main, Germany

Luxembourg Listing Agent . . . . . BNP Paribas Securities Services, 33 rue de Gasperich, Howald-Hesperange, 2085 Luxembourg

Use of Proceeds . . . . . The aggregate net proceeds from the sale of €500 million principal amount of the Notes will be approximately €492 million, after payment of fees and estimated expenses in the total amount of approximately €8 million.

The net proceeds of this offering will be used for acquisitions, to refinance short-term debt and for general corporate purposes. For information regarding our outstanding indebtedness, see "*Description of Other Financing Arrangements*" and "*Capitalization*".

## SUMMARY OF THE RISK FACTORS

*Investing in the Notes involves substantial risks. We are exposed to a number of risks that either individually or collectively could have material adverse effects on our assets, financial condition and results of operations, and on our ability to fulfill our obligations under the Notes, or the price of the Notes could decline. The following summarizes the risks you should consider before investing in the Notes as they may impact each of the Issuers and the Guarantors.*

### Risks Relating to Our Business

- If we do not comply with the healthcare or other governmental regulations applicable to our businesses, we could be subject to civil or criminal penalties and excluded from government healthcare reimbursement programs in the United States and other countries, or our authorization to conduct business could be terminated, either of which could result in a material decrease in our sales.
- If our joint ventures violate the law, our business could be adversely affected.
- A change in government reimbursement or health insurance coverage for our products or services, including dialysis care, could materially decrease our sales and operating profit.
- A change in the utilization of erythropoietin could materially reduce our sales and operating profit. An interruption of supply or our inability to obtain satisfactory terms for erythropoietin could reduce our sales and operating profit.
- Proposals for health care reform, or relating to regulatory approvals, or changes to legal practice, could decrease our revenues and operating profit.
- A significant portion of Fresenius Medical Care's North American profits are dependent on the services it provides to a minority of its patients who are covered by private insurance.
- Significant competition could adversely affect our sales in our business segments and our ability to grow.
- If physicians and other referral sources cease referring patients to Fresenius Medical Care's dialysis clinics or cease prescribing Fresenius Medical Care's products, sales could decrease.
- Global economic conditions could have an adverse effect on our businesses.
- Market developments and government actions regarding the sovereign debt crisis in Europe could adversely affect our business, financial condition, results of operations and liquidity.
- We operate in many different jurisdictions and we could be adversely affected by violations of the U.S. Foreign Corrupt Practices Act and similar worldwide anti-corruption laws.
- We face specific risks from international operations.
- We face risks and uncertainties from emerging markets.
- Changes in foreign exchange rates could have adverse effects on our financial results and on our ability to repay debt; our hedging efforts may be unsuccessful.
- Our indebtedness imposes restrictions.
- Our leverage could adversely affect our financial condition, prevent us from fulfilling our debt-service obligations or pursuing certain aspects of our business strategy.
- Despite our substantial indebtedness, we may still be able to incur significantly more debt; this could intensify the risks described above.
- Acquisitions may place a financial burden on us. We face competition from other companies for suitable acquisition targets. Our growth depends, in part, on our ability to continue to make acquisitions.

- The integration of past and future acquisitions involves inherent uncertainties and risks.
- Our efforts to develop successful new products and therapies may fail to achieve the desired results or may fail to generate substantial revenue streams.
- Fresenius Helios's planned growth presents us with certain risks. In addition, we are dependent on contracts with German public health insurance funds and government social security insurance authorities.
- If we are unable to attract and retain skilled medical, technical and engineering personnel, it could limit our technological development and growth.
- Our in-licensing of rights to, or acquisition and commercialization of, proprietary or other specialty injectable products might not be successful, and we may never receive any return on our investment in these product candidates.
- We are exposed to product liability, patent infringement and other claims, which could result in significant liability that we may not be able to insure on acceptable terms in the future.
- Fresenius Medical Care's pharmaceutical product business could lose sales to generic drug manufacturers or new branded drugs.
- A failure of our products to meet the quality standards expected by our customers could materially adversely affect our business and reputation.
- The tax authorities could take positions that require us to make additional tax payments.

#### **Risks Relating to the Notes**

- The Notes are subordinate to other creditors of non-guarantors and to our subsidiaries' secured debt, and enforcement of guarantees by our subsidiaries may be limited.
- German insolvency laws may preclude the recovery of payments due under the guarantees.
- We may not have the ability to raise the funds necessary to finance a change of control offer as required by the Indenture.
- The Issuer has no material assets or sources of revenue except for claims against other Group companies resulting from intercompany receivables, and the Parent Guarantor relies on distributions from its subsidiaries to meet its payment obligations.
- There can be no guarantee regarding the development of the trading market for the Notes.
- You may face foreign exchange risks by investing in the Notes.
- Further notes issued in additional offerings by the Issuer that have identical terms to the Notes issued in this offering may not be fungible for U.S. federal income tax purposes with the Notes issued in this offering.
- Market perceptions concerning the instability of the euro, the potential re-introduction of individual currencies within the Eurozone, or the potential dissolution of the euro entirely, could adversely affect the value of the Notes.

#### **Risks Relating to the Guarantors**

As the Guarantors are part of our group of companies, the risks enumerated above under "*Risks Relating to Our Business*" also apply to them with regard to their respective businesses.

## RISK FACTORS

*Before making an investment decision with respect to the Notes, you should carefully consider the risks relating to our businesses and the Notes described below, in addition to the other information in this prospectus/offering memorandum. These risks are not the only ones we face; additional risks and uncertainties not presently known to us, or that we now believe are immaterial, could also impair our businesses or our ability to fulfill our obligations under the Notes. The order of presentation of the risk factors below does not indicate the likelihood of these risks actually occurring or the scope of any potential impairment these risks might cause to our business. The risks could be realized individually or cumulatively.*

### RISKS RELATING TO OUR BUSINESS

***If we do not comply with the healthcare or other governmental regulations applicable to our businesses, we could be subject to civil or criminal penalties and excluded from government healthcare reimbursement programs in the United States and other countries, or our authorization to conduct business could be terminated, either of which could result in a material decrease in our sales.***

The operations in our four business segments, Fresenius Medical Care, Fresenius Kabi, Fresenius Helios and Fresenius Vamed, which are organized through the Company's subsidiaries FMC AG & Co. KGaA, Fresenius Kabi AG, HELIOS Kliniken GmbH and VAMED AG, respectively, are subject to extensive governmental regulation in virtually every country in which we do business. We are also subject to other laws of general applicability, including antitrust laws. These regulations and laws, which differ from country to country, cover areas that include (*inter alia*):

- the quality, safety and efficacy of medical and pharmaceutical products and supplies;
- the operation of manufacturing facilities, laboratories and clinics;
- the planning, equipment, construction and management of pharmaceutical and medical-technical production plants;
- the construction and management of healthcare facilities, especially the operation of hospitals, dialysis clinics and other healthcare facilities;
- the rate of, and accurate reporting and billing for, government and third-party reimbursement; and
- compensation of medical directors and other financial arrangements with physicians and other referral sources

If we fail to comply with one or more of these laws or regulations, this may give rise to a number of legal consequences, including monetary and administrative penalties, increased compliance costs, complete or partial exclusion from governmental reimbursement programs, or a complete or partial curtailment of our authorization to conduct business. Any of these consequences could have a material adverse impact on our business, financial condition or results of operations.

We rely upon our Group's management structure, regulatory and legal resources and the effective operation of our compliance programs to direct, manage and monitor our operations to comply with government regulations. If employees were to deliberately, recklessly or inadvertently fail to adhere to these regulations, then our authority to conduct business could be terminated and our operations could be significantly curtailed. Any such terminations or reductions could materially reduce our sales. If we fail to identify in our diligence process and promptly remediate any non-compliant business practices in companies that we acquire, we could be subject to penalties, claims for repayment or other sanctions. Any such terminations or reductions could materially reduce our sales, with a resulting material adverse effect on our business, financial condition and results of operations.

Our Group's medical and pharmaceutical products are subject to detailed, rigorous and frequently changing regulation by the U.S. Food and Drug Administration ("FDA"), and numerous

other national, supranational, federal and state authorities. These regulations include, among other things, regulations regarding manufacturing practices, product labeling, quality control, quality assurance, advertising and post-marketing reporting, including adverse event reports and field alerts due to manufacturing quality concerns. We cannot assure that all necessary regulatory approvals for new products or product improvements will be granted on a timely basis or at all. In addition, our Group's facilities and procedures and those of its suppliers are subject to periodic inspection by the FDA and other regulatory authorities. The FDA and comparable regulatory authorities outside the U.S. may suspend, revoke, or adversely amend the authority necessary for manufacture, marketing, or sale of our products and those of our suppliers. Our Group and its suppliers must incur expense and spend time and effort to ensure compliance with these complex regulations, and if such compliance is not maintained, they could be subject to significant adverse regulatory actions in the future. These possible regulatory actions could include warning letters, injunctions, civil penalties, seizures of our Group's products and criminal prosecution as well as other dissemination of information to the public about such regulatory actions. These actions could result in, among other things, substantial modifications to our Group's business practices and operations; refunds; a total or partial shutdown of production while the alleged violation is remedied; and withdrawals or suspensions of current products from the market. Any of these events, in combination or alone, could disrupt our Group's business and have a material adverse effect on our Group's business, financial condition and results of operations.

By virtue of this regulatory environment, our business activities and practices are subject to extensive review by regulatory authorities and private parties, and continuing audits, investigative demands, subpoenas, other inquiries, claims and litigation relating to our or our subsidiaries' compliance with applicable laws and regulations. We may not always be aware that an inquiry or action has begun, particularly in the case of "qui tam" or "whistle blower actions brought by private plaintiffs under the False Claim Act, which are initially filed under seal. Our Group companies are the subject of a number of ongoing actions, including governmental inquiries and civil suits by the U.S. federal government and private plaintiffs, including a suit in which a judgment for US\$82.6 million has been entered against Fresenius Medical Care under the False Claims Act, which Fresenius Medical Care has appealed. Adverse results in one or more pending actions could have a material adverse effect on our business, financial condition or results of operations.

***If our joint ventures violate the law, our business could be adversely affected.***

A number of the dialysis centers Fresenius Medical Care operates are owned by joint ventures in which we hold a controlling interest and one or more hospitals, physicians or physician practice groups hold a minority interest. Fresenius Medical Care will acquire additional joint venture interests in the Liberty Acquisition. Physician owners, who are usually nephrologists, may also provide medical director services and physician owners may refer patients to those centers or other centers Fresenius Medical Care owns and operates or to other physicians who refer patients to those centers or other centers Fresenius Medical Care owns and operates. While Fresenius Medical Care has structured the joint ventures to comply with many of the criteria for safe harbor protection under the U.S. Federal Anti-Kickback Statute, our investments in these joint venture arrangements do not satisfy all elements of such safe harbor. While Fresenius Medical Care has established comprehensive compliance policies, procedures and programs to ensure ethical and compliant joint venture business operations, if one or more of Fresenius Medical Care's joint ventures were found to be in violation of the Anti-Kickback Statute or the Stark Law, Fresenius Medical Care could be required to restructure or terminate them. Fresenius Medical Care also could be required to repay to Medicare amounts received by the joint ventures pursuant to any prohibited referrals, and Fresenius Medical Care could be subject to criminal and monetary penalties and exclusion from Medicare, Medicaid and other U.S. federal and state healthcare programs. Imposition of any of these penalties could have a material adverse effect on our business, financial condition and results of operations.

***A change in government reimbursement for our products or services, including dialysis care, could materially decrease our sales and operating profit.***

For the twelve months ended December 31, 2011, approximately 30% of Fresenius Medical Care's consolidated revenues resulted from Medicare and Medicaid reimbursement. Legislative changes or changes in government reimbursement practice may affect the reimbursement rates for the services Fresenius Medical Care provides, as well as the scope of Medicare and Medicaid coverage. A decrease in Medicare or Medicaid reimbursement rates or covered services could have a material adverse effect on Fresenius Medical Care's business, financial condition and results of operations. Effective January 1, 2011, Medicare implemented a new ESRD prospective payment system ("**ESRD PPS**") that expands the scope of the products and services covered by the bundled rate and results in lower reimbursement per treatment than under the reimbursement system in place until December 31, 2010. Beginning in 2012, the ESRD PPS payment amounts are subject to annual adjustment based on a statutory formula reflecting increases in the costs of a "market basket" of certain healthcare items and services, less an adjustment reflecting productivity. The Centers for Medicare and Medicaid Services ("**CMS**") accordingly updated ESRD PPS rates by 2.1% for 2012. Effective January 1, 2012, the ESRD PPS includes a quality incentive program ("**QIP**") in which full payment of the Medicare ESRD rate to a dialysis facility is contingent upon such dialysis facility's achievement of certain minimum performance criteria, focusing in 2012 on anemia management and dialysis adequacy and in subsequent years on additional measures to determine whether dialysis patients are receiving high quality care. Failure to achieve these minimum criteria in any year subjects the facility to up to a 2% reduction in Medicare reimbursement two years later. Reimbursement in 2012 is dependent in part upon quality achievements in 2010 and is based on three quality standards. On December 15, 2011, CMS released QIP reduction reimbursement amounts. Fresenius Medical Care expects that the impact of these reductions on Fresenius Medical Care's earnings will not be material. CMS changed the QIP performance measures for 2013 by retiring the lower level of the anemia management range and equally weighting the upper level of such range and hemodialysis adequacy. For 2014, CMS has adopted four additional measures to determine whether dialysis patients are receiving high quality care. The new measures include (i) prevalence of catheter and arteriovenous fistula use; (ii) reporting of infections to the Centers for Disease Control and Prevention; (iii) administration of patient satisfaction surveys; and (iv) monthly monitoring of phosphorus and calcium levels. A material failure by Fresenius Medical Care to achieve the minimum clinical quality standards under the QIP could materially and adversely affect on our business, financial condition and results of operations.

In addition, Fresenius Helios derives significant portions of its revenues from government reimbursement programs, primarily in Germany. A case-based reimbursement system for hospitals (based on diagnosis related groups or "**DRG**") was introduced in Germany in 2003 for inpatients. This scheme, which phased in and was fully implemented in 2010, replaced the former composite scheme of mostly departmental per diem payments and a small share of case-based payments. Psychiatric, psychosomatic and psychotherapeutic departments have not yet migrated to the DRG scheme. Under the case-based reimbursement system, hospitals receive a flat fee per patient (more exactly for an inpatient case of the patient). The fee takes into account the individual conditions of each patient by evaluating the patient's principal and secondary diagnoses, age, the procedures undertaken on the patient and the patient's discharge status. Hospitals receive additional payments for some specific services provided based on the procedure. Essentially, the DRG system is aimed at improving hospital efficiency and reducing healthcare spending. We will closely follow the further regulatory developments relating to the DRG system, as well as discussions regarding the end of dual financing in the hospital sector. Changes to these programs could also have a material adverse effect on our business, financial condition and results of operations.



***A change in the utilization of erythropoietin could materially reduce our sales and operating profit. An interruption of supply or our inability to obtain satisfactory terms for erythropoietin could reduce our sales and operating profit.***

Synthetic erythropoietin is produced in the United States by a single source manufacturer, Amgen Inc., under the brand names Epogen (epoeitin alfa) and Aranesp (darbepoetin alfa). Fresenius Medical Care's supply contract for erythropoietin with Amgen USA, Inc., a subsidiary of Amgen, Inc., covers the period from January 1, 2012 to December 31, 2014. Pricing is based on Amgen's list price for erythropoietin and is subject to change within certain parameters. Any of the following developments could materially adversely affect Fresenius Medical Care's and, indirectly, our business, financial condition and results of operations: (i) a reduction of the current overfill amount in erythropoietin vials that Fresenius Medical Care currently uses (liquid medications, such as erythropoietin, typically include a small overfill amount to ensure that the fill volume can be extracted from the vial as administered to the patient), (ii) an interruption of supply of erythropoietin, or (iii) material increases in the utilization of or acquisition costs for erythropoietin. Under the ESRD PPS effective January 1, 2011, payment for erythropoietin is included in the bundled rate; previously, it was reimbursed separately. An interruption of supply of erythropoietin, or inability to obtain erythropoietin on satisfactory terms, could reduce our sales and profits.

***Proposals for health care reform, or relating to regulatory approvals, or changes to legal practice, could decrease our revenues and operating profit.***

Many of the countries in which we operate have been considering proposals to modify their current healthcare systems to improve access to healthcare and to control costs. We cannot predict whether and when these reform proposals will be adopted in countries in which we operate or what impact they might have on us. Any decrease in spending or other significant changes in state funding in countries in which we operate, particularly significant changes in the U.S. Medicare and Medicaid programs, could reduce our sales and profitability and have a material adverse effect on our business, financial condition and results of operations.

The Patient Protection and Affordable Care Act was enacted in the United States on March 23, 2010 and subsequently amended by the Healthcare and Educational Affordability Reconciliation Act (as amended, "**ACA**"). ACA implements broad healthcare system reforms, including (i) provisions to facilitate access to affordable health insurance for all Americans, (ii) expansion of the Medicaid program, (iii) an industry fee on pharmaceutical companies that began in 2011 based on sales of brand name pharmaceuticals to government healthcare programs, (iv) a 2.3% excise tax on manufacturers' medical device sales starting in 2013, (v) increases in Medicaid prescription drug rebates that became effective January 1, 2010, (vi) commercial insurance market reforms that protect consumers, such as bans on lifetime and annual limits, coverage of pre-existing conditions, limits on administrative costs, and limits on waiting periods, (vii) provisions encouraging integrated care, efficiency and coordination among providers and (viii) provisions for reduction of healthcare program waste and fraud. ACA does not modify the dialysis reimbursement provisions of the Medicare Improvements for Patients and Providers Act of 2008 (also known as MIPPA). ACA's medical device excise tax, Medicaid drug rebate increases and annual pharmaceutical industry fees will adversely impact Fresenius Medical Care's product business earnings and cash flows. We expect modest favorable impact to Fresenius Medical Care's business from ACA's integrated care and commercial insurance consumer protection provisions.

On August 2, 2011 the U.S. Budget Control Act of 2011 ("**Budget Control Act**") was enacted, which raised the United States' debt ceiling and put into effect a series of actions for deficit reduction. In addition, the Budget Control Act created a 12-member Congressional Joint Select Committee on Deficit Reduction (the "**Joint Congressional Committee**") that was tasked with proposing additional revenue and spending measures to achieve additional deficit reductions of at least US\$1.5 trillion over ten years, which could include reductions in Medicare and Medicaid. The Joint Congressional Committee failed to make recommendations to Congress by the November 23, 2011 deadline established by the Budget Control Act. As a result of this failure, and unless Congress acts in some other fashion, automatic across the board reductions in spending of US\$1.2 trillion

over nine fiscal years (fiscal years 2013-2021) will be triggered on January 2, 2013. The President has stated that he will veto any legislation that would repeal the automatic budget cuts without a bipartisan solution to deficit reduction. Medicare payments to providers and suppliers would be subject to the triggered reductions, but any such reductions will be capped at 2% annually. Any such reductions would be independent of annual inflation update mechanisms, such as the market basket update pursuant to the ESRD PPS.

In the current legislative environment, increases in government spending may need to be accompanied by corresponding offsets. For example, the Budget Control Act did not address reductions in physician payments mandated by the sustainable growth rate ("SGR"). The Temporary Payroll Tax Cut Continuation Act of 2011 delayed implementation of these reductions until March 1, 2012. If implemented for the remainder of calendar year 2012, SGR would impose a reduction of 27.4% in physician fees. In order to reduce or eliminate SGR physician payment reductions and not adversely affect federal spending, Congress would have to reduce other spending. We cannot predict whether any such reductions would affect our business.

On July 29, 2011, the Institute of Medicine ("IOM") of the U.S. National Institutes of Health issued a report commissioned by the FDA recommending that the FDA establish a new system for the review of certain medical devices to replace the 510(k) notification system. Under the present system, many medical devices do not require premarketing approval. For a medical device that is deemed to have a moderate risk to patients, the FDA grants marketing clearance if data submitted for the device establish that the device is "substantially equivalent" to a legally marketed "predicate" device that did not itself require pre-marketing approval. The FDA has opened a public docket to receive comments on the IOM report but has not issued a detailed response to the report. It has stated that it does not believe that the 510(k) system should be eliminated but is open to proposals for improvement of its device review program, and that significant changes to the 510(k) clearance process would require legislation. Substantially all of the dialysis products that our Group manufactures or distributes in the United States, other than peritoneal dialysis solutions and renal pharmaceuticals, are marketed on the basis of 510(k) clearances. At the present time, regulatory and legislative changes to the 510(k) process have been proposed, and we cannot predict whether or to what extent the 510(k) process will be modified or replaced or what the effects, if any, of a modified or replacement review process for medical devices would be on our Group's dialysis products business.

Further changes in the U.S. healthcare reforms may be debated by Congress. Certain forces in Congress are interested in repealing all or part of ACA and the Supreme Court has agreed to hear cases challenging it on March 26-28, 2012. Whether significant changes in policy will result is unknown. Changes, if any, that may result from these events could, depending on the details, have positive or adverse effects, possibly material, on our businesses and results of operations. Any significant healthcare reforms that substantially change the financing and regulation of the healthcare industry in countries in which we operate could reduce our sales and profitability and have a material adverse effect on our business, financial condition and results of operations.

In addition, there may be legislative or regulatory proposals or changes to legal practice that could affect regulatory procedures or decision-making for approving medical or pharmaceutical products. Such legislation or regulations or changes if adopted, could result in a delay or denial of regulatory approval for our products. If any of our products do not receive regulatory approval, or there is a delay in obtaining approval, this also could have a material adverse effect on our business, financial condition and results of operations.

***A significant portion of Fresenius Medical Care's North American profits are dependent on the services it provides to a minority of its patients who are covered by private insurance.***

In recent reviews of dialysis reimbursement, the Medicare Payment Advisory Commission, an independent U.S. federal body whose primary role is to advise the U.S. Congress on issues affecting the administration of the Medicare program (also known as "MedPAC"), has noted that Medicare payments for dialysis services are lower than the average costs that providers incur to provide the

services. Since Medicaid rates are comparable to those of Medicare and because Medicare only pays Fresenius Medical Care 80% of the Medicare allowable amount (the patient, Medicaid or secondary insurance being responsible for the remaining 20%), the amount Fresenius Medical Care receives from Medicare and Medicaid is less than Fresenius Medical Care's average cost per treatment. As a result, the payments Fresenius Medical Care receives from private payors both subsidize the losses Fresenius Medical Care incurs on services for Medicare and Medicaid patients and generate a substantial portion of the profits Fresenius Medical Care reports. Fresenius Medical Care estimates that Medicare and Medicaid are the primary payors for approximately 76% of the patients to whom Fresenius Medical Care provides care in North America but that for 2011, Fresenius Medical Care derived only 52% of the North America Dialysis Care net revenues from Medicare and Medicaid. Therefore, if the private payors who pay for the care of the other 24% of Fresenius Medical Care's patients reduce their payments for Fresenius Medical Care's services, or if Fresenius Medical Care experiences a material shift in the revenue mix toward Medicare or Medicaid reimbursement, then our revenue, cash flow and earnings would materially decrease.

Over the last few years, Fresenius Medical Care has generally been able to implement modest annual price increases for private insurers and managed care organizations, but government reimbursement has remained flat or has been increased at rates below typical consumer price index ("CPI") increases. Under the new prospective payment system (the expanded "bundled" payment system) implemented on January 1, 2011, Medicare payment rates will be updated annually based on the CPI, but they will be subject to a downward adjustment, expected to be in the vicinity of one percentage point, to reflect productivity improvements. There can be no assurance of future price increases to private insurers and managed care organizations comparable to those Fresenius Medical Care has received historically. Any reductions in reimbursement from private insurers and managed care organizations could adversely impact our operating results. Any reduction in our ability to attract private pay patients to utilize Fresenius Medical Care's dialysis services relative to historical levels could adversely impact our operating results. Any of the following events could have a material adverse effect on our operating results:

- a portion of Fresenius Medical Care's business that is currently reimbursed by private insurers or hospitals may become reimbursed by managed care organizations, which generally have lower rates for our services; or
- a portion of Fresenius Medical Care's business that is currently reimbursed by private insurers at rates based on our billed charges may become reimbursed under a contract at lower rates.

***Significant competition could adversely affect our sales in our business segments and our ability to grow.***

We face numerous competitors in each of our four business segments. Some of these competitors possess substantially greater financial, marketing or research and development resources. Increased competition could have a material adverse effect on the pricing and sales of our products and services. In particular, technological innovation has historically been a significant competitive factor in the healthcare sector. The introduction of new products and services by competitors could render one or more of our products or services less competitive or even obsolete.

Our Fresenius Medical Care business segment generated 56% of our consolidated sales in the year ended December 31, 2011. Fresenius Medical Care is one of the world's leading provider of dialysis services and dialysis products to patients with chronic kidney failure. We face a number of competitors in both our dialysis services business and our dialysis products business, some of which may possess substantial financial, marketing or research and development resources. Competition and especially new competitive developments could materially adversely affect the future pricing and sale of our products and services. In particular, technological innovation has historically been a significant competitive factor in the dialysis products business. The introduction of new products by competitors could render one or more of our products or services less competitive or even obsolete.

Our Fresenius Kabi business segment generated 24% of our consolidated sales in the year ended December 31, 2011 with its four product businesses: infusion therapy, IV drugs, clinical nutrition and medical devices/transfusion technology. The markets in which Fresenius Kabi operates are characterized by price pressure, intense competition and cost-saving measures in the healthcare sector. These market conditions could lead to a reduction in Fresenius Kabi's sales, which could have a material adverse effect on our business, financial condition and results of operations.

Our Fresenius Helios business segment generated 16% of our consolidated sales in the year ended December 31, 2011. Fresenius Helios is one of the largest private hospital operators in Germany. In the course of its further expansion, Fresenius Helios may compete with other hospital operators for suitable expansion targets. If consolidation in the private hospital market results in material restraints on Fresenius Helios's future growth, it could have a material adverse effect on our business, financial condition and results of operations.

***If physicians and other referral sources cease referring patients to Fresenius Medical Care's dialysis clinics or cease prescribing Fresenius Medical Care's products, sales could decrease.***

Fresenius Medical Care's dialysis services business is dependent upon patients choosing Fresenius Medical Care clinics for their treatment. Patients may select a clinic based, in whole or in part, on the recommendation of their physician. We believe that physicians and other clinicians typically consider a number of factors when recommending a particular dialysis facility to a patient, including, but not limited to, the quality of care at a clinic, the competency of a clinic's staff, convenient scheduling and a clinic's location and physical condition. Physicians may change their facility recommendations at any time, which may result in the movement of our existing patients to competing clinics, including clinics established by the physicians themselves. At most of Fresenius Medical Care's clinics, a relatively small number of physicians often account for the referral of all or a significant portion of the patient base. Fresenius Medical Care's dialysis services business also depends on recommendations by hospitals, managed care plans and other healthcare institutions. If a significant number of physicians, hospitals or other healthcare institutions ceased referring their patients to Fresenius Medical Care clinics, this would reduce our dialysis care revenue and could have a material adverse effect on our overall operations.

The decision to purchase or prescribe Fresenius Medical Care's dialysis products and other services or competing dialysis products and other services will be made in some instances by medical directors and other referring physicians at Fresenius Medical Care's dialysis clinics and by the managing medical personnel and referring physicians at other dialysis clinics, subject to applicable regulatory requirements. A decline in physician recommendations or recommendations from other sources for purchases of the products or ancillary services, or an increase in recommendations for Fresenius Medical Care's products and/or lab services covered by the Medicare expanded bundled rate would reduce Fresenius Medical Care's dialysis product and other services revenue, and would materially adversely affect our business, financial condition and results of operations.

***Global economic conditions could have an adverse effect on our businesses.***

There was a material deterioration of the global economy and tightening of the financial markets in 2008 and 2009. Although there was some improvement in the global economy and financial markets in 2010 and 2011, the overall global economic outlook remains uncertain. The recent downgrading of credit ratings by Standard & Poor's, Moody's and Fitch of many countries and financial institutions has added to this uncertainty. We depend on the financial markets for access to capital, as do our renal product customers and commercial healthcare insurers. Limited or expensive access to capital could make it more difficult for these customers to do business with us, or to do business generally, which could adversely affect our businesses. The continuation, or worsening, of domestic and global economic conditions could continue to adversely affect our businesses and results of operations.

***Market developments and government actions regarding the sovereign debt crisis in Europe could adversely affect our business, financial condition, results of operations and liquidity.***

Global markets and economic conditions recently have been negatively impacted by concern regarding the ability of certain European Union member states and other countries to service their sovereign debt obligations. If the fiscal obligations of these countries continue to exceed their fiscal revenue, taking into account the reactions of the credit and swap markets, the ability of such countries to service their debt in a cost efficient manner could be impaired. The continued uncertainty over the outcome of various international financial support programs and the possibility that other countries may experience similar financial pressures could further disrupt global markets. We have exposure to government obligations, principally for accounts receivable from public healthcare organizations in such countries. Continued adverse conditions in these countries for an extended period of time could adversely affect collection of our accounts receivable in these countries, which could have a material adverse affect on our business, financial condition, results of operations and liquidity.

***We operate in many different jurisdictions and we could be adversely affected by violations of the U.S. Foreign Corrupt Practices Act and similar worldwide anti-corruption laws.***

The U.S. Foreign Corrupt Practices Act (“FCPA”) and similar worldwide anti-corruption laws generally prohibit companies and their intermediaries from making improper payments to public officials for the purpose of obtaining or retaining business. Our internal policies mandate compliance with these anti-corruption laws. We operate many facilities throughout the United States and other parts of the world. Our decentralized system has thousands of persons employed by many affiliated companies, and we rely on our management structure, regulatory and legal resources and effective operation of our compliance program to direct, manage and monitor the activities of these employees. Despite our training, oversight and compliance programs, we cannot assure you that our internal control policies and procedures always will protect us from deliberate, reckless or inadvertent acts of our employees or agents that contravene the Company’s compliance policies or violate applicable laws. Our continued expansion, including in developing countries, could increase the risk of such violations in the future. Violations of these laws, or allegations of such violations, could disrupt our business and result in a material adverse effect on our results of operations or financial condition.

***We face specific risks from international operations.***

Our international operations are subject to a number of risks, including but not limited to the following:

- the economic situation in developing or other countries could deteriorate;
- fluctuations in exchange rates could adversely affect profitability;
- we could face difficulties in enforcing and collecting accounts receivable under some countries’ legal systems;
- local regulations could restrict our ability to obtain a direct ownership interest in dialysis clinics or other operations;
- political, social or economic instability, especially in developing and newly industrializing countries, could disrupt our operations;
- some customers and governments could increase their payment cycles, with resulting adverse effects on our cash flow;
- some countries could impose additional or higher taxes or restrict the import of our products;
- we could fail to receive or could lose required licenses, certifications or other regulatory approvals for the operation of subsidiaries or dialysis clinics, sale of equipment, products, or services, or acquisitions;

- civil unrest, turmoil or outbreak of disease in one or more countries in which we have material operations or material product revenue;
- differing labor regulations and difficulty in staffing and managing geographically widespread operations;
- different or less robust regulatory regimes controlling the protection of our intellectual property; and
- transportation delays or interruptions.

International growth and expansion into emerging markets, such as China, Eastern Europe, the Middle East and Africa, could cause us difficulty due to greater regulatory barriers than in the United States or Western Europe, the necessity of adapting to new regulatory systems, and problems related to entering new markets with different economic, social and political systems and conditions. For example, unstable political conditions or civil unrest could negatively impact our operations and sales in a region or our ability to collect receivables or reimbursements or operate or execute projects in a region. Our Group has, on occasion in the past, been forced to postpone or discontinue certain projects due to the occurrence of events that resulted in an unacceptable level of risk to our personnel, and no assurance can be given that such events will not occur in the future.

Any one or more of these or other factors could increase our costs, reduce our sales, or disrupt our operations, with possible material adverse effects on our business, financial condition and results of operations.

***We face risks and uncertainties from emerging markets.***

We intend to expand further in emerging markets. We expect that sales from countries outside of Europe and North America, will account for an increasing portion of our sales in the future. Sales from these countries accounted for 17% of our Group sales in 2011. Emerging market economies can entail risks not commonly encountered in developed countries. These risks include, but are not limited to, underdeveloped or unstable political, legal and regulatory regimes, inconsistent enforcement of laws and regulations, limited or unreliable infrastructure, and a higher risk of conflict. Any one of these or other factors relating to our operations in emerging markets could increase our costs, reduce our sales, or disrupt our operations, with possible material adverse effects on our business, financial condition and results of operations.

***Changes in foreign exchange rates could have adverse effects on our financial results and on our ability to repay debt; our hedging efforts may be unsuccessful.***

The reporting currency of Fresenius is the euro. For the year ended December 31, 2011, 42% of our consolidated sales came from our business segments in Europe, whose sales are mostly denominated in euro; and 41% of our consolidated sales came from our business in North America, whose sales are mostly denominated in U.S. dollars. Fluctuations in exchange rates between the euro and other non-euro currencies, primarily the U.S. dollar, will affect the translation of our consolidated financial results into euro and will also affect the value of any distributions that our business segments make to us. Exchange rate changes may also affect our consolidated balance sheet. Changes in the euro values of our consolidated assets and liabilities resulting from exchange rate movements may cause us to record foreign currency gains and losses. In addition, as of December 31, 2011, 56% of our consolidated debt was denominated in U.S. dollars. Our ability to use cash received in currencies other than the euro or U.S. dollar to service that debt could be adversely affected by changes in exchange rates against the euro or the U.S. dollar.

While we enter into hedging transactions to minimize the effects of certain changes in exchange rates, we cannot assure you that such measures will be successful or that our hedging strategy will be effective. If these measures are unsuccessful or our hedging strategy is ineffective, this could increase our costs, reduce our sales or disrupt our operations, with possible material adverse effects on our business, financial condition and results of operations.



***Our indebtedness imposes restrictions.***

The various debt instruments, including the 2008 Senior Credit Agreement and the indentures for the various outstanding senior unsecured notes to which Fresenius SE & Co. KGaA is a party as Guarantor (the “**Outstanding Senior Notes**”) contain covenants restricting or limiting our ability to, among other things:

- incur additional indebtedness;
- create liens;
- impose limitations on the ability of our subsidiaries to pay dividends or make other payments to us;
- transfer or sell assets;
- engage in sale and leaseback transactions;
- merge or consolidate with other entities; and
- enter into transactions with affiliates.

All of these limitations are subject to a number of important exceptions and qualifications.

In addition, each of the 2008 Senior Credit Agreement and our agreements with the European Investment Bank (EIB), as well as our outstanding tranches of euro-denominated notes (*Schuldscheindarlehen*) issued by us or Fresenius Finance B.V., include covenants that require us to maintain certain financial ratios. Under our 2008 Senior Credit Agreement, we are obligated to maintain, among other things, a maximum leverage ratio, a minimum interest coverage ratio, a minimum fixed charge ratio and a limit on capital expenditures.

If we breach the covenants of any financing arrangements and are unable to cure the breach (to the extent the breach is capable of being cured) or to obtain a waiver from the lenders (to the extent the covenant is capable of being waived), we would be in default under the terms of such arrangement. A default under any financing arrangements could result in a default under other financing arrangements, including the indentures for our Outstanding Senior Notes and the Indenture, and could cause lenders under other arrangements to accelerate such financing arrangements, in which case the amounts under those arrangements would become due as well. If the indebtedness under the Notes or certain other financing arrangements were to be accelerated, there can be no assurance that our assets would be sufficient to repay in full that indebtedness and the other indebtedness of the Issuer.

In addition, Fresenius Medical Care’s senior credit facilities entered into in 2006 (the “**2006 Senior Credit Agreement**”), its agreements with the European Investment Bank, its outstanding tranches of euro-denominated notes (*Schuldscheindarlehen*), and its senior notes include covenants that require Fresenius Medical Care to maintain certain financial ratios or to meet other financial tests in order to incur indebtedness. Under the 2006 Senior Credit Agreement, Fresenius Medical Care is obligated to maintain a minimum consolidated fixed charge ratio and a maximum consolidated leverage ratio. Other covenants in one or more of each of these agreements restrict or have the effect of restricting Fresenius Medical Care’s ability to dispose of assets, incur debt, pay dividends to the Parent Guarantor and make other restricted payments, create liens or engage in sale-and-leaseback transactions. A breach of any of the covenants or conditions of Fresenius Medical Care’s financing arrangement could result in a default and acceleration of the debt under the respective arrangement, which could, in turn, lead to additional defaults and acceleration of the debt under other financing arrangements of Fresenius Medical Care and, in some circumstances, of the Company.



***Our leverage could adversely affect our financial condition, prevent us from fulfilling our debt-service obligations or pursuing certain aspects of our business strategy.***

We have incurred substantial indebtedness. As of December 31, 2011, our total consolidated debt amounted to €9,799 million, while our total consolidated assets amounted to €26,321 million and our consolidated shareholders' equity amounted to €10,577 million, including noncontrolling interest. We had EBITDA for the year ended December 31, 2011 of €3,237 million and net interest expense of €531 million. Recent acquisitions completed after December 31, 2011 have further increased these levels of indebtedness.

Our substantial indebtedness could adversely affect our financial condition which could, as a result, have important consequences to our ability to service the Notes. For example, it could:

- jeopardize the success of our business strategy;
- increase our vulnerability to general adverse economic conditions;
- limit our ability to obtain necessary financing to fund future working capital needs, capital expenditures and other general corporate requirements;
- require us to dedicate a substantial portion of our cash flow from operations, as well as the proceeds of certain financings and asset dispositions, to payments on our indebtedness, thereby reducing the availability of our cash flow and such proceeds to fund other purposes;
- limit our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate;
- place us at a competitive disadvantage compared to our competitors that have less debt;
- limit our ability to pursue possible future acquisitions and sell assets;
- make it more difficult for us to satisfy our obligations under our debt securities, including the Notes; and
- limit our ability to borrow additional funds.

As a result, our leverage makes us vulnerable to:

- a downturn in the operating performance of our subsidiaries;
- larger than normal fluctuations or volatility in our cash flow; or
- a downturn in economic conditions.

Our ability to make payments on and to refinance our indebtedness, including the Notes, will depend on our ability to generate cash in the future, which is dependent on various factors. These factors include governmental and private insurer reimbursement rates for medical treatment and general economic, financial, competitive, legislative, regulatory and other factors that are beyond our control. If our cash flow is not sufficient to meet our debt service and principal payment requirements, we could be required to refinance our obligations or to dispose of assets in order to meet such requirements. In addition, from time to time we need to refinance our existing debt as and when it matures. In either case, there is no guarantee that we will be able to refinance our existing indebtedness on terms comparable to those governing our existing indebtedness. If our cash flow is not sufficient to meet our debt service and principal payment requirements, or if we are unable to refinance our existing indebtedness on acceptable terms, it could have a material adverse effect on our business, financial condition or results of operations.

***Despite our substantial indebtedness, we may still be able to incur significantly more debt; this could intensify the risks described above.***

Despite our significant indebtedness, we may incur additional indebtedness in the future, provided that such indebtedness does not exceed the limit on senior indebtedness imposed by, or is

subordinate to the indebtedness under our 2008 Senior Credit Agreement, and such indebtedness is permitted to be incurred under the indentures governing our Outstanding Senior Notes and the Notes. If additional debt is added to our current substantial debt levels, the related risks that we now face could intensify.

***Acquisitions may place a financial burden on us. We face competition from other companies for suitable acquisition targets. Our growth depends, in part, on our ability to continue to make acquisitions.***

The healthcare industry has experienced significant consolidation in recent years. Our ability to make future acquisitions depends, in part, on our available financial resources and could be limited by restrictions imposed by the United States or other countries' competition laws or under our credit documents. Fresenius Medical Care, for example, financed its recent acquisitions of International Dialysis Centers, American Access Care Holdings, LLC and Liberty Dialysis Holdings with a combination of cash from operations and debt. Similar considerations apply to Fresenius Helios and its efforts to acquire hospitals. In this sector, the recent acquisitions of a controlling interest in Katholisches Klinikum Duisburg and 94.7% of the share capital in Damp Group were financed by cash flow from operations and debt. For our future acquisitions, we may need to borrow additional debt or assume significant liabilities, either of which might increase our financial leverage and cause the prices of our debt securities to decline. In addition, any financing that we might need for future acquisitions might be available to us only on terms that restrict our business. Acquisitions that we complete are also subject to risks relating to, among other matters, integration of the acquired businesses (including combining the acquired company's infrastructure and management information systems with ours, harmonization of its marketing, patient service and logistical procedures with ours and, potentially, reconciling divergent corporate and management cultures), possible non-realization of anticipated synergies from the combination, potential loss of key personnel or customers of the acquired companies, and the risk of assuming unknown liabilities not disclosed by the seller or not uncovered during due diligence. If we are not able to effect acquisitions on reasonable terms, there could be an adverse effect on our business, financial condition and results of operations.

We also compete with other companies in seeking suitable acquisition targets, and the continuing consolidation of competitors could affect future growth of our product sales. If we are not able to continue to effect acquisitions on reasonable terms, this could have an adverse effect on our business, financial condition and results of operations.

***The integration of past and future acquisitions involves inherent uncertainties and risks.***

The integration of acquisitions or potential acquisitions carries risks that can adversely affect Fresenius' assets and liabilities, our financial position, and results of operations. Following an acquisition, the infrastructure of the acquired company must be integrated while legal questions and contractual obligations are being clarified. Marketing, patient services, quality standards and logistics must also be unified. During the integration phase, key managers can leave the company and the course of ongoing business, as well as relationships with customers and employees can be harmed. In addition, change of control clauses may be triggered. The integration process may prove to be more difficult and cost-intensive or last longer than expected. Risks can arise from the operations of the newly acquired company that Fresenius regarded as insignificant or was unaware of. An acquisition may also prove to be less beneficial than initially expected. Future acquisitions may be a strain on the finances and management of our business. Moreover, as a consequence of an acquisition Fresenius may become directly or indirectly liable toward third parties or claims against third parties may turn out to be nonassertible.

***Our efforts to develop successful new products and therapies may fail to achieve the desired results or may fail to generate substantial revenue streams.***

The development of new products and therapies always carries the risk that the ultimate goal is not achieved. Regulatory approval of new products requires comprehensive, cost-intensive

preclinical and clinical studies. Our Group spreads its risk widely by conducting development activities in various product segments. We also counteract risks from research and development projects by regularly analyzing and assessing development trends and examining the progress of research projects. We also strictly comply with the legal regulations for clinical and chemical-pharmaceutical research and development. With generic IV drugs, it is also crucial that new products are brought to the market continually and at the right time.

***Fresenius Helios's planned growth presents us with certain risks. In addition, we are dependent on contracts with German public health insurance funds and government social security insurance authorities.***

Our growth strategy for Fresenius Helios involves acquiring hospitals in suitable locations. Fresenius Helios's competitors pursue similar strategies. Some of these competitors may have greater financial resources than we have. If our competitors are more successful in making acquisitions than we are, this could curtail our growth plans and hinder the development of our regional clinic network, which could have a material adverse effect on our business, financial condition and results of operations.

In 2011, more than 90% of Fresenius Helios's patients were insured by German public health insurance and social security insurance authorities. Therefore, we are highly dependent on continuing contractual relations with German governmental authorities, especially as care agreements and referral arrangements, in line with industry practice, do not contain referral guarantees. Should some or all of these contractual arrangements be discontinued, or should the hospitals be unable to compensate for lower reimbursements, this could have a material adverse effect on our business, financial condition and results of operations.

***If we are unable to attract and retain skilled medical, technical and engineering personnel, it could limit our technological development and growth.***

Our continued growth will depend upon our ability to attract and retain skilled employees, such as highly skilled nurses and other medical personnel. Competition for those employees is intense, for example in the hiring of medical, technical and scientific staff, and could lead to increases in our personnel and recruiting costs. Moreover, we believe that future success in the service businesses (dialysis clinics and HELIOS hospitals) will be significantly dependent on our ability to attract and retain qualified physicians to serve as medical directors of our clinics and hospitals. If we are unable to achieve that goal or if doing so requires us to bear increased costs this could adversely impact our growth and results of operations.

Our products business depends on the development of new products, technologies and treatment concepts to be competitive. Competition is also intense for skilled engineers and other technical research and development personnel. If we are unable to obtain and retain the services of key personnel, the ability of our officers and key employees to manage our growth would suffer and our operations could suffer in other respects. These factors could preclude us from integrating acquired companies into our operations, which could increase our costs and prevent us from realizing synergies from acquisitions. A lack of skilled research and development personnel could impair our technological development, increase our costs and impair our reputation for production of technologically advanced products, and could have a material adverse affect on our business, financial condition and results of operations.

***Our in-licensing of rights to, or acquisition and commercialization of, proprietary or other specialty injectable products might not be successful, and we may never receive any return on our investment in these product candidates.***

We may in-license rights to or acquire or commercialize proprietary or other specialty injectable products or technologies. Other companies, including those with substantially greater financial and sales and marketing resources, will compete with us to license rights to or acquire or commercialize these products. We may not be able to license rights to or acquire these proprietary or other

products or technologies on acceptable terms, if at all. Even if we obtain rights to a pharmaceutical product and commit to payment terms, including, in some cases, up-front license payments, we may not be able to generate product sales sufficient to create a profit or otherwise avoid a loss.

A product candidate may fail to result in a commercially successful drug for other reasons, including the possibility that the product candidate may:

- fail to receive necessary regulatory approvals;
- be difficult or uneconomical to produce in commercial quantities;
- be precluded from commercialization by proprietary rights of third parties; or
- fail to achieve market acceptance.

The marketing strategy, distribution channels and levels of competition with respect to any licensed or acquired product may be different from those of our current products, and we may not be able to compete favorably in any new product category.

***We are exposed to product liability, patent infringement and other claims, which could result in significant liability that we may not be able to insure on acceptable terms in the future.***

Healthcare companies, including Fresenius Group, are often subject to actions alleging negligence, products liability, breach of warranty, malpractice and other legal theories that may involve large claims and significant defense costs, whether or not liability is ultimately imposed on the defendant. The products of Fresenius Medical Care and Fresenius Kabi (in particular, its medical and pharmaceutical products) could also be subject to recalls or actions for patent infringement, which could result in our inability to sell any of our existing products that are deemed to be infringing. In addition, Fresenius Helios could be exposed to claims for negligence in the operation of its hospitals or patient treatment, for example claims relating to hospital-based infectious diseases. Fresenius Vamed could be exposed to claims arising from errors in the planning, construction and equipping of hospitals or other healthcare facilities or to claims arising from negligence regarding the facility management or the operational management and logistics of hospitals and other healthcare facilities. We cannot assure you that significant claims will not be asserted against us, that significant adverse verdicts will not be reached against us for patent infringements or that large scale recalls of our products will not become necessary. In addition, some of the countries in which we operate have legal protections relating to pharmaceutical products that could increase the risk of product liability claims. Product liability and patent infringement claims, other actions for negligence or breach of contract and product recalls or related sanctions could result in significant costs. These costs could have a material adverse effect on our business, financial condition and results of operations.

While we have been able to obtain liability insurance in the past to partially cover our business risks, we cannot assure that such insurance will be available in the future either on acceptable terms or at all. In addition, we and our subsidiaries are partially self-insured for professional, product and general liability, auto liability and worker's compensation claims, up to pre-determined levels above which our third-party insurance applies. A successful claim in excess of the limits of our insurance coverage could have a material adverse effect on our business, results of operations and financial condition. Liability claims, regardless of their merit or eventual outcome, also could adversely affect our sales and reputation, which could in turn have a material adverse effect on our business, financial condition and results of operations.

***Fresenius Medical Care's pharmaceutical product business could lose sales to generic drug manufacturers or new branded drugs.***

Fresenius Medical Care's branded pharmaceutical product business is subject to significant risk as a result of competition from manufacturers of generic drugs and other new competing medicines or therapies. Fresenius Medical Care is obligated to make certain minimum annual royalty payments under certain of its pharmaceutical product license agreements, irrespective of its annual sales of

the licensed products. Either the expiration or loss of patent protection for one of its products, or the “at-risk” launch by a generic manufacturer of a generic version of one of its branded pharmaceutical products, the launch of new branded drugs that compete with one or more of its products or the launch of new branded drugs that compete with one or more of its products, could result in the loss of a major portion of sales of that branded pharmaceutical product in a very short time period, which could have a material adverse effect on our business, financial condition and results of operations.

***A failure of our products to meet the quality standards expected by our customers could materially adversely affect our business and reputation.***

Our reputation for quality is a key component of our success, and our customers expect our products to meet high standards for quality. Failure of one or more of our products to meet these quality standards could result in decreased sales and a negative impact on our reputation in the markets in which we operate, which could have a material adverse effect on our business, financial condition and results of operations.

***The tax authorities could take positions that require us to make additional tax payments.***

We are in dispute with the German tax authorities and the U.S. Internal Revenue Service (IRS) on certain tax deductions disallowed in past and current tax audits and from time to time with other jurisdictions. We are also subject to ongoing tax audits in the United States, Germany and other jurisdictions. We have received notices of unfavorable adjustments and disallowances in connection with certain of these audits and we may be subject to additional unfavorable adjustments and disallowances. We are contesting, and in some cases appealing certain of the unfavorable determinations. If our objections, audit appeals or court claims are unsuccessful, we could be required to make additional tax payments, which could have a material adverse impact on our results of operations and operating cash flow in the relevant reporting period.

## **RISKS RELATING TO THE NOTES**

***The Notes are subordinate to other creditors of non-guarantors and to our subsidiaries' secured debt, and enforcement of guarantees by our subsidiaries may be limited.***

Generally, claims of creditors of a subsidiary, including trade creditors, secured creditors and creditors holding indebtedness and guarantees issued by the subsidiary, will have priority with respect to the assets and earnings of the subsidiary over the claims of creditors of its parent company. However, holders of the Notes will have direct claims against the Subsidiary Guarantors and the Parent Guarantor itself under the guarantees issued by the Parent Guarantor and the Subsidiary Guarantors guaranteeing the Notes on a senior unsecured basis.

Accordingly, the Notes will be structurally subordinated to all creditors, including trade creditors, of the Parent Guarantor's subsidiaries (including Fresenius Medical Care) other than the Subsidiary Guarantors and the Group's financing subsidiaries (including the Issuer). As of December 31, 2011, our subsidiaries which are not Subsidiary Guarantors (including Fresenius Medical Care) or our financing subsidiaries had €6,433 million of debt. Any right of the Parent Guarantor or any of the Subsidiary Guarantors to receive assets of any subsidiary upon the insolvency or liquidation of the subsidiary (and the consequent rights of the holders of the Notes to participate in those assets) will be structurally subordinated to the claims of these subsidiary's creditors, except to the extent the Parent Guarantor's or the Subsidiary Guarantor's claims do not result from (i) their respective shareholdings, (ii) shareholder loans (or their economic equivalent) subordinated by law or (iii) contractually subordinated claims, in which case their claims would still be subordinated with respect to any assets of the subsidiary pledged to secure other indebtedness, and any indebtedness of the subsidiary senior to that held by the Parent Guarantor or the Subsidiary Guarantors. In addition, holders of secured indebtedness of the Parent Guarantor or the Subsidiary Guarantors would have a claim on the assets securing such indebtedness that is prior to the holders of the Notes and would have a claim that is *pari passu* with the holders of the Notes to the extent

the security did not satisfy such indebtedness. As of December 31, 2011, our Group (other than Fresenius Medical Care) had €1,430 million of secured indebtedness.

The Notes will be effectively junior to any of our and our subsidiaries' secured debt to the extent of the value of the assets securing such debt. As a result, the Notes will be subordinated to the debt under the 2008 Senior Credit Agreement to the extent of the collateral granted to secure such debt.

Enforcement of the guarantees of the Notes issued by the Subsidiary Guarantors are limited in certain circumstances. Such limitations would, if applicable, effectively subordinate the Notes in right of payment to all indebtedness and other payment obligations of the relevant Subsidiary Guarantor then existing irrespective of the granting of the guarantee.

The terms of the guarantee of the Notes granted by Fresenius Kabi AG limit enforcement to the amount calculated in accordance with Section 291 paragraph 3 and Section 301 of the German Stock Corporation Act (*Aktiengesetz*), i.e., the amount available to Fresenius Kabi AG from time to time for profit distribution to the Parent Guarantor under any existing profit-and-loss pooling agreement (*Ergebnisabführungsvertrag*) between the Parent Guarantor and Fresenius Kabi AG. See "*Description of the Notes — Description of the Guarantees*".

The terms of the guarantee of the Notes granted by Fresenius ProServe GmbH limits enforcement if and to the extent payment under the guarantee or the application of enforcement proceeds would cause Fresenius ProServe GmbH's net assets to fall below its registered share capital, or (if the net assets are already an amount less than the registered share capital) cause such amount to be further reduced, calculated as described under "*Description of the Notes — Description of the Guarantees*".

***German insolvency laws may preclude the recovery of payments due under the guarantees.***

Insolvency proceedings with regard to the Company or the Subsidiary Guarantors would most likely be based on and governed by the insolvency laws of Germany, the jurisdiction under which they are organized and in which all of their assets are located. The provisions of such insolvency laws differ substantially from U.S. bankruptcy laws and may in many instances be less favorable to holders of the Notes than comparable provisions of U.S. law.

In particular, an insolvency administrator (*Insolvenzverwalter*) of the Company or the Subsidiary Guarantors may avoid (*anfechten*) transactions which are detrimental to insolvency creditors and which were effected prior to the commencement of insolvency proceedings. Such transactions can include the payment of any amounts to the holders of the Notes, as well as provision of security for their benefit. The administrator's right to avoid transactions under the German Insolvency Code (*Insolvenzordnung*) can, depending on the circumstances, extend to transactions during a period of up to ten-years prior to the petition for commencement of insolvency proceedings. In the event such transactions were successfully avoided, the holders of the Notes would be under an obligation to repay the amounts received or to waive the security provided (as the case may be). In addition, before the opening of insolvency proceedings, a creditor who has obtained an enforcement order has the right to avoid certain transactions, such as the payment of debt and the granting of security pursuant to the German Code on Avoidance (*Anfechtungsgesetz*). In particular, a transaction (which term includes the provision of security or the payment of debt) may be avoided in the following cases:

- the transaction was entered into by the debtor (i.e., the Company or the Subsidiary Guarantors) and is directly detrimental to its insolvency creditors if the transaction was effected (i) during the three-month period prior to the petition for commencement of insolvency proceedings over the assets of the debtor and the debtor was unable to make payments when due at the time of the transaction and the beneficiary of the transaction (i.e., the holders of the Notes) had positive knowledge thereof at such time, or (ii) after a petition for the commencement of insolvency proceedings and the beneficiary of the



transaction had knowledge of either the debtor's inability to make payments when due or of the petition for commencement of insolvency proceedings at the time of the transaction;

- the transaction was entered into during the ten-year period prior to the petition for the commencement of insolvency proceedings with the debtor's actual intent to disadvantage creditors, provided that the beneficiary of such transaction had positive knowledge of the debtor's intent at the time of the transaction;
- the transaction granting an insolvency creditor security (including a guarantor) or satisfaction to which such creditor had no right or no right to claim in such manner or at such time it was entered into and such transaction took place (i) within the month prior to the petition for commencement of insolvency proceedings; (ii) within the second or third month preceding such petition and the debtor was unable to make payments when due at the time of such transaction; or (iii) within the second and third month prior to the petition for commencement of insolvency proceedings and the creditor had positive knowledge at the time of the transaction that it was detrimental to the creditors of the debtor; or
- the transaction granting an insolvency creditor security or satisfaction to which such creditor had a right and such transaction took place (i) within the three-month period prior to the petition for the commencement of insolvency proceedings and the debtor was unable to make payments when due at the time of the transaction and the beneficiary of the transaction had positive knowledge thereof at such time, or (ii) following a petition for the commencement of insolvency proceedings and the creditor had positive knowledge of either the debtor's inability to make payments when due or of the petition for commencement of insolvency proceedings at the time of the transaction.

Generally, the Company or the Subsidiary Guarantors would be considered unable to make payments when due if they are not able to meet at least 90% of their due financial obligations within a period of three weeks. If their security were avoided or held unenforceable for any other reason, the holders of the Notes would cease to have any claim in respect of such security. Any amounts obtained from a transaction that has been avoided would have to be repaid. In addition, the guarantees entered into by the Company and the Subsidiary Guarantors will contain provisions intended to limit the maximum amount payable thereunder in circumstances that could otherwise give rise to the personal liability of the management board members or managing directors of the Guarantors under German law, including German Federal Supreme Court decisions, and be effectively subordinated to the claims of the guarantor's third-party creditors as a result of limitations applicable to the guarantee subordinated to the claims of the guarantor's third-party creditors as a result of limitations applicable to the guarantee.

Where the voidability of a transaction depends on the beneficiary's knowledge of certain circumstances, it is possible that the beneficiary (i.e., the holders of the Notes) will be deemed to have knowledge of aspects that are known to a third party. For example, it is likely that noteholders will be deemed to have knowledge of these circumstances that are known to the Trustee.

***We may not have the ability to raise the funds necessary to finance a change of control offer as required by the Indenture.***

If specific kinds of change of control events occur, the Issuer would be required to make an offer to repurchase all of the outstanding Notes at a purchase price equal to 101% of their principal amount plus any accrued and unpaid interest, if any, and additional amounts, if any. If a change of control occurs, we cannot assure you that we will have sufficient funds to pay the purchase price for any Notes tendered. Some events involving a change of control may also cause an event of default under our credit facilities, our Outstanding Senior Notes, or the Indenture or other debt that we may incur in the future. If a change of control occurs at a time when we are prohibited from purchasing the Notes under our other debt agreements, we could seek the consent of our lenders to purchase the Notes or could attempt to refinance the borrowings that prohibit our repurchase of the Notes. If we do not obtain that consent or repay those borrowings, we would remain prohibited from



purchasing the Notes. In that case, our failure to purchase any of the tendered Notes would constitute an event of default under the Indenture governing the Notes, which would likely cause a default under other debt obligations. In that event we would be required to repay all our senior debt, including debt under our credit facilities or indentures before we could repurchase the Notes. You should read the discussions under the headings *"Description of Other Financing Arrangements"*, and *"Description of the Notes — Change of Control"* for further information about these restrictions.

***The Issuer has no material assets or sources of revenue except for claims against other Group companies resulting from intercompany receivables, and the Parent Guarantor relies on distributions from its subsidiaries to meet its payment obligations.***

The Issuer is a wholly owned finance subsidiary of the Parent Guarantor and will on-lend the proceeds from the sale of the Notes under intercompany loans. The Issuer intends to service and repay the Notes out of the payments it receives under these intercompany loans. The Issuer has no other material assets or sources of revenue except for its claims under various intercompany receivables. Accordingly, the Issuer's ability to service and repay the Notes depends on the ability of the counterparties to the intercompany loans to service such indebtedness. Therefore, in meeting its payment obligations under the Notes, the Issuer is wholly dependent on the profitability and cashflow of the counterparties to the intercompany loans to which it is a party.

The Parent Guarantor functions as a holding company for our Group, has no material amount of independent operations and derives substantially all of its consolidated sales from its operating subsidiaries. Consequently, the Parent Guarantor's cash flow and its ability to meet its cash requirements, including its obligations under its Guarantee, is dependent upon the profitability and cash flow of its subsidiaries and payments by such subsidiaries to the Parent Guarantor in the form of loans, dividends, fees, rental payments, or otherwise, as well as the Parent Guarantor's own credit arrangements.

The ability of our subsidiaries to make payments to the Parent Guarantor may be restricted by, among other things, applicable corporate and other laws and regulations and by the terms of covenants and restrictions contained in financing agreements to which our subsidiaries are or will be a party. See *"Description of Other Financing Arrangements"* for a description of such agreements. In addition to any limitations on payment to the Parent Guarantor contained in such agreements, any failure to comply with the covenants and restrictions contained in such agreements could trigger defaults under those agreements which could delay or preclude the distribution of dividend payments or any other similar payments to the Parent Guarantor.

For example, our subsidiary Fresenius Medical Care generated approximately 62%, or €1,039 million, of our cash flow from operations in the year ended December 31, 2011. However, the Parent Guarantor has access to such cash flow only to the extent it is distributed to it as dividends. Such dividends are received in proportion to its economic interest, which was 30.34% as of December 31, 2011, and are limited by the financing agreements referred to above. See *"Management's Discussion and Analysis of Financial Condition and Results of Operation — Key Factors Affecting Our Results of Operations and Financial Condition"*. The Notes will not be guaranteed by Fresenius Medical Care and will be structurally subordinated in right of payment to all existing and future indebtedness of Fresenius Medical Care. As of December 31, 2011, Fresenius Medical Care had €5,573 million of debt.

The Subsidiary Guarantors function exclusively as holding companies, have no independent operations and derive substantially all of their revenue and cash from their operating subsidiaries. The Subsidiary Guarantor's ability to meet their obligations on their respective Guarantees are dependent upon the profitability and cash flow of their respective subsidiaries and payments by such subsidiaries to them in the form of loans, dividends, fees or otherwise.

See *"— The Notes are subordinate to other creditors of non-guarantors and to our subsidiaries' secured debt, and enforcement of guarantees by our subsidiaries may be limited"*.

***There can be no guarantee regarding the development of the trading market for the Notes.***

Although we have applied to admit the Notes to listing on the official list of the Luxembourg Stock Exchange and to admit the Notes to trading on the regulated market of the Luxembourg Stock Exchange, there can be no assurance regarding the future development of a market for the Notes or the ability of holders of the Notes to sell their Notes or the price at which such holders may be able to sell their Notes. If such a market were to develop, the Notes could trade at prices that may be higher or lower than the initial offering price depending on many factors, including:

- prevailing interest rates;
- our operating results; and
- the market for similar securities.

Certain of the Initial Purchasers have advised the Issuer that they currently intend to make a market in the Notes as permitted by applicable laws and regulations; however, the Initial Purchasers are not obligated to do so, and any such market-making activities with respect to the Notes may be discontinued at any time without notice. Therefore, there can be no assurance as to the liquidity of any trading market for the Notes or that an active trading market for the Notes will develop.

***You may face foreign exchange risks by investing in the Notes.***

The Notes will be denominated and payable in euro. An investment in the Notes by investors not resident in a country belonging to the European Monetary Union therefore entails foreign-exchange risks. In particular, investors in the United States face the risk of possible significant changes in the value of the U.S. dollar relative to the euro. Currency fluctuations can occur because of economic, political and other factors over which we have no control. A depreciation of the euro against the U.S. dollar could cause a decrease in the effective yield of the Notes below their stated coupon rates and could result in a loss to investors on a U.S. dollar basis.

For information regarding historical exchange rates between the euro and the U.S. dollar for the five years preceding the date of this prospectus/offering memorandum, and the exchange rates used in preparing the consolidated financial statements, see *"Management's Discussion and Analysis of Financial Condition and Results of Operations — Quantitative and Qualitative Disclosures about Market Risk — Management of Foreign Exchange and Interest Rate Risks — Foreign Exchange Risk Management"* in this prospectus/offering memorandum.

***Additional notes issued in offerings by the Issuer that have identical terms to the Notes issued in this offering may not be fungible for U.S. federal income tax purposes with the Notes issued in this offering.***

We may issue additional notes that have identical terms to the Notes issued in this offering, but are not fungible with the Notes issued in this offering for U.S. federal income tax purposes. Depending on the price at which any additional notes are offered, U.S. holders of additional notes may be required to accrue original issue discount on the additional notes into income whether or not they receive cash payments. Because the additional notes may not be distinguishable from the previously outstanding Notes, that may adversely affect the market value of all of the Notes. (See *"Taxation Considerations — United States Federal Income Tax Considerations — Further Notes"*.)

***Market perceptions concerning the instability of the euro, the potential re-introduction of individual currencies within the Eurozone, or the potential dissolution of the euro entirely, could adversely affect the value of the Notes.***

As a result of the credit crisis in Europe, in particular in Greece, Italy, Ireland, Portugal and Spain, the European Commission created the European Financial Stability Facility (the "EFSF") and the European Financial Stability Mechanism (the "EFSM") in May 2010 to provide funding to

Eurozone countries in financial difficulties that seek such support. The total credit volumes available under the EFSF and the EFSM amount to €440 billion and €60 billion respectively. Both instruments will expire on June 30, 2013. In reaction to the growing crisis in Greece, the scope of the EFSF was significantly extended in July 2011 to enable the EFSF, inter alia, to help endangered EU countries with precautionary measures, to provide countries with loans to recapitalize endangered banks and to directly acquire government bonds on both primary and secondary markets. In March 2011, the European Council agreed on the need for Eurozone countries to establish a permanent stability mechanism, the European Stability Mechanism (the “**ESM**”), which will be activated by mutual agreement, to assume the role of the EFSF and the EFSM in providing external financial assistance to Eurozone countries. The ESM is expected to start in July 2012 and will completely replace the EFSF until mid 2013. Despite these measures, concerns persist regarding the debt burden of certain Eurozone countries and their ability to meet future financial obligations, the overall stability of the euro and the suitability of the euro as a single currency given the diverse economic and political circumstances of individual Member States. These and other concerns have led to speculation regarding the possible re-introduction of individual currencies in one or more Member States, or, in more extreme circumstances, the possible dissolution of the euro entirely. Should the euro dissolve entirely, the legal and contractual consequences for holders of euro-denominated obligations would be determined by laws in effect at such time. These potential developments, or market perceptions concerning these and related issues, could adversely affect the value of the Notes.

#### **RISKS RELATING TO THE GUARANTORS**

As the Guarantors are part of our group of companies, the risks described above under “— *Risks Relating to Our Business*” also apply to them with regard to their respective businesses.

## USE OF PROCEEDS

The aggregate net proceeds from the sale of €500 million principal amount of the Notes will be approximately €492 million, after payment of fees and estimated expenses in the total amount of approximately €8 million.

The net proceeds of this offering will be used for acquisitions, to refinance short-term debt and for general corporate purposes. For information regarding our outstanding indebtedness, see *"Description of Other Financing Arrangements"* and *"Capitalization"*.

## CAPITALIZATION

The table below sets out our audited consolidated capitalization as of December 31, 2011 and as adjusted to reflect the issuance and application of the net proceeds of the Notes.

You should read this table together with our consolidated financial statements and the notes to those consolidated financial statements, and the information under “Summary — Summary in Respect of Our Company and Our Group — Overview”, “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources” and “Description of Other Financing Arrangements”.

|                                                                                  | Actual as of<br>December 31, 2011 | As adjusted for<br>this offering |
|----------------------------------------------------------------------------------|-----------------------------------|----------------------------------|
|                                                                                  | (million €)                       |                                  |
| <b>Cash and cash equivalents<sup>(1)</sup></b>                                   | <b>635</b>                        | <b>1,127<sup>(2)</sup></b>       |
| Short-term debt <sup>(3)</sup>                                                   | 2,026                             | 2,026                            |
| Long-term debt                                                                   |                                   |                                  |
| 2008 Senior Credit Agreement                                                     | 1,326                             | 1,326                            |
| Fresenius Medical Care 2006 Senior Credit Agreement                              | 2,161                             | 2,161                            |
| FMC A/R Facility                                                                 | 413                               | 413                              |
| Fresenius Medical Care euro notes ( <i>Schuldscheindarlehen</i> )                | 200                               | 200                              |
| Fresenius Finance B.V. euro notes ( <i>Schuldscheindarlehen</i> ) <sup>(4)</sup> | 600                               | 600                              |
| Fresenius Medical Care’s senior notes <sup>(5)</sup>                             | 2,223                             | 2,223                            |
| Fresenius Finance B.V. 5.00% senior notes due 2013                               | 500                               | 500                              |
| Fresenius Finance B.V. 5.50% senior notes due 2016                               | 637                               | 637                              |
| Fresenius Finance B.V. 4.25% senior notes due 2019 <sup>(6)</sup>                | —                                 | 500                              |
| Fresenius US Finance II Inc. 8.75% senior notes due 2015                         | 264                               | 264                              |
| Fresenius US Finance II Inc. 9.00% senior notes due 2015                         | 372                               | 372                              |
| Other long-term debt and liabilities <sup>(7)</sup>                              | 929                               | 929                              |
| <b>Total long-term debt</b>                                                      | <b>9,625</b>                      | <b>10,125</b>                    |
| Less: short-term portion                                                         | 1,852                             | 1,852                            |
| Total long-term debt net of short-term portion                                   | 7,773                             | 8,273                            |
| Thereof: Fresenius Medical Care <sup>(5)</sup>                                   | 4,247                             | 4,247                            |
| <b>Total debt</b>                                                                | <b>9,799</b>                      | <b>10,299</b>                    |
| Shareholders’ equity                                                             |                                   |                                  |
| Subscribed capital                                                               | 163                               | 163                              |
| Capital reserves                                                                 | 2,115                             | 2,115                            |
| Other reserves                                                                   | 3,658                             | 3,658                            |
| Accumulated other comprehensive income (loss)                                    | 35                                | 35                               |
| <b>Fresenius SE &amp; Co. KGaA shareholders’ equity</b>                          | <b>5,971</b>                      | <b>5,971</b>                     |
| <b>Noncontrolling interest subject to put provisions</b>                         | <b>317</b>                        | <b>317</b>                       |
| <b>Noncontrolling interest not subject to put provisions</b>                     | <b>4,606</b>                      | <b>4,606</b>                     |
| <b>Total capitalization</b>                                                      | <b>20,058</b>                     | <b>20,066</b>                    |

(1) Of the amounts set forth in this line item, €353 million represent cash and cash equivalents held by Fresenius Medical Care.

(2) The net proceeds of this offering of €492 million will be used for acquisitions, to refinance short-term debt and for general corporate purposes.

(3) Short-term debt mainly consists of short-term debt and loans and short-term portion of long-term debt. The net proceeds of this offering will be used for acquisitions, to refinance short-term debt and for general corporate purposes.

- (4) On March 16, 2012, Fresenius SE & Co. KGaA issued senior unsecured euro denominated notes (*Schuldscheindarlehen*) totaling €400 million (the “**New Fresenius Euro Notes**”). The proceeds of the New Fresenius Euro Notes will accrue to the Fresenius Group on April 2, 2012 and will be used to refinance two tranches of the euro notes (*Schuldscheindarlehen*) issued by Fresenius Finance B.V., each as of April 2, 2008 and with maturity on April 2, 2012, in an aggregate amount of €200 million and for general corporate purposes. For more information with regard to the €200 million euro notes of Fresenius Finance B.V. to be refinanced see “*Description of Other Financing Arrangements — Fresenius SE & Co. KGaA and its Subsidiaries Other than Fresenius Medical Care — Fresenius Euro Notes*”.
- (5) This figure does not include the following senior notes of Fresenius Medical Care issued in January 2012: Fresenius Medical Care US Finance II Inc. 5<sup>5</sup>/<sub>8</sub>% unsecured Senior Notes due 2019 in an aggregate principal amount of US\$800 million; Fresenius Medical Care US Finance II Inc. 5<sup>7</sup>/<sub>8</sub>% unsecured Senior Notes due 2022, in an aggregate principal amount of US\$700 million; and FMC Finance VIII S.A. 5.25% unsecured Senior Notes due 2019 in an aggregate principal amount of €250 million.
- Fresenius Medical Care used the net proceeds of the offering of the aforementioned senior notes for acquisitions, including the acquisition of Liberty Dialysis, to refinance indebtedness, and for general corporate purposes. For more information on Fresenius Medical Care’s acquisition of Liberty Dialysis, see “*Business — History and Development — Recent Acquisitions*”. For more information on Fresenius Medical Care’s indebtedness, see “*Description of Other Financing Arrangements — Fresenius Medical Care*”.
- Fresenius Medical Care’s existing senior notes are described under “*Description of Other Financing Arrangements — Fresenius Medical Care*”.
- (6) The adjusted figure reflects the issuance of the Notes offered hereby.
- (7) Of the amounts set forth in this line item, €53 million represents capital lease obligations. Other long-term debt otherwise mainly consists of credit facilities with the European Investment Bank.

Other than as indicated above, there has been no material change to the Group’s consolidated capitalization or indebtedness since December 31, 2011.

## SELECTED CONSOLIDATED FINANCIAL INFORMATION

*The consolidated financial information below (including ratios) reflects the full consolidation of Fresenius Medical Care's financial statements in our financial statements. Fresenius Medical Care Management AG, a wholly owned subsidiary of the Company in the legal form of a stock corporation under German law (Aktiengesellschaft), is the general partner of FMC AG & Co. KGaA. Fresenius Medical Care Management AG, acting through its management board, is responsible for the management of FMC AG & Co. KGaA. Because corporate decisions are taken by the general partner for German partnerships limited by shares, the Company has, and as long as it maintains ownership of Fresenius Medical Care Management AG and more than 25% of the share capital of FMC AG & Co. KGaA will retain, a controlling position in FMC AG & Co. KGaA under the articles of association of FMC AG & Co. KGaA. Since this controlling position meets the control test for purposes of consolidation under U.S. GAAP, the Company fully consolidates Fresenius Medical Care in its consolidated financial statements under U.S. GAAP. Noncontrolling interest and assets attributable to other shareholders of FMC AG & Co. KGaA are eliminated and recorded under noncontrolling interests in the Company's consolidated statement of income and balance sheet. However, the Company receives cash flows generated by Fresenius Medical Care only to the extent they are distributed to the Company as dividends, or as payments under existing agreements, such as rental and service agreements. Dividends are received by the Company only in proportion to its economic interest in Fresenius Medical Care and are also limited by the terms of certain of Fresenius Medical Care's debt instruments. At December 31, 2011, the Company owned 30.74% of the ordinary voting shares of FMC AG & Co. KGaA, constituting 30.34% of the total subscribed capital. See also "Management's Discussion and Analysis of Financial Condition and Results of Operations — Key Factors Affecting Our Results of Operations and Financial Condition" and "General Information on Group Structure, Issuer and Guarantors — Interest of the Company in Fresenius Medical Care AG & Co. KGaA".*

*You should regard the summary financial and business data below only as an introduction and should base your investment decision on a review of the entire prospectus/offering memorandum.*

### U.S. GAAP

*The following tables present summary consolidated financial information and business segment data for our Group for each of the financial years ended December 31, 2011, 2010 and 2009. We derived the summary financial data from our consolidated financial statements prepared in accordance with U.S. GAAP. Business segment data is clearly identified as such in the tables. KPMG AG Wirtschaftsprüfungsgesellschaft, The Squire, Am Flughafen, 60549 Frankfurt am Main, Germany, audited and issued an auditors' report with respect to each of these consolidated financial statements. These auditors' reports are included elsewhere in this prospectus/offering memorandum.*



## Selected Consolidated Financial Data

### Selected Consolidated Statement of Income Data

|                                                                                       | Year ended December 31, |          |         |
|---------------------------------------------------------------------------------------|-------------------------|----------|---------|
|                                                                                       | 2011                    | 2010     | 2009    |
|                                                                                       | (million €)             |          |         |
| Sales . . . . .                                                                       | 16,522                  | 15,972   | 14,164  |
| Cost of sales . . . . .                                                               | (10,883)                | (10,646) | (9,528) |
| Gross profit . . . . .                                                                | 5,639                   | 5,326    | 4,636   |
| Selling, general and administrative expenses . . . . .                                | (2,809)                 | (2,664)  | (2,342) |
| Research and development expenses . . . . .                                           | (267)                   | (244)    | (240)   |
| Operating income (EBIT) . . . . .                                                     | 2,563                   | 2,418    | 2,054   |
| Net interest expense . . . . .                                                        | (531)                   | (566)    | (580)   |
| Other financial result <sup>(1)</sup> . . . . .                                       | (100)                   | (66)     | (31)    |
| Income taxes . . . . .                                                                | (604)                   | (581)    | (452)   |
| Noncontrolling interest <sup>(2)</sup> . . . . .                                      | (638)                   | (583)    | (497)   |
| Net income attributable to Fresenius SE & Co. KGaA . . . . .                          | 690                     | 622      | 494     |
| Net income attributable to Fresenius SE & Co. KGaA, adjusted <sup>(3)</sup> . . . . . | 770                     | 660      | 514     |

### Selected Consolidated Statement of Financial Position Data

|                                                                 | At December 31, |                 |                 |
|-----------------------------------------------------------------|-----------------|-----------------|-----------------|
|                                                                 | 2011            | 2010            | 2009            |
|                                                                 | (million €)     |                 |                 |
| Cash and cash equivalents . . . . .                             | 635             | 769             | 420             |
| Current assets . . . . .                                        | 7,151           | 6,435           | 5,363           |
| Non-current assets . . . . .                                    | 19,170          | 17,142          | 15,519          |
| <b>Total assets . . . . .</b>                                   | <b>26,321</b>   | <b>23,577</b>   | <b>20,882</b>   |
| Short-term liabilities . . . . .                                | (5,988)         | (5,711)         | (3,528)         |
| Long-term liabilities . . . . .                                 | (9,439)         | (8,813)         | (9,702)         |
| Noncontrolling interest subject to put provisions . . . . .     | (317)           | (209)           | (161)           |
| Noncontrolling interest not subject to put provisions . . . . . | (4,606)         | (3,879)         | (3,257)         |
| Total of Fresenius SE & Co. KGaA shareholders' equity . . . . . | (5,971)         | (4,965)         | (4,234)         |
| <b>Total liabilities and shareholders' equity . . . . .</b>     | <b>(26,321)</b> | <b>(23,577)</b> | <b>(20,882)</b> |

### Selected Consolidated Cash Flow Statement Data

|                                                           | Year ended December 31, |         |       |
|-----------------------------------------------------------|-------------------------|---------|-------|
|                                                           | 2011                    | 2010    | 2009  |
|                                                           | (million €)             |         |       |
| Cash provided by operating activities . . . . .           | 1,689                   | 1,911   | 1,553 |
| Cash used in investing activities . . . . .               | (2,072)                 | (1,237) | (889) |
| Cash provided by (used in) financing activities . . . . . | 242                     | (352)   | (611) |

### ***Selected Other Consolidated Financial Information***

|                                            | Year ended and at<br>December 31, |       |       |
|--------------------------------------------|-----------------------------------|-------|-------|
|                                            | 2011                              | 2010  | 2009  |
|                                            | (million €, except ratios)        |       |       |
| EBITDA <sup>(4)(5)(6)</sup>                | 3,237                             | 3,057 | 2,616 |
| Net debt <sup>(7)</sup>                    | 9,164                             | 8,015 | 7,879 |
| Net interest expense                       | (531)                             | (566) | (580) |
| Capital expenditure                        | (783)                             | (758) | (671) |
| Acquisitions                               | (1,612)                           | (644) | (260) |
| Ratio of EBITDA to net interest expense    | 6.1                               | 5.4   | 4.5   |
| Ratio of net debt to EBITDA <sup>(8)</sup> | 2.8                               | 2.6   | 3.0   |

### ***Selected Consolidated Business Segment Data***

#### *Fresenius Medical Care*

|                                                                 | Year ended December 31,       |        |        |
|-----------------------------------------------------------------|-------------------------------|--------|--------|
|                                                                 | 2011                          | 2010   | 2009   |
|                                                                 | (million €, except employees) |        |        |
| Sales                                                           | 9,192                         | 9,091  | 8,064  |
| EBITDA <sup>(4)(5)</sup>                                        | 1,891                         | 1,830  | 1,586  |
| EBIT                                                            | 1,491                         | 1,451  | 1,259  |
| Net interest expense                                            | (213)                         | (211)  | (215)  |
| Net income attributable to Fresenius Medical Care AG & Co. KGaA | 770                           | 738    | 639    |
| Operating cash flow                                             | 1,039                         | 1,032  | 960    |
| Capital expenditure                                             | (429)                         | (395)  | (411)  |
| Acquisitions                                                    | (1,429)                       | (596)  | (138)  |
| Research and development expenses                               | (80)                          | (73)   | (67)   |
| Employees (headcount as of December 31)                         | 83,476                        | 77,442 | 71,617 |
| Dividends paid                                                  | 197                           | 183    | 173    |
| thereof to Fresenius SE & Co. KGaA                              | 69                            | 65     | 62     |

#### *Fresenius Kabi*

|                                              | Year ended December 31,       |        |        |
|----------------------------------------------|-------------------------------|--------|--------|
|                                              | 2011                          | 2010   | 2009   |
|                                              | (million €, except employees) |        |        |
| Sales                                        | 3,964                         | 3,672  | 3,086  |
| EBITDA <sup>(4)(5)</sup>                     | 955                           | 893    | 742    |
| EBIT                                         | 803                           | 737    | 607    |
| Net interest expense                         | (278)                         | (279)  | (302)  |
| Net income attributable to Fresenius Kabi AG | 354                           | 294    | 200    |
| Operating cash flow                          | 462                           | 567    | 397    |
| Capital expenditure                          | (177)                         | (174)  | (125)  |
| Acquisitions                                 | (11)                          | (31)   | (32)   |
| Research and development expenses            | (162)                         | (143)  | (129)  |
| Employees (headcount as of December 31)      | 24,106                        | 22,851 | 21,872 |

## Fresenius Helios

|                                                       | Year ended December 31,       |        |        |
|-------------------------------------------------------|-------------------------------|--------|--------|
|                                                       | 2011                          | 2010   | 2009   |
|                                                       | (million €, except employees) |        |        |
| Sales .....                                           | 2,665                         | 2,520  | 2,416  |
| EBITDA <sup>(4)(5)</sup> .....                        | 369                           | 318    | 286    |
| EBIT .....                                            | 270                           | 235    | 205    |
| Net interest expense .....                            | (51)                          | (55)   | (55)   |
| Net income attributable to HELIOS Kliniken GmbH ..... | 163                           | 131    | 107    |
| Operating cash flow .....                             | 294                           | 311    | 219    |
| Capital expenditure .....                             | (157)                         | (166)  | (124)  |
| Acquisitions .....                                    | (45)                          | (13)   | (79)   |
| Research and development expenses .....               | —                             | —      | —      |
| Employees (headcount as of December 31) .....         | 37,198                        | 33,321 | 33,364 |

## Fresenius Vamed

|                                               | Year ended December 31,       |       |       |
|-----------------------------------------------|-------------------------------|-------|-------|
|                                               | 2011                          | 2010  | 2009  |
|                                               | (million €, except employees) |       |       |
| Sales .....                                   | 737                           | 713   | 618   |
| EBITDA <sup>(4)(5)</sup> .....                | 51                            | 49    | 42    |
| EBIT .....                                    | 44                            | 41    | 36    |
| Net interest income .....                     | 2                             | 2     | 3     |
| Net income attributable to VAMED AG .....     | 34                            | 30    | 27    |
| Operating cash flow .....                     | (83)                          | 47    | 29    |
| Capital expenditure .....                     | (7)                           | (9)   | (5)   |
| Acquisitions .....                            | (3)                           | (5)   | (2)   |
| Research and development expenses .....       | 0                             | 0     | 0     |
| Employees (headcount as of December 31) ..... | 3,724                         | 3,110 | 2,849 |

- (1) Other financial result includes effects of mark-to-market accounting of the Mandatory Exchangeable Bonds ("MEB") and the Continent Value Rights ("CVR") relating to the acquisition of APP Pharmaceuticals. Both are non-cash items. The CVR were delisted in the first quarter of 2011. The MEB matured on August 14, 2011.

The following table shows how the effects of mark-to-market accounting in respect of the MEB and the CVR comprised the line item "Other financial result" for 2011, 2010 and 2009:

|                                     | Year ended December 31, |             |             |
|-------------------------------------|-------------------------|-------------|-------------|
|                                     | 2011                    | 2010        | 2009        |
|                                     | (million €)             |             |             |
| MEB .....                           | (105)                   | (98)        | (37)        |
| CVR .....                           | 5                       | 32          | 6           |
| <b>Other financial result</b> ..... | <b>(100)</b>            | <b>(66)</b> | <b>(31)</b> |

- (2) Noncontrolling interest represents net income attributable to third parties. In 2011, 92% of Noncontrolling interest was attributable to the noncontrolling interest in Fresenius Medical Care.
- (3) 2011, 2010 and 2009 adjusted for the effects of the mark-to-market accounting of the MEB and the CVR related to the acquisition of APP Pharmaceuticals. Both are non-cash items.

The following table shows the adjustments to net income made in respect of the MEB and CVR for 2011, 2010 and 2009:

|                                           | Year ended December 31, |                  |                  |
|-------------------------------------------|-------------------------|------------------|------------------|
|                                           | 2011                    | 2010             | 2009             |
|                                           | (million €)             |                  |                  |
| MEB . . . . .                             | 85                      | 70               | 26               |
| CVR . . . . .                             | (5)                     | (32)             | (6)              |
| <b>Adjustment to net income . . . . .</b> | <b><u>80</u></b>        | <b><u>38</u></b> | <b><u>20</u></b> |

- (4) EBITDA means operating income plus depreciation and amortization and is derived from our operating income determined in accordance with U.S. GAAP.
- (5) We are presenting this figure on the basis that investors may find it helpful as a measure of our performance. This figure is not recognized as a measure under U.S. GAAP or IFRS and should not be construed as a substitute for income statement or cash flow data, as determined in accordance with U.S. GAAP or IFRS, or as a measure of profitability or liquidity. It does not necessarily indicate whether cash flow will be sufficient or available for our cash requirements, nor is it necessarily indicative of our historical or future operating results. Because not all companies define this measure in the same way, our presentation of it is not necessarily comparable to similarly-titled measures used by other companies.
- (6) You should not consider EBITDA to be an alternative to net earnings determined in accordance with U.S. GAAP or IFRS or to cash flow from operations, investing activities or financing activities.

Group EBITDA can be reconciled to operating income as follows for 2011, 2010 and 2009:

|                                         | Year ended December 31, |                     |                     |
|-----------------------------------------|-------------------------|---------------------|---------------------|
|                                         | 2011                    | 2010                | 2009                |
|                                         | (million €)             |                     |                     |
| Operating income (EBIT) . . . . .       | 2,563                   | 2,418               | 2,054               |
| Depreciation and amortization . . . . . | 674                     | 639                 | 562                 |
| <b>EBITDA . . . . .</b>                 | <b><u>3,237</u></b>     | <b><u>3,057</u></b> | <b><u>2,616</u></b> |

The EBITDA measure used in determining compliance with certain covenants contained in our 2008 Senior Credit Agreement and other financing arrangements is subject to a number of adjustments according to the terms of these agreements and therefore differs from the EBITDA figures presented here.

Since we fully consolidate FMC AG & Co. KGaA, EBITDA includes EBITDA of Fresenius Medical Care.

- (7) Net debt includes short-term borrowings (including the FMC A/R Facility), short-term borrowings from related parties, long term debt (including current portion) and Fresenius Medical Care's trust preferred securities (until June 15, 2011), less cash and cash equivalents.

The net debt measure used in determining compliance with certain covenants contained in our 2008 Senior Credit Agreement and other financing arrangements is subject to a number of adjustments according to the terms of these agreements and therefore differs from the net debt figures presented here.

Net debt does not include the MEB or the CVR for any period during which the MEB or CVR were outstanding.

Since we fully consolidate FMC AG & Co. KGaA, net debt includes debt of Fresenius Medical Care.

- (8) One of the measures used in determining compliance with certain covenants contained in our 2008 Senior Credit Agreement and other financing arrangements is a ratio of net debt to EBITDA. This ratio differs from the net debt to EBITDA ratio presented here due to certain adjustments that are prescribed by the respective governing agreements.

## IFRS

*The Company uses the International Financial Reporting Standards of the International Accounting Standards Board (IASB) as adopted by the European Union ("IFRS") to comply with the reporting requirements of the German Commercial Code (Handelsgesetzbuch) and other German laws. The following tables present summary consolidated financial information and business segment data for our Group prepared in accordance with IFRS for each of the financial years ended December 31, 2011, December 31, 2010 and December 31, 2009. For the years presented, we derived the selected financial information from our audited consolidated financial statements prepared in accordance with IFRS. KPMG AG Wirtschaftsprüfungsgesellschaft, The Squire, Am Flughafen, 60549 Frankfurt am Main, Germany, audited and issued an auditors' report with respect to each of these consolidated financial statements. For information regarding the exchange rate between the U.S. Dollar and the Euro for selected time periods preceding the date of this prospectus/offering memorandum, see "Quantitative and Qualitative Disclosures about Market Risk — Management of Foreign Exchange and Interest Rate Risks — Foreign Exchange Risk Management".*

## Selected Statement of Operations Data

|                                                                                       | Year ended December 31, |        |        |
|---------------------------------------------------------------------------------------|-------------------------|--------|--------|
|                                                                                       | 2011                    | 2010   | 2009   |
|                                                                                       | (million €)             |        |        |
| Sales . . . . .                                                                       | 16,522                  | 15,972 | 14,165 |
| Operating income (EBIT) . . . . .                                                     | 2,546                   | 2,410  | 2,004  |
| Net income attributable to Fresenius SE & Co. KGaA . . . . .                          | 678                     | 619    | 476    |
| Net income attributable to Fresenius SE & Co. KGaA, adjusted <sup>(1)</sup> . . . . . | 758                     | 657    | 496    |

## Selected Other Financial Data

|                                                                  | Year ended and at<br>December 31, |       |       |
|------------------------------------------------------------------|-----------------------------------|-------|-------|
|                                                                  | 2011                              | 2010  | 2009  |
|                                                                  | (million €, except ratios)        |       |       |
| EBITDA <sup>(2)(3)</sup> . . . . .                               | 3,263                             | 3,072 | 2,628 |
| Depreciation and amortization . . . . .                          | (717)                             | (662) | (624) |
| Net interest expense . . . . .                                   | (531)                             | (566) | (580) |
| Net debt <sup>(4)</sup> . . . . .                                | 9,068                             | 7,908 | 7,776 |
| Ratio of EBITDA to net interest expense <sup>(3)</sup> . . . . . | 6.1                               | 5.4   | 4.5   |
| Ratio of net debt to EBITDA <sup>(3)</sup> . . . . .             | 2.8                               | 2.6   | 3.0   |
| Capital expenditure . . . . .                                    | (797)                             | (768) | (681) |
| Acquisitions . . . . .                                           | (1,608)                           | (643) | (259) |

## Selected Balance Sheet Data

|                                      | At December 31, |        |        |
|--------------------------------------|-----------------|--------|--------|
|                                      | 2011            | 2010   | 2009   |
|                                      | (million €)     |        |        |
| Total assets . . . . .               | 26,510          | 23,831 | 21,148 |
| Total shareholders' equity . . . . . | 11,031          | 9,219  | 7,908  |

- (1) 2011, 2010 and 2009 adjusted for the effects of the mark-to-market accounting of the MEB and the CVR related to the acquisition of APP Pharmaceuticals. Both are non-cash items.

The following table shows the adjustments to net income made in respect of the MEB and CVR for 2011, 2010 and 2009:

|                                           | Year ended December 31, |                  |                  |
|-------------------------------------------|-------------------------|------------------|------------------|
|                                           | 2011                    | 2010             | 2009             |
|                                           | (million €)             |                  |                  |
| MEB . . . . .                             | 85                      | 70               | 26               |
| CVR . . . . .                             | (5)                     | (32)             | (6)              |
| <b>Adjustment to net income . . . . .</b> | <b><u>80</u></b>        | <b><u>38</u></b> | <b><u>20</u></b> |

- (2) We are presenting this figure for comparison with EBITDA calculated on the basis of our U.S. GAAP financial information. You should not consider EBITDA to be an alternative to net earnings determined in accordance with U.S. GAAP or IFRS or to cash flow from operations, investing activities or financing activities.
- Since we fully consolidate FMC AG & Co. KGaA, EBITDA includes EBITDA of Fresenius Medical Care.
- (3) We are presenting this figure on the basis that investors may find it helpful as a measure of our performance. This figure is not recognized as a measure under U.S. GAAP or IFRS and should not be construed as a substitute for income statement or cash flow data, as determined in accordance with U.S. GAAP or IFRS, or as a measure of profitability or liquidity. It does not necessarily indicate whether cash flow will be sufficient or available for our cash requirements, nor is it necessarily indicative of our historical or future operating results. Because not all companies define this measure in the same way, our presentation of it is not necessarily comparable to similarly-titled measures used by other companies.
- (4) Net debt includes short-term borrowings (including the FMC A/R Facility), short-term borrowings from related parties, long term debt (including current portion) and Fresenius Medical Care's trust preferred securities (until June 30, 2011), less cash and cash equivalents.

Net debt does not include the MEB or the CVR for any period during which the MEB or CVR were outstanding.

Since we fully consolidate FMC AG & Co. KGaA, net debt includes net debt of Fresenius Medical Care.

## DIFFERENCES BETWEEN U.S. GAAP AND IFRS FINANCIAL INFORMATION

Financial statements and other financial information prepared in accordance with U.S. GAAP are not comparable to, and could differ from, financial statements and other financial information prepared in accordance with IFRS. The following represents a summary of certain of the significant differences between U.S. GAAP and IFRS as they affect determination of our consolidated net income. The summary has been prepared to assist a reader in understanding the nature of the differences between U.S. GAAP and IFRS as they relate to our Company. This summary does not provide a description of all of the significant differences between U.S. GAAP and IFRS.

Differences between U.S. GAAP and IFRS that could impact our financial statements will most likely result from differences in the accounting treatment under U.S. GAAP and IFRS relating to (1) recognition of the gains resulting from operating sale and leaseback transactions, (2) accounting requirements for deferred taxes related to stock options, (3) amortization of actuarial losses of employee benefit plans and (4) capitalization of development cost and the subsequent amortization of these costs. Each of these items is discussed below. This list is not intended as a complete discussion of the differences between U.S. GAAP and IFRS; it addresses only the differences that could have an impact on our financial statements.

1. *Recognition of gains resulting from operating sale and leaseback transactions.* We sell assets to leasing companies and lease them back under operating lease agreements. Under U.S. GAAP, the gain from the sale is deferred over the term of the lease whereas IFRS requires an immediate recognition of the gain. If the selling price is higher than the fair value, this difference is also deferred under IFRS.
2. *Different accounting requirements for deferred taxes on stock options.* Under U.S. GAAP, deferred taxes on compensation expense for stock options are based on the fair value of stock options. Under IFRS, deferred taxes on stock options are based on the intrinsic value of stock options. The resulting difference between deferred tax expense, deferred tax assets and additional paid in capital under IFRS and U.S. GAAP is usually completely offset at the date of the exercise of stock options and the associated receipt of tax benefits.
3. *Amortization of actuarial losses of employee benefit plans.* When IAS 19, Employee Benefits, was adopted for the first time, all unrecognized actuarial losses were recognized. The subsequent accounting treatment for these losses according to IFRS is the same as under U.S. GAAP in that these losses are recognized only in part in profit and loss if they exceed a certain limit. In subsequent accounting periods, the unrecognized actuarial losses under IFRS are lower than under U.S. GAAP. As a result, the expense recognized under IFRS for the amortization of these losses is lower than the expense recognized for amortization of these losses under U.S. GAAP.
4. *Capitalization of development costs if specific requirements are fulfilled.* Costs for the development of new products or technologies are capitalized in accordance with IFRS whereas U.S. GAAP does not allow capitalization. Subsequent to initial measurement under IFRS, the costs for development of successful products or technologies are amortized over the useful life while the costs for development of unsuccessful products or technologies are written off.

We consider the differences between our net income determined in accordance with U.S. GAAP and our net income determined in accordance with IFRS to be immaterial for each of the years ended December 31, 2011, 2010 and 2009.

## SELECTED UNCONSOLIDATED FINANCIAL DATA FOR THE ISSUER

At December 31, 2011, the Issuer had total assets of €1,794 million, mainly consisting of financial fixed assets of €1,429 million and receivables from affiliated companies of €365 million, cash and cash equivalents of €86 thousand and shareholders' equity of negative €2 million. At December 31, 2010, the Issuer had total assets of €2,359 million, mainly consisting of financial fixed assets of €1,732 million and receivables from affiliated companies of €625 million, cash and

cash equivalents of €1 million and shareholders' equity of negative €8 million. The financial statements of the Issuer for the financial years ending December 31, 2011 and 2010 are included in this prospectus/offering memorandum on pages F-261 et seq.

#### **SELECTED UNCONSOLIDATED FINANCIAL DATA FOR THE SUBSIDIARY GUARANTORS**

At December 31, 2011, Fresenius Kabi AG had total assets of €2,044 million, mainly consisting of financial fixed assets of €1,571 million and accounts receivable from related parties of €460 million, cash and cash equivalents of €1 million and shareholders' equity €1,488 million. At December 31, 2010, Fresenius Kabi AG had total assets of €2,738 million, mainly consisting of financial fixed assets of €2,008 million and accounts receivable from related parties of €710 million, cash and cash equivalents of €134 thousand and shareholders' equity €1,488 million. The financial statements of Fresenius Kabi AG for the financial years ending December 31, 2011 and 2010 are included in this prospectus/offering memorandum on pages F-327 et seq.

At December 31, 2011, Fresenius ProServe GmbH had total assets of €2,057 million, mainly consisting of financial fixed assets of €1,901 million, and accounts receivable due from related parties of €148 million and shareholders' equity of €1,587 million. At December 31, 2010, Fresenius ProServe GmbH had total assets of €1,975 million, mainly consisting of financial fixed assets of €1,846 million and accounts receivable due from related parties of €120 million and shareholders' equity of €1,587 million. The financial statements of Fresenius ProServe GmbH for the financial years ending December 31, 2011 and 2010 are included in this prospectus/offering memorandum on pages F-393 et seq.

The financial statements of the Subsidiary Guarantors for the financial years ending December 31, 2011 and 2010 are included in this prospectus/offering memorandum on pages F-327 et seq. Our consolidated financial statements, also contain financial information for our group of companies on a consolidated basis which includes the Guarantors as our principal subsidiaries.



## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*You should read the following discussion of our financial condition and results of operations in conjunction with our consolidated financial statements and the related notes to those financial statements. Some of the statements contained below, including those concerning future sales, costs, capital expenditures, acquisitions and financial condition, include forward looking-statements. Because such statements involve risks and uncertainties, actual results may differ materially from the results that the forward-looking statements express or imply. For a discussion of these risks and uncertainties see "Disclosure Regarding Forward-Looking Statements" and "Risk Factors". Fresenius Medical Care presents its stand-alone consolidated financial statements in U.S. dollars. Certain items of Fresenius Medical Care's financial data, such as geographical financial data, have not been converted into euro amounts and are therefore stated in U.S. dollar amounts in accordance with U.S. GAAP in the discussion below.*

*Our consolidated financial statements are included on pages F-4 et seq. in this prospectus/offering memorandum.*

### OVERVIEW

Fresenius is an international healthcare group with products and services for dialysis, hospitals and outpatient medical care. In addition, Fresenius focuses on hospital operations, as well as on engineering and services for hospitals and other healthcare facilities. Our Group includes the following business segments:

- **Fresenius Medical Care** is the world's largest provider of dialysis products and dialysis care for patients with chronic kidney failure according to publicly reported sales and number of patients treated;
- **Fresenius Kabi** is a leading supplier of infusion therapies, intravenously administered generic drugs (IV drugs), and clinical nutrition for critically and chronically ill people in hospitals and outpatient care in addition to medical devices and products in the area of transfusion technology;
- **Fresenius Helios** is one of the three largest German private hospital operators, operating 65 proprietary clinics (as of December 31, 2011) with over 20,000 beds, with a focus on providing acute treatment and post-acute care (medical rehabilitation); and
- **Fresenius Vamed** is worldwide one of the leading international providers of engineering, construction and maintenance services to hospitals and other healthcare facilities.

Fresenius is active in about 170 countries and has an international marketing and production network of more than 80 production sites worldwide. In the year ended December 31, 2011, our Group generated sales of €16,522 million and EBIT of €2,563 million. Fresenius Medical Care is fully consolidated into the financial statements of our Group.

The following table shows key data of our business segments and our Corporate/Other segment:

|                                                                                             | Year ended December 31, 2011                  |                   |                     |                    |                                    |         |
|---------------------------------------------------------------------------------------------|-----------------------------------------------|-------------------|---------------------|--------------------|------------------------------------|---------|
|                                                                                             | Fresenius<br>Medical<br>Care                  | Fresenius<br>Kabi | Fresenius<br>Helios | Fresenius<br>Vamed | Corporate/<br>Other <sup>(1)</sup> | Total   |
|                                                                                             | (million €, except employees and percentages) |                   |                     |                    |                                    |         |
| Sales. . . . .                                                                              | 9,192                                         | 3,964             | 2,665               | 737                | (36)                               | 16,522  |
| EBITDA . . . . .                                                                            | 1,891                                         | 955               | 369                 | 51                 | (29)                               | 3,237   |
| Operating income (EBIT). . . . .                                                            | 1,491                                         | 803               | 270                 | 44                 | (45)                               | 2,563   |
| Net income attributable to<br>Fresenius SE & Co. KGaA,<br>adjusted <sup>(2)</sup> . . . . . | 770                                           | 354               | 163                 | 34                 | (551)                              | 770     |
| Operating cash flow . . . . .                                                               | 1,039                                         | 462               | 294                 | (83)               | (23)                               | 1,689   |
| Capital expenditures . . . . .                                                              | (429)                                         | (177)             | (157)               | (7)                | (13)                               | (783)   |
| Acquisitions . . . . .                                                                      | (1,429)                                       | (11)              | (45)                | (3)                | (124)                              | (1,612) |
| Research and development . . . . .                                                          | (80)                                          | (162)             | —                   | 0                  | (25)                               | (267)   |
| Employees (as of December 31) . . .                                                         | 83,476                                        | 24,106            | 37,198              | 3,724              | 847                                | 149,351 |
| Equity participation . . . . .                                                              | 30%                                           | 100%              | 100%                | 77%                | —                                  | —       |

(1) Corporate/Other consists of consolidation and certain corporate revenues and costs (which relate to certain Group overhead charges and the costs of Fresenius Biotech, which is focused on immunotherapeutic products based on antibody technologies, but does not have the status of a business segment).

(2) Adjusted for the effects of mark-to-market accounting of the MEB and the CVR.

For additional information about our business segments, see “*Business*”.

Our consolidated financial statements also include the segment Corporate/Other, to which certain corporate sales and costs are allocated. The costs relate to certain Group overhead charges and the costs of certain research and development projects relating to biotechnology. The segment is mainly comprised of Fresenius SE & Co. KGaA, our Group’s holding company; Fresenius Netcare GmbH, which provides services in the field of information technology; and Fresenius Biotech, which does not fulfill the standards for a reportable segment under U.S. GAAP. In addition, Corporate/Other also reflects consolidation adjustments between our business segments.

## KEY FACTORS AFFECTING OUR RESULTS OF OPERATIONS AND FINANCIAL CONDITION

Factors affecting our results of operations include the following:

- *Ownership of Fresenius Medical Care.* We owned 30.74% of the ordinary voting shares of FMC AG & Co. KGaA and 30.34% of the total subscribed capital of FMC AG & Co. KGaA as at December 31, 2011 (our percentage of ordinary shares and total subscribed capital of FMC AG & Co. KGaA as of February 29, 2012 were 31.44% and 31.03%, respectively). Fresenius Medical Care Management AG, a wholly owned subsidiary of Fresenius SE & Co. KGaA in the legal form of a stock corporation under German law (*Aktiengesellschaft*), is the general partner of FMC AG & Co. KGaA. The management board of Fresenius Medical Care Management AG is responsible for the management of FMC AG & Co. KGaA. Because corporate decisions are taken by the general partner for German partnerships limited by shares, Fresenius SE & Co. KGaA has, and as long as it maintains ownership of more than 25% of the share capital of FMC AG & Co. KGaA will retain, a controlling position in FMC AG & Co. KGaA under the articles of association of FMC AG & Co. KGaA. Since this controlling position meets the control test for purposes of consolidation under U.S. GAAP, we fully consolidate Fresenius Medical Care in our consolidated financial statements under US GAAP. Net income and assets attributable to other shareholders of FMC AG & Co. KGaA are eliminated and recorded under noncontrolling interest in our consolidated statement of income and balance sheet.

Although we fully consolidate the financial statements of Fresenius Medical Care in our financial statements, we receive the cash flows generated by the Fresenius Medical Care business segment only to the extent they are distributed to us as dividends. Such dividends are received in proportion to our ownership of the ordinary voting shares of FMC AG & Co. KGaA. We received dividend distributions from FMC AG & Co. KGaA in the amount of €69 million in 2011, €65 million in 2010 and €62 million in 2009. Our economic interest in FMC AG & Co. KGaA in 2011, 2010 and 2009 (in each case, the average for the year) was 33.24%, 35.45% and 35.74%, respectively. The Mandatory Exchangeable Bonds (MEB) matured in August 2011 and therefore Fresenius SE & Co. KGaA's shareholding in FMC AG & Co. KGaA was reduced. In addition, covenants contained in Fresenius Medical Care's 2006 Senior Credit Agreement impose limitations on the amount of total annual dividends that Fresenius Medical Care may distribute in any one year. Under Fresenius Medical Care's 2006 Senior Credit Agreement, dividends and other restricted payments are subject to a limitation of US\$330 million in 2011, US\$360 million in 2012 and US\$390 million in 2013. Covenants in the Indenture relating to Fresenius Medical Care's trust preferred securities also placed similar limitations on Fresenius Medical Care's ability to distribute dividends. The trust preferred securities entitled the holders to distributions at a fixed annual rate of the stated amount and were mandatorily redeemable after 10 years. On June 15, 2011, Fresenius Medical Care redeemed all of its outstanding trust preferred securities, primarily with funds obtained under existing credit facilities. For additional information about Fresenius Medical Care's indebtedness, see *"Description of Other Financing Arrangements — Fresenius Medical Care"*.

In addition to cash dividends, we receive cash payments, primarily in the form of service fees and rental payments and from Fresenius Medical Care under certain intercompany agreements. We received payments of €73.2 million in 2011, €62.9 million in 2010 and €65.5 million in 2009 under these agreements. These payments were partially offset by payments that we made to Fresenius Medical Care pursuant to other intercompany agreements in the amounts of €4.7 million in 2011, €4.6 million in 2010 and €9.7 million in 2009.

For more information about ownership of Fresenius Medical Care, see *"General Information on Group Structure, Issuer and Guarantors — Interest of the Company in Fresenius Medical Care AG & Co. KGaA"*.

- *Acquisitions.* We completed a number of acquisitions during the period under review. These acquisitions include:
  - Fresenius Medical Care's acquisitions in 2011 totaled €1,429 million, mainly related to the acquisition of the dialysis service business of Euromedic in Europe, the investment of approximately US\$300 million to acquire a 49% share in Renal Advantage, Inc., in the United States, and the takeover of American Access Care Holdings, LLC ("**AAC**"), also in the United States. AAC operates 28 out-patient centers primarily dedicated to serving vascular access needs of dialysis patients. In the year 2010, Fresenius Medical Care spent €596 million, primarily for acquisitions of dialysis clinics, the formation of a new renal pharmaceutical company with Galenica Ltd., the acquisition of licenses and the acquisition of Gambro's peritoneal dialysis business outside the United States. In the year 2009, acquisition spending of Fresenius Medical Care in an amount of €138 million related mainly to the purchase of dialysis clinics.
  - Fresenius Kabi's acquisitions totaled €11 million in 2011. There were no major acquisitions at Fresenius Kabi. The largest single project at Fresenius Kabi was the acquisition of a compounding center in Germany. In the year 2010, Fresenius Kabi spent €31 million on acquisitions, mainly for the purchase of two compounding centers in Germany. In the year 2009, Fresenius Kabi spent €32 million on acquisitions. The acquisition of a lactulose business division in Italy was the biggest individual project.

- Fresenius Helios's acquisitions totaled €45 million in 2011, mainly consisting of the acquisition of 51% of the share capital of (and 100% of the economic interest in) Katholisches Klinikum Duisburg, a maximum care hospital, as well as one other acute care hospital in Germany. In 2010, Fresenius Helios spent €13 million on acquisitions, mainly for the purchase of the Kreiskrankenhaus St. Marienberg in Helmstedt, Germany and medical centres. In 2009, Fresenius Helios spent €79 million which mainly referred to the acquisitions of five acute care hospitals.
- Fresenius Vamed made acquisitions totaling €3 million in 2011, compared with €5 million in 2010 and €2 million in 2009. There were no major acquisitions at Fresenius Vamed.
- In the segment Corporate/Other acquisitions totaled €124 million in 2011, mainly consisting of purchase of approximately 1.4 million ordinary shares of FMC AG & Co. KGaA, as well as the acquisition of the remaining shares of HELIOS Kliniken GmbH. Our Corporate/Other segment did not complete any material acquisitions in 2010. In 2009, acquisitions in the Corporate/Other segment totaled €9 million mainly consisting of milestone payments in conjunction with the acquisition of additional shares of Trion Pharma, Germany, in 2007.
- *Currency Translation.* We conduct our business on a global basis in several major international currencies, although our operations are primarily in Europe and the United States. Our reporting currency is the euro. In 2011, 42% of our consolidated sales came from our business segments in Europe, whose sales are mostly denominated in euro, and 41% of our consolidated sales came from our business in North America, whose sales are mostly denominated in U.S. dollars. Fluctuations in exchange rates between the euro and other, non-euro currencies, primarily the U.S. dollar, affect the translation of our consolidated financial results into euro and also affect the value of any distributions that our business segments contribute to our consolidated financial statements. Exchange rate changes also affect our consolidated balance sheet. Changes in the euro values of our consolidated assets and liabilities resulting from exchange rate movements may cause us to record foreign currency gains and losses.

In 2009, 2010 and 2011, the average exchange rate of the U.S. dollar against the euro had a strong impact on our reported sales mainly due to the large percentage of our sales that are generated in the United States. On average over the year, the U.S. dollar was 5% lower against the euro in 2011 as compared with 2010 and 5% higher in 2010 as compared with 2009. In translating the financial statements for 2011 of our consolidated subsidiaries that are stated in U.S. dollars, each US\$0.01 decrease in the value of the U.S. dollar against the euro decreased our sales by approximately €60 million and decreased our net income by approximately €2.5 million.

In the discussion below, we refer to the currency translation effects on certain items in our financial statements. We use the term "at constant exchange rates" to refer to comparisons of financial data that have been computed to exclude currency translation effects. We believe comparisons at constant exchange rates are useful in explaining changes in our historical results of operations and in permitting a comparison of our underlying performance excluding currency translation effects. In calculating constant currency comparisons, we apply the relevant exchange rates used in our financial statements for the previous year — period average exchange rates in the case of profit and loss statement data — to generate numbers for the current year as if the exchange rates for the current year had been the same as those in the previous year, then compare the resulting "constant currency" data with the corresponding actual data from the previous year in order to measure the increase or decrease on a constant currency basis.

For additional information on the accounting treatment of currency translation effects see Note 1.IV.bb to our consolidated financial statements for the year ended December 31,

2011, included elsewhere in this prospectus/offering memorandum. Please also see “*Risk Factors — Risks Relating to Our Business — Changes in foreign exchange rates could have adverse effects on our financial results and on our ability to repay debt; our hedging efforts may be unsuccessful*”.

## SEGMENT RESULTS

Management evaluates each segment using a measure that reflects all of the segment’s sales and expenses. Management believes the most appropriate measure in this regard is earnings before interest and taxes, or “EBIT”. In addition to EBIT, management believes that earnings before interest, taxes, depreciation and amortization, or “EBITDA”, is helpful for investors as a measurement of the segment’s ability to generate cash and to service financing obligations. You should not, however, consider EBITDA to be an alternative to net income attributable to Fresenius SE & Co. KGaA determined in accordance with U.S. GAAP or to cash flow from operations, investing activities or financing activities or as a measure of cash flows generally. Because all companies do not calculate EBIT and EBITDA consistently, the presentation herein may not be comparable to other similarly titled measures of other companies.

The EBITDA margin is calculated by dividing EBITDA by sales. The EBIT margin is calculated by dividing EBIT by sales.

The following table shows the sales, EBITDA, EBITDA margins, EBIT and EBIT margins of each of our segments for the periods indicated:

|                                                | Year ended December 31, |               |             |               |             |               |
|------------------------------------------------|-------------------------|---------------|-------------|---------------|-------------|---------------|
|                                                | 2011                    |               | 2010        |               | 2009        |               |
|                                                | (million €)             | (margin in %) | (million €) | (margin in %) | (million €) | (margin in %) |
| <b>Fresenius Medical Care</b>                  |                         |               |             |               |             |               |
| Sales .....                                    | 9,192                   | 100.0         | 9,091       | 100.0         | 8,064       | 100.0         |
| EBITDA .....                                   | 1,891                   | 20.6          | 1,830       | 20.1          | 1,586       | 19.7          |
| EBIT .....                                     | 1,491                   | 16.2          | 1,451       | 16.0          | 1,259       | 15.6          |
| <b>Fresenius Kabi</b>                          |                         |               |             |               |             |               |
| Sales .....                                    | 3,964                   | 100.0         | 3,672       | 100.0         | 3,086       | 100.0         |
| EBITDA .....                                   | 955                     | 24.1          | 893         | 24.3          | 742         | 24.0          |
| EBIT .....                                     | 803                     | 20.3          | 737         | 20.1          | 607         | 19.7          |
| <b>Fresenius Helios</b>                        |                         |               |             |               |             |               |
| Sales .....                                    | 2,665                   | 100.0         | 2,520       | 100.0         | 2,416       | 100.0         |
| EBITDA .....                                   | 369                     | 13.8          | 318         | 12.6          | 286         | 11.8          |
| EBIT .....                                     | 270                     | 10.1          | 235         | 9.3           | 205         | 8.5           |
| <b>Fresenius Vamed</b>                         |                         |               |             |               |             |               |
| Sales .....                                    | 737                     | 100.0         | 713         | 100.0         | 618         | 100.0         |
| EBITDA .....                                   | 51                      | 6.9           | 49          | 6.9           | 42          | 6.8           |
| EBIT .....                                     | 44                      | 6.0           | 41          | 5.8           | 36          | 5.8           |
| <b>Fresenius Corporate/Other<sup>(1)</sup></b> |                         |               |             |               |             |               |
| Sales .....                                    | (36)                    | 100.0         | (24)        | 100.0         | (20)        | 100.0         |
| EBITDA .....                                   | (29)                    | —             | (33)        | —             | (40)        | —             |
| EBIT .....                                     | (45)                    | —             | (46)        | —             | (53)        | —             |
| <b>Fresenius Group</b>                         |                         |               |             |               |             |               |
| Sales .....                                    | 16,522                  | 100.0         | 15,972      | 100.0         | 14,164      | 100.0         |
| EBITDA .....                                   | 3,237                   | 19.6          | 3,057       | 19.1          | 2,616       | 18.5          |
| EBIT .....                                     | 2,563                   | 15.5          | 2,418       | 15.1          | 2,054       | 14.5          |

(1) EBIT and EBITDA margins are not shown for segments in periods in which EBIT and EBITDA are negative for that segment.

For additional information on the financial performance of our segments, see Note 33 to our consolidated financial statements for the financial year ended December 31, 2011, included elsewhere in this prospectus/offering memorandum.

## SALES BY GEOGRAPHICAL REGION

We operate in five major geographical regions: North America, Europe, Asia-Pacific, Latin America and Africa. The following tables set forth our sales by region for the periods indicated, the period-to-period changes in our sales, as well as the contribution of organic growth, growth from acquisitions net of divestitures and currency translation effects on these changes:

|                              | Year ended<br>December 31, |               | Change    | Organic  | Currency               | Acquisitions/<br>divestitures | Percentage<br>of total<br>sales in<br>2011 |
|------------------------------|----------------------------|---------------|-----------|----------|------------------------|-------------------------------|--------------------------------------------|
|                              | 2011                       | 2010          | 2011/2010 | growth   | translation<br>effects | (%)                           | (%)                                        |
|                              | (million €)                |               | (%)       | (%)      | (%)                    | (%)                           | (%)                                        |
| Europe . . . . .             | 6,919                      | 6,515         | 6         | 3        | 0                      | 3                             | 42                                         |
| North America . . . . .      | 6,762                      | 7,020         | (4)       | 1        | (5)                    | 0                             | 41                                         |
| Asia-Pacific . . . . .       | 1,582                      | 1,307         | 21        | 16       | 0                      | 5                             | 10                                         |
| Latin America . . . . .      | 899                        | 814           | 10        | 13       | (4)                    | 1                             | 5                                          |
| Africa . . . . .             | 360                        | 316           | 14        | 16       | (2)                    | 0                             | 2                                          |
| <b>Total Sales . . . . .</b> | <b>16,522</b>              | <b>15,972</b> | <b>3</b>  | <b>4</b> | <b>(3)</b>             | <b>2</b>                      | <b>100</b>                                 |

|                              | Year ended<br>December 31, |               | Change    | Organic  | Currency               | Acquisitions/<br>divestitures | Percentage<br>of total<br>sales in<br>2010 |
|------------------------------|----------------------------|---------------|-----------|----------|------------------------|-------------------------------|--------------------------------------------|
|                              | 2010                       | 2009          | 2010/2009 | growth   | translation<br>effects | (%)                           | (%)                                        |
|                              | (million €)                |               | (%)       | (%)      | (%)                    | (%)                           | (%)                                        |
| Europe . . . . .             | 6,515                      | 6,045         | 8         | 6        | 1                      | 1                             | 41                                         |
| North America . . . . .      | 7,020                      | 6,113         | 15        | 8        | 6                      | 1                             | 44                                         |
| Asia-Pacific . . . . .       | 1,307                      | 1,088         | 20        | 7        | 10                     | 3                             | 8                                          |
| Latin America . . . . .      | 814                        | 641           | 27        | 11       | 13                     | 3                             | 5                                          |
| Africa . . . . .             | 316                        | 277           | 14        | 6        | 8                      | 0                             | 2                                          |
| <b>Total Sales . . . . .</b> | <b>15,972</b>              | <b>14,164</b> | <b>13</b> | <b>7</b> | <b>5</b>               | <b>1</b>                      | <b>100</b>                                 |

For further information concerning the individual contributions of these geographic regions to our financial results, see the table entitled "Segment Reporting by Region" in the financial statements included in this prospectus/offering memorandum.

## RESULTS OF OPERATIONS

The following table summarizes our financial performance and certain operating results for the periods indicated, both in absolute terms and as a percentage of sales:

|                                                                                             | Year ended December 31, |              |               |              |               |              |
|---------------------------------------------------------------------------------------------|-------------------------|--------------|---------------|--------------|---------------|--------------|
|                                                                                             | 2011                    |              | 2010          |              | 2009          |              |
|                                                                                             | (million €)             | (% of sales) | (million €)   | (% of sales) | (million €)   | (% of sales) |
| <b>Sales</b> .....                                                                          | <b>16,522</b>           | <b>100.0</b> | <b>15,972</b> | <b>100.0</b> | <b>14,164</b> | <b>100.0</b> |
| Cost of sales .....                                                                         | (10,883)                | (65.9)       | (10,646)      | (66.7)       | (9,528)       | (67.3)       |
| Gross profit .....                                                                          | 5,639                   | 34.1         | 5,326         | 33.3         | 4,636         | 32.7         |
| Selling, general and administrative expenses .....                                          | (2,809)                 | (17.0)       | (2,664)       | (16.7)       | (2,342)       | (16.5)       |
| Research and development expenses ..                                                        | (267)                   | (1.6)        | (244)         | (1.5)        | (240)         | (1.7)        |
| Operating income (EBIT) .....                                                               | 2,563                   | 15.5         | 2,418         | 15.1         | 2,054         | 14.5         |
| Net interest expense .....                                                                  | (531)                   | (3.2)        | (566)         | (3.5)        | (580)         | (4.1)        |
| Other financial result <sup>(1)</sup> .....                                                 | (100)                   | (0.6)        | (66)          | (0.4)        | (31)          | (0.2)        |
| <b>Earnings before income taxes and minority interests</b> .....                            | <b>1,932</b>            | <b>11.7</b>  | <b>1,786</b>  | <b>11.2</b>  | <b>1,443</b>  | <b>10.2</b>  |
| Income taxes .....                                                                          | (604)                   | (3.7)        | (581)         | (3.6)        | (452)         | (3.2)        |
| Noncontrolling interest .....                                                               | (638)                   | (3.9)        | (583)         | (3.7)        | (497)         | (3.5)        |
| <b>Net income attributable to Fresenius SE &amp; Co. KGaA</b> .....                         | <b>690</b>              | <b>4.2</b>   | <b>622</b>    | <b>3.9</b>   | <b>494</b>    | <b>3.5</b>   |
| <b>Net income attributable to Fresenius SE &amp; Co. KGaA, adjusted<sup>(2)</sup></b> ..... | <b>770</b>              | <b>4.7</b>   | <b>660</b>    | <b>4.1</b>   | <b>514</b>    | <b>3.6</b>   |

(1) Other financial result includes effects of mark-to-market accounting of the MEB and CVR. Both are non-cash items. See "Selected Consolidated Financial Information — U.S. GAAP — Selected Consolidated Financial Data — Selected Consolidated Statement of Income Data".

(2) 2011, 2010 and 2009 adjusted for the effects of the mark-to-market accounting of the MEB and the CVR. Both are non-cash items. See "Selected Consolidated Financial Information — U.S. GAAP — Selected Consolidated Financial Data — Selected Consolidated Statement of Income Data".

### Year Ended December 31, 2011, compared with Year Ended December 31, 2010

#### Sales

Our total sales increased 3% to €16,522 million in 2011 from €15,972 million in 2010. The 3% increase represents 4% organic growth and 2% growth from acquisitions, offset by 3% for currency translation effects. The average 5% weakening of the U.S. dollar against the euro in 2011 compared with 2010 had a significant negative impact on our sales, since a large portion of our business is generated in North America.

- Fresenius Medical Care's sales increased 1% to €9,192 million in 2011 from €9,091 million in 2010 and, as a percentage of Fresenius Group total sales, decreased slightly from 57% to 56%. The 1% increase in sales represents 2% organic growth combined with 3% growth from acquisitions, offset by 4% for currency translation effects. In U.S. dollar terms, sales increased 6% to US\$12,795 million in 2011 from US\$12,053 million in 2010.

At year-end 2011, Fresenius Medical Care owned, operated or managed 2,898 clinics compared with 2,757 clinics at year-end 2010. During 2011, it acquired 119 clinics, opened 64 new clinics and sold or consolidated 29 clinics. Fresenius Medical Care treated 233,156 patients at December 31, 2011 (234,516 patients including 21 clinics in the United States managed by Fresenius Medical Care but not consolidated), an increase of 9% from 214,648 patients at December 31, 2010. In 2011, 34.39 million treatments were provided, an increase of 9% from 31.67 million treatments in 2010.



The following table sets forth information regarding Fresenius Medical Care's sales ("FMC Sales") derived from dialysis care and from dialysis products in its North America segment and in its International segment (markets outside of North America) in 2011 and 2010:

|                                  | Dialysis care sales     |              |                     | Dialysis product sales  |              |                     |
|----------------------------------|-------------------------|--------------|---------------------|-------------------------|--------------|---------------------|
|                                  | Year ended December 31, |              | Change<br>2011/2010 | Year ended December 31, |              | Change<br>2011/2010 |
|                                  | 2011                    | 2010         |                     | 2011                    | 2010         |                     |
|                                  | (million US\$)          |              | (%)                 | (million US\$)          |              | (%)                 |
| North America sales . . . . .    | 7,337                   | 7,303        | 0                   | 813                     | 827          | (2)                 |
| International sales . . . . .    | 2,170                   | 1,767        | 23                  | 2,458                   | 2,156        | 14                  |
| <b>Total FMC Sales . . . . .</b> | <b>9,507</b>            | <b>9,070</b> | <b>5</b>            | <b>3,271</b>            | <b>2,983</b> | <b>10</b>           |

Accounting for 64% of sales, North America remained Fresenius Medical Care's largest business region. 2011 sales of US\$8,150 million were slightly higher compared with sales in North America in 2010 of US\$8,130 million. Dialysis services was by far the largest contributor to sales, with a share of 90%. Sales in dialysis services in 2011 were US\$7,337 million, compared with US\$7,303 million in 2010. In 2011, the average revenue per treatment in the United States decreased to US\$348, compared with US\$356 in 2010. This decrease was primarily the result of the introduction of the new bundled reimbursement system for dialysis treatments. Dialysis product sales declined by 2% to US\$813 million from US\$827 million in 2010, since increased sales of hemodialysis products did not entirely offset lower pricing of renal drugs.

In 2011, the International segment comprising the business regions Europe/Middle East/Africa, Asia-Pacific and Latin America achieved excellent results. Approximately 36% of Fresenius Medical Care's total sales were derived from these regions. Sales in the International segment increased by 18% to US\$4,628 million in 2011, compared with 2010 sales of US\$3,923 million. This 18% increase represents 4% growth from currency translation effects due to the strengthening of the euro and certain other currencies against the U.S. dollar, 7% organic growth, and 7% growth from acquisitions net of divestitures. Sales from dialysis services increased by 23% to US\$2,170 million, compared with US\$1,767 million in 2010. This increase is the result of an increase in contributions from acquisitions of 11%, and organic growth of 8%. Currency translation had a positive effect of 4%. Sales from dialysis products increased by 14% to US\$2,458 million in 2011, compared with US\$2,156 million in 2010. This growth was mainly driven by higher sales of peritoneal dialysis products, dialyzers, dialysis machines and acute care products.

- Fresenius Kabi's sales increased 8% to €3,964 million in 2011 from €3,672 million in 2010 and, as a percentage of our total sales increased to 24% from 23% in 2010. The 8% increase in sales represents 9% organic growth. Sales growth in emerging markets was again very strong. New product launches and continuing drug shortages in the injectable drug market had a positive effect in the United States. Acquisitions had no significant effect on sales growth in 2011. Currency translation had a negative effect of 1%, which was mainly attributable to the U.S. dollar decreasing in value against the euro.

Fresenius Kabi's sales were 7% higher in Europe, compared with 2010. In North America sales growth was 3%. Organic sales growth was 7%. Fresenius Kabi achieved a growth rate of 14% in Asia-Pacific/Latin America/Africa.

Fresenius Kabi's sales growth in 2011 was driven by all four product businesses: infusion therapy, IV drugs, clinical nutrition and medical devices/transfusion technology. Infusion therapy's sales increased 6% to €895 million in 2011 from €843 million 2010. IV drugs sales increased 8% to €1,438 million in 2011 from €1,328 million in 2010. Clinical nutrition's sales increased 9% to €1,154 million in 2011 from €1,062 million in 2010. In 2011, infusion therapy, IV drugs and clinical nutrition achieved organic growth rates of 4%, 12% and 9%, respectively. Sales in Fresenius Kabi's medical devices/transfusion technology product business grew organically by 9% to €477 million in 2011 compared with €439 million in 2010.

- Sales by Fresenius Helios increased 6% to €2,665 million in 2011 compared with €2,520 million in 2010. Organic sales growth accounted for 4% and acquisitions accounted for 2% of this growth. The sales growth of 6% was largely attributable to a 4% increase in inpatient admissions in acute care clinics to 632,778 in 2011 compared with 606,880 in 2010.
- Fresenius Vamed's sales increased 3% to €737 million in 2011 from €713 million in 2010. Prior-year sales included a substantial medical supply contract with the Ukraine. In addition, sales in 2011 were impacted by the unrest in the Middle East/North Africa region. Sales in Fresenius Vamed's project business slightly increased by 1% to €494 million in 2011 from €487 million in 2010. Order intake in the project business decreased 3% during 2011 to €604 million from €625 million in 2010. Order backlog in the project business of Fresenius Vamed increased by 5% to €845 million at year-end 2011 compared with €801 million at year-end 2010. Fresenius Vamed's service business grew by 8% to €243 million in 2011 from €226 million in 2010.

### ***Cost of Sales***

Cost of sales consists primarily of material costs, labor costs and depreciation. Cost of sales increased 2% to €10,883 million in 2011 from €10,646 million in 2010 and, as a percentage of our total sales, decreased to 65.9% in 2011 from 66.7% in 2010. At constant currency, cost of sales increased to €11,131 million in 2011 from €10,646 million in 2010, and as a percentage of our total sales, decreased to 65.9% in 2011 from 66.7% in 2010.

### ***Gross Profit***

Our gross profit increased 6% to €5,639 million in 2011 from €5,326 million in 2010. At constant currency, gross profit increased 8%. We improved our gross margin to 34.1% in 2011 from 33.3% in 2010.

### ***Selling, General and Administrative Expenses***

Selling, general and administrative expenses increased 5% to €2,809 million in 2011 from €2,664 million in 2010 and, as a percentage of sales, increased to 17.0% from 16.7%.

### ***Research and Development Expenses***

Research and development expenses were €267 million in 2011, compared with €244 million in 2010. We therefore invested approximately 4% of our product sales in research and development, which was also the case in 2010. Fresenius Medical Care spent €80 million on research and development in 2011, compared with €73 million in 2010, primarily in the area of hemodialysis and home therapies, for example peritoneal dialysis. Fresenius Kabi spent €162 million on research and development in 2011, compared with €143 million in 2010, primarily on the development of new products and product enhancements in its core areas of clinical nutrition, infusion therapy, IV drugs and medical devices. Neither Fresenius Helios nor Fresenius Vamed had significant research and development expenses in 2011 or 2010. In the segment Corporate/Other, €25 million was spent on research and development at Fresenius Biotech, mostly on the clinical development of trifunctional antibodies. This was below the €28 million spent in 2010.

### ***Operating Income (EBIT)***

Group EBIT increased 6% to €2,563 million in 2011 from €2,418 million in 2010. EBIT margin increased to 15.5% in 2011 from 15.1% in 2010. At constant exchange rates, Group EBIT increased 9% in 2011, from €2,418 million to €2,624 million, and Group EBIT margin increased from 15.1% to 15.5%.

- Fresenius Medical Care's EBIT increased 3% to €1,491 million in 2011 from €1,451 million in 2010. Its EBIT margin rose to 16.2% compared with 16.0% in 2010. In U.S. dollar terms,

Fresenius Medical Care's EBIT increased 8% to US\$2,075 million in 2011 from US\$1,924 million in 2010.

In North America, EBIT increased 4% to US\$1,435 million in 2011 from US\$1,386 million in 2010, and EBIT margin increased to 17.6% in 2011 from 17.0% in 2010, mainly due to margin improvement in the United States. This margin improvement was primarily driven by the favorable development in pharmaceutical costs. Currency translation effects, particularly due to the decline in the U.S. dollar against other currencies, including the euro, had a negative impact on EBIT of 5%.

In Fresenius Medical Care's International segment, EBIT increased 19% to US\$807 million in 2011 from US\$678 million in 2010, while EBIT margin improved to 17.4% in 2011 from 17.3% in 2010. This development is mainly due to strong growth in the Asia-Pacific region.

- Fresenius Kabi's EBIT increased 9% to €803 million in 2011 from €737 million in 2010. EBIT margin increased to 20.3% from 20.1%. All regions contributed to this EBIT growth.

Fresenius Kabi's EBIT in Europe increased to €385 million in 2011 compared with €359 million in 2010. Its EBIT margin in Europe remained at its 2010 level of 21.1%.

Fresenius Kabi's EBIT in North America increased to €368 million in 2011 compared with €335 million in 2010. Its EBIT margin in North America improved to 36.7% compared with 34.4% in 2010.

Fresenius Kabi's EBIT in Asia-Pacific/Latin America/Africa increased to €232 million in 2011 compared with €183 million in 2010. Its EBIT margin in Asia-Pacific/Latin America/Africa increased to 20.4% compared with 18.4% in 2010.

- Fresenius Helios achieved an excellent EBIT performance with an EBIT increase of 15%. In 2011, this business segment reported EBIT of €270 million in 2011 compared with €235 million in 2010 thanks to the very good business progress at the established clinics and the continued targeted progress at the clinics covered by the restructuring plan. The latter are clinics which have been in the Fresenius Helios portfolio for less than five years. The EBIT margin improved to 10.1% compared with 9.3% in 2010.
- The EBIT of Fresenius Vamed increased to €44 million in 2011 compared with €41 million in 2010. Its EBIT margin improved to 6.0% compared with 5.8% in 2010.

### ***Net Interest Expense***

Net interest expense decreased 6% to €531 million in 2011 from €566 million in 2010. Aside from lower average interest rates for liabilities, the currency effects had a positive effect due to the weakness of the U.S. dollar against the euro.

Not included in net interest expense was the other financial result, consisting of the valuation changes of the fair redemption value of the MEB and the CVR. Both are non-cash items. As the CVR were delisted in the first quarter of 2011, the effect relates solely to the first quarter of 2011. The MEB came to maturity on August 14, 2011, therefore no further effect will occur after the third quarter of 2011. Upon having matured, the MEB had to be converted into 15,722,644 common shares of FMC AG & Co. KGaA. See *"Selected Consolidated Financial Information — U.S. GAAP — Selected Consolidated Financial Data — Selected Consolidated Statement of Income Data"*.

### ***Income Taxes***

Income taxes increased 4% to €604 million in 2011 from €581 million in 2010. The effective income tax rate for 2011 (as a percentage of operating income) decreased to 31.3% compared with 32.5% in 2010.

Excluding effects of mark-to-market accounting of the MEB and the CVR, income taxes increased to €624 million in 2011 from €609 million in 2010. The adjusted group tax rate in the year 2011 decreased to 30.7% from 32.9% in 2010.

### Noncontrolling Interests

Profits allocated to noncontrolling interests increased 9% to €638 million in 2011 from €583 million in 2010. Of this, 92% was attributable to the noncontrolling interest in Fresenius Medical Care. In constant currency, profits allocated to noncontrolling interests increased by 13% in 2011. Profits allocated to noncontrolling interests were not affected by mark-to-market accounting of the MEB and the CVR. See “Selected Consolidated Financial Information — U.S. GAAP — Selected Consolidated Financial Data — Selected Consolidated Statement of Income Data”.

### Net Income

Net income increased 11% to €690 million in 2011 from €622 million in 2010. Net income increased in constant currency by 12% in 2011.

Excluding effects of mark-to-market accounting of the MEB and the CVR, net income increased 17% to €770 million in 2011 compared to €660 million in 2010. At constant exchange rates, net income increased by 18% to €779 million.

### Year Ended December 31, 2010, compared with Year Ended December 31, 2009

#### Sales

Our total sales increased 13% to €15,972 million in 2010 from €14,164 million in 2009. The 13% increase represents 7% organic growth, 1% growth from acquisitions, and 5% positive currency translation effects. The average 5% strengthening of the U.S. dollar against the euro in 2010 had a significant positive impact on our sales, since a large portion of our business is generated in North America.

- Fresenius Medical Care’s sales increased 13% to €9,091 million in 2010 from €8,064 million in 2009 and, as a percentage of our total sales, remained constant at 57%. The 13% increase in sales represents 6% organic growth, 1% growth from acquisitions, and 6% positive currency translation effects. In U.S. dollar terms, sales increased 7% to US\$12,053 million in 2010 from US\$11,247 million in 2009.

At year-end 2010, Fresenius Medical Care owned, operated or managed 2,757 clinics compared with 2,553 clinics at year-end 2009. During 2010, it acquired 168 clinics, opened 90 new clinics and sold or consolidated 54 clinics. Fresenius Medical Care treated 214,648 patients at December 31, 2010 (216,286 patients including 30 clinics in the United States managed by Fresenius Medical Care but not consolidated), an increase of 10% from 195,651 patients at December 31, 2009. In 2010, 31.67 million treatments were provided, an increase of 8% from 29.43 million treatments in 2009.

The following table sets forth information regarding Fresenius Medical Care’s sales derived from dialysis care and from dialysis products in its North America segment and in its International segment (markets outside of North America) in 2010 and 2009:

|                                  | Dialysis care sales        |                        |                            | Dialysis product sales     |                        |                            |
|----------------------------------|----------------------------|------------------------|----------------------------|----------------------------|------------------------|----------------------------|
|                                  | Year ended<br>December 31, |                        | Change<br>2010/2009<br>(%) | Year ended<br>December 31, |                        | Change<br>2010/2009<br>(%) |
|                                  | 2010<br>(million US\$)     | 2009<br>(million US\$) |                            | 2010<br>(million US\$)     | 2009<br>(million US\$) |                            |
| North America . . . . .          | 7,303                      | 6,794                  | 7                          | 827                        | 818                    | 1                          |
| International . . . . .          | 1,767                      | 1,556                  | 14                         | 2,156                      | 2,079                  | 4                          |
| <b>Total FMC Sales . . . . .</b> | <b>9,070</b>               | <b>8,350</b>           | <b>9</b>                   | <b>2,983</b>               | <b>2,897</b>           | <b>3</b>                   |

Fresenius Medical Care’s sales in North America increased 7% to US\$8,130 million in 2010 from US\$7,612 million in 2009, on the strength of a 7% increase in dialysis care sales supplemented by a 1% increase in product sales. The 7% increase in dialysis care sales reflects 6% organic growth and 1% growth from acquisitions. The number of treatments in North America increased 5% to 20.85 million in 2010 from 19.87 million in 2009. Average

revenue per dialysis treatment in North America increased to US\$356 from US\$347, mainly due to an increase in reimbursement rates, especially for privately insured patients.

Sales in Fresenius Medical Care's International segment increased 8% to US\$3,923 million in 2010 from US\$3,635 million in 2009. This 8% increase represents 5% organic growth, and 3% growth from acquisitions net of divestitures. The number of treatments in the International segment increased 13% to 10.82 million in 2010 from 9.56 million in 2009. Average revenue per dialysis treatment in the International segment for the year ended December 31, 2010 remained constant at US\$163 in comparison with the same period of 2009.

- Fresenius Kabi's sales increased 19% to €3,672 million in 2010 from €3,086 million in 2009 and, as a percentage of our total sales, increased to 23% from 22%. The 19% increase in sales represents 12% organic growth, 1% growth from acquisitions and 6% positive currency translation effects.

All regions contributed to Fresenius Kabi's 12% organic growth in 2010, which was notably driven by strong growth in North America, where new product launches and strong demand due to supply constraints at competitors had a positive effect. The 6% positive currency translation effect was mainly attributable to the strengthening of the currencies in North America, China, Brazil and the United Kingdom against the euro.

Fresenius Kabi's sales growth was driven by growth in the four core product businesses infusion therapy, IV drugs, clinical nutrition and medical devices/transfusion technology. Sales in the infusion therapy product business grew by 18% to €843 million in 2010, compared with €712 million in 2009. In the IV drugs business, sales growth was 29%, with sales of €1,328 million in 2010 compared with €1,027 million in 2009. The clinical nutrition product business experienced growth of 15%, with sales of €1,062 million in 2010 compared with €924 million in 2009. Sales in Fresenius Kabi's medical devices/transfusion technology product business grew by 4% to €439 million in 2010 compared with €423 million in 2009. In 2010, infusion therapy, IV drugs and clinical nutrition achieved organic growth rates of 6%, 23% and 9%, respectively.

- Sales by Fresenius Helios increased 4% to €2,520 million in 2010 compared with €2,416 million in 2009. The 4% increase represents 5% organic sales growth, offset by 1% for divestitures. The sales growth of 4% was mainly attributable to a 4% increase in inpatient admissions in acute care clinics to 606,880 in 2010 compared with 586,123 in 2009.
- Fresenius Vamed's sales increased 15% to €713 million in 2010 from €618 million in 2009. Organic growth was 15%. Sales in Fresenius Vamed's project business increased by 16% to €487 million in 2010 from €420 million in 2009. Order intake in the project business increased 16% during 2010 to €625 million from €539 million in 2009. Order backlog in the project business of Fresenius Vamed increased 18% to €801 million at year-end 2010, compared with €679 million at year-end 2009. Sales in Fresenius Vamed's services business increased by 14% to €226 million in 2010 from €198 million in 2009.

### **Cost of Sales**

Cost of sales increased 12% to €10,646 million in 2010 from €9,528 million in 2009 and, as a percentage of our total sales, decreased slightly to 66.7% in 2010 from 67.3% in 2009. In constant currency, cost of sales increased by 7%.

### **Gross Profit**

Our gross profit increased 15% to €5,326 million in 2010 from €4,636 million in 2009. At constant exchange rates, gross profit increased 10% during 2010. Our gross profit margin improved slightly to 33.3% in 2010 from 32.7% in 2009.

### ***Selling, General and Administrative Expenses***

Selling, general and administrative expenses increased 14% to €2,664 million in 2010 from €2,342 million in 2009 and, as a percentage of sales, increased slightly to 16.7% from 16.5%.

### ***Research and Development Expenses***

Research and development expenses increased 2% to €244 million in 2010 from €240 million in 2009. Fresenius Medical Care spent €73 million on research and development in 2010, compared with €67 million in 2009, primarily on programs in the area of hemodialysis equipment and extracorporeal critical care therapies. Fresenius Kabi spent €143 million on research and development in 2010, compared with €129 million in 2009, primarily on the development of new products and product enhancements in its core areas of clinical nutrition, infusion therapy and transfusion technology. Neither Fresenius Helios nor Fresenius Vamed had significant research and development expenses in 2010 or 2009. In 2010, the business segment Corporate/Other spent €28 million on research and development at Fresenius Biotech, mostly on the clinical development of trifunctional antibodies. This expenditure was below the €44 million spent in 2009.

### ***Operating Income (EBIT)***

Group EBIT increased 18% to €2,418 million in 2010 from €2,054 million in 2009. EBIT margin increased to 15.1% from 14.5%. At constant exchange rates, Group EBIT increased 13% in 2010.

- Fresenius Medical Care's EBIT increased 15% to €1,451 million in 2010 from €1,259 million in 2009. Its EBIT margin increased to 16.0% compared with 15.6% in 2009. The improvement in EBIT was driven by the performance of the dialysis care business. Currency translation effects, particularly due to the decline in the euro against other currencies, including the U.S. dollar, had a positive impact on EBIT of 5%.

In U.S. dollar terms, Fresenius Medical Care's EBIT increased 10% to US\$1,924 million in 2010 from US\$1,756 million in 2009. EBIT margin in U.S. dollar terms rose to 16.0% for 2010 from 15.6% for 2009.

Fresenius Medical Care's EBIT in North America increased 11% to US\$1,386 million in 2010 from US\$1,250 million in 2009. EBIT margin in North America increased to 17.0% in 2010 from 16.4% in 2009. The increase in EBIT in North America was mainly due to higher average revenues per treatment and scale effects, as well as a favorable cost structure for renal pharmaceuticals.

The EBIT of Fresenius Medical Care's International segment increased 6% to US\$678 million in 2010 from US\$637 million in 2009, primarily as a result of revenue growth and favorable currency effects. EBIT margin in the International segment decreased slightly to 17.3% in 2010 from 17.5% in 2009 primarily as a result of lower gross profit margins for newly acquired dialysis clinics, and the impact of high inflation in Venezuela.

- Fresenius Kabi's EBIT increased 21% to €737 million in 2010 from €607 million in 2009. Its EBIT margin increased slightly to 20.1% from 19.7% in 2009. These increases were driven by a good operating performance in all geographical regions, and excellent progress in North America.

Fresenius Kabi's EBIT in Europe increased 7% to €359 million in 2010 from €335 million in 2009. Its EBIT margin in Europe slightly decreased to 21.1% in 2010 from 21.4% in 2009.

Outside Europe, Fresenius Kabi's EBIT increased 41% to €518 million in 2010 from €367 million in 2009. Its EBIT margin outside Europe improved to 26.3% in 2010 from 24.1% in 2009.



- Fresenius Helios's EBIT increased 15% to €235 million for 2010 compared with €205 million for 2009. Its EBIT margin improved to 9.3% in 2010, up from 8.5% in 2009. This increase was primarily due to good margin developments in the established clinics.
- Fresenius Vamed's EBIT increased 14% to €41 million in 2010, compared with €36 million in 2009, and its EBIT margin remained stable at 5.8%.

### **Net Interest Expense**

Net interest expense decreased 2% to €566 million in 2010 from €580 million in 2009. In constant currency, net interest expense decreased 6%. Net interest expense for 2010 included interest expense of €596 million and interest income of €30 million. Interest expenses resulted from our Group's financial liabilities.

Not included in net interest expense was other financial result, which consists of a net expense of €66 million, comprising an expense of €98 million in connection with recognizing the fair redemption value of the MEB, offset by a gain of €32 million in connection with recognizing the fair redemption value of the CVR. Both were non-cash items.

For more information, see "*— Liquidity and Capital Resources — Historical Debt*", "*— Liquidity and Capital Resources — Available Sources of Liquidity*" and "*— Liquidity and Capital Resources — Summary of Commitments and Contingent Liabilities*".

### **Income Taxes**

Income taxes increased 29% to €581 million in 2010 from €452 million in 2009. The effective income tax rate for 2010 increased slightly to 32.5% compared with 31.3% in 2009.

Excluding the effects of mark-to-market accounting of the MEB and the CVR, the effective tax rate in the year 2010 rose to 32.9% from 31.4% in 2009.

### **Noncontrolling Interests**

Profits allocated to noncontrolling interests increased 17% to €583 million in 2010 from €497 million in 2009, mainly on the good earnings performance of Fresenius Medical Care. Of the profits allocated to noncontrolling interests in 2010, 93% were attributable to the other shareholders of Fresenius Medical Care. In constant currency, profits allocated to noncontrolling interests increased by 12% in 2010. Profits allocated to noncontrolling interests were not affected by mark-to-market accounting of the MEB and the CVR. See "*Selected Consolidated Financial Information — U.S. GAAP — Selected Consolidated Financial Data — Selected Consolidated Statement of Income Data*".

### **Net Income**

Net income increased 26% to €622 million in 2010 from €494 million in 2009. Net income growth in constant currency was 21% in 2010, from €494 million in 2009 to €595 million in 2010.

Excluding effects of mark-to-market accounting of the MEB and the CVR, net income increased 28% to €660 million in 2010 compared to €514 million in 2009. At constant exchange rates, net income increased by 23%, from €514 million in 2009 to €634 million in 2010.

## **LIQUIDITY AND CAPITAL RESOURCES**

### **Overview**

We have historically financed our capital and working capital requirements through a combination of cash flows from our segments' operating activities, short- and long-term bank borrowings and the issuance of bonds, trust preferred securities and commercial paper.

Cash flows from our segments' operating activities are impacted by their operating results and the development of their working capital, which consists principally of receivables and inventories,



less payables, accruals and other liabilities. The level of receivables is significantly dependent on reimbursement rates. As discussed under “— *Quantitative and Qualitative Disclosures About Market Risk — Reimbursement Rates*” below, the majority of our consolidated sales are generated from providing dialysis treatments, a major portion of which are reimbursed by either public healthcare organizations or private insurers.

## Historical Consolidated Cash Flow

The following table summarizes our cash flow activity for the periods indicated:

|                                                                   | Year ended December 31, |            |            |
|-------------------------------------------------------------------|-------------------------|------------|------------|
|                                                                   | 2011                    | 2010       | 2009       |
|                                                                   | (million €)             |            |            |
| Net cash provided by operating activities . . . . .               | 1,689                   | 1,911      | 1,553      |
| Net cash used in investing activities . . . . .                   | (2,072)                 | (1,237)    | (889)      |
| Net cash provided by (used in) financing activities . . . . .     | 242                     | (352)      | (611)      |
| <b>Net increase in cash and cash equivalents . . . . .</b>        | <b>(134)</b>            | <b>349</b> | <b>50</b>  |
| <b>Cash and cash equivalents at beginning of period . . . . .</b> | <b>769</b>              | <b>420</b> | <b>370</b> |
| <b>Cash and cash equivalents at period-end . . . . .</b>          | <b>635</b>              | <b>769</b> | <b>420</b> |

The discussion of our cash flows below is on a consolidated basis. We receive the cash flows generated by Fresenius Medical Care only to the extent they are distributed to us as dividends in proportion to our interest of 30.34% in the total subscribed capital of FMC AG & Co. KGaA as at December 31, 2011, as payments under existing agreements, such as rental and service agreements, or as reimbursement of the general partner’s expenses. The Company received dividend distributions from FMC AG & Co. KGaA in the amount of €69 million in 2011, €65 million in 2010 and €62 million in 2009. The majority of our subsidiaries place most of their excess liquidity in the form of short-term intercompany deposits or in cash pooling arrangements with Fresenius SE & Co. KGaA.

## Year Ended December 31, 2011, compared with Year Ended December 31, 2010

*Operating Activities.* Our operating cash flow was €1,689 million in 2011, compared with €1,911 million in 2010. The primary movements in our operating cash flow in 2011, compared with 2010 were the following:

- our net income for the year was €68 million higher in 2011 than in 2010. Excluding effects of the mark-to-market accounting of the MEB and the CVR related to the acquisition of APP Pharmaceuticals, our net income was €110 million higher in 2011 than in 2010;
- noncontrolling interest was €55 million higher in 2011 than in 2010;
- deferred taxes were €81 million higher at December 31, 2011 than at December 31, 2010;
- loss on sale of fixed assets was €3 million in 2011;
- net working capital was €391 million higher at December 31, 2011 than at December 31, 2010; net working capital consists of trade accounts receivable, net; inventories; other current and non-current assets; accounts receivable from/payable to related parties; trade accounts payable, accrued expenses and other short-term and long-term liabilities; and accruals for income taxes:
  - trade accounts receivable, inventories, prepaid expenses and other current and non-current assets, and accounts receivable from related parties were €577 million higher at December 31, 2011 than at December 31, 2010. This increase reflects a €264 million increase in inventories, a €222 million increase in net trade accounts receivable primarily due to business expansion, a €114 million increase in prepaid expenses and other current and non-current assets, and a €23 million decrease in accounts receivable from/payable to related parties. Scope of inventories increased to 58 days at December 31, 2011, from

48 days at December 31, 2010. This increase was mainly due to the provisioning of inventories due to an increase in market demand, as well as the pre-financing of projects at Fresenius Vamed. Those projects will be finalized in 2012. Average number of days of sales outstanding was 72 days at December 31, 2011, compared with 68 days at December 31, 2010. Through strict accounts receivable management, we were able to keep average days sales outstanding roughly stable despite the continued difficult financial operating environment. The increase in the average days sales outstanding is mostly related to the expansion of our existing business;

- trade accounts payable, accruals and other short and long-term liabilities were €165 million higher at December 31, 2011 than at December 31, 2010; and
- accruals for income taxes were €21 million higher at December 31, 2011 than at December 31, 2010.

*Investing Activities.* Net cash used in investing activities increased to €2,072 million in 2011 from €1,237 million in 2010. We made acquisitions (including acquisitions financed with cash, equity and the assumption of debt) totalling €1,612 million in 2011 compared to €644 million in 2010. We used €1,314 million for acquisitions in 2011 (net of cash acquired and proceeds from investments and divestitures and including net purchases of intangible assets) compared with €504 million in 2010. Net cash used for capital expenditures on property, plant and equipment was €758 million in 2011, compared with €733 million in 2010. For more information about our acquisitions and capital expenditures, see “— *Acquisitions and Capital Expenditures*”.

*Financing Activities.* Our financing activities provided net cash in the amount of €242 million in 2011, whereas in 2010 €352 million were used. The cash inflow from financing activities (without dividend payments) in 2011 was predominantly characterized by the partial debt financing of acquisitions. Our free cash flow after investing activities and the payment of dividends was negative €748 million in 2011, compared with €345 million in 2010.

For the payment of dividends, we used cash of €365 million in 2011 and €329 million in 2010, of which €140 million and €122 million, respectively, related to dividends paid by Fresenius SE & Co. KGaA. The remainder consisted of dividend payments of €197 million by Fresenius Medical Care to its shareholders, and dividends paid to third parties of €97 million. These payments were offset by the dividend of €69 million which Fresenius SE & Co. KGaA received as a shareholder of Fresenius Medical Care.

Continuity in our dividend policy remains an important priority. On average, we have distributed about half of the percentage growth in Group net income to our shareholders as a percentage dividend increase. Based on our positive earnings forecast, we intend to offer our shareholders an earnings-linked dividend in 2012, as well. Based on our Group’s earnings-linked dividend policy, the general partner and the Supervisory Board of Fresenius SE & Co. KGaA will propose a dividend increase to the Annual General Meeting of the Company. For 2011, a dividend of €0.95 per share is proposed, which represents an increase of about 10% over 2010. Under this proposal, the total dividend distribution will increase by 11% to €155.1 million, compared with €139.7 million in 2010.

Total debt at December 31, 2011 was €9,799 million compared with €8,784 million at December 31, 2010. Short-term borrowings were €2,026 million at December 31, 2011, compared with €1,496 million at December 31, 2010. Long-term borrowings at December 31, 2011 were €7,773 million, compared with €7,288 million at December 31, 2010.

Cash and cash equivalents were €635 million at year-end 2011, compared with €769 million at year-end 2010.

***Year Ended December 31, 2010, compared with Year Ended December 31, 2009***

*Operating Activities.* Our operating cash flow was €1,911 million in 2010, compared with €1,553 million in 2009. The primary movements in our operating cash flow in 2010, compared with 2009 were the following:

- our net income for the year was €128 million higher in 2010 than in 2009; not including effects of the mark-to-market accounting of the MEB and the CVR related to the acquisition of APP Pharmaceuticals, our net income was €146 million higher in 2010 than in 2009;
- noncontrolling interest was €86 million higher in 2010 than in 2009;
- deferred taxes were €11 million higher at December 31, 2010 than at December 31, 2009;
- gain on sale of fixed assets was €1 million in 2010;
- net working capital was €55 million lower at December 31, 2010 than at December 31, 2009; net working capital consists of trade accounts receivable, net; inventories; other current and non-current assets; accounts receivable from/payable to related parties; trade accounts payable, accrued expenses and other short-term and long-term liabilities; and accruals for income taxes:
  - trade accounts receivable, inventories, prepaid expenses and other current and non-current assets, and accounts receivable from related parties were €293 million higher at December 31, 2010 than at December 31, 2009. This increase reflects a €275 million increase in net trade accounts receivable primarily due to business expansion and a slight increase in days sales outstanding, a €81 million increase in inventories, a €57 million decrease in other current and non-current assets, and a decrease of accounts receivable from/payable to related parties of €6 million at year-end 2010 compared to year-end 2009. The scope of our inventories was 48 days at each of December 31, 2010 and December 31, 2009. Average number of days of sales outstanding increased slightly to 67 days at December 31, 2010, compared with 65 days at December 31, 2009. Through strict accounts receivable management, we were able to keep average days sales outstanding roughly stable despite the continued difficult financial operating environment. The increase in average days sales outstanding is mostly related to the expansion of our existing business;
  - trade accounts payable, accruals and other short and long-term liabilities were €346 million higher at December 31, 2010 than at December 31, 2009; and
  - accruals for income taxes were €2 million higher at December 31, 2010 than at December 31, 2009.

*Investing Activities.* Net cash used in investing activities increased to €1,237 million in 2010 from €889 million in 2009 driven by higher acquisition at Fresenius Medical Care. We made acquisitions (including acquisitions financed with cash, equity and the assumption of debt) totalling €644 million in 2010 compared to €260 million in 2009. We used €504 million for acquisitions in 2010 (net of cash acquired and proceeds from investments and divestitures and including net purchases of intangible assets) compared with €227 million in 2009. Net cash used for capital expenditures on property, plant and equipment was €733 million in 2010, compared with €662 million in 2009. For more information about our acquisitions and capital expenditures, see “—Acquisitions and Capital Expenditures”.

*Financing Activities.* Our financing activities used net cash in the amount of €352 million in 2010, compared with €611 million in 2009. The cash used in financing activities was primarily a result of our net repayment of financial liabilities in that year, including repayments of short-term loans of €196 million and long-term debt and capital lease obligations of €1,185 million. These repayments were mostly offset by proceeds from short-term loans of €233 million, proceeds from long-term debt and capital lease obligations of €541 million, proceeds from the issuance of senior notes of €242 million, changes of accounts receivable securitization program of €223 million and

proceeds from the exercise of stock options of €121 million. Our free cash flow after investing activities and the payment of dividends was €345 million in 2010, compared with €389 million in 2009.

For the payment of dividends, we used cash of €329 million in 2010 and €275 million in 2009, of which €122 million and €114 million, respectively, related to dividends paid by Fresenius SE & Co. KGaA. The remainder consisted of dividend payments of €183 million by Fresenius Medical Care to its shareholders, and dividends paid to third parties of €89 million. These payments were offset by the dividend of €65 million which Fresenius SE & Co. KGaA received as a shareholder of Fresenius Medical Care.

Total debt at December 31, 2010 was €8,784 million compared with €8,299 million at December 31, 2009. Short-term financial liabilities were €1,496 million at December 31, 2010, compared with €550 million at December 31, 2009. Long-term financial liabilities (less current position) at December 31, 2010 were €7,288 million compared with €7,749 million at December 31, 2009.

Cash and cash equivalents were €769 million at year-end 2010, compared with €420 million at year-end 2009.

## Acquisitions and Capital Expenditures

### *Year Ended December 31, 2011, compared with Year Ended December 31, 2010*

The following table shows the geographic distribution of our acquisitions expenditures for 2011 and 2010:

|                         | Year ended<br>December 31, |                   |
|-------------------------|----------------------------|-------------------|
|                         | 2011                       | 2010              |
|                         | (million €)                |                   |
| Europe . . . . .        | 924                        | 267               |
| North America . . . . . | 596                        | 277               |
| Asia-Pacific . . . . .  | 75                         | 89                |
| Latin America . . . . . | 17                         | 11                |
| Africa . . . . .        | —                          | —                 |
| <b>Total . . . . .</b>  | <b><u>1,612</u></b>        | <b><u>644</u></b> |

- Fresenius Medical Care made acquisitions totaling €1,429 million in 2011, compared with €596 million in 2010. The acquisitions in 2011 particularly related to the acquisition of the dialysis service business of Euromedic in Europe, the acquisition of a minority share in Renal Advantage, Inc., USA, and the purchase of American Access Care Holdings, LLC (AAC). AAC operates 28 out-patient centers primarily dedicated to serving vascular access needs of dialysis patients.
- Fresenius Kabi made acquisitions totaling €11 million in 2011, compared with €31 million in 2010. There were no major acquisitions at Fresenius Kabi. The largest single project at Fresenius Kabi was the acquisition of a compounding center in Germany.
- Fresenius Helios made acquisitions totaling €45 million in 2011, compared with €13 million in 2010. Expenditures for acquisitions in 2011 related mainly to the acquisition of 51% of the share capital of (and a 100% economic interest in) Katholisches Klinikum Duisburg, a maximum care hospital, as well as two other acute care hospitals in Germany.
- Fresenius Vamed made acquisitions totaling €3 million in 2011, compared with €5 million in 2010. There were no major acquisitions at Fresenius Vamed.

The following table shows the geographic distribution of our gross capital expenditures for 2011 and 2010:

|                         | Year ended<br>December 31, |                   |
|-------------------------|----------------------------|-------------------|
|                         | 2011                       | 2010              |
|                         | (million €)                |                   |
| Europe . . . . .        | 422                        | 400               |
| North America . . . . . | 210                        | 223               |
| Asia-Pacific . . . . .  | 69                         | 73                |
| Latin America . . . . . | 71                         | 52                |
| Africa . . . . .        | 11                         | 10                |
| <b>Total . . . . .</b>  | <b><u>783</u></b>          | <b><u>758</u></b> |

- Fresenius Medical Care's capital expenditures for property, plant and equipment totaled €429 million in 2011, compared with €395 million in 2010. Capital expenditures for property, plant and equipment in 2011 related primarily to the start-up of 64 de novo dialysis clinics, of which 33 were in the United States, and expansion and modernization of existing clinics and expansion and optimization of production facilities and expansion of warehouse capacity, especially for dialysis products in Germany.
- Fresenius Kabi's capital expenditures for property, plant and equipment were €177 million in 2011, compared with €174 million in 2010. Capital expenditures for property, plant and equipment in 2011 related primarily to the expansion and optimization of production facilities and expansion of warehouse capacity primarily in Germany, India, South Africa and in the United States.
- Fresenius Helios's capital expenditures for property, plant and equipment in 2011 related primarily to hospital modernization. Capital expenditures for property, plant and equipment were €157 million in 2011, compared with €166 million in 2010. The largest single project was the HELIOS clinic in Krefeld. The first construction phase for the new building project was completed in July 2011.
- Fresenius Vamed's capital expenditures for property, plant and equipment were €7 million in 2011, compared with €9 million in 2010.

***Year Ended December 31, 2010, compared with Year Ended December 31, 2009***

The following table shows the geographic distribution of our acquisitions expenditures for 2010 and 2009:

|                         | Year ended<br>December 31, |                   |
|-------------------------|----------------------------|-------------------|
|                         | 2010                       | 2009              |
|                         | (million €)                |                   |
| Europe . . . . .        | 267                        | 136               |
| North America . . . . . | 277                        | 98                |
| Asia-Pacific . . . . .  | 89                         | 12                |
| Latin America . . . . . | 11                         | 13                |
| Africa . . . . .        | —                          | 1                 |
| <b>Total . . . . .</b>  | <b><u>644</u></b>          | <b><u>260</u></b> |

- Fresenius Medical Care made acquisitions totaling €596 million in 2010, compared with €138 million in 2009, primarily for the acquisitions of dialysis clinics such as Asia Renal Care Ltd., the second largest provider of dialysis and related services in the Asia-Pacific region (behind Fresenius Medical Care), the formation of a new renal pharmaceutical

company with Galenica Ltd., the acquisition of licenses and the acquisition of Gambro's peritoneal dialysis business outside the United States.

- Fresenius Kabi made acquisitions totaling €31 million in 2010, compared with €32 million in 2009, mainly for the purchase of two compounding centers in Germany.
- Fresenius Helios made acquisitions totaling €13 million in 2010, compared with €79 million in 2009. Expenditures for acquisitions in 2010 related mainly to the purchase of the Kreiskrankenhaus St. Marienberg in Helmstedt, Germany and medical centers.
- Fresenius Vamed made acquisitions totaling €5 million in 2010, compared with €2 million in 2009.

The following table shows the geographic distribution of our gross capital expenditures for 2010 and 2009:

|                         | Year ended<br>December 31, |                   |
|-------------------------|----------------------------|-------------------|
|                         | 2010                       | 2009              |
|                         | (million €)                |                   |
| Europe . . . . .        | 400                        | 350               |
| North America . . . . . | 223                        | 229               |
| Asia-Pacific . . . . .  | 73                         | 50                |
| Latin America . . . . . | 52                         | 37                |
| Africa . . . . .        | <u>10</u>                  | <u>5</u>          |
| <b>Total . . . . .</b>  | <b><u>758</u></b>          | <b><u>671</u></b> |

- Fresenius Medical Care's capital expenditures on property, plant and equipment totaled €395 million in 2010, compared with €411 million in 2009. Capital expenditures on property, plant and equipment in 2010 related primarily to maintaining existing clinics and equipping new ones. In addition, Fresenius Medical Care invested in the maintenance and expansion of production capacity, primarily in Germany.
- Fresenius Kabi's capital expenditures on property, plant and equipment were €174 million in 2010, compared with €125 million in 2009. Capital expenditures on property, plant and equipment in 2010 related primarily to the expansion and optimization of production facilities in Germany and India.
- Fresenius Helios's capital expenditures on property, plant and equipment in 2010 related primarily to hospital modernization. Capital expenditures on property, plant and equipment were €166 million in 2010, compared with €124 million in 2009. The largest single project was the HELIOS clinic in Krefeld. Fresenius Helios also acquired the land and buildings of the clinic in Siegburg.
- Fresenius Vamed's capital expenditures on property, plant and equipment were €9 million in 2010, compared with €5 million in 2009.

## Historical Debt

The following table sets forth our financial liabilities as of the dates indicated:

|                                                                                     | As of December 31, |              |              |
|-------------------------------------------------------------------------------------|--------------------|--------------|--------------|
|                                                                                     | 2011               | 2010         | 2009         |
|                                                                                     | (million €)        |              |              |
| <b>Long-term financial liabilities</b>                                              |                    |              |              |
| 2008 Senior Credit Agreement . . . . .                                              | 1,326              | 1,484        | 1,602        |
| Fresenius Medical Care 2006 Senior Credit Agreement . . . . .                       | 2,161              | 2,211        | 2,445        |
| Fresenius Medical Care euro notes ( <i>Schuldscheindarlehen</i> ) . . . . .         | 200                | 200          | 200          |
| Fresenius Finance B.V. euro notes ( <i>Schuldscheindarlehen</i> ) . . . . .         | 600                | 600          | 600          |
| Fresenius Finance B.V. 5.00% senior notes due 2013 . . . . .                        | 500                | 500          | 500          |
| Fresenius Finance B.V. 5.50% senior notes due 2016 . . . . .                        | 637                | 635          | 639          |
| Fresenius US Finance II Inc. 8.75% senior notes due 2015 . . . . .                  | 264                | 261          | 259          |
| Fresenius US Finance II Inc. 9.00% senior notes due 2015 . . . . .                  | 372                | 356          | 326          |
| Fresenius Medical Care's senior notes <sup>(1)</sup> . . . . .                      | 2,223              | 617          | 342          |
| FMC A/R Facility <sup>(2)</sup> . . . . .                                           | 413                | —            | —            |
| Capital lease obligations . . . . .                                                 | 53                 | 54           | 45           |
| Fresenius Medical Care Capital Trust IV trust preferred securities due 2011 . . . . | —                  | —            | 455          |
| Other long-term debt and liabilities <sup>(3)</sup> . . . . .                       | 876                | 790          | 597          |
| <b>Total long-term debt</b> . . . . .                                               | <b>9,625</b>       | <b>7,708</b> | <b>8,010</b> |
| Less: Short-term portion . . . . .                                                  | 1,852              | 420          | 261          |
| <b>Total long-term financial liabilities less current portion</b> . . . . .         | <b>7,773</b>       | <b>7,288</b> | <b>7,749</b> |
| Thereof of Fresenius Medical Care . . . . .                                         | 4,247              | 3,225        | 3,529        |
| <b>Short-term financial liabilities</b>                                             |                    |              |              |
| Bilateral bank facilities . . . . .                                                 | 171                | 224          | 138          |
| FMC A/R Facility <sup>(2)</sup> . . . . .                                           | —                  | 382          | 149          |
| Fresenius Medical Care Capital Trust IV trust preferred securities due 2011 . . . . | —                  | 468          | —            |
| Short-term liabilities and loans from related parties . . . . .                     | 3                  | 2            | 2            |
| Short-term portion of long-term financial liabilities . . . . .                     | 1,852              | 420          | 261          |
| <b>Total short-term financial liabilities</b> . . . . .                             | <b>2,026</b>       | <b>1,496</b> | <b>550</b>   |
| Thereof of Fresenius Medical Care . . . . .                                         | 1,305              | 1,168        | 329          |
| <b>Total financial liabilities</b>                                                  |                    |              |              |
| Total long-term financial liabilities net of current portion . . . . .              | 7,773              | 7,288        | 7,749        |
| Total short-term financial liabilities . . . . .                                    | 2,026              | 1,496        | 550          |
| <b>Total financial liabilities (actual)</b> . . . . .                               | <b>9,799</b>       | <b>8,784</b> | <b>8,299</b> |
| Thereof of Fresenius Medical Care . . . . .                                         | 5,552              | 4,393        | 3,858        |

(1) This figure does not include the following senior notes of Fresenius Medical Care issued in January 2012: Fresenius Medical Care US Finance II Inc. 5<sup>5</sup>/<sub>8</sub>% Senior Notes due 2019 in an aggregate principal amount of US\$800 million; Fresenius Medical Care US Finance II Inc. 5<sup>7</sup>/<sub>8</sub>% Senior Notes due 2022 in an aggregate principal amount of US\$700 million; and FMC Finance VIII S.A. 5.25% Senior Notes due 2019 in an aggregate principal amount of €250 million.

Fresenius Medical Care used the net proceeds of the offering of the aforementioned senior notes for acquisitions, including the acquisition of Liberty Dialysis, to refinance indebtedness, and for general corporate purposes. For more information on Fresenius Medical Care's acquisition of Liberty Dialysis, see "Business — History and Development — Recent Acquisitions". For more information on Fresenius Medical Care's indebtedness, see "Description of Other Financing Arrangements — Fresenius Medical Care".

(2) This facility became classified as long-term debt starting September 30, 2011.

(3) Other long-term debt and liabilities mainly consists of obligations under bilateral bank facilities, including the credit facilities with the European Investment Bank.



For additional information about the financial liabilities listed see the table above in “Description of Other Financing Arrangements” and Notes 21, 22, 23 and 24 to our consolidated financial statements for the year ended December 31, 2011, appearing on pages F-4 et seq. in this prospectus/offering memorandum.

The ratio of net debt to shareholders’ equity was 87% at December 31, 2011, compared with 91% at year-end 2010 and 103% at year-end 2009.

### Available Sources of Liquidity

We expect that our principal sources of liquidity in the medium term will be cash provided by operations, cash from short- and long-term borrowings and cash dividends from FMC AG & Co. KGaA.

FMC AG & Co. KGaA and its subsidiaries provide their own liquidity and have their own financing arrangements. Except for certain short-term financing provided by Fresenius SE & Co. KGaA, they are not dependent on Fresenius SE & Co. KGaA, Fresenius Kabi, Fresenius Helios, Fresenius Vamed or the Issuer for any of their financing needs or to provide credit support for their financing facilities.

The following table summarizes the available sources of liquidity for FMC AG & Co. KGaA and its subsidiaries at December 31, 2011:

| <u>Available Sources of Liquidity</u>     | <u>(million US\$)</u> |
|-------------------------------------------|-----------------------|
| FMC A/R Facility <sup>(1)</sup> . . . . . | 266                   |
| 2006 Senior Credit Agreement. . . . .     | 960                   |
| Other Unused Lines of Credit . . . . .    | 234                   |
| <b>Total</b> . . . . .                    | <b><u>1,460</u></b>   |

(1) Subject to availability of sufficient accounts receivable meeting funding criteria.

The following table summarizes the available sources of liquidity for Fresenius SE & Co. KGaA and its subsidiaries other than FMC AG & Co. KGaA and its subsidiaries at December 31, 2011:

| <u>Available Sources of Liquidity</u>  | <u>(million €)</u>  |
|----------------------------------------|---------------------|
| 2008 Senior Credit Agreement . . . . . | 425                 |
| Commercial Paper Program . . . . .     | 250                 |
| Other Unused Lines of Credit . . . . . | 665                 |
| <b>Total</b> . . . . .                 | <b><u>1,340</u></b> |

The Issuer expects that the proceeds of any future indebtedness incurred by it will be lent to Fresenius SE & Co. KGaA, its subsidiaries (other than FMC AG & Co. KGaA and its subsidiaries) or to both.

For additional information about the financing arrangements discussed above, see “Description of Other Financing Arrangements” and Notes 21, 22, 23 and 24 to our consolidated financial statements for the year ended December 31, 2011.

We believe the proceeds of this offering and our existing credit facilities, cash generated from our operations and other current sources of financing will be adequate to meet our foreseeable needs, including our 2012 budget for acquisitions and capital expenditures.

## Summary of Commitments and Contingent Liabilities

The table below summarizes our obligations and commitments to make future payments under our operating leases and rental payments, as of December 31, 2011.

| For the fiscal years             | (million €) <sup>(1)</sup> |
|----------------------------------|----------------------------|
| 2012.....                        | 436                        |
| 2013.....                        | 376                        |
| 2014.....                        | 320                        |
| 2015.....                        | 270                        |
| 2016.....                        | 221                        |
| Thereafter.....                  | 677                        |
| <b>Total<sup>(2)</sup></b> ..... | <b><u>2,300</u></b>        |

(1) All amounts exclude future interest payments.

(2) Our Group's subsidiaries lease office and manufacturing buildings, as well as machinery and equipment under various lease agreements expiring on dates through 2101. Rental expenses recorded for operating leases were €497 million in 2011, €480 million in 2010 and €430 million for 2009.

As of December 31, 2011, future investment commitments existed up to the year 2016 from acquisition contracts for hospitals at projected costs of up to €350 million. Thereof, €75 million related to the year 2012.

Other than the above-mentioned contingent liabilities, the amount of other commitments is immaterial.

The table below summarizes our obligations and commitments to make future payments under our long-term debt and capital lease obligations, as of December 31, 2011.

|                                                          | Payments due by period of |                                               |                     |                     |
|----------------------------------------------------------|---------------------------|-----------------------------------------------|---------------------|---------------------|
|                                                          | Total                     | Up to<br>1 year<br>(million €) <sup>(1)</sup> | 1 to<br>5 years     | Over<br>5 years     |
| 2008 Senior Credit Agreement .....                       | 1,326                     | 243                                           | 1,083               | 0                   |
| Fresenius Medical Care 2006 Senior Credit Agreement..... | 2,161                     | 976                                           | 1,185               | 0                   |
| Outstanding Senior Notes <sup>(2)</sup> .....            | 1,812                     | 0                                             | 1,812               | 0                   |
| FMC Senior Notes <sup>(3)</sup> .....                    | 2,248                     | 0                                             | 350                 | 1,898               |
| Euro Notes <sup>(4)</sup> .....                          | 800                       | 461                                           | 339                 | 0                   |
| European Investment Bank Agreements .....                | 527                       | 8                                             | 495                 | 24                  |
| FMC A/R Facility .....                                   | 413                       | 0                                             | 413                 | 0                   |
| Capital lease obligations .....                          | 53                        | 10                                            | 32                  | 11                  |
| Other .....                                              | 349                       | 154                                           | 162                 | 33                  |
| <b>Total<sup>(5)</sup></b> .....                         | <b><u>9,689</u></b>       | <b><u>1,852</u></b>                           | <b><u>5,871</u></b> | <b><u>1,966</u></b> |

(1) All amounts exclude future interest payments.

(2) The various outstanding senior unsecured notes issued by our financing subsidiaries (excluding the financing subsidiaries of FMC AG & Co. KGaA) are collectively referred to as the "Outstanding Senior Notes". Amounts based on principal amounts due for repayment.

(3) The various outstanding senior unsecured notes issued by the financing subsidiaries of FMC AG & Co. KGaA are collectively referred to as the "FMC Senior Notes". Amounts based on principal amounts due for repayment.

This item does not include the following senior notes of Fresenius Medical Care issued in January 2012: Fresenius Medical Care US Finance II Inc. 5<sup>5</sup>/<sub>8</sub>% Senior Notes due 2019 in an aggregate principal amount of US\$800 million; Fresenius Medical Care US Finance II Inc. 5<sup>7</sup>/<sub>8</sub>% Senior Notes due 2022 in an aggregate principal amount of US\$700 million; and FMC Finance VIII S.A. 5.25% Senior Notes due 2019 in an aggregate principal amount of €250 million. Fresenius Medical Care used the net proceeds of the offering of the aforementioned senior notes for acquisitions, including the acquisition of Liberty Dialysis, to refinance indebtedness, and for general corporate purposes.

- (4) The various euro notes (*Schuldscheindarlehen*) issued by Fresenius Finance B.V. and Fresenius Medical Care are collectively referred to as the “**Euro Notes**”. On March 16, 2012, Fresenius SE & Co. KGaA issued senior unsecured euro denominated notes (*Schuldscheindarlehen*) totaling €400 million (the “**New Fresenius Euro Notes**”). The proceeds of the New Fresenius Euro Notes will accrue to the Fresenius Group on April 2, 2012 and will be used to refinance two tranches of the euro notes (*Schuldscheindarlehen*) issued by Fresenius Finance B.V., each as of April 2, 2008 and with maturity on April 2, 2012, in an aggregate amount of €200 million and for general corporate purposes.
- (5) For additional information about our long-term debt obligations, see “— *Liquidity and Capital Resources — Historical Debt*”, “*Description of Other Financing Arrangements*” and Notes 21, 22, 23 and 24 to our consolidated financial statements for the year ended December 31, 2011.

The amount of guarantees and other commercial commitments as at December 31, 2011 was not significant.

The settlement agreement entered into by Fresenius Medical Care with the asbestos creditors committees on behalf of the W.R. Grace & Co. bankruptcy estate and W.R. Grace & Co. provides for payments by Fresenius Medical Care of US\$115 million upon approval of the settlement agreement by the U.S. District Court, which has since occurred, and confirmation of a W.R. Grace & Co. bankruptcy reorganization plan that includes the settlement. The proposed settlement is subject to confirmation of a final plan of reorganization of W.R. Grace & Co. that meets the requirements of the settlement agreement. The US\$115 million obligation is included in the special charge Fresenius Medical Care recorded in 2001 to address legal matters related to the merger with National Medical Care in 1996. See “*Business — Legal Proceedings — Commercial Litigation*”.

Fresenius Group is subject to ongoing tax audits in the United States, Germany and other jurisdictions. Fresenius Group has received notices of unfavorable adjustments and disallowances in connection with certain of the audits. It is contesting these unfavorable adjustments and disallowances, including, if necessary, by way of appeal of these unfavorable determinations. Fresenius Group may be subject to additional unfavorable adjustments and disallowances in connection with ongoing audits. If its objections and any final audit appeals are unsuccessful, Fresenius Group could be required to make additional tax payments. With respect to adjustments and disallowances currently on appeal, we do not anticipate that an unfavorable ruling would have a material impact on our results of operations. We currently are not able to determine the timing of these potential additional tax payments.

If all potential additional tax payments and the Grace Chapter 11 Proceedings settlement were to occur contemporaneously, there could be a material adverse impact on Fresenius Medical Care’s operating cash flow in the relevant reporting period. Fresenius Medical Care anticipates that other cash from operations and, if required, its available liquidity will be sufficient to satisfy all such obligations if and when they come due.

### **Off-Balance Sheet Arrangements**

We are not a party to any off-balance sheet arrangements that have, or are reasonably likely to have, a current or future material effect on our financial condition, sales or expenses, results of operations, liquidity, capital expenditures or capital resources.

## **QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

### **Market Risk**

Our segments operate in highly competitive markets and are subject to changes in business, economic and competitive conditions. Our business is subject risks relating to:

- changes in reimbursement rates;
- intense competition;
- interest rate fluctuations;
- foreign exchange rate fluctuations;
- varying degrees of acceptance of new product introductions;

- technological developments in our industry;
- uncertainties in litigation or investigative proceedings and regulatory developments in the healthcare sector; and
- the availability of financing.

Developments in any of these risk areas could cause our results to differ materially from the results that we or others have projected or may project.

Below, please find additional information on various market risks we may face.

### ***Reimbursement Rates***

The profitability of Fresenius Medical Care's business depends significantly on reimbursement rates. Approximately 74% of Fresenius Medical Care's revenues are generated by providing dialysis services, a major portion of which is reimbursed by either public healthcare organizations or private insurers. For the period ended December 31, 2011, approximately 30% of Fresenius Medical Care's consolidated revenues were attributable to U.S. federal healthcare benefit programs, such as Medicare and Medicaid reimbursement. Legislative changes could affect Medicare reimbursement rates for a significant portion of the services we provide, as well as the scope of Medicare coverage. A decrease in reimbursement rates, as occurred in Fresenius Medical Care's North America segment as a result of the implementation of the expanded ESRD bundled prospective payment system in the United States ("**ESRD PPS**"), or a decrease in the scope of coverage could have a material adverse effect on Fresenius Medical Care's business, financial condition and results of operations and thus on Fresenius Medical Care's capacity to generate cash flow. In the past Fresenius Medical Care experienced and, after the implementation of the new ESRD PPS in the United States, also expect going forward generally stable reimbursements for Fresenius Medical Care's dialysis services. This includes the balancing of unfavorable reimbursement changes in certain countries with favorable changes in other countries. For more information see "*Business — Regulatory Matters*".

Fresenius Medical Care also obtains a significant portion of sales from reimbursement by non-government payers. Historically, these payers' reimbursement rates have generally been higher than government program rates in their respective countries. However, non-governmental payers are imposing cost containment measures that are creating significant downward pressure on reimbursement levels that Fresenius Medical Care receives for its services and products.

### ***Inflation***

The effects of inflation during the periods covered by our consolidated financial statements have not been significant to our results of operations. However, most of our sales from dialysis care are subject to reimbursement rates regulated by governmental authorities, and a significant portion of other revenues, especially revenues from the United States, is received from customers whose revenues are also subject to regulation. Non-governmental payers are also exerting downward pressure on reimbursement rates. Increased operating costs that are subject to inflation, such as labor and supply costs, may not be recoverable through price increases in the absence of a compensating increase in reimbursement rates payable to us and our customers and could materially adversely affect our business, financial condition and results of operations.

### ***Management of Foreign Exchange and Interest Rate Risks***

#### ***General***

Our Group is exposed to effects related to foreign exchange fluctuations in connection with its international business activities that are denominated in various currencies. In order to finance its business operations, our Group issues senior notes and commercial papers and enters into mainly long-term credit agreements and euro notes (*Schuldscheindarlehen*) with banks. Due to these financing activities, our Group is exposed to interest risk caused by changes in variable interest

rates and the risk of changes in the fair value of statement of financial position items bearing fixed interest rates.

In order to manage the risk of interest rate and foreign exchange rate fluctuations, our Group enters into certain hedging transactions with highly rated financial institutions as authorized by the Management Board. Derivative financial instruments are not entered into for trading purposes.

In general, our Group conducts its derivative financial instrument activities under the control of a single centralized department. Our Group has established guidelines derived from best practice standards in the banking industry for risk assessment procedures and supervision concerning the use of financial derivatives. These guidelines require amongst other things a clear segregation of duties in the areas of execution, administration, accounting and controlling. We continuously monitor risk limits and, as appropriate, adjust our use of hedging instruments.

Our Group defines benchmarks for individual exposures in order to quantify interest and foreign exchange risks. The benchmarks are derived from achievable and sustainable market rates. Depending on the individual benchmarks, hedging strategies are determined and generally implemented by means of micro-hedges. Our Group's earnings were not materially affected by hedge ineffectiveness in the reporting period since the critical terms of the interest and foreign exchange derivatives mainly matched the underlying exposure.

#### *Foreign Exchange Risk Management*

Our Group has determined the euro as its financial reporting currency. Therefore, foreign exchange translation risks resulting from the fluctuation of exchange rates between the euro and the local currencies in which the financial statements of the foreign subsidiaries are prepared have an impact on results of operations and financial positions reported in the consolidated financial statements.

Besides translation risks, foreign exchange transaction risks exist, which mainly relate to transactions such as purchases and sales, as well as engineering and services provided by our Group that are denominated in foreign currencies. A major part of transaction risks arise from products manufactured in our Group's worldwide production sites, which are usually denominated in the local currency of the respective manufacturer and are delivered worldwide to various Fresenius Group entities. These intragroup sales are mainly denominated in euros, U.S. dollars and yen. Therefore, Group companies are exposed to changes of the foreign exchange rates between the invoicing currencies and the local currencies in which they conduct their businesses. Solely for the purpose of hedging existing and foreseeable foreign exchange transaction exposures, our Group enters into foreign exchange forward contracts and, on a small scale, foreign exchange options. To ensure that no foreign exchange risks result from loans in foreign currencies, our Group enters into foreign exchange swap contracts.

As of December 31, 2011, the notional amounts of foreign exchange contracts totaled €3,955 million. The foreign exchange contracts have been entered into to hedge risks from operational business and in connection with loans in foreign currency. The predominant part of the foreign exchange forward contracts to hedge risks from operational business was recognized as cash flow hedge, while foreign exchange contracts in connection with loans in foreign currencies are partly recognized as fair value hedges. The fair values of cash flow hedges and fair value hedges were negative €35 million and (positive) €1 million, respectively.

The hedge-effective portion of changes in the fair value of foreign exchange forward contracts that are designated and qualified as cash flow hedges of forecasted product purchases and sales is reported in accumulated other comprehensive income (loss). These amounts are subsequently reclassified into earnings as a component of cost of sales or as selling, general and administrative expenses in the same period in which the hedged transaction affects earnings.

As of December 31, 2011, our Group was party to foreign exchange contracts with a maximum maturity of 47 months. In order to estimate and quantify the transaction risks from foreign currencies, our Group considers the cash flows reasonably expected for the following three months

as the relevant assessment basis for a sensitivity analysis. For this analysis, our Group assumes that all foreign exchange rates in which the Group had unhedged positions as of reporting date would be negatively impacted by 10%. By multiplying the calculated unhedged risk positions with this factor, the maximum possible negative impact of the foreign exchange transaction risks on the Group's results of operations would be €9 million.

### *Interest Rate Risk Management*

Fresenius Group's interest rate risks mainly arise from money market and capital market transactions of the Group for financing its business activities. Our Group enters into interest rate swaps and, on a small scale, into interest rate options in order to protect against the risk of rising interest rates. These interest rate derivatives are mainly designated as cash flow hedges and have been entered into to convert payments based on variable interest rates into payments at a fixed interest rate and in anticipation of future debt issuances. The U.S. dollar interest rate swaps with a notional volume of US\$3,850 million (€2,976 million) and a fair value of negative US\$174 million (negative €134 million) expire at various dates in the years 2012 to 2014. The euro interest rate swaps with a notional volume of €966 million and a fair value of negative €32 million expire in the years 2012 to 2016. The U.S. dollar interest rate swaps bear an average interest rate of 3.45% and the euro interest rate swaps bear an average interest rate of 3.19%.

Interest payables and interest receivables in connection with the swap agreements are accrued and recorded as an adjustment to the interest expense at each reporting date. Concerning interest rate contracts, unscheduled repayments or the renegotiation of hedged items may in some cases lead to the de-designation of the hedging instrument that existed up to that point. From that date, these hedging transactions are recognized in the consolidated statement of income.

For purposes of analyzing the impact of changes in the relevant reference interest rates on Fresenius Group's results of operations, the Group calculates the portion of financial debt which bears variable interest rates and which has not been hedged by means of interest rate swaps or options against rising interest rates. For this particular part of its liabilities, our Group assumes an increase in the reference rates of 0.5% compared to the actual rates as of the date of the statement of financial position. The corresponding additional annual interest expense is then compared to the net income attributable to Fresenius SE & Co. KGaA. This analysis shows that an increase of 0.5% in the relevant reference rates would have an effect of less than 1% on the consolidated net income attributable to Fresenius SE & Co. KGaA and Fresenius SE & Co. KGaA shareholders' equity.

### *Credit Risk*

Our Group is exposed to potential losses regarding financial instruments in the event of non-performance by counterparties. With respect to derivative financial instruments, it is not expected that any counterparty fails to meet its obligations as the counterparties are highly rated financial institutions. The maximum credit exposure of derivatives is represented by the fair value of those contracts with a positive fair value amounting to €54 million for foreign exchange derivatives at December 31, 2011. No credit exposure existed from interest rate derivatives. The interest rate derivatives in place did not have a positive fair value. The maximum credit risk resulting from the use of non-derivative financial instruments is defined as the total amount of all receivables. In order to control this credit risk, the management of Fresenius Group performs an aging analysis of trade accounts receivable.

### *Liquidity Risk*

The liquidity risk is defined as the risk that a company is potentially unable to meet its financial obligations. The Management of our Group manages the liquidity of the Group by means of effective working capital and cash management, as well as an anticipatory evaluation of refinancing alternatives. The Management of our Group believes that existing credit facilities, as well as the cash generated by operating activities and additional short-term borrowings are sufficient to meet the Company's foreseeable demand for liquidity.

## CRITICAL ACCOUNTING POLICIES

In the opinion of the management of our Group (the “**Management**”), the following accounting policies and topics are critical for the consolidated financial statements in the present economic environment. The influences and judgments, as well as the uncertainties which affect them are also important factors to be considered when looking at present and future operating earnings of our Group.

### Recoverability of Goodwill and Intangible Assets

The amount of intangible assets, including goodwill, product rights, trade names and management contracts, represents a considerable part of the total assets of our Group. At December 31, 2011 and December 31, 2010, the carrying amount of goodwill and non-amortizable intangible assets with indefinite useful lives was €12,853 million and €11,641 million, respectively. This represented 49% of total assets in both 2010 and 2011.

An impairment test of goodwill and non-amortizable intangible assets with indefinite useful lives is performed at least once a year, or if events occur or circumstances change that would indicate the carrying amount might be impaired (impairment test).

To determine possible impairments of these assets, the fair value of the reporting units is compared to their carrying amount. The fair value of each reporting unit is determined using estimated future cash flows for the unit discounted by a weighted-average cost of capital (WACC) specific to that reporting unit. Estimating the discounted future cash flows involves significant assumptions, especially regarding future reimbursement rates and sales prices, number of treatments, sales volumes and costs. In determining discounted cash flows, our Group utilizes for every reporting unit its approved three-year budget, projections for years 4 to 10 and a corresponding growth rate for all remaining years. These growth rates are 0% to 4% for Fresenius Medical Care, 3% for Fresenius Kabi and 1% for Fresenius Helios and Fresenius Vamed. Projections for up to 10 years are possible due to historical experience and the stability of Fresenius Group’s business, which is largely independent from the economic cycle. The discount factor is determined by the WACC of the respective reporting unit. Fresenius Medical Care’s WACC consisted of a basic rate of 6.27% for 2011. This basic rate is then adjusted by a country-specific risk rate within each reporting unit. In 2011, WACCs (after tax) for the reporting units of Fresenius Medical Care ranged from 6.27% to 12.73%. In the business segments Fresenius Kabi, Fresenius Helios and Fresenius Vamed, the WACC (after tax) was 5.87%, country-specific adjustments did not occur. If the fair value of the reporting unit is less than its carrying amount, the difference is recorded as an impairment of the fair value of the goodwill at first. An increase of the WACC (after tax) by 0.5% would not have resulted in the recognition of an impairment loss in 2011.

A prolonged downturn in the healthcare industry with lower than expected increases in reimbursement rates and/or higher than expected costs for providing healthcare services could adversely affect the estimated future cash flows of certain countries or segments. Future adverse changes in a reporting unit’s economic environment could affect the discount rate. A decrease in the estimated future cash flows and/or a decline in the reporting unit’s economic environment could result in impairment charges to goodwill and other intangible assets with indefinite useful lives which could materially and adversely affect Fresenius Group’s future operating results.

### Legal Contingencies

Our Group is involved in several legal matters arising from the ordinary course of its business. The outcome of these matters may have a material effect on the financial position, results of operations or cash flows of our Group.

Our Group regularly analyzes current information about such claims for probable losses and provides accruals for such matters, including estimated expenses for legal services, as appropriate. Our Group utilizes its internal legal department, as well as external resources for these assessments.



In making the decision regarding the need for a loss accrual, we consider the degree of probability of an unfavorable outcome and its ability to make a reasonable estimate of the amount of loss.

The filing of a suit or formal assertion of a claim, or the disclosure of any such suit or assertion, does not necessarily indicate that an accrual of a loss is appropriate.

### **Allowance for Doubtful Accounts**

Trade accounts receivable are a significant asset and the allowance for doubtful accounts is a significant estimate made by the Management. Trade accounts receivable were €3,234 million and €2,935 million in 2011 and 2010, respectively, net of allowance. Approximately two thirds of receivables derive from the business segment Fresenius Medical Care and mainly relate to the dialysis care business in North America.

The major debtors or debtor groups of trade accounts receivable at December 31, 2011 were U.S. Medicare and Medicaid healthcare programs (14%) and private insurers in the United States (12%). Other than these two categories of debtor, our Group has no significant risk concentration, due to its international and heterogeneous customer structure.

The allowance for doubtful accounts was €383 million and €317 million as of December 31, 2011 and December 31, 2010, respectively.

Sales are invoiced at amounts estimated to be receivable under reimbursement arrangements with third party payors. Estimates for the allowance for doubtful accounts are mainly based on historic collection experience, taking into account the aging of accounts receivable and the contract partners. We believe these analyses result in a well-founded estimate of allowances for doubtful accounts. From time to time, our Group reviews changes in collection experience to ensure the appropriateness of the allowances.

Deterioration in the ageing of receivables and collection difficulties could require that our Group increases the estimates of allowances for doubtful accounts. Additional expenses for uncollectible receivables could have a significant negative impact on future operating results.

### **Self-Insurance Programs**

Under the insurance programs for professional, product and general liability, auto liability and worker's compensation claims, the largest subsidiary of FMC AG & Co. KGaA, located in North America, is partially self-insured for professional liability claims.

## RECENT DEVELOPMENTS

In October 2011, HELIOS agreed to acquire 94.7% of the share capital in Damp Group. Damp operates seven acute care hospitals and four post-acute care hospitals with a total of 4,112 beds (including 2,649 in acute care) and is among the ten largest private hospital operators in Germany. In addition, Damp operates eight outpatient medical care centers, two nursing care facilities with a total of 606 beds and a wellness resort. The company has approximately 6,000 full-time employees. The acquisition of Damp is an excellent geographic fit with the Fresenius Helios hospital network in the north and northeast of Germany. In 2010, Damp achieved sales of €487 million and operating profit (EBIT) of €21 million. Due to the geographic proximity of HELIOS hospital, Schwerin, Fresenius Helios was required to divest Damp hospital Wismar (505 beds, sales of approximately €60 million in 2010) to secure regulatory clearance and complete the transaction. The acquisition of Damp Group was completed on March 19, 2012. Damp will be consolidated as of March 31, 2012.

On February 29, 2012, Fresenius Medical Care closed the acquisition of Liberty Dialysis Holdings, Inc., the holding company of Liberty Dialysis and Renal Advantage. The closing follows the completion of the review of the transaction and issuance of a consent decree by the United States Federal Trade Commission. In connection with the consent decree, Fresenius Medical Care intends to divest 62 dialysis clinics. We expect that the acquisition of Liberty Dialysis Holdings, Inc. will add annual revenues of approximately US\$700 million (net of divestitures) and 201 clinics to Fresenius Medical Care's network for an investment (net of proceeds from the divestiture of certain clinics divested in connection with obtaining the consent decree) of approximately US\$1.5 billion.

On February 27, 2012, Standard & Poor's Credit Market Services Europe Limited increased its credit rating of Fresenius SE & Co. KGaA from BB to BB+.

On March 9, 2012, the Supervisory Board of Fresenius Management SE appointed Rice Powell and Mats Henriksson as new Management Board members, effective January 1, 2013. On the same date, Rice Powell, 56, will succeed Dr. Ben Lipps, 71, as CEO of Fresenius Medical Care, and Mats Henriksson, 44, will succeed Rainer Baule, 63, as CEO of Fresenius Kabi. Dr. Ben Lipps and Rainer Baule will both retire from the Management Board at the end of 2012. Rice Powell, who currently serves as CEO of Fresenius Medical Care North America, joined Fresenius Medical Care in 1997 and has been a member of the management board of Fresenius Medical Care since 2004, from January 1, 2010 as Deputy Chairman. Rice Powell has more than 30 years of experience in the health care industry, and from 1978 to 1996, he held various management positions, among others at Baxter International Inc. and Biogen Inc. Mats Henriksson joined Fresenius Kabi in 1999 as a member of its management board, and has served as President of the Asia Pacific region since 2001. Before joining the Fresenius Group, Mats Henriksson held several positions in controlling and finance at Pharmacia & Upjohn.

On March 16, 2012, Fresenius SE & Co. KGaA issued senior unsecured euro denominated notes (*Schuldscheindarlehen*) totalling €400 million (the "**New Fresenius Euro Notes**"). The proceeds of the New Fresenius Euro Notes will accrue to the Fresenius Group on April 2, 2012 and will be used to refinance two tranches of the euro notes (*Schuldscheindarlehen*) issued by Fresenius Finance B.V., each as of April 2, 2008 and with maturity on April 2, 2012, in an aggregate amount of €200 million, and for general corporate purposes. For more information with regard to the €200 million euro notes of Fresenius Finance B.V. to be refinanced see "*Description of Other Financing Arrangements — Fresenius SE & Co. KGaA and its Subsidiaries Other than Fresenius Medical Care — Fresenius Euro Notes*".

The New Fresenius Euro Notes consist of:

| Tranche                                     | Maturity      | Interest rate (p. a.) | Book value/<br>nominal value<br>(million €)<br>Amount |
|---------------------------------------------|---------------|-----------------------|-------------------------------------------------------|
| Fresenius SE & Co. KGaA 2012/2016 . . . . . | April 4, 2016 | 3.36%                 | 155.5                                                 |
| Fresenius SE & Co. KGaA 2012/2016 . . . . . | April 4, 2016 | Variable              | 129.5                                                 |
| Fresenius SE & Co. KGaA 2012/2018 . . . . . | April 4, 2018 | 4.09%                 | 72.5                                                  |
| Fresenius SE & Co. KGaA 2012/2018 . . . . . | April 4, 2018 | Variable              | 42.5                                                  |
| Total . . . . .                             |               |                       | <u>400</u>                                            |

The New Fresenius Euro Notes are guaranteed by Fresenius Kabi AG and Fresenius ProServe GmbH.

## BUSINESS

### OVERVIEW

Fresenius is an international healthcare group with products and services for dialysis, hospitals and outpatient medical care. In addition, Fresenius focuses on hospital operations, as well as on engineering and services for hospitals and other healthcare facilities. Our Group includes the following business segments:

- **Fresenius Medical Care** is the world's largest provider of dialysis products and dialysis care for patients with chronic kidney failure according to publicly reported sales and number of patients treated;
- **Fresenius Kabi** is a leading supplier of infusion therapies, intravenously administered generic drugs (IV drugs), and clinical nutrition for critically and chronically ill people in hospitals and outpatient care in addition to medical devices and products in the area of transfusion technology;
- **Fresenius Helios** operates 65 hospitals and clinics (as of December 31, 2011) with over 20,000 beds with a focus on providing acute treatment and post-acute care (medical rehabilitation) and is one of the three largest private hospital operators in Germany; and
- **Fresenius Vamed** is worldwide one of the leading international providers of engineering, construction and maintenance services to hospitals and other healthcare facilities.

Fresenius is active in about 170 countries and has an international marketing and production network of more than 80 production sites worldwide. In the year ended December 31, 2011, our Group generated sales of €16,522 million and EBIT of €2,563 million. Fresenius Medical Care is fully consolidated into the financial statements of our Group.

The following table shows key data of our business segments and our Corporate/Other segment:

|                                                                                       | Year ended December 31, 2011                  |                |                  |                 |                                | Total   |
|---------------------------------------------------------------------------------------|-----------------------------------------------|----------------|------------------|-----------------|--------------------------------|---------|
|                                                                                       | Fresenius Medical Care                        | Fresenius Kabi | Fresenius Helios | Fresenius Vamed | Corporate/Other <sup>(1)</sup> |         |
|                                                                                       | (million €, except employees and percentages) |                |                  |                 |                                |         |
| Sales . . . . .                                                                       | 9,192                                         | 3,964          | 2,665            | 737             | (36)                           | 16,522  |
| EBITDA . . . . .                                                                      | 1,891                                         | 955            | 369              | 51              | (29)                           | 3,237   |
| Operating income (EBIT) . . . . .                                                     | 1,491                                         | 803            | 270              | 44              | (45)                           | 2,563   |
| Net income attributable to Fresenius SE & Co. KGaA, adjusted <sup>(2)</sup> . . . . . | 770                                           | 354            | 163              | 34              | (551)                          | 770     |
| Operating cash flow . . . . .                                                         | 1,039                                         | 462            | 294              | (83)            | (23)                           | 1,689   |
| Capital expenditures . . . . .                                                        | (429)                                         | (177)          | (157)            | (7)             | (13)                           | (783)   |
| Acquisitions . . . . .                                                                | (1,429)                                       | (11)           | (45)             | (3)             | (124)                          | (1,612) |
| Research and development . . . . .                                                    | (80)                                          | (162)          | —                | 0               | (25)                           | (267)   |
| Employees (as of December 31) . . . . .                                               | 83,476                                        | 24,106         | 37,198           | 3,724           | 847                            | 149,351 |
| Equity participation . . . . .                                                        | 30%                                           | 100%           | 100%             | 77%             | —                              | —       |

(1) Corporate/Other consists of consolidation and certain corporate revenues and costs (which relate to certain Group overhead charges and the costs of Fresenius Biotech, which is focused on immunotherapeutic products based on antibody technologies, but does not have the status of a business segment).

(2) Adjusted for the effects of mark-to-market accounting of the MEB and the CVR.

Unless otherwise indicated, the market data information set forth below is based on our internal estimates. See "Industry Information".

## HISTORY AND DEVELOPMENT

### Corporate History

Our company will mark its 100th anniversary this year, but the Fresenius family has an even longer history in the medical industry. Fresenius AG (now Fresenius SE & Co. KGaA) became a listed company in December 1986. In 1996, we completed a series of transactions pursuant to which we combined the Fresenius dialysis product business with National Medical Care, Inc., W.R. Grace & Co.'s dialysis services business, to create Fresenius Medical Care. In the course of the initial public offering of Fresenius Medical Care in the National Medical Care acquisition, its ordinary shares were first traded on October 1, 1996 in New York and on October 2, 1996 in Frankfurt am Main, Germany. Its non-voting preference shares were admitted to trading on November 25, 1996 in New York and on November 27, 1996 in Frankfurt am Main, Germany. Fresenius Medical Care's American Depositary Shares evidencing its ordinary shares and its preference shares were also admitted to the New York Stock Exchange. In 1998, Fresenius acquired the international infusion and nutrition business of Pharmacia & Upjohn and created Fresenius Kabi by combining this business with the Fresenius Pharma Division. In 1999, Fresenius AG became an operating holding company with legally independent business segments. In 2001, Fresenius acquired Wittgensteiner Kliniken AG, a German hospital operator that today is part of Fresenius Helios. In December 2005, Fresenius ProServe GmbH acquired HELIOS Kliniken GmbH, one of the largest private hospital operators in Germany. Fresenius Medical Care expanded significantly in 2006 with the acquisition of Renal Care Group ("**RCG**"), which at the time of acquisition provided dialysis and ancillary services at more than 450 owned outpatient dialysis centers and to more than 200 hospitals in the United States. In February of the same year, Fresenius Medical Care initiated a share conversion in which most preference shares were converted into ordinary shares in conjunction with its change in the legal form of the Company from a stock corporation (*Aktiengesellschaft*) into a partnership limited by shares (*Kommanditgesellschaft auf Aktien* — *KGaA*).

Fresenius AG was converted into a European company (SE — *Societas Europaea*) effective on July 13, 2007. With effect as of January 28, 2011, the company's legal form was changed into a SE & Co. KGaA. As a result of this conversion, all non-voting preference shares in the company were mandatorily converted into voting ordinary shares at a 1:1 exchange ratio. Accordingly, the listing of the two classes of shares in Fresenius SE was discontinued on January 28, 2011. The voting ordinary shares of Fresenius SE & Co. KGaA commenced trading on January 31, 2011. The legal form SE & Co. KGaA combines the elements of a stock corporation with those of a limited partnership. For more details, see "*General Information on Group Structure, Issuer and Guarantors — Summary Corporate and Group Structure*" and "*— Guarantors — Fresenius SE & Co. KGaA*".

### Recent Acquisitions

Recently, we have made a number of important acquisitions of complementary businesses and technologies. Important recent acquisitions in our Fresenius Medical Care segment include:

- In February 2012, Fresenius Medical Care AG & Co. KGaA announced that Fresenius Medical Care North America has closed the acquisition of Liberty Dialysis Holdings, Inc., a Delaware corporation and the owner of all the business of Liberty Dialysis, Inc. and 51% of Renal Advantage, Inc. Prior to entering into the merger agreement for the Liberty Acquisition, Fresenius Medical Care owned 49% of Renal Advantage, Inc. The closing follows the completion of the review of the transaction and issuance of a consent decree by the United States Federal Trade Commission. In connection with the consent decree, Fresenius Medical Care is required to divest 62 dialysis clinics. We expect that the acquisition of Liberty Dialysis Holdings, Inc. will add annual revenues of approximately US\$700 million (net of divestitures) and 201 clinics to Fresenius Medical Care's network for an investment (net of proceeds from the divestiture of certain clinics divested in connection with obtaining the consent decree) of approximately US\$1.5 billion.
- In July 2011, Fresenius Medical Care acquired International Dialysis Centers ("**IDC**"), the dialysis service business of Euromedic International. With this acquisition, Fresenius

Medical Care expanded its activities in the dialysis care market, especially in Central and Eastern Europe, where IDC is the market leader, operating about 70 clinics in nine countries. IDC is expected to add approximately US\$180 million in annual revenue. The purchase price was €529 million.

- In October 2011, Fresenius Medical Care acquired the United States-based company American Access Care Holdings, LLC (“**AAC**”) for US\$385 million. AAC operated 28 freestanding out-patient, interventional-radiology centers primarily dedicated to serving vascular access needs of dialysis patients. The acquisition enables Fresenius Medical Care to achieve critical mass in its vascular access business. Fresenius Medical Care expects the acquired operations to add approximately US\$175 million in annual revenue.

Important recent acquisitions in our Fresenius Kabi segment include:

- In 2008, Fresenius Kabi acquired APP Pharmaceuticals, Inc. (along with its subsidiaries, “**APP Pharmaceuticals**”), a leading manufacturer of IV drugs in North America. The acquisition was an important step in Fresenius Kabi’s growth strategy. Through the acquisition of APP Pharmaceuticals, Fresenius Kabi entered the U.S. pharmaceuticals market and achieved a leading position in the global IV drugs market.
- In 2008, Fresenius Kabi acquired the Indian company Dabur Pharma Ltd (now Fresenius Kabi Oncology Ltd.). The company is one of the leading suppliers of generic drugs and active pharmaceutical ingredients to treat cancer. It holds a substantial number of drug registrations in Asia, Europe and the United States and is also one of the few manufacturers worldwide to hold international registrations for all steps within the manufacturing process of cytostatic agents.

Important recent acquisitions in our Fresenius Helios business segment include:

- In December 2011, Fresenius Helios acquired 51% of the share capital of, and 100% of the economic interest in, Katholisches Klinikum Duisburg (“**KKD**”). The remaining share capital is held by local institutions related to the Catholic Church. KKD operates a maximum care hospital with four locations in Duisburg and a total of 1,034 beds, as well as a rehabilitation clinic with 220 beds. KKD also operates two nursing care facilities. In 2010, KKD achieved sales of approximately €134 million. Fresenius Helios will establish two new hospital buildings to consolidate KKD’s acute care operations into two locations.
- In October 2011, HELIOS agreed to acquire 94.7% of the share capital in Damp Group. Damp operates seven acute care hospitals and four post-acute care hospitals with a total of 4,112 beds (including 2,649 in acute care) and is among the ten largest private hospital operators in Germany. In addition, Damp operates eight outpatient medical care centers, two nursing care facilities with a total of 606 beds and a wellness resort. The company has approximately 6,000 full-time employees. The acquisition of Damp is an excellent geographic fit with the Fresenius Helios hospital network in the north and northeast of Germany. In 2010, Damp achieved sales of €487 million and operating profit (EBIT) of €21 million. Due to the geographic proximity of HELIOS hospital, Schwerin, Fresenius Helios was required to divest Damp hospital Wismar (505 beds, sales of approximately €60 million in 2010) to secure regulatory clearance and complete the transaction. The acquisition of Damp Group was completed on March 19, 2012.

## KEY STRENGTHS

Our business benefits from a number of key strengths, including:

**Leading market positions.** We are among the market leaders in each of the key markets in which our business segments operate. Based on publicly reported sales and number of patients treated, Fresenius Medical Care is the world’s largest provider of dialysis products and dialysis care for patients with chronic kidney failure. We believe Fresenius Kabi is the market leader in Europe in clinical nutrition and infusion therapy and has strong market positions in the growth regions of

Asia-Pacific, Latin America and South Africa, as well as being a leading supplier of generic IV drugs in the United States. Fresenius Helios is one of the three largest private hospital operators in Germany. Fresenius Vamed is a market leader for engineering and other project development, planning, construction and technical management of healthcare facilities worldwide, as well as in the general management of healthcare facilities in selected key markets. We believe our leading positions and the scale and spread of our operations provide us with negotiating power with suppliers and with a cost-competitive advantage compared with our smaller competitors.

**Globally diversified presence in growing non-cyclical markets.** Our markets are relatively independent of economic cycles due to the intrinsic importance of the life-saving and life-sustaining products and treatments that we provide. These markets are also expanding due to demographic trends, the growing demand for innovative therapies in industrialized countries and the increasing availability of high-quality healthcare in developing and newly industrializing countries. We are one of the few globally active companies in our business areas and have subsidiaries in about 80 countries, providing us with the local presence needed to respond to differing national healthcare systems. Fresenius Medical Care sells its dialysis products to its own clinics, as well as to external dialysis providers. Fresenius Medical Care sells its products in over 120 countries, and Fresenius Kabi sells its products to hospitals and other purchasers in more than 160 countries. We operate a marketing and production network of more than 80 production sites worldwide. Our key production facilities are in the United States, Germany, Sweden, China, Japan and India. We also have production facilities in other European and Asia-Pacific countries, Latin America and South Africa.

**Comprehensive product range.** With a comprehensive product portfolio, we believe we are one of a few companies able to meet our customers' needs for a broad range of therapies. Fresenius Medical Care offers a comprehensive range of products for both hemodialysis (i.e., the removal of impurities and waste products from the bloodstream through a dialyzer before returning the blood to the patient's body) and peritoneal dialysis (i.e., the removal of toxins from the blood using the peritoneum). Fresenius Kabi is one of the few healthcare companies that offers a complete range of both enteral and parenteral nutrition therapies. Fresenius Kabi also offers a broad range of fluid and blood volume substitution products and a comprehensive portfolio of IV drugs and has a strong registration pipeline.

**High barriers to entry.** Most of our healthcare products and service businesses are characterized by high barriers to entry. High regulatory standards and quality requirements, as well as the need for an international production and distribution network and established relationships with suppliers and customers make it difficult for companies to enter and be competitive in our markets. An existing platform of hospitals, in-depth experience and a proven track record are needed to participate successfully in the privatization of the German hospital market and to successfully manage the economic turnaround of acquired hospitals.

**Integrated businesses.** Within the framework of our vertically integrated business model, each of our business segments operates at various stages of the value chain. Fresenius Medical Care provides its customers and patients with products and services for dialysis. By combining the development and manufacture of dialysis products with dialysis services for patients, Fresenius Medical Care gains valuable medical insights that it uses to improve both treatments and product quality. Fresenius Kabi also pursues an integrated product strategy in the areas of infusion therapy and clinical nutrition. In addition to infusion solutions, IV drugs and clinical nutrition, Fresenius Kabi also offers the corresponding application systems for the administration of these products to patients. We believe Fresenius Kabi has a strong market position as a vertically integrated supplier of generic IV drugs, with a reliable supply of active pharmaceutical ingredients for the manufacture of antibiotics and oncology drugs.

**Strong and stable cash flow and proven deleveraging track record.** Our business has strong, recurring cash flow streams generated by sales of life-saving and life-sustaining products and services. Our operating cash flow in the year ended December 31, 2011 amounted to €1,689 million, compared with €1,911 million in 2010 and €1,553 million in 2009. As a result of our strong cash flow generation and EBITDA growth, we were able to reduce our net debt to EBITDA



ratio following the acquisition of APP Pharmaceuticals from 3.6 as of December 31, 2008 to 2.8 as of December 31, 2011, and kept within the target range of 2.5 to 3.0 despite intensified acquisition activity in 2011. Calculated at comparable exchange rates (using the average exchange rate over the previous 12 months to calculate the principal amount of debt, cash and cash equivalents, and EBITDA), our net debt to EBITDA ratio was 2.7 as of December 31, 2011.

**Experienced management team.** Fresenius has one of the most experienced management teams in the industry with a proven track record for organic growth, as well as completing and successfully integrating acquisitions, including the €1.5 billion acquisition of HELIOS Kliniken GmbH in 2005, the US\$4.2 billion acquisition of RCG in 2006, and the US\$4.7 billion acquisition of APP Pharmaceuticals in 2008. Fresenius Medical Care's executive management boasts a combined experience in the dialysis sector of more than 150 years. Fresenius Kabi's executive management has about 185 years of combined experience in healthcare. Fresenius Helios's executive management has more than 85 years of combined experience in hospital management. Fresenius Vamed's executive management has more than 65 years of combined experience in providing services to the healthcare industry.

## STRATEGY

The following is a summary of the key elements of our business strategy:

**Expand our market position.** Fresenius' goal is to ensure the long-term future of the Company as a leading international provider of products and services in the healthcare industry and to grow its market share. Future opportunities in dialysis will arise from further international expansion in dialysis care and products and in renal pharmaceuticals. To strengthen its position, Fresenius Kabi plans to roll out more products from its portfolio to new markets. Market share is also to be expanded through the launch of new products in the field of IV drugs and new medical devices for infusion therapy and clinical nutrition. In addition, products from the existing portfolio are to be launched in the U.S. market. Fresenius Helios is in a strong position to take advantage of the further growth opportunities offered by the continuing privatization process in the German hospital market. Investment decisions are based on the continued existence and long-term potential of the hospitals to be acquired. Fresenius Vamed will be further strengthening its position as a global specialist provider of engineering and services for hospitals and other healthcare facilities.

**Extend our global presence.** In addition to sustained organic growth in markets where Fresenius is already established, our strategy is to diversify into new growth markets worldwide, especially in the Asia-Pacific region and in Latin America. With our brand name, product portfolio, and existing infrastructure, we intend to focus on markets that offer attractive growth potential. Apart from organic growth, Fresenius also plans to make further small to mid-sized selective acquisitions to improve the Group's market position and to diversify its business geographically.

**Strengthen innovation.** Fresenius' strategy is to continue building on its strength in technology, its competence and quality in patient care, and its ability to manufacture cost-effectively. We intend to leverage our competence in research and development in our operations to develop products and systems that provide a high level of safety and user-friendliness and enable tailoring to individual patient needs. We intend to continue to meet the requirements of best-in-class medical standards by developing and producing more effective products and treatment methods for the critically and chronically ill. Fresenius Helios's goal is to widen brand recognition for its healthcare services and innovative therapies. Fresenius Vamed's goal is to realize further projects in integrated healthcare services and to support patient-oriented healthcare systems more efficiently.

**Enhance profitability.** Our goal is to continue to improve Group profitability. To contain costs, we are concentrating particularly on making our production plants more efficient, exploiting economies of scale, leveraging the existing marketing and distribution infrastructure more intensively, and practicing strict cost control. We have set ourselves an ambitious earnings goal. We aim to achieve Group net income of more than €1 billion by 2014. We also have set ourselves a mid-term target aiming to achieve average organic sales growth of 6% to 9% per year for the Group. By focusing on our operating cash flow and employing efficient working capital management, we will



increase our investment flexibility and improve our balance sheet ratios. Another goal is to optimize our weighted average cost of capital by deliberately employing a balanced mix of equity and debt funding. In present capital market conditions, we optimize our cost of capital if we maintain our net debt to EBITDA ratio in a range between 2.5 and 3.0. It was 2.8 as of December 31, 2011. At the end of 2012 we target Group leverage to be 3.0 or lower.

## OUR BUSINESS

### Fresenius Medical Care

Based on publicly reported sales and number of patients treated, Fresenius Medical Care is the largest kidney dialysis company, operating in both the field of dialysis care and the field of dialysis products. When the kidney function of a patient fails, dialysis takes over the vital task of cleansing the blood of toxins and surplus water. Fresenius Medical Care's dialysis business is vertically integrated, providing dialysis treatment at its own dialysis clinics and supplying these clinics with a broad range of products. Fresenius Medical Care also develops and manufactures a full range of equipment, systems and disposable products, which it sells to customers in more than 120 countries.

In 2011, Fresenius Medical Care generated approximately 64% of its sales in North America and 36% from its international operations, encompassing operations in Europe (21%), Latin America (5%) and Asia-Pacific (8%). Fresenius Medical Care's sales represented 56% of our consolidated Group sales in 2011. As described under *"Management's Discussion and Analysis of Financial Condition and Results of Operation — Key Factors Affecting Our Results of Operations and Financial Condition"*, although Fresenius Medical Care is fully consolidated in our financial statements, we had a 33.24% economic interest in Fresenius Medical Care in 2011 (the average for the year), and we receive cash flows from it only to the extent that dividends are paid to us and from existing agreements such as rental and service agreements. Our economic interest in Fresenius Medical Care was 30.34% as of December 31, 2011, and 31.03% as of February 29, 2012.

While dialysis services accounted for approximately 90% of Fresenius Medical Care's total sales in North America in 2011, dialysis products accounted for 53% of its sales in the rest of the world (Fresenius Medical Care's "International" segment) in 2011, down from 55% in 2010. The following tables summarize Fresenius Medical Care's sales and Fresenius Medical Care's EBIT ("FMC EBIT") in its North America and International segments:

|                                            | Year ended December 31,     |                         |                             |                         |                             |                         |
|--------------------------------------------|-----------------------------|-------------------------|-----------------------------|-------------------------|-----------------------------|-------------------------|
|                                            | 2011                        |                         | 2010                        |                         | 2009                        |                         |
|                                            | (US\$ million)<br>(audited) | % of total<br>FMC sales | (US\$ million)<br>(audited) | % of total<br>FMC sales | (US\$ million)<br>(audited) | % of total<br>FMC sales |
| North America sales . . .                  | 8,150                       | 64                      | 8,130                       | 67                      | 7,612                       | 68                      |
| International sales . . . .                | 4,628                       | 36                      | 3,923                       | 33                      | 3,635                       | 32                      |
| <b>Total FMC Sales<sup>(1)</sup> . . .</b> | <b>12,795</b>               | <b>100</b>              | <b>12,053</b>               | <b>100</b>              | <b>11,247</b>               | <b>100</b>              |

|                                                    | Year ended December 31,     |                        |                             |                        |                             |                        |
|----------------------------------------------------|-----------------------------|------------------------|-----------------------------|------------------------|-----------------------------|------------------------|
|                                                    | 2011                        |                        | 2010                        |                        | 2009                        |                        |
|                                                    | (US\$ million)<br>(audited) | % of total<br>FMC EBIT | (US\$ million)<br>(audited) | % of total<br>FMC EBIT | (US\$ million)<br>(audited) | % of total<br>FMC EBIT |
| North America operating<br>profit (EBIT) . . . . . | 1,435                       | 69                     | 1,386                       | 72                     | 1,250                       | 71                     |
| International operating profit<br>(EBIT) . . . . . | 807                         | 39                     | 678                         | 35                     | 637                         | 36                     |
| <b>Total FMC EBIT<sup>(2)</sup> . . . . .</b>      | <b>2,075</b>                | <b>100</b>             | <b>1,924</b>                | <b>100</b>             | <b>1,756</b>                | <b>100</b>             |

(1) For 2011, this figure primarily consisted of sales internal to the Fresenius Group generated by corporate functions in the amount of US\$17 million.

(2) This figure includes Fresenius Medical Care's corporate costs relating primarily to certain Fresenius Medical Care headquarters overhead charges (including but not limited to accounting, finance and professional services) of US\$167 million for 2011, US\$140 million for 2010 and US\$131 million for 2009.

## ***Dialysis Overview***

### *End-Stage Renal Disease*

End-stage renal disease (“**ESRD**”) is the stage of advanced chronic kidney disease that is characterized by the irreversible loss of kidney function and requires regular dialysis treatment or kidney transplantation to sustain life. A normally functioning human kidney removes waste products and excess water from the blood, which prevents toxin buildup, water overload and the eventual poisoning of the body. A number of conditions — diabetes, hypertension, glomerulonephritis and inherited diseases — can cause chronic kidney disease. The majority of all people with ESRD acquire the disease as a complication of one or more of these primary conditions.

In dialysis, two treatment methods are distinguished: hemodialysis (“**HD**”) and peritoneal dialysis (“**PD**”). With HD, the patient’s blood is cleansed with a dialyzer, or “artificial kidney”, a process that is controlled by a hemodialysis machine. In contrast, PD removes toxins from the blood using the peritoneum, the membrane lining covering the internal organs located in the abdominal area, as a filter. In 2011, hemodialysis patients comprised more than 89% of all dialysis patients worldwide; the remaining approximately 11% received peritoneal dialysis treatments.

### *Hemodialysis*

Hemodialysis removes toxins and excess fluids from the blood outside the patient’s body. The blood flows outside the body through plastic tubes known as bloodlines into a specially designed filter, called a dialyzer. The dialyzer separates waste products and excess water from the blood. Dialysis solution flowing through the dialyzer carries away the waste products and excess water and supplements the blood with solutes, which must be added due to renal failure. The treated blood is returned to the patient. The hemodialysis machine pumps blood, adds anti-coagulants, regulates the purification process and controls the mixing of dialysis solution and the rate of its flow through the system. The machine can also monitor and record the patient’s vital signs. Hemodialysis patients generally receive treatment three times per week, typically for three to five hours per treatment. The majority of hemodialysis patients receive treatment at outpatient dialysis clinics, such as those of Fresenius Medical Care.

### *Peritoneal Dialysis*

Peritoneal dialysis removes toxins from the blood using the peritoneum, the membrane lining covering the internal organs located in the abdominal area, as a filter. Most peritoneal dialysis patients administer their own treatments in their homes or workplaces, either by a treatment known as continuous ambulatory peritoneal dialysis (“**CAPD**”), or by a treatment known as continuous cycling peritoneal dialysis (“**CCPD**”). In both of these treatments, a surgically implanted catheter provides access to the peritoneal cavity. A typical CAPD peritoneal dialysis program involves the introduction and disposal of dialysis solution four times a day. With CCPD, a machine pumps or “cycles” dialysis solution to and from the patient’s peritoneal cavity while the patient sleeps. These treatments can usually be done over a limited period of time, ideally only if the kidneys are still functioning to some extent.

## ***Dialysis Services***

Fresenius Medical Care provides dialysis treatment and related laboratory and diagnostic services through its network of 2,898 outpatient dialysis clinics, 1,838 of which are in North America (including Mexico) and 1,060 of which are in other countries around the globe. In 2011, Fresenius Medical Care acquired 119 clinics, opened 64 new clinics and sold or consolidated 29 clinics. The number of patients treated in Fresenius Medical Care’s clinics increased by 9% to 233,156 at December 31, 2011 from 214,648 at December 31, 2010. In 2011, dialysis services accounted for 74% of Fresenius Medical Care’s total sales.

The following table sets forth the number of treatments, patients and dialysis clinics in 2011, 2010 and 2009:

|                                             | Year ended December 31, |         |         |
|---------------------------------------------|-------------------------|---------|---------|
|                                             | 2011                    | 2010    | 2009    |
| Treatments (in millions) . . . . .          | 34.4                    | 31.7    | 29.4    |
| Patients (at December 31) . . . . .         | 233,156                 | 214,648 | 195,651 |
| Dialysis clinics (at December 31) . . . . . | 2,898                   | 2,757   | 2,634   |

As part of the dialysis therapy, Fresenius Medical Care provides a variety of services to ESRD patients at its dialysis clinics in the United States. These services include administering erythropoietin, a synthetic engineered hormone to treat anemia. Our supply contract for erythropoietin between Fresenius Medical Care and Amgen USA, Inc., a subsidiary of Amgen, Inc., and the only supplier of synthetic erythropoietin in the United States, covers the period from January 1, 2012 to December 31, 2014. Fresenius Medical Care also provides dialysis services under contract to hospitals in the United States on an “as needed” basis for hospitalized ESRD patients and for patients suffering from acute kidney failure. Fresenius Medical Care treats these patients either at their bedside, using portable dialysis equipment, or at the hospital’s dialysis site.

Fresenius Medical Care’s clinics also offer services for home dialysis patients, the majority of whom receive peritoneal dialysis treatment. For these patients, Fresenius Medical Care provides materials, training and patient-support services, including clinical monitoring, follow-up assistance and arranging for delivery of supplies to the patient’s residence.

The manner in which each clinic conducts its business depends, in large part, upon applicable laws, rules and regulations of the jurisdiction in which the clinic is located, as well as our clinical policies. However, a patient’s attending physician, who may be the clinic’s medical director or an unaffiliated physician with staff privileges at the clinic, has medical discretion to prescribe the particular treatment modality and medications for that patient. Similarly, the attending physician has discretion in prescribing particular medical products, although the clinic typically purchases equipment, regardless of brand, in consultation with the medical director.

### ***Laboratory Services***

Fresenius Medical Care provides laboratory testing and marketing services in the United States, such as blood, urine and other bodily fluid testing services, through its subsidiary Spectra Laboratories (“**Spectra**”). Nephrologists use the results of laboratory tests to determine the appropriate individual dialysis therapy for a patient and to assist physicians in determining whether a dialysis patient’s therapy regimen, diet and medicines remain optimal. Spectra is the leading renal clinical laboratory provider in North America and provides testing for dialysis related treatments in its two laboratories located in New Jersey and Northern California. In 2011, Spectra provided more than 55 million laboratory services for approximately 178,000 dialysis patients in the United States.

### ***Dialysis Products***

Fresenius Medical Care manufactures dialysis equipment and related products, including dialyzers, hemodialysis machines, peritoneal dialysis cyclers, solutions, flexible bags, bloodlines, and systems for water treatment. Fresenius Medical Care is currently the world’s largest manufacturer and distributor of equipment and related products for hemodialysis and the second largest manufacturer of peritoneal dialysis products and sells its dialysis products directly or through subsidiaries in over 120 countries. The majority of Fresenius Medical Care’s customers are dialysis clinics. In 2011, dialysis products sales accounted for 26% of Fresenius Medical Care’s total sales.

#### ***Hemodialysis Products***

Fresenius Medical Care offers a comprehensive hemodialysis product line and continually strives to expand and improve the capabilities of its hemodialysis systems to offer an advanced treatment at reasonable cost. Fresenius Medical Care sells its 4008 and 5008 series HD dialysis

machines in its International Segment. In North America, Fresenius Medical Care sells its 2008 series machines, which are modeled on the 4008 series. The <sup>2008</sup>/<sub>4008</sub> series is the best selling machine for hemodialysis treatment worldwide.

Fresenius Medical Care manufactures dialyzers using hollow fiber Fresenius Polysulfone and Helixone membranes, which are synthetic materials. According to its estimates, Fresenius Medical Care is worldwide the leading producer of polysulfone dialyzers. In addition, Fresenius Medical Care manufactures and distributes numerous other hemodialysis disposables and other hemodialysis products.

#### *Peritoneal Dialysis Equipment and Products*

Fresenius Medical Care offers a full line of peritoneal dialysis systems and solutions for both CAPD, which requires manually changing the dialysis solution four times a day, and CCPD, a machine-supported type of peritoneal dialysis that is used mostly at night.

#### *Renal Pharmaceuticals*

Renal pharmaceuticals broaden our portfolio vertically beyond dialysis products and dialysis services. Patients receiving dialysis treatment usually need to take drugs, for instance to maintain the right balance of minerals in the body or to prevent anemia. The spectrum of renal pharmaceuticals includes erythropoiesis-stimulating agents (EPO), phosphate binders, iron preparations, vitamin D preparations, and so-called calcimimetics.

Fresenius Medical Care acquired the rights to PhosLo in November 2006. During 2007, Fresenius Medical Care applied for approval of PhosLo in selected European countries and of OsvaRen, another phosphate binder that supports bone and cardiovascular health, in most EU member states. In October 2008, a generic phosphate binder that competes with PhosLo was introduced in the United States market, which reduced our PhosLo sales in 2009. In October 2009, Fresenius Medical Care launched a competing authorized generic version of the PhosLo existing gelcap formulation in the United States. In April 2011, a new drug application for Phoslyra, the liquid formulation of PhosLo was approved by the FDA.

In 2008, Fresenius Medical Care entered into two separate and independent license and distribution agreements, one for the U.S. (with Galenica Ltd. and Luitpold Pharmaceuticals Inc.) and one for certain countries in Europe and the Middle East (with Galenica AG and Vifor (International) AG), to market and distribute intravenous iron products, such as Venofer (iron sucrose) and Ferinject (ferric carboxymaltose). Both drugs are used to treat iron deficiency anemia experienced by dialysis patients. Venofer is the leading intravenous iron product worldwide. The agreement concerns all commercialization activities for these intravenous iron products in the field of dialysis and became effective on January 1, 2009. In North America, a separate license agreement effective November 1, 2008 provides Fresenius Medical Care's subsidiary Fresenius USA Manufacturing Inc. ("FUSA") with exclusive rights to manufacture and distribute Venofer to freestanding (non-hospital based) U.S. dialysis facilities and, in addition, grants FUSA similar rights for certain new formulations of the drug. The United States license agreement has a term of ten years and includes FUSA extension options. The international agreement has a term of 20 years.

In December 2010, Fresenius Medical Care announced the extension of its agreements with Galenica Ltd. ("Galenica") by forming a new renal pharmaceutical company, Vifor-Fresenius Medical Care Renal Pharma Ltd., ("VFMCRP") with Galenica (subject to final antitrust approval in certain countries), to develop and distribute products to treat iron deficiency anemia and bone mineral metabolism for pre-dialysis and dialysis patients. Galenica will contribute licenses (or the commercial benefit in the United States) to the new company for its Venofer® and Ferinject products for use in the dialysis and pre-dialysis market (Chronic Kidney Disease ("CKD") stages III to V). Commercialization of both of these products outside the field of CKD stages III to V will remain fully the responsibility of Galenica and its existing key partners. Galenica will also contribute to the new company exclusive worldwide rights for PA21, a novel iron-based phosphate binder currently in preparation for phase III clinical studies, but will maintain a recently announced agreement to develop and market this product in Japan through another partner. Fresenius Medical Care owns

45% of the new company which is headquartered in Switzerland. The closing in December 2010 allowed Galenica and Fresenius Medical Care to participate in Stages III to V in the U.S. and to continue their collaboration in Stage V in selected other countries. The European antitrust authorities granted approval in October 2011, which allowed VFMCRP to proceed with the targeted expansion of its global operations on November 1, 2011.

In September 2011, Fresenius Medical Care closed an agreement with the Japanese company Toray for co-development of the compound TRK820 for chronic itch (uremic pruritus) in Europe. Conditional registration of this drug, which bears an orphan disease indication, is planned for late 2013, with further post market trials needed after registration.

Fresenius Medical Care estimated that the worldwide market for dialysis drugs used to treat CKD (currently vitamin D, iron, potassium binders and phosphate binders) in 2010 was more than US\$2.7 billion. As part of its horizontal expansion growth path, Fresenius Medical Care intends to continue to integrate the use of dialysis drugs with its existing product technology, dialysis treatment and laboratory services.

### ***Marketing, Distribution and Service***

A dialysis patient generally seeks treatment at a conveniently located clinic at which the patient's nephrologist has staff privileges. Fresenius Medical Care maintains a direct sales force of trained salespersons engaged in the sale of both hemodialysis and peritoneal dialysis products and engages in direct promotional efforts, including visits to physicians, clinical specialists, hospitals, clinics and dialysis clinics, and is represented at industry trade shows through its Sales and Marketing division. It also sponsors medical conferences and scientific symposia as a means for disseminating scientific or technical information. Fresenius Medical Care's clinical nurses provide clinical support, training and assistance to customers and assist the sales force. Fresenius Medical Care also uses outside distributors to provide sales coverage in countries that its internal sales force does not service.

Fresenius Medical Care ships products from factories to central warehouses frequently located near the production facilities. From these central warehouses, dialysis products are shipped to regional warehouses. Fresenius Medical Care then distributes peritoneal dialysis products to the patient at home, and hemodialysis products directly to clinics and other customers.

Fresenius Medical Care offers customer service, training and education in the applicable local language, and technical support such as field service, repair shops, maintenance, and warranty regulation for each country in which it sells dialysis products. Fresenius Medical Care provides training sessions on its equipment at selected facilities in Germany, the United States and the Philippines and it also maintains regional service centers that are responsible for day-to-day international service support.

### ***Customers***

The following table provides information for the years ended December 31, 2011, 2010 and 2009 regarding the percentage of Fresenius Medical Care's U.S. dialysis treatment services net revenues from (a) the Medicare ESRD program; (b) private/alternative payors, such as commercial insurance and private funds; (c) Medicaid and other government sources; and (d) hospitals.

|                                                 | <b>Year ended December 31,</b> |                     |                     |
|-------------------------------------------------|--------------------------------|---------------------|---------------------|
|                                                 | <b>2011</b>                    | <b>2010</b>         | <b>2009</b>         |
|                                                 | <b>(% of net sales)</b>        |                     |                     |
| Medicare ESRD program . . . . .                 | 46.2                           | 49.4                | 50.0                |
| Private/alternative payors . . . . .            | 42.8                           | 42.3                | 41.1                |
| Medicaid and other government sources . . . . . | 5.9                            | 3.4                 | 3.6                 |
| Hospitals . . . . .                             | 5.1                            | 4.9                 | 5.3                 |
| <b>Total . . . . .</b>                          | <b><u>100.0</u></b>            | <b><u>100.0</u></b> | <b><u>100.0</u></b> |

Under the Medicare ESRD program, Medicare reimburses dialysis providers for the treatment of certain individuals who are diagnosed as having ESRD, regardless of age or financial circumstances. See “— *Regulatory Matters — Regulations Relating to Reimbursement*”.

We believe that Fresenius Medical Care’s success in establishing and maintaining dialysis clinics, both in the United States and in other countries, depends significantly on its ability to obtain the acceptance of and referrals from local physicians, hospitals and managed care plans. A dialysis patient generally seeks treatment at a conveniently located clinic at which the patient’s nephrologist has staff privileges.

Medicare ESRD program reimbursement regulations require that a medical director generally supervises treatment at a dialysis clinic. Generally, the medical director must be board certified or board eligible in internal medicine or pediatrics and have at least twelve months of training or experience in the care of patients undergoing dialysis. Fresenius Medical Care’s medical directors also generally maintain their own private practices.

### ***Production Facilities***

Fresenius Medical Care’s global orientation also applies to the manufacture of its products. Fresenius Medical Care operates production facilities in numerous countries throughout the world — including in Germany, the United States, Mexico and China — to meet the demand for its machines, high-performance machines for CCPD (“**cyclers**”), dialyzers, solutions, concentrates, blood lines, disposable tubing components and equipment for water treatment in dialysis clinics. Fresenius Medical Care’s production activities focus on the North American, European and Japanese markets. In addition, Fresenius Medical Care’s decentralized structure helps to significantly reduce transportation costs. Another advantage of the decentralized structure of its production facilities is that this helps to reduce the impact of currency fluctuations.

### ***Market Information***

Based on Fresenius Medical Care’s estimates, there were approximately 2.78 million ESRD patients worldwide, of which approximately 618,000 kidney patients were living with a transplanted kidney. Of the approximately 2.16 million patients receiving regular dialysis treatment in 2011, more than 89%, or approximately 1.92 million patients, are treated with hemodialysis, while about 11%, or approximately 237,000 patients, choose peritoneal dialysis. The majority of hemodialysis patients are treated in dialysis clinics. There are about 31,700 dialysis clinics worldwide with an average of 70 hemodialysis patients per clinic.

The number of dialysis patients grew by approximately 6% worldwide in 2011, but the growth in patient numbers has not been uniform across all regions. The present annual patient growth rate in North America, the largest dialysis market, is approximately 4% per year, while in many developing countries we see annual growth rates of 10% or more. Fresenius Medical Care believes that worldwide growth will continue at around 6% per year. At the end of 2011, there were approximately 517,000 patients in North America (including Mexico), approximately 329,000 dialysis patients in the 27 countries of the European Union, approximately 266,000 patients in Europe (excluding EU countries), the Middle East and Africa, approximately 225,000 patients in Latin America (excluding Mexico), and approximately 820,000 patients in Asia-Pacific (including approximately 304,000 patients in Japan).

Dialysis patient growth rates vary significantly from region to region. A below average increase in the number of patients is experienced in the United States and Japan, as well as Western and Central Europe, where patients with terminal kidney failure have had readily available access to treatment, usually dialysis, for many years. In contrast, growth rates in the economically weaker regions were above average, reaching double digit figures in some cases. This indicates that accessibility to treatment is still somewhat limited in these countries, but is gradually improving. Fresenius Medical Care estimates that about 20% of worldwide patients are treated in the United States, around 15% in the European Union and approximately 14% in Japan. The remaining 51%



of all dialysis patients are distributed throughout approximately 120 countries in different geographical regions.

## **Competition**

### *Dialysis Services*

In the United States, the majority of the market for dialysis care is already highly consolidated. Taken together, Fresenius Medical Care and the second largest provider of dialysis care, DaVita, treat approximately 66% of all U.S. dialysis patients. Ownership of the remaining dialysis clinics in the United States is split between a large number of operators owning ten or fewer clinics each and a small number of larger multi-clinic operators. In 2011, Fresenius Medical Care maintained its market-leading position of approximately 33%. Outside the United States, the markets for dialysis care are much more fragmented. Competitors include Diaverum (formerly the non-United States-based dialysis services business of Gambro Lundia AB), Baxter International Inc. ("**Baxter**") and B. Braun Melsungen AG ("**B. Braun**"), as well as independent clinics and with clinics that are affiliated with hospitals. Fresenius Medical Care operates 1,057 dialysis clinics in about 40 countries and treats over 91,300 patients.

Since government programs are the primary source of reimbursement for services to the majority of dialysis patients in the United States, competition is based primarily on quality and accessibility of service and the ability to obtain admissions from physicians with privileges at the facilities. However, the extension of periods during which commercial insurers are primarily responsible for reimbursement and the growth of managed care programs have placed greater emphasis on service costs for privately insured patients.

In most countries outside the United States, Fresenius Medical Care competes primarily against individual free-standing clinics and hospital-based clinics. In many of these countries, especially developed countries, governments directly or indirectly regulate prices and the opening of new clinics. Providers compete in all countries primarily on the basis of quality and availability of service and the development and maintenance of relationships with referring physicians.

### *Dialysis Products*

In the dialysis products market, the most important products are dialyzers, hemodialysis machines, concentrates and dialysis solutions, and products for peritoneal dialysis. Fresenius Medical Care is the world market leader in dialysis products with a market share of approximately 33%, followed by Baxter with approximately 19% and Gambro with approximately 15%. These top three manufacturers serve approximately 67% of the market demand. Each of the other competitors, mainly from Japan, have a single-digit percentage market share.

Fresenius Medical Care estimates that in 2011, it supplied approximately 44% of global dialyzer production and approximately 55% of all HD machines sold worldwide. In 2010, Fresenius Medical Care's market share for PD products sold worldwide was 17%. Fresenius Medical Care's acquisition of Gambro's PD business closed in December 2010; as a result, its market share for PD products increased to 19% in 2011. In the United States, our most important business region, Fresenius Medical Care had a share of over 80% of the independent market in these two product segments. We define the independent market as all dialysis clinics that do not belong to the major dialysis care providers, Fresenius Medical Care or DaVita. In 2011, China was our second largest market, where we sold more than 3,860 new hemodialysis machines. Over 48%, or almost half of all machines used in the Chinese market, are now produced by Fresenius Medical Care.

### *Laboratory Services*

Spectra competes in the United States with large nationwide laboratories, dedicated dialysis laboratories and numerous local and regional laboratories, including hospital laboratories. In the laboratory services market, companies compete on the basis of service performance, including quality of laboratory testing, timeliness of reporting test results and cost-effectiveness. We believe that Spectra's laboratory services are competitive in these areas.



## Fresenius Kabi

Fresenius Kabi specializes in the therapy and care of chronically and critically ill patients in hospitals and in the out-patient setting. Representing approximately 24% of our consolidated Group sales in 2011, Fresenius Kabi has four product segments: infusion therapy, IV drugs, clinical nutrition, and medical devices/transfusion technology. Fresenius Kabi's products cover the full range of patient care: emergency cases, surgery, intensive care, hospital wards, and outpatient care.

Fresenius Kabi's portfolio of IV drugs includes anesthetics, analgesics, anti-infectives, and drugs for the treatment of oncological and other critical diseases. For infusion therapy, Fresenius Kabi provides blood volume substitution products and infusion solutions. In the area of clinical nutrition, Fresenius Kabi is one of the few companies worldwide that offers both parenteral and enteral nutrition products. For the administration of its products, Fresenius Kabi supplies infusion pumps, infusion management systems, nutrition pumps, and disposables. For transfusion technology, Fresenius Kabi offers a range of products used by blood banks and blood donation units to produce blood products.

Fresenius Kabi's total sales in 2011 were €3,964 million, with infusion therapy accounting for €895 million, IV drugs for €1,438 million, clinical nutrition for €1,154 million and medical devices/transfusion technology for €477 million.

The following table shows Fresenius Kabi's sales in 2011, 2010 and 2009 by region:

|                              | Year ended December 31, |                      |                    |                     |                      |                    |                     |                    |
|------------------------------|-------------------------|----------------------|--------------------|---------------------|----------------------|--------------------|---------------------|--------------------|
|                              | 2011                    |                      |                    | 2010                |                      |                    | 2009                |                    |
|                              | (million €)             | (change 2011/2010 %) | (% of total sales) | (million €)         | (change 2010/2009 %) | (% of total sales) | (million €)         | (% of total sales) |
| Europe . . . . .             | 1,826                   | 7                    | 46                 | 1,702               | 9                    | 46                 | 1,566               | 51                 |
| North America . . . . .      | 1,002                   | 3                    | 25                 | 975                 | 34                   | 27                 | 728                 | 23                 |
| Asia-Pacific . . . . .       | 702                     | 18                   | 18                 | 593                 | 23                   | 16                 | 482                 | 16                 |
| Latin America/Africa . . . . | 434                     | 8                    | 11                 | 402                 | 30                   | 11                 | 310                 | 10                 |
| <b>Total . . . . .</b>       | <b><u>3,964</u></b>     | <b><u>8</u></b>      | <b><u>100</u></b>  | <b><u>3,672</u></b> | <b><u>19</u></b>     | <b><u>100</u></b>  | <b><u>3,086</u></b> | <b><u>100</u></b>  |

### Infusion Therapy

For infusion therapy, Fresenius Kabi offers products for fluid and blood volume replacement. For the administration of these therapies Fresenius Kabi provides infusion technologies and disposables. Infusion therapy products are used in general hospital wards, in intensive care units and in emergency medicine, such as trauma. Whether for treating fluid or electrolyte deficiencies or as a carrier solution for IV drugs, infusion therapy products are used every day in the medical field.

If the necessary care is not taken to replace the fluid and blood losses in time, patients may go into a state of shock, which acutely restricts blood and fluid supply to all vital organs. Restricted blood circulation leads to a shortage of oxygen and nutrients supply to the organs, which may result in organ failure, tissue damage and even death. Infusion therapy restores normal fluid volume, counteracting low blood pressure.

Fresenius Kabi provides a wide range of infusion therapy products, including the following:

- Infusion solutions consist primarily of salts (electrolytes), carbohydrates and water. They are infused when the body's water content or electrolyte balance has been disrupted, in acute need of energy supply and a lack of salt or lack of specific minerals in the blood. They also serve as carrier solutions for intravenously administered drugs. Fresenius Kabi offers a comprehensive range of products in infusion bags and bottles, such as freeflex PVC-free infusion bags and KabiPac plastic bottles.
- Blood volume replacements (artificial colloids) are most often used in treating patients suffering from blood losses resulting from an accident or during surgery; colloids can be a

safe alternative to blood transfusions. Fresenius Kabi develops and manufactures blood volume replacement solutions such as HAES-steril, Voluven and Volulyte, which are manufactured with hydroxyethyl starch derived from waxy maize.

- Fresenius Kabi also provides medical-technical equipment and disposables, cannulae such as Ambix Intrastick Safe, tubes and pumps used for administering infusion therapies, as well as infusion management systems.

## ***IV Drugs***

Fresenius Kabi is a leading global supplier of IV drugs. It has a comprehensive product portfolio for the therapy areas of anesthetics, pain-therapy products (analgesics), infectious diseases, oncology, and critical diseases. The portfolio is geared towards the treatment of and care for chronically and critically ill patients. Fresenius Kabi not only manufactures the drug, but also produces some of the active pharmaceutical ingredients (API), e.g., cystostatic agents and cephalosporin and penicillin group antibiotic agents, and thus has expertise to cover the entire pharmaceutical value chain — a factor of particular relevance to quality and price flexibility.

As an essential part of the acute, surgical and therapeutic treatment of patients, IV drugs are commonly used in today's medical routine. They are applied in emergency cases, during surgeries and for intensive care since in this way the drug reaches the entire human body directly through the bloodstream and can be effective within a few seconds.

In 2011, Fresenius Kabi further expanded its business. New products and the continued internationalization of the existing product portfolio has contributed to this success. In the United States, Fresenius Kabi offers a broad portfolio of anesthetics, anti-infectives, oncology drugs, and products for critical diseases. Supply constraints at competitors in the U.S. market continued. Based on its broad product portfolio, Fresenius Kabi was again able to contribute to a reliable IV drug supply in that market. Its manufacturing facilities were able to flexibly and quickly respond to market conditions. They were able to adjust their produced quantities to the growing demand.

Fresenius Kabi is one of the globally leading companies in the areas of IV anesthetics and IV analgesics. In the area of IV analgetics, Fresenius Kabi introduced the pain medication Paracetamol Kabi in Germany at the end of 2010. Fresenius Kabi also advanced the European marketing of this product, and launched it on the Indian market. In addition, Fresenius Kabi successfully placed the two IV analgetics Remifentanyl and Cisatracurium in the market, and introduced another analgesic on the U.S. market, Clonidine Hydrochloride, which is mostly used in oncology.

Fresenius Kabi specializes in generic drugs for cancer treatment, and successfully continued with the internationalization of oncology products in 2011. Immediately after the patent had expired, Fresenius Kabi was able to offer the cystostatic drug Topotecan Kabi in Portugal and France. In addition, other IV oncology drugs, which were launched in many European countries include: Irinotecan Kabi, Paclitaxel Kabi and Oxaliplatin Kabi.

Fresenius Kabi introduced several cystostatic drugs in the Asia-Pacific area. Pemetrexed, a therapeutic agent used for patients with bronchial carcinoma, was introduced in India. Fresenius Kabi successfully launched Letrozole on the Philippine market to treat breast cancer. In Taiwan it introduced Bicalutamide, a drug used to treat prostate cancer. In the United States it was one of the first generic drug providers to offer all three dosages of the cystostatic drug Gemcitabine. At the beginning of the year Fresenius Kabi entered into a manufacturing and distribution agreement with Teva Pharmaceuticals for Gemcitabine. This agreement enabled Fresenius Kabi to distribute the product during a 180-day marketing exclusivity period. In addition it introduced Letrozole in the United States.

Fresenius Kabi further internationalized its product portfolio for the treatment of infectious diseases and for critical diseases. Fresenius Kabi features a comprehensive product range and is the leading supplier of unfractionated heparin in North America. Heparin is used for the prophylaxis and treatment of blood clotting after surgery and in extracorporeal blood circulation, such as dialysis.

## ***Clinical Nutrition***

There are two types of clinical nutrition therapy: parenteral nutrition and enteral nutrition. Parenteral nutrition is administered intravenously when the intestinal function is impaired. Enteral nutrition is administered in the form of sip and tube feeds using the gastro-intestinal tract. Clinical nutrition products are administered predominantly to intensive care, trauma or cancer patients, patients who have undergone surgery and patients suffering from malnutrition. Clinical nutrition therapy is essential to maintaining or restoring normal body tissue and function during convalescence by reducing complications, thus shortening the length of hospital stay, as well as helping to avoid weight-loss and reducing related morbidity. Fresenius Kabi is one of the few companies worldwide to offer both forms of clinical nutrition: parenteral and enteral.

Clinical Nutrition therapy meets a variety of nutritional needs, including the need for:

- protein or amino acids, the building blocks of the body's proteins to maintain protein synthesis and to preserve body muscle mass;
- fat for energy supply;
- glucose for immediate energy supply; and
- micronutrients: vitamins, minerals, trace elements, micronutrients and organic phosphates, which are essential to a number of complex functions within the body, such as the enzyme and hormone system.

### ***Parenteral Nutrition***

Parenteral nutrition is administered to patients intravenously. Fresenius Kabi has a comprehensive range of products, including:

- amino acid solutions, including formulations for pediatric use, standard adult use, organ specific amino acids for patients with conditions such as renal insufficiency or hepatic insufficiency (liver disease) and specific amino acids for intensive care;
- lipid emulsions;
- glucose products;
- water and fat soluble vitamins and trace elements; and
- medical-technical products and disposables for administering parenteral nutrition.

### ***Enteral Nutrition***

Enteral nutrition products are given as sip and tube feeds using the gastro-intestinal tract. Fresenius Kabi's enteral products that are taken orally (oral nutritional supplements) come in a variety of flavours and textures.

Fresenius Kabi's enteral nutrition products include:

- a range of standard tube and sip feeds with different energy and protein levels with and without fibre for patients with or at risk of malnutrition and other nutrition deficiencies;
- enteral products for intensive care patients to fulfill increased requirements of certain key nutrients such as glutamine and antioxidants;
- pediatric enteral nutrition products;
- disease specific products for treatment of patients with, for example, renal insufficiency, hepatic insufficiency, diabetes, burns and cancer; and
- medical-technical products and disposables for administering enteral nutrition.

### ***Medical Devices/Transfusion Technology***

Medical Devices are used for the safe and precise administration of pharmaceuticals and include infusion and nutrition pumps, infusion management systems, as well as disposables. In transfusion technology, Fresenius Kabi offers products for the production of blood products, including a broad range of products for blood banks and blood-donor services.

Fresenius Kabi's portfolio of medical devices and transfusion technology products includes the following:

- infusion technologies such as infusion systems (e.g., Orchestra, infusion workstations for critical care), syringe and volumetric pumps, and respective i.v. disposables;
- nutrition pumps and disposables to transfer clinical nutrition from a feed container to the patient;
- the disposables, including infusion sets, extension lines, valves, filters and transfer devices;
- a range of products for blood transfusion, including products for blood collection, processing, storage and transfusion;
- aphaeresis systems that allow the collection of specific blood components from a donor or patient;
- the Continuous Auto Transfusion System ("C.A.T.S."), for blood salvage during or after an operation. C.A.T.S. collects and processes shed blood from surgical wounds or drainage to produce quality packed red blood cells for re-infusion;
- blood filters that remove leukocytes from donor blood; and
- a comprehensive range of standardized blood bags.

### ***Production Facilities***

Fresenius Kabi operates an international production network. Its most important production sites include plants in Austria, Germany, Sweden, the United States, China and India. In addition, Fresenius Kabi has production sites in other European countries, South and Central America, Asia and South Africa.

### ***Customers***

Fresenius Kabi has a broadly diversified customer base. This includes hospitals, wholesalers, purchasing associations, medical and similar institutions, hospital operators, and home care patients. Fresenius Kabi has no significant dependence on one source of revenue.

Many purchases by Fresenius Kabi's customers in the United States are made through arrangements with Group Purchasing Organizations ("GPOs"), which negotiate collective purchasing agreements on behalf of their members, or through specialty distributors, which specialize in particular therapeutic categories such as oncology. We sell to members of all of the major GPOs in the United States. We also sell products to the leading specialty distributors. Fresenius Kabi currently derives, and expects to continue to derive, a large percentage of its revenues from customers in the United States that are members of a small number of GPOs. Currently, fewer than ten GPOs control a large majority of sales to hospital customers. Fresenius Kabi has purchasing arrangements with the major GPOs in the United States. Our GPO agreements are typically multi-year in duration and may be terminated on short notice. Particularly in the international business, there is a growing tendency for government entities to award contracts by public tender processes, in which Fresenius Kabi also participates.

### ***Market Information***

In the market for infusion therapy and clinical nutrition, therapies that offer high standards of healthcare paired with cost advantages are increasingly gaining importance in Central and Western

Europe due to general cost pressure. Studies show that, in cases of health or age-induced nutritional deficiencies, the administration of food supplements can reduce hospital costs by an average of €1,000 per patient — through shorter stays and less nursing care. At the time when they are admitted to hospital, at least 25% of all patients in Europe are suffering from nutritional deficiencies, or have an elevated risk of developing nutritional deficiencies. Much higher figures of 50 to 60% are reported for people who require nursing care, especially the elderly. The costs caused by health-induced nutritional deficiencies are about €170 billion per year Europe-wide.

In Central and Western Europe, the total market for infusion therapy and clinical nutrition is growing at a low single-digit rate. Growth rates are in the high single to double digits in the emerging markets of Asia-Pacific, Latin America, and Eastern Europe. Based on its own estimates, Fresenius Kabi considers its relevant market for infusion therapy and clinical nutrition (excluding the United States and Japan) to be about €9 billion.

We also expect the demand for generics to continue growing. Generic drugs are more advantageous from health economics aspects than original preparations because of their significantly lower price and they already make a vital contribution to healthcare today. In our view, and judged from today's vantage point, the focus is mainly on the pricing of patented drugs and the prescription drugs segment in the pharmacy market.

The market for IV drugs is characterized by moderate volume growth, steady price erosion, and fierce competition. Growth is mainly achieved through new generics that are brought to market when the original preparation goes off-patent. In Europe and the United States, the market for IV drugs is growing at a midsingle-digit rate. We expect the U.S. market for IV drugs that go off-patent from 2012 to 2022 to grow to approximately US\$20 billion on a cumulative basis. These figures are based on the sales of the original preparations in 2010 and do not take account of the usual price erosions for generics. Based on its own estimates, Fresenius Kabi considers its relevant market for IV drugs (without Japan) to be around €15 billion.

The market for medical devices for infusion therapy, IV drugs, and clinical nutrition is growing in Europe at mid-single-digit rates. Here, the main growth drivers are technical innovations that focus on application safety and therapy efficiency.

## **Competition**

Fresenius Kabi operates in highly competitive markets. In recent years, many smaller companies have withdrawn from the business, sparking a consolidation in some of the markets in which we operate. At the same time, a small number of new competitors have entered the market. In the infusion therapy and parenteral nutrition market, Fresenius Kabi's main competitors in Europe are Baxter and B. Braun. In the enteral nutrition market, Fresenius Kabi's main competitors are Danone, Abbott and Nestlé. Baxter, Sichuan Kelun Pharmaceutical, Abbott and Otsuka are primary competitors in Asia-Pacific; in addition, there are numerous local competitors. In the United States, Fresenius Kabi faces competition from major, brand name pharmaceutical companies, as well as generic manufacturers such as Hospira, Bedford Laboratories, Sandoz and Teva Pharmaceuticals USA.

Revenue and gross profit derived from sales of generic pharmaceutical products tend to follow a pattern based on regulatory and competitive factors. As patents for brand name products and related exclusivity periods expire, the first generic pharmaceutical manufacturer to receive regulatory approval for generic versions of these products is generally able to achieve significant market penetration and higher margins. As competing generic manufacturers receive regulatory approvals on similar products, market share, revenue and gross profit typically decline. The level of market share, revenue and gross profit attributable to a particular generic pharmaceutical product is normally related to the number of competitors in that product's market and the timing of that product's regulatory approval and launch in relation to competing approvals and launches. Fresenius Kabi continues to develop and introduce new products in a timely and cost-effective manner and identifies niche products in order to maintain its revenue and gross margins.

## Fresenius Helios

Fresenius Helios is one of the largest German private hospital operators. The HELIOS Group operates 65 proprietary clinics (as of December 31, 2011) almost exclusively in Germany. In addition to 45 acute care hospitals, including six maximum care clinics in the German cities of Berlin-Buch, Duisburg, Erfurt, Krefeld, Schwerin and Wuppertal, the HELIOS Group has 20 post-acute-care clinics. 30 medical care centers and 10 nursing homes are also affiliated with the HELIOS Group. Fresenius Helios provides expertise in all areas (except transplantation medicine) and at all levels of clinical care. Fresenius Helios had more than 20,000 beds as of December 31, 2011, and treated more than two million patients — including approximately 700,000 inpatients — during 2011. Fresenius Helios's sales and EBITDA in 2011 were €2,665 million and €369 million, respectively, and represented approximately 16% of our Group's sales and 11% of our Group's EBITDA.

Fresenius Helios has a proven track record in turning around hospitals and running complex maximum care hospitals. Fresenius Helios's business model is based on growth through acquisitions on the one hand, and growth in admissions and treatments on the other. Fresenius Helios's business is based on acquiring mainly public hospitals with low profitability in the process of their privatization by local authorities. Public hospitals are typically operated at lower margins, offering Fresenius Helios the opportunity to create value by improving their profitability level through a combination of more efficient staff management, procurement synergies, general management best practices, and implementing Fresenius Helios's quality standards. One element of our acquisition strategy is the regional proximity of hospitals — sufficiently close to one another to form networks (clusters). Regional clustering enables cost savings, especially by concentrating nonmedical services (for example, laundry or catering) in one hospital. Moreover, patients benefit from the bundling of medical expertise from the Helios clinics in, and also outside, the region. Fresenius Helios has defined a five-year restructuring plan for the acquired acute care hospitals with the goal of increasing the EBITDA margin of an acute care hospitals to 15% within five years of acquisition. In the past, Fresenius Helios has focused on the acquisition of larger hospitals with strong revenues and restructuring potential that fit into Fresenius Helios's successful clustering strategy with hospitals as competence and growth centers.

In 2011, Fresenius Helios generated 16% of our total Group sales. Fresenius Helios's total sales in 2011 were €2,665 million, up 6% from €2,520 million in 2010. Fresenius Helios achieved organic growth of 4% in 2011 and 5% in 2010.

The following table sets forth certain data regarding Fresenius Helios's facilities and the number of patients treated:

|                                                             | Year ended December 31, |           |           |
|-------------------------------------------------------------|-------------------------|-----------|-----------|
|                                                             | 2011                    | 2010      | 2009      |
| Acute care clinics . . . . .                                | 45                      | 42        | 43        |
| Therefor beds . . . . .                                     | 16,690                  | 15,097    | 15,116    |
| Therefor length of stay (days) . . . . .                    | 6.7                     | 6.9       | 7.1       |
| Post-acute care clinics . . . . .                           | 20                      | 20        | 19        |
| Therefor beds . . . . .                                     | 3,422                   | 3,467     | 3,467     |
| Therefor length of stay (days) <sup>(1)</sup> . . . . .     | 29.6                    | 29.5      | 29.7      |
| Therefor occupancy <sup>(1)</sup> . . . . .                 | 78.4%                   | 80.2%     | 82.5%     |
| Inpatient admissions <sup>(1)</sup> . . . . .               | 665,108                 | 640,296   | 620,268   |
| Thereof at acute care clinics . . . . .                     | 632,778                 | 606,880   | 586,123   |
| Thereof at post-acute care clinics <sup>(1)</sup> . . . . . | 32,330                  | 33,416    | 34,145    |
| Outpatient admissions <sup>(1)</sup> . . . . .              | 1,726,704               | 1,696,919 | 1,634,170 |

(1) Germany only.

## Customers

The customers of Fresenius Helios include social security institutions, health insurers, and private patients.

## Market Information

The total volume for hospital treatment (excluding research and teaching) in Germany was about €77 billion in 2010. This was approximately one-fourth of total healthcare expenditures. Personnel costs account for about 61% of hospital costs, and material costs for 39%. Personnel and material costs rose by 3.6% each in 2010.

The number of hospitals in Germany was 2,064 in 2010 (2009: 2,084). After declining for years, the number of beds only fell slightly to 502,749 (2009: 503,341). Over the last five years the number of beds has declined at an average annual rate of 0.4%. Nonetheless, with 6.15 beds per 1,000 population, Germany is still well above the OECD average of 3.5 (2009). The average stay of a patient in an acute care clinic in Germany fell slightly over the same period and was 7.9 days in 2010 (2009: 8.0 days).

The following table shows key figures for inpatient care in Germany:

|                                                                           | Year ended<br>December 31, |         |
|---------------------------------------------------------------------------|----------------------------|---------|
|                                                                           | 2010                       | 2009    |
| Hospitals. . . . .                                                        | 2,064                      | 2,084   |
| Available beds. . . . .                                                   | 502,749                    | 503,341 |
| Number of admissions (in million) . . . . .                               | 18.0                       | 17.8    |
| Beds per 1,000 population . . . . .                                       | 6.15                       | 6.15    |
| Hospital transaction sales (total in € millions) <sup>(1)</sup> . . . . . | 230                        | 504     |
| Length of stay (days) . . . . .                                           | 7.9                        | 8.0     |

(1) Research by Fresenius Group.

Sources: German Federal Statistics Office.

On the other hand, the number of inpatient admissions has increased. This is mainly due to changing demographics. In 2010, the number of admissions increased by about 216,000 or 1.2% compared to 2009 and increased for the first time to more than 18 million. This is equivalent to 221 admissions per 1,000 population (2009: 218). Other countries rank well below the German level. In the years 2006 to 2010, the number of admissions in Germany has risen at an average annual rate of 1.7%. The average costs per admission have increased by 3.0% on average over the five years leading up to 2010.

According to a survey by the German Hospital Institute, the economic situation at many public hospitals in Germany remains difficult: 48.8% of the hospitals expect to earn a surplus in 2011 (2010: 56%), 20.6% expect to make a loss (2010: 16%), and 30.6% expect to break even (2010: 28%). Of the clinics surveyed, about 41% assess their economic situation as good and 18% as unsatisfactory. The other 41% saw the situation as mixed. Consequently, the assessment of the economic situation has worsened even further compared to the previous year.

Many hospitals are facing a difficult financial and economic situation, as well as significant investment needs. This is due in large part to an investment backlog that has accumulated because the federal states have not met their statutory obligation to finance necessary investments and major maintenance measures sufficiently in the past due to budget constraints. Moreover, the investment needs are mainly driven by technological advances, higher quality requirements, and necessary modernizations. The Rheinisch-Westfälisches Institut für Wirtschaftsforschung (RWI) estimates that the investment backlog at German hospitals is about €14 billion.

According to the German Federal Statistics Office, the privatization trend in the German hospital market continued in 2010, albeit on a modest scale, with the share of private hospital beds



rising to 16.9% (2009: 16.6%). However, as the table below shows, with a share of 48.6%, the bulk of the hospital beds continued to be in the public sector (2009: 48.7%). In 2011, however, the privatization of hospitals increased once again: According to our research, about €850 million in hospital transaction sales were acquired in 2011, which was a significant increase compared to the previous year (2010: €230 million).

The following table shows the breakdown of the German hospital market by type of operator in 2010:

|                                            | Market share by beds (%) |
|--------------------------------------------|--------------------------|
| Private hospitals . . . . .                | 16.9                     |
| Public hospitals . . . . .                 | 48.6                     |
| Independent non-profit hospitals . . . . . | 34.5                     |

Quality is increasingly becoming a key competitive factor for the hospital market. Transparency and comparability of the treatments for the patients and their doctors will play an ever more decisive role.

In 2010, the post-acute care market in Germany comprised a total of 1,237 clinics, almost the same as the year before. The number of beds was 171,724 (2009: 171,489). 56.1% (2009: 55.8%) of the clinics were private clinics. An almost unchanged 25.9% (2009: 26.1%) were independent non-profit clinics and the share of public clinics decreased to 17.9% (2009: 18.1%). Private clinics accounted for 67.0% of the total number of post-acute care beds (2009: 66.8%). Independent non-profit clinics and public clinics accounted for 15.8% (2009: 16.0%) and 17.2% (2009: 17.3%), respectively. The total number of admissions in Germany decreased by about 30,800 admissions to 1.97 million. The average length of stay decreased to 25.4 days (2009: 25.5 days).

Sources: German Hospital Institute (DKI) — Krankenhaus Barometer 2011, OECD Health Data 2011, German Ministry of Health.

## Competition

Fresenius Helios is one of the top three private hospital operators in Germany. In addition to the large publicly owned hospitals, Fresenius Helios's largest competitors in the German hospital management market are the German private hospital groups Asklepios and Rhön Klinikum. The top three hospital operators had a combined market share of the privatized market of approximately 60% in 2010.

## Fresenius Vamed

Headquartered in Vienna, Austria, Fresenius Vamed specializes in international projects and services for hospitals and other healthcare facilities and is a market leader for engineering and other project development, planning, construction and technical management of healthcare facilities worldwide, as well as in general management of healthcare facilities in selected key markets. Founded in 1982, Fresenius Vamed has successfully completed approximately 600 projects in more than 60 countries in Europe, Africa, the Middle East, Asia, Russia and Latin America including hospitals and university clinics, health and rehabilitation centers, thermal spa and medical wellness resorts, laboratories and research facilities and other healthcare facilities.

Fresenius Vamed's portfolio ranges along the entire value chain in the healthcare area: from consulting, project development, planning, and turnkey construction, via maintenance, to administrative management and total operational management. This entire competency enables us to support complex healthcare facilities efficiently and successfully at each level of their life cycle, as Fresenius Vamed offers everything from one source. Fresenius Vamed is also a pioneer in public-private partnership ("PPP") models for hospitals in Central Europe.

Following its strategy "everything from one source", Fresenius Vamed believes its focus on health across the entire value chain gives it a competitive advantage and supports the company's

strong position as a partner for healthcare facilities worldwide. Being able to meet distinct and constantly changing requirements of different international healthcare markets, Fresenius Vamed is well positioned to keep and secure its position as a market leader.

Fresenius Vamed generated 4% of our total Group sales in 2011. Fresenius Vamed's total sales in 2011 were €737 million, with its project business accounting for €494 million and its service business accounting for €243 million.

The following table sets forth Fresenius Vamed's sales in 2011, 2010 and 2009:

|                            | Year ended December 31, |                    |             |                    |             |                    |
|----------------------------|-------------------------|--------------------|-------------|--------------------|-------------|--------------------|
|                            | 2011                    |                    | 2010        |                    | 2009        |                    |
|                            | (million €)             | (% of total sales) | (million €) | (% of total sales) | (million €) | (% of total sales) |
| Project business . . . . . | 494                     | 67                 | 487         | 68                 | 420         | 68                 |
| Service business . . . . . | 243                     | 33                 | 226         | 32                 | 198         | 32                 |
| <b>Total</b> . . . . .     | <b>737</b>              | <b>100</b>         | <b>713</b>  | <b>100</b>         | <b>618</b>  | <b>100</b>         |

### ***Project Business***

The project business comprises the consulting, project development, planning, turnkey construction, and financing management of projects. Fresenius Vamed responds flexibly to clients' local needs, providing custom-tailored solutions, all from one source. Fresenius Vamed also carries out projects in cooperation with partners. Among public clients in particular there is growing interest in PPP models. With these business models, hospitals or other healthcare facilities are planned, constructed, financed, and operated by public and private partners together through a joint project company.

### ***Service Business***

Fresenius Vamed offers a full range of facility management services for healthcare facilities. Modular in design, Fresenius Vamed's service offering encompasses every aspect of technical, commercial, and infrastructural facility management, ranging from building and equipment maintenance, medical technology management, waste management, energy management, security services, and the cleaning of buildings and outdoor facilities through to technical and operational management. With this integrated portfolio of services, Fresenius Vamed guarantees optimal operation of a facility over its entire life cycle, from the construction of the buildings to the end of primary use, modernization, or renewal. In addition to facility and operational management, Fresenius Vamed also specializes in logistics for the healthcare industry. By optimizing the processes, logistics costs are minimized while still maintaining the necessary supply standards.

### ***Customers***

Fresenius Vamed's customers are public institutions, e.g., ministries and authorities, public and private hospitals and other healthcare facilities.

### ***Market Information***

Fresenius Vamed operates in more than 60 countries worldwide, mainly in Europe but also in the Middle East, Asia, Africa and Latin America. The market for engineering and services for hospitals and other healthcare facilities is very country-specific and depends to a large extent on factors such as public healthcare policies, government regulation, levels of privatization, economic conditions, and demographics.

In markets with established healthcare systems and mounting cost pressure, the challenge for hospitals and other healthcare facilities is to increase their efficiency. Here, demand is especially high for sustainable planning and energy-efficient construction, optimized hospital processes and the outsourcing of technical support services to external specialists. This enables hospitals to

concentrate on their core competency — treating patients. In emerging markets the focus is on building and developing infrastructure and improving the level of healthcare.

### **Competition**

With the exception of Fresenius Vamed, based on our own estimates, there is no company within the healthcare segment that offers such a comprehensive portfolio of services throughout the entire life cycle of a healthcare facility on a global scale (from planning through construction and operational start-up up to total management). Competitors of Fresenius Vamed only offer parts of Fresenius Vamed's service portfolio. In the service business, competitors of Fresenius Vamed are, for instance, Siemens Healthcare, Hochtief FM, HSG Zander or Dräger. In total management of healthcare facilities, Fresenius Vamed competes in Austria, for instance, with Vinzenz Group, Humanomed, PremiQaMed and in the international markets with John Hopkins Medicine or Cleveland Clinic. For turnkey or general contractor services, Fresenius Vamed competes, for instance, with STRABAG, PORR, Hochtief or Bilfinger Berger.

### **Sales, Marketing and Logistics**

Long-term, mutually trusting cooperation with our customers is an essential basis for sustainable growth. We strive to guarantee top quality and top service to our customers, together with reliable logistics and product availability. Thanks to its broad product portfolio and long experience, Fresenius has been able to build and maintain close relationships with its customers worldwide. Close cooperation between sales departments and research and development departments enables Fresenius to integrate concepts and ideas generated by the sales force with regard to the development of products. Fresenius has its own sales organizations with trained sales personnel. Fresenius also employs external distributors in countries where the company does not have their own sales team.

Fresenius' products are shipped from the production plants to central warehouses, mostly located not far from the production sites. These central warehouses dispatch the products to the regional warehouses, which then distribute them to the clinics and other customers, or directly to a patient's home.

The business segments offer after-sales services, training in the local language, technical support, servicing and maintenance, and warranty arrangements in every country in which Fresenius sells its products. Product training is also provided at Fresenius's production sites, while regional service centers are responsible for day-to-day international service support.

### **Suppliers**

Our purchasing policy combines worldwide sourcing of high-quality materials with the establishment of long-term relationships with our suppliers. Additionally, we carefully assess the reliability of all materials purchased to ensure that they comply with the rigorous quality and safety standards required for our products. We coordinate our purchases worldwide through centralized purchasing coordination departments that ensure the bundling of similar requirements and negotiate global master supply agreements. Furthermore, these coordination departments organize purchasing for the production sites, carry out quality and safety checks of purchased goods and analyze market and price developments.

We focus on further optimizing procurement logistics and reducing purchasing costs. Supplemental raw material contracts for manufacturers of semi-finished goods will enable us to continue to improve purchasing terms for our whole network.

### **Investments**

For information on the most important investments undertaken in 2009, 2010, 2011, as well as planned investments in *"Management's Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources — Acquisitions and Capital Expenditures"*.

## Research and Development

Innovations are the cornerstones of our strategy and the basis of our economic success. We, therefore, place great importance on our research and development activities. Our research and development focuses on the core competences of our individual business segments:

- dialysis (Fresenius Medical Care);
- infusion therapy, IV drugs, clinical nutrition and medical devices/transfusion technology (Fresenius Kabi); and
- antibody therapies (Fresenius Biotech). Fresenius Biotech is reported in Group/Other within our segment reporting.

Apart from products, we are concentrating on developing optimized or completely new therapies, treatment methods, and services. In 2011, we successfully advanced numerous projects and a number of new products were launched.

Research and development expenses increased by 9% in 2011 to €267 million from €244 million in 2010 and €240 million in 2009. In each of 2009, 2010 and 2011, we invested between 4% and 5% of our product sales in research and development. Of our total research and development expenses in 2011, Fresenius Medical Care accounted for 30%, Fresenius Kabi for 61% and Corporate/Fresenius Biotech for 9%.

At December 31, 2011, 1,592 people in the Group were employed in research and development, compared with 1,449 at December 31, 2010 and 1,421 at December 31, 2009. Of the 1,592 employed at December 31, 2011, 543 worked for Fresenius Medical Care, 985 for Fresenius Kabi and 64 for Fresenius Biotech. Our main research sites are in Europe, the United States, and India. Product-related development activities are also carried out in China. Our research and development projects are mainly conducted in-house; external research is commissioned only on a limited scale.

### *Dialysis*

#### *Overview*

Fresenius Medical Care's research and development strategy has three essential objectives: first, to continuously enhance the quality of life of patients with chronic kidney disease using innovative products and treatment concepts; second, to offer the customers high-quality services while keeping prices as low as possible; and third, to continue to expand its position as the dialysis market leader. Due to Fresenius Medical Care's vertical integration, its research and development department can apply its experience as the world's largest provider of dialysis treatments to product development, and its technical department benefits from Fresenius Medical Care's daily practical experience as a provider of dialysis treatment and being directly in-touch with doctors, nurses and patients to keep track of and meet customer and patient needs. In addition, Fresenius Medical Care's research and development units are usually located at production sites, enabling direct exchange of ideas with production staff. Fresenius Medical Care conducts annual internal research and development conferences which its employees attend every year. In addition, Fresenius Medical Care's employees visit research events worldwide and participate actively in scientific discourse. This not only enables them to inject new concepts into their work, but also strengthens Fresenius Medical Care's reputation in the international professional community. Fresenius Medical Care also maintains close contacts with universities and research institutions. It is cooperating closely with the University of Michigan (on a longitudinal study of chronic kidney patients), Danube University Krems in Krems, Austria (on extracorporeal methods), and the Renal Research Institute ("RRI") in the United States. RRI was founded in 1997 as a joint venture between Fresenius Medical Care North America and the Beth Israel Medical Center, a hospital in New York. Together, they are researching the fundamental issues of dialysis treatment, including the causes that lead to kidney failure, the particular features of treating children with ESRD, and issues such as the mineralization of dialysis patients' bones or the effects of kidney diseases on the natural acid-base balance in the human body.

The task of Fresenius Medical Care's research and development group, which employs approximately 530 full time equivalents, is to continually develop and improve its products and treatments. Fresenius Medical Care's largest research and development department is research and development in the European region, with 330 employees, most of whom work at Fresenius Medical Care's Schweinfurt and Bad Homburg locations. Smaller teams also work in St. Wendel, Germany and in Bucharest, Romania, where a research and development competency center specializing in software development has been established. In September 2010, Fresenius Medical Care opened a new research lab in Krems, which specializes in sorbent technology. Apart from research and development International, Fresenius Medical Care has research and development departments in the North America and the Asia Pacific regions. All of these units are closely connected and cooperate on many projects.

Fresenius Medical Care's is focused on enhancing and improving its products and treatment concepts for its patients and users, on membrane development in connection with its work on a wearable artificial kidney, on dialysis patient overhydration, on software for enhanced patient safety during unattended dialysis and data management for dialysis clinics. A discussion of each of these activities follows below.

#### *Home Dialysis*

The 2008K@home was specifically developed for in home use and was released to the North America market in November of 2011. The 2008K@home system was designed to have an intuitively designed user interface for patient use. The device also contains a wetness detector to determine if there is a leak at the vascular access site. This type of detection is important as a leak during the dialysis process can have fatal consequences. Overall, this system allows for a more adaptable and individualized approach to home dialysis care.

#### *The Crit-Line Analysis Device*

Crit-Line is an analysis device that enables physicians and dialysis specialists to measure the changes in fluid levels for hemodialysis patients during treatment. Hemodialysis specialists also use Crit-Line to determine whether patients have become over hydrated by measuring the hematocrit level during dialysis. Additionally, this innovative device can also be used in conjunction with the treatment of anemia and acute kidney failure by offering a solution for fluid control and allowing specialists to recognize and treat symptoms more assuredly.

#### *The FX CorDiax Dialyzer*

The new FX CorDiax dialyzer contains a Helixone plus membrane that allows for the selective filtering out of toxins that have a medium molecular size and a low molecular weight, such as phosphates. The removal of these toxins reduces the risk of cardiovascular diseases and ensures that beneficial substances that may be expelled during the normal course of treatment remain within the patient's system.

#### *Software Development*

During November of 2011, Fresenius Medical Care successfully launched a software-based method of blood loss prevention — Venous Access Monitoring, or "VAM". The software, Venous Needle Disconnect, or "VND" uses intelligent signal analysis in the area of extracorporeal pressure to detect dangerous conditions in the bloodline system, including needle disconnects at the point of vascular access, leakage, and bent tubing. Based on a mathematical algorithm that accounts for normal disturbances and pressure deviations (such as those resulting from patient arm movement), the software detects pressure drops due to leakage or needle slip, sets off an alarm and turns off the blood pump and closes the venous clamp automatically. It is currently integrated into the monitors in Fresenius Medical Care's 5008 Series dialysis machines as part of its regular software updates for both clinical and home use. This software version contains an interface for connecting a wetness

detector to the patient's vascular access and it has been proven to significantly reduce blood loss risk during dialysis.

Fresenius Medical Care intends to continue investing in developing and improving life-sustaining products and treatment concepts in the years to come, thus improving the quality of life for as many patients as possible with financially viable, environmentally-friendly innovations based on strategic technology platforms.

Fresenius Medical Care's research and development focus in the coming years will be to develop innovations that incorporate additional treatment elements into our products or to help better align them, with the goal of improving the quality, safety and cost efficiency of treatment. In addition, Fresenius Medical Care will continue to focus our software development efforts on developing integrated system solutions for clinical quality data management in order to enable a larger volume of data to be captured faster and more easily, enhance the quality of the data and thus improve treatment. In general, Fresenius Medical Care will continue to look into the issue of how new scientific and technological findings can be used to further improve the quality of life of patients with chronic kidney failure, such as through innovations in home therapies. Over the long term, Fresenius Medical Care is conducting research in the transferability of the blood-cleansing dialysis process to other illnesses, such as liver disease or certain autoimmune and metabolic disorders. Fresenius Medical Care is also researching new approaches to treating severe kidney and liver disease through regenerative medicine, through cooperations with scientific institutes and universities that conduct research on adult liver and kidney stem cells. Finally, Fresenius Medical Care wants to provide people in developing countries and emerging markets with more access to higher-quality dialysis treatment and to reduce the environmental impact of our products and services.

### ***Infusion Therapy, IV Drugs and Clinical Nutrition***

Fresenius Kabi's research and development activities concentrate on products for the treatment and care of critically and chronically ill patients. Fresenius Kabi's focus is on therapy areas with high medical requirements, such as oncology patients. Fresenius Kabi develops products that help to support medical advancements in acute and post-acute care and improve the patients' quality of life. At the same time, Fresenius Kabi wants to make high-quality treatments available to patients worldwide through our comprehensive range of generics.

Our research and development strategy has four focal points:

- develop innovative products in areas where we hold a leading position, such as blood volume replacement and clinical nutrition;
- develop new formulations for non-patented drugs;
- develop own generic drug formulations for the date when drugs go off-patent; and
- continue to develop and refine our existing portfolio of pharmaceuticals and medical devices.

Fresenius Kabi has an encompassing development competency which includes all the relevant components: the drug raw material, the pharmaceutical solution, the primary packaging, the medical device for application, and the production technology. Fresenius Kabi is also one of the few companies in the world that cover the entire production chain for IV drugs: from the processing of the raw materials and the production of the active ingredient through to the manufacture of the drug. This competence enables us to offer IV drugs that place special demands on development and especially on production, as is, for example, the case with oncological products. Here, Fresenius Kabi also develops and manufactures cytostatics both as finished products and as patient-specific compounding preparations. Wherever possible, Fresenius Kabi develops and produces the active pharmaceutical ingredient in its own research labs and production facilities in order to ensure first-rate quality.



Another important element of our activities regarding Fresenius Kabi is the preparations for obtaining marketing approval for new products. We are constantly working on dossiers for the registration of our products for all the world's major markets. This applies to Fresenius Kabi's established portfolio, which we roll out on a broader international basis through marketing authorizations for new local markets, while, at the same time, we work on applications for new products.

### *Infusion Therapy*

We continued our existing research and development efforts in the area of blood volume replacement. It is important for us in this regard to continuously add to clinical evidence. Voluven is one of our most successful blood volume replacement products. About 30 million patients have been treated with this preparation. We continued to support a clinical study that is examining our product Voluven 6% in comparison with crystalloids in the treatment of about 7,000 intensive care patients. Furthermore, the randomized double-blind studies with Voluven 6% for patients with penetrating trauma and caesarean section, which we had financed, were concluded. Both studies had positive results for the treatment with Voluven compared to crystalloid solutions. Patients, who had undergone a caesarian section under spinal anesthesia, and who had been given Voluven had significantly less low blood pressure phases. Also the frequency of vomiting and nausea caused by the treatment was lower in this group. In patients with a penetrating trauma, Voluven achieved a quick and consistent, and also safe hemodynamic stabilization.

We also supported several studies about anesthesia and intensive care medicine for our product Volulyte, which includes our proven HES ingredient (hydroxyethyl starch) in a balanced electrolyte solution.

In the field of IV drugs we focus on antiinfectives, anesthetics, analgesics and drugs that are used in oncological diseases, as well as with critically ill patients. In our development portfolio we have an extensive range of active substances that will be ready for market launch in the coming years. We are working on the registration dossiers for their marketing authorization in Europe and outside Europe. Fresenius Kabi is highly competent in the further development of pharmaceutical active agents for intravenous administration and a strong pipeline of promising drugs in the regulatory approval phase. Also the packaging for our intravenously administered drugs are extremely important. We therefore developed intelligent packaging concepts, like our color code safety concept which makes it possible to easily distinguish all products and their different active substance concentrations and to guarantee a high degree of safety for patients and the nursing staff. This clear, safe and readily transparent system conforms to national and international standards. We are already offering the majority of our products in the new packaging concept.

### *IV Drugs*

In the development of IV drugs, we are working on developing a comprehensive range of generics for the areas of anesthesia, analgesics, infectious diseases, oncology, and critical diseases medicine, and developed both generic and also, if appropriate, new and improved drug formulations.

In 2011, we continued our work to make it possible that IV drugs that currently only exist in lyophilized form as a powder can be offered in a ready-to-use solution. The conversion to the ready-to-use solution requires a modification of the drug formulation in such a way that the pharmaceutical drugs are also stable in liquid form. The ready-to-use solutions can be administered directly by the medical staff. This makes their use in the day-to-day hospital routine safe, simple, and saves time in their preparation. We plan to introduce the first products in a ready-to-use solution in 2012.

The packaging of our IV drugs is critical as well. We therefore developed intelligent packaging concepts, like our color code safety concept. This makes it possible to easily distinguish all products and their different active substance concentrations. It thus provides a high degree of safety for patients and nursing staff. This clear, safe and readily transparent system complies with national and



international standards. We are already offering the majority of our products in the new packaging concept.

Furthermore we are already using our freeflex bag as the liquid container for selected IV drugs. This PVC-free bag is characterized by very good drug compatibility and can safely be used in day-to-day medical care due to its port system.

Our research and development pipeline contains an extensive portfolio of active drugs that are expected to be coming to market in the next few years. Our aim is to offer a comprehensive portfolio of high-quality generics globally. It is important that we bring products to the market as quickly as possible. In our marketing approval activities, we therefore worked intensively on dossiers for the registration of new generics.

The following table lists important approvals obtained in 2011:

| <u>Product</u>                    | <u>Country/Region</u>      | <u>Indication</u>     |
|-----------------------------------|----------------------------|-----------------------|
| Bialutamide . . . . .             | Taiwan                     | Oncology              |
| Cisatricurium . . . . .           | Several European Countries | Anaesthesia/Analgesia |
| Clonidine Hydrochloride . . . . . | USA                        | Critical Care         |
| Gemcitabine . . . . .             | USA                        | Oncology              |
| Letrozole . . . . .               | Phillipines                | Oncology              |
| Nafcilin . . . . .                | USA                        | Antiinfectives        |
| Piperacillin/Tazobactam . . . . . | USA                        | Antiinfectives        |
| Remifentanyl . . . . .            | Several European Countries | Anaesthesia/Analgesia |
| Topotecan . . . . .               | Several European Countries | Oncology              |
| Vancomycin . . . . .              | Several European Countries | Antiinfectives        |

#### *Clinical Nutrition*

In parenteral nutrition we develop products which have a highly therapeutic effect in the care of critically and chronically ill patients. Our two main areas of focus are:

- parenteral nutrition products that improve the therapy of patients in hospital, and
- innovative containers, e. g., multi-chamber bags that allow maximum application safety and convenience in everyday use.

The regional rollout of our successful product portfolio is also a central part of our research and development activities. The introduction of our parenteral products in the U.S. market plays an important role. We therefore work intensively on the documentation for the products for which we wish to obtain marketing approval.

One of the areas on which we focus in parental nutrition is the use of lipids, especially in the area of premature and newborn infants, nurslings, and children. This includes, for example, the international launch of Omegaven, a unique product based 100% on fish oil. Our product SmoFlipid is a lipid emulsion, which has more balanced composition of the lipid components than currently used lipid emulsions. In 2011, we continued our development work on another variation of our product SmofKabiven.

In the development activities in the area of enteral nutrition, we are focusing on sip and tube feed nutrition products for malnourished — often geriatric — patients and on therapeutic products for dysphagia (difficulties in swallowing), diabetes, oncology, and critical illness. We are thus combining the latest insights in both medical and nutritional science and food and process technology into our product development.

This approach enables us to offer innovative nutrition products matched to the specific patient profile. In the area of dysphagia, we are working on products that would have the same consistency and flow characteristics as a contrast medium that is used for esophageal tests. It would make the

swallowing process safer for patients, because the risk that fluids or food enter the air ways or the lungs is significantly reduced.

We are also constantly working on new, improved flavors for our sip feed products to counter side effects that arise during long-term therapy, e.g., patients growing tired of the taste. Our broad range of products in different flavors increases patients' adherence to the dietetic regime and helps to improve their quality of life at the same time.

For critically ill patients with chronic inflammatory bowel diseases, pancreatic insufficiency, and short bowel syndrome, we have introduced the tube feed nutrition product Survimed OPD NH in the market. This product is characterized by increased protein to balance out protein catabolic conditions.

Informing people about the consequences of malnutrition is an important concern of ours. Nutritional and energy deficiencies are often due to heightened needs, e. g., as a result of tumor diseases, injuries, or surgery, or due to insufficient intake, e. g., because of difficulties chewing or swallowing and neurological ailments, or due to excessive weight loss, e. g., as a result of intestinal disorders. We are working together with the European Society for Clinical Nutrition and Metabolism, the European Nutrition for Health Alliance, and the International Medical Nutrition Industry Group on ways to inform people about the consequences of malnutrition for patients and possible therapies. In 2011, we organized our own scientific symposium, the Fresenius Advanced Nutrition Course, and initiated a symposium specifically on dysphagia.

In the field of medical devices we have set a goal for ourselves of developing safe application products for effective therapies. One main focus of our development work was the international expansion and adaptation to local and regional specifications. We plan to offer selected medical devices on the United States market. In 2011, we adapted the products to local requirements and for example modified menu navigation.

### ***Antibody Therapies***

Fresenius Biotech develops and commercializes innovative therapies with immunotherapeutic products. Two products are currently being marketed: firstly, ATG-Fresenius S in transplantation medicine and, secondly, the trifunctional antibody Removab for the treatment of cancer patients with malignant ascites.

#### ***Trifunctional Antibodies***

In 2011, we continued to focus on the marketing of Removab (catumaxomab). The majority of the sales are still generated in Germany and Austria, where we are increasingly able to position Removab for malignant ascites.

We have made progress with regard to the European market launch. We entered, for example, into a distribution agreement with Swedish Orphan Biovitrum, which covers Scandinavia and Eastern Europe, and with Genilac for Turkey. We have also received the reimbursement approval for the price-controlled countries Italy and Belgium and, jointly with our partner Neopharm, for Israel.

Several studies were conducted to support the ongoing marketing of Removab. The CASIMAS study, which was being carried out in key European countries in parallel with the market introduction, was successfully concluded at the end of 2011. This randomized phase IIIb study examined the tolerability, safety, and effectiveness of a treatment with Removab, applied as a three-hour infusion combined with a simultaneous premedication of a corticosteroid. The outcome of the study supports the application of Removab as a three-hour infusion. The results also confirmed the outcome of the first pivotal study. In 2011, the by-three-hours-reduced infusion time, was approved by the European Medicines Agency (EMA). Consequently, the infusion time can be cut in half, which is an important aspect in the oncological practice.

In 2011, we continued to analyze the data from the pivotal study for malignant ascites and presented the results at international congresses. These analyses show for patients with malignant

ascites, who were treated with Removab, a statistically significant survival benefit. The six-month survival rate of these patients was more than four times as high as of the patients in the control group. In addition to an improved survival rate, patients treated with Removab also enjoyed a better quality of life. We believe that this aspect will gain importance also when it comes to the reimbursability of drugs.

In addition, we have started a study on the safety and feasibility of the repeated intravenous application of Removab. This form of application enables the use of Removab, as the only antibody in the world currently approved for EpCAMpositive tumors, to be extended to indications such as lung cancer.

#### *Immunosuppressivum ATG-Fresenius S*

With ATG-Fresenius S, a polyclonal antibody, Fresenius Biotech has a proven immunosuppressive agent that is used for two therapeutic areas; it has been used for many years for organ transplant patients in order to avoid the rejection of transplanted organs. In addition, medical data from a European study was able to demonstrate the efficacy of ATG-Fresenius S in the prophylaxis of Graft-versus-Host-Disease in stem cell transplantation. Based on these results, Fresenius Biotech was granted approval for this therapeutic area for countries such as Germany and Austria in 2011.

Fresenius Biotech is in contact with European authorities in order to obtain approval for the indication stem cell transplantation in other countries. A pivotal phase III study was initiated in the United States. Its objective is to obtain FDA approval for ATG-Fresenius S at the prophylaxis of GvHD.

In 2011, ATG-Fresenius S was awarded with the Drug Award of the Munich Medical Journal *Münchener Medizinische Wochenschrift* in recognition for its specific effect and its contribution for successful transplantations. This award is specifically given to drugs that, over many years, have become a fixed-point as a therapeutic instrument, while at the same time continue to broaden the indications to be used against.

## **INTELLECTUAL PROPERTY**

### **Patents**

As the owner, directly or indirectly through our group companies, of or licensee under patents, patent applications, utility models and designs throughout the world, we hold about 5,600 industrial property rights in major markets through national and regional filings. However, we are not materially dependent on patents.

#### ***Fresenius Medical Care***

Patented technologies that relate to dialyzers include our in line sterilization method and sterile closures for in line sterilized medical devices. The generation of DiaSafeplus filters and FX dialyzers are also the subject of patents and pending patent applications.

The connector system for our biBag bicarbonate concentrate powder container for the 4008 dialysis equipment series has been patented in the United States, Norway, Finland, Japan and Europe. The German part of the Europe patent had been the subject of invalidity proceedings and has been confirmed by final court decision.

A number of patents and pending patent applications relate to components of the 5008 dialysis equipment series, including, for example, the pump technology, extracorporeal blood pressure measurement and connector system for a modified biBag bicarbonate concentrate container. A number of new applications pending for the newly introduced North American 2008T HD machine. Patents have been issued and patent applications are also pending relating to our new Liberty peritoneal dialysis cycler, which has a number of innovative attributes such as its multi-channel disposable cassette, dual-piston pump and pneumatically locking door. Finally, a large number of

new patent applications have been filed related to our new table top portable HD machine and wearable kidney devices in development.

Among FMC AG & Co. KGaA's more significant patents, the in-line sterilization method patent, expired in 2010 in Germany, the United States and other countries. The patent for the 4008 biBag connector expires in 2013 in Germany, the United States, and other countries. The dates given represent the maximum patent life of the corresponding patents. We believe that even after expiration of these patents, Fresenius Medical Care's proprietary know-how for the manufacture of these products and our continuous efforts in obtaining targeted patent protection for newly developed upgrade products will continue to constitute a competitive advantage.

For peritoneal dialysis, FMC AG & Co. KGaA holds protective rights for our polyolefine film Biofine, which is suitable for packaging intravenous and peritoneal dialysis fluids. Patents have been granted in Australia, Brazil, Canada, Germany, Europe, South Korea and the United States. A Japanese patent was revoked as a result of opposition proceedings. A further patent family describes and claims a special film for a peelable, non-PVC, multi chamber bag for peritoneal dialysis solutions. These patents have been granted in Brazil, Europe, Germany, Japan, South Korea and the United States. However, proceedings against the registration of this patent in Europe are currently pending.

### ***Fresenius Kabi***

Fresenius Kabi holds a comprehensive patent portfolio on packaging including specific port systems and multi chamber bags. These patents have been granted in many countries including Brazil, China, Mexico, Russia, Canada, Australia, the United States and the countries of the European Union.

Several patents have been granted on infusion pump technology. The focus of these patents is directed to safety features for the benefit of the patient.

HESylation technology is covered by a large patent portfolio covering different aspects of linkers, coupling chemistry and conjugates. Based on these patents, Fresenius Kabi enters partnering projects on HESylated compounds with third parties.

In the field of infusion therapy the more important patents held by Fresenius Kabi include the Voluven blood volume replacement product.

We believe that our success will continue to depend significantly on our technology. As a standard practice, we obtain the legal protections we believe are appropriate for our intellectual property. Nevertheless, we are in a position to successfully market a material number of products for which patent protection has lapsed or where only particular features have been patented. From time to time our patents may be infringed by third parties and in such case we will assert our rights. Initially registered patents may also be subject to invalidation claims made by competitors in formal proceedings (oppositions, trials, re-examinations, etc.) either in part or in whole. In addition, technological developments could suddenly and unexpectedly reduce the value of our existing intellectual property.

Expiring originator patents provide significant business opportunities in the generics market for pharmaceutical products in which Fresenius Kabi is active. In light of the competitive situation, patent disputes are occasionally occurring whereby originator companies seek to prevent generics manufacturers from entering the market. From time to time Fresenius Kabi is involved in such patent litigation.

### **Trademarks**

We hold a broad trademark portfolio, which includes, among many other trademarks, our company names "Fresenius", "Fresenius Medical Care", "Fresenius Kabi", "Fresenius Helios" and "Fresenius Vamed", as well as the "F" logos. The trademarks are owned by Fresenius SE & Co. KGaA or its relevant affiliates. The trademark portfolio is administered and protected by our

trademark department in cooperation with our professional lawyers of correspondence throughout the world.

## EMPLOYEES

### Overview

We had 149,351 employees at the end of 2011, an increase of 11,799 or 9% (December 31, 2010: 137,552). Organically, the number of employees increased by 4%, while acquisitions contributed 5% to this growth. We actively promote diversity amongst our employees and are convinced that our potential for success is tapped best through different perspectives, opinions, cultures, and backgrounds.

We are a member of the Chemical Industry Employers Association (*Bundesarbeitgeberverband Chemie*) in Germany. For Fresenius Medical Care and Fresenius Kabi we are bound by the collective bargaining agreements (*Tarifverträge*) this association negotiates with union representatives. As for the hospital business, Helios is directly negotiating with the unions Ver.di and Marburger Bund collective bargaining agreements. We are also party to shop agreements (*Betriebsvereinbarungen*) negotiated with works councils for certain parts or countries of the Group and at individual facilities. During the last three financial years, we have not suffered any major labor related work disruptions.

We believe we have, overall and in essence over all our global business, a good relationship with our employees, and with the trade unions, works councils, and other bodies representing our employees in the various countries in which we operate. Where this may temporarily not be the case in individual countries or situations, the potential impact on the business is usually immaterial. There is a shortage of specialized employees in many fields in which we operate.

### Headcount by Business Segment

The following tables show the number of our employees (headcount) by business segment and region for the last three financial years:

|                                  | At December 31, |                |                |
|----------------------------------|-----------------|----------------|----------------|
|                                  | 2011            | 2010           | 2009           |
| Fresenius Medical Care . . . . . | 83,476          | 77,442         | 71,617         |
| Fresenius Kabi . . . . .         | 24,106          | 22,851         | 21,872         |
| Fresenius Helios . . . . .       | 37,198          | 33,321         | 33,364         |
| Fresenius Vamed . . . . .        | 3,724           | 3,110          | 2,849          |
| Corporate/Other . . . . .        | 847             | 828            | 808            |
| <b>Total . . . . .</b>           | <b>149,351</b>  | <b>137,552</b> | <b>130,510</b> |

|                         | At December 31, |                |                |
|-------------------------|-----------------|----------------|----------------|
|                         | 2011            | 2010           | 2009           |
| Europe . . . . .        | 74,415          | 66,179         | 63,602         |
| North America . . . . . | 47,701          | 46,082         | 44,590         |
| Asia Pacific . . . . .  | 13,134          | 12,258         | 10,356         |
| Latin America . . . . . | 12,754          | 11,726         | 10,804         |
| Africa . . . . .        | 1,347           | 1,307          | 1,158          |
| <b>Total . . . . .</b>  | <b>149,351</b>  | <b>137,552</b> | <b>130,510</b> |

The following table shows the average number of our employees by function during each of the last three financial years:

|                                    | Year ended December 31, |                       |                       |
|------------------------------------|-------------------------|-----------------------|-----------------------|
|                                    | 2011                    | 2010                  | 2009                  |
| Production and Service . . . . .   | 115,581                 | 107,807               | 102,003               |
| Administration. . . . .            | 17,924                  | 17,095                | 16,131                |
| Sales and Marketing . . . . .      | 8,170                   | 7,816                 | 8,397                 |
| Research and Development . . . . . | 1,513                   | 1,445                 | 1,372                 |
| <b>Total . . . . .</b>             | <b><u>143,188</u></b>   | <b><u>134,163</u></b> | <b><u>127,903</u></b> |

## FACILITIES

Fresenius, through various property companies, owns the Group's headquarters in Bad Homburg, Germany, as well as the major production facilities in Germany that are located in Friedberg, Schweinfurt and St. Wendel.

Fresenius Medical Care operates state-of-the-art production facilities worldwide and has invested significantly in developing proprietary processes, technologies and manufacturing equipment which Fresenius Medical Care believes provide a competitive advantage in manufacturing its products. Fresenius Medical Care is using its facilities in St. Wendel, Germany and Ogden, Utah for development and manufacturing.

Fresenius Medical Care produces and assembles hemodialysis machines and CCPD cyclers in its Schweinfurt, Germany and Walnut Creek, California facilities. Fresenius Medical Care also has service and local distribution centers in Argentina, Egypt, France, Italy, the Netherlands, China, Brazil and Russia for testing and calibrating dialysis machines. Fresenius Medical Care manufactures and assembles dialyzers and polysulfone membranes in its St. Wendel, Germany, L'Arbresle, France, Vrsac, Serbia, Buzen, Japan and Inukai, Japan, facilities and at production facilities of its joint ventures in Belarus, Saudi Arabia and Japan. At Fresenius Medical Care's Ogden, Utah facilities Fresenius Medical Care manufactures and assembles dialyzers and polysulfone membranes and manufactures peritoneal dialysis solutions. Fresenius Medical Care manufactures hemodialysis concentrate at various facilities worldwide. Fresenius Medical Care's peritoneal dialysis products are manufactured in North America, Europe, Latin America, and Asia, with two of its largest plants for production of peritoneal dialysis products in Germany and the United States. Fresenius Medical Care's facilities are inspected on a regular basis by national and/or international authorities.

Fresenius Kabi has approximately 55 sales and marketing organizations, approximately 60 production sites (including compounding centers) and more than 10 research and development centers around the world. Fresenius Kabi's most important production facilities include factories in Austria, Germany, Sweden, the United States, China and India. Fresenius Kabi operates other production facilities in Europe, South and Central America, Asia and South Africa.

As of December 31, 2011, Fresenius Helios owned the majority and leased the remainder of the facilities for its 65 clinics, primarily in Germany. These facilities include hospitals, specialist clinics, health facilities and offices. Fresenius Helios's most important properties are the facilities for its clinics. Fresenius Helios owns and operates the clinic and hospital businesses.

Generally, Fresenius Vamed does not own facilities (with the exception of four hospitals it owns in the Czech Republic) and has some leased facilities within its network.

## QUALITY MANAGEMENT

The quality of our products and therapies is the basis for best-in-class medical care. All processes are subject to the highest quality and safety standards for the benefit of the patients and to protect our employees. Our quality management has the following three objectives:

- to identify value-enhancing processes oriented toward efficiency and the needs of our customers,
- to monitor and steer these processes on the basis of performance indicators, and
- to improve procedures.

These objectives overlay the quality of our products and all services and therapies that we provide. Our quality management system integrates all product groups — drugs, medical devices, and nutrition — as well as our clinics.

We regularly evaluate the quality management system through internal audits. It is also certified by external bodies. Our products are already closely controlled at the development stage. Our drugs are subject to regulatory approval, so appropriate documentation has to be prepared and submitted in accordance with national and international regulations. Medical devices undergo a conformity assessment procedure that documents compliance with the appropriate norms. In enteral nutrition, we already follow the Hazard Analysis Critical Control Point (“**HACCP**”) principle during the development process. The HACCP principle is a generally acknowledged method of identifying and examining risk areas in the production of food. We have established a quality assurance system in all our production plants. In addition to the controlled use of materials, validated production procedures, and ambience and in-process controls, each batch produced also undergoes final controls and a formal release procedure. Our quality assurance system also includes measures for the protection of employees, for instance when handling hazardous substances. Our production facilities are regularly inspected by regulatory authorities or other independent institutions. Over the past few years, Fresenius Helios, in cooperation with the Technical University of Berlin has developed and established a quality management system for hospitals. What is measured is the medical result quality in the hospital based on quality indicators compiled from administrative data about the respective treatment. In combination with the execution of a peer review process, this method demonstrably has led to significant improvements of the medical treatment quality and patient safety. More than 500 hospitals in Germany, Austria, and Switzerland are already using a quality management system based on the Fresenius Helios system. Last year, the concept was introduced in all state hospitals in Lower Austria, who have been using it since then for internal control purposes. The Swiss Federal Office for Health publishes the key figures of the treatment results of all Swiss acute care hospitals. The implementation of these Swiss quality indicator is equally based on the system developed by Fresenius Helios and the Technical University of Berlin.

## ENVIRONMENTAL MATTERS

Our responsibility as a healthcare group goes beyond our business operations. We are committed to protecting nature as the basis of life and using its resources responsibly. It is our mission to constantly improve our performance in the areas of environmental protection, occupational health and technical safety, and product responsibility and logistics and to comply with legal requirements. The international ISO Standard 14001:2004 is the most important benchmark for environmental management in the corporate sector. Among other things, it stresses the need for continuous assessment of a production site’s impact on the environment, for instance with respect to emissions and waste. These international standards are implemented at our various production plants and most of our dialysis clinics. Key environmental performance indicators are, for instance, not only energy and water consumption but also the volumes of waste and recycling rates at our locations. In Europe, our production sites are subject to the EU regulation REACH (Registration, Evaluation and Authorization of Chemicals). The aim of REACH is to protect human health and the environment against hazards and risks from chemical substances. We have implemented this regulation. Fresenius Medical Care is also an active member of the REACH Working Group of the



German Federal Association of the Medical Device Industry (*Bundesverband Medizintechnologie* or *BVMed*). In the few cases where Fresenius Kabi produces within the EU or imports products into the European market, all the relevant substances are pre-registered in compliance with the REACH regulation.

### **Fresenius Medical Care**

Fresenius Medical Care has continuously expanded its environmental activities. In Europe, the Middle East and Africa, TÜV-certified environmental management is part of the integrated management system. At the end of 2011, our seven largest European production sites and the medical device development were certified in accordance with ISO 14001. In addition, the environmental management system is being used by 294 of our European dialysis clinics. In the area of research and development, we are working on making our products and processes more environmentally friendly. We are using new materials with improved environmental characteristics, developing new technologies and further reducing the resource consumption of the dialysis machines, and efficiently using energy and raw materials in production. In 2011, Fresenius Medical Care introduced a new environmental program in Europe and Latin America with the aim to improve environmental awareness and environmentally responsible behavior, enhance knowledge relating to strategic and operational environmental issues, to improve our ecological efficiency and reinforce measures to control environmental risks, and ensure that environmental regulations are complied with. Those goals are measured by a number of environmental objectives for the individual stages of the value chain, for example research and development, or at its dialysis clinics.

### **Fresenius Kabi**

An integral component of the quality management of Fresenius Kabi is an environmental management system that complies with the international standard ISO 14001. We are also pursuing the implementation of the occupational health and safety assessment system OHSAS 18001. Our goals are:

- to reduce the accumulation of waste at our production sites and sales offices; and
- to efficiently and carefully use energy to reduce emissions.

These goals lead to individual objectives for our locations. In 2011, Fresenius Kabi continued the matrix certification for the environmental management system. Within the context of the certification, we analyze and assess work flows and processes in accordance with sustainability criteria, and document the responsible handling of energies and natural resources, as well as the protection of employees and the environment. This allows us to uncover opportunities for improvement, both with regard to the value creation chain and how we deal with external partners. Our international manufacturing network shortens, for example, the delivery channels to our customers and reduces emissions associated with transportation. Our goal is to base all internal and external processes not only on economic, but also ecologic provisions, and to expand the matrix certification to other production sites and sales offices.

### **Fresenius Helios**

Hospitals are part of the healthcare system and bear a special responsibility in terms of environmental protection; they are expected to carefully handle resources and energy and comply with the demanding waste disposal and hygiene standards. They must also avoid any health risks for patients, employees, and the local environment.

### **Fresenius Vamed**

In the future, healthcare systems will also have to pay greater attention to sustainability. In project business Fresenius Vamed already integrates national environmental standards and regulations into the planning and construction of a hospital or other healthcare facility as an active contribution toward environmental protection. Fresenius Vamed's extensive expertise in

environmental management is an important success factor especially in growth markets in Africa and Asia. Fresenius Vamed built and operates, for example, a hospital in Gabon, Africa, which features a modern waste water recycling plant and a high-temperature waste incineration plant designed to European standards.

## **INSURANCE**

We are covered by comprehensive general liability insurance, liability insurance for pharmaceutical and healthcare operations, as well as property insurance and other types of insurance policies that are standard within the industry. We believe that our insurance coverage is sufficient and in line with industry practice.

For additional information on risks relating to product liability and other claims, see “— *Legal Proceedings*” and “*Risk Factors — Risks Relating to Our Business — We are exposed to product liability, patent infringement and other claims, which could result in significant liability that we may not be able to insure on acceptable terms in the future*”.

## **MATERIAL CONTRACTS**

### **Settlement Agreement**

On February 6, 2003, Fresenius Medical Care entered into a settlement agreement with the asbestos creditors’ committees for the final settlement of fraudulent conveyance claims and other legal matters resulting from the reorganization proceedings of W.R. Grace & Co. under Chapter 11 of the U.S. Bankruptcy Code. See “— *Legal Proceedings — Commercial Litigation*”.

In July 2008, Fresenius Medical Care entered into two separate and independent license and distribution agreements, one for the United States and one for certain countries in Europe and the Middle East, to market and distribute Galenica’s intravenous iron products, such as Venofer and Ferinject for dialysis treatment. For a summary of these agreements, See “— *Fresenius Medical Care — Dialysis Products — Renal Pharmaceuticals*”. In December 2010, Fresenius Medical Care and Galenica formed a new renal pharmaceutical company (Vifor-Fresenius Medical Care Renal Pharma Ltd.) designed to develop and distribute products to treat iron deficiency anaemia and bone mineral metabolism for pre-dialysis and dialysis patients. The newly formed company extended existing agreements with Galenica.

### **Other Agreements**

For a description of certain intercompany agreements and arrangements between Fresenius SE & Co. KGaA and its subsidiaries (other than Fresenius Medical Care) and Fresenius Medical Care and its subsidiaries, see “*Certain Relationships and Related-Party Transactions*”. For a description of material credit agreements and other financing documents, see “*Description of Other Financing Arrangements*”.

## **LEGAL PROCEEDINGS**

Our Group is routinely involved in numerous claims, lawsuits, regulatory and tax audits, investigations and other legal matters arising, for the most part, in the ordinary course of its business of providing healthcare services and products. Legal matters which our Group currently deems to be material are described below. For the matters described below which our Group believes a loss in both reasonably possible and estimable, an estimate of the loss or range of loss exposure is provided. For the other matters described below, our Group believes that the loss probability is remote and/or the loss or range of possible losses cannot be reasonably estimated at this time. The outcome of litigation and other legal matters is always difficult to accurately predict and outcomes that are not consistent with our Group’s view of the merits can occur. We believe that it has valid defenses to the legal matters pending against it and is defending itself vigorously. Nevertheless, it is possible that the resolution of one or more of the legal matters currently pending

or threatened could have a material adverse effect on its business, results of operations and financial condition.

## Commercial Litigation

Fresenius Medical Care was originally formed as a result of a series of transactions completed pursuant to the Agreement and Plan of Reorganization dated as of February 4, 1996, by and between W.R. Grace & Co. and Fresenius SE & Co. KGaA (the "**Merger**"). At the time of the Merger, a W.R. Grace & Co. subsidiary known as W.R. Grace & Co.-Conn. had, and continues to have, significant liabilities arising out of product-liability related litigation (including asbestos-related actions), pre-Merger tax claims and other claims unrelated to National Medical Care, Inc. ("**NMC**"), which was W.R. Grace & Co.'s dialysis business prior to the Merger. In connection with the Merger, W.R. Grace & Co.-Conn. agreed to indemnify Fresenius Medical Care (including Fresenius Medical Care Holding, Inc. ("**FMCH**") and NMC) against all liabilities of W.R. Grace & Co., whether relating to events occurring before or after the Merger, other than liabilities arising from or relating to NMC's operations. W.R. Grace & Co. and certain of its subsidiaries filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code (the "**Grace Chapter 11 Proceedings**") on April 2, 2001.

Prior to and after the commencement of the Grace Chapter 11 Proceedings, class action complaints were filed against W.R. Grace & Co. and FMCH by plaintiffs claiming to be creditors of W.R. Grace & Co.-Conn., and by the asbestos creditors' committees on behalf of the W.R. Grace & Co. bankruptcy estate in the Grace Chapter 11 Proceedings, alleging, among other things, that the Merger was a fraudulent conveyance, violated the uniform fraudulent transfer act and constituted a conspiracy. All such cases have been stayed and transferred to or are pending before the U.S. District Court as part of the Grace Chapter 11 Proceedings.

In 2003, Fresenius Medical Care reached agreement with the asbestos creditors' committees on behalf of the W.R. Grace & Co. bankruptcy estate and W.R. Grace & Co. in the matters pending in the Grace Chapter 11 Proceedings for the settlement of all fraudulent conveyance and tax claims against it and other claims related to Fresenius Medical Care that arise out of the bankruptcy of W.R. Grace & Co. Under the terms of the settlement agreement as amended (the "**Settlement Agreement**"), fraudulent conveyance and other claims raised on behalf of asbestos claimants will be dismissed with prejudice and Fresenius Medical Care will receive protection against existing and potential future W.R. Grace & Co. related claims, including fraudulent conveyance and asbestos claims, and indemnification against income tax claims related to the non-NMC members of the W.R. Grace & Co. consolidated tax group upon confirmation of a W.R. Grace & Co. bankruptcy reorganization plan that contains such provisions. Under the Settlement Agreement, Fresenius Medical Care will pay a total of US\$115 million without interest to the W.R. Grace & Co. bankruptcy estate, or as otherwise directed by the Court, upon plan confirmation. No admission of liability has been or will be made. The Settlement Agreement has been approved by the U.S. District Court. In January and February 2011, the U.S. Bankruptcy Court entered orders confirming the joint plan of reorganization, and the confirmation orders were affirmed by the U.S. District Court on January 31, 2012. Subsequent to the Merger, W.R. Grace & Co. was involved in a multi-step transaction involving Sealed Air Corporation ("**Sealed Air**," formerly known as Grace Holding, Inc.). Fresenius Medical Care is engaged in litigation with Sealed Air to confirm its entitlement to indemnification from Sealed Air for all losses and expenses incurred by Fresenius Medical Care relating to pre-Merger tax liabilities and Merger-related claims. Under the Settlement Agreement, upon confirmation of a plan that satisfies the conditions of Fresenius Medical Care's payment obligation, this litigation will be dismissed with prejudice.

On April 4, 2003, FMCH filed a suit in the United States District Court for the Northern District of California, styled Fresenius USA, Inc., et al., v. Baxter International Inc., et al., Case No. C 03-1431, seeking a declaratory judgment that FMCH does not infringe patents held by Baxter International, Inc. and its subsidiaries and affiliates ("**Baxter**"), that the patents are invalid, and that Baxter is without right or authority to threaten or maintain suit against FMCH for alleged infringement of Baxter's patents. In general, the alleged patents concern the use of touch screen interfaces for hemodialysis machines. Baxter filed counterclaims against FMCH seeking more than

US\$140 million in monetary damages and injunctive relief, and alleging that FMCH willfully infringed on Baxter's patents. On July 17, 2006, the court entered judgment on a jury verdict in favor of FMCH finding that all the asserted claims of the Baxter patents are invalid as obvious and/or anticipated in light of prior art.

On February 13, 2007, the court granted Baxter's motion to set aside the jury's verdict in favor of FMCH and reinstated the patents and entered judgment of infringement. Following a trial on damages, the court entered judgment on November 6, 2007 in favor of Baxter on a jury award of US\$14.3 million. On April 4, 2008, the court denied Baxter's motion for a new trial, established a royalty payable to Baxter of 10% of the sales price for continuing sales of FMCH's 2008K hemodialysis machines and 7% of the sales price of related disposables, parts and service beginning November 7, 2007, and enjoined sales of the 2008K machine effective January 1, 2009. Fresenius Medical Care has appealed the court's rulings to the U.S. Court of Appeals for the Federal Circuit. In October 2008, Fresenius Medical Care completed design modifications to the 2008K machine that are expected to eliminate any incremental hemodialysis machine royalty payment exposure under the original court order. On September 10, 2009, the Federal Circuit reversed the district court's decision and determined that the asserted claims in two of the three patents at issue are invalid. As to the third patent, the Federal Circuit affirmed the district court's decision; however, the Court also vacated the injunction and award of damages. These issues were remanded to the District Court for reconsideration in light of the invalidity ruling on most of the claims. As a result, FMCH is no longer required to fund the court-approved escrow account set up to hold the royalty payments ordered by the district court. Funds of US\$70 million were contributed to the escrow fund. On March 18, 2010, the U.S. Patent and Trademark Office ("USPTO") and the Board of Patent Appeals and Interferences ruled in the parallel re-examination of the last surviving patent that the remaining Baxter patent is invalid. On October 5, 2010, Baxter appealed the Board's ruling to the Federal Circuit.

On October 17, 2006, Baxter and DEKA Products Limited Partnership filed suit in the United States District Court for the Eastern District of Texas which was subsequently transferred to the Northern District of California, styled Baxter Healthcare Corporation and DEKA Products Limited Partnership v. Fresenius Medical Care Holdings, Inc. d/b/a Fresenius Medical Care North America and Fresenius USA, Inc., Case No. CV 438 TJW. The complaint alleges that FMCH's Liberty cyclor infringes nine patents owned by or licensed to Baxter. During and after discovery, seven of the asserted patents were dropped from the suit. On July 28, 2010, at the conclusion of the trial, the jury returned a verdict in favor of FMCH finding that the Liberty cyclor does not infringe any of the asserted claims of the Baxter patents. The District Court denied Baxter's request to overturn the jury verdict and Baxter has appealed the verdict and resulting judgment to the United States Court of Appeals for the Federal Circuit. On February 13, 2012, the Federal Circuit affirmed the District Court's non-infringement verdict.

### Other Litigation

Renal Care Group, Inc. ("RCG"), which Fresenius Medical Care acquired in 2006, is named as a nominal defendant in a complaint originally filed September 13, 2006 in the Chancery Court for the State of Tennessee Twentieth Judicial District at Nashville styled Indiana State District Council of Laborers and Hod Carriers Pension Fund v. Gary Brukardt et al. Following the trial court's dismissal of the complaint, plaintiff's appeal in part, and reversal in part by the appellate court, the cause of action purports to be a class action on behalf of former shareholders of RCG and seeks monetary damages only against the individual former directors of RCG. The individual defendants, however, may have claims for indemnification and reimbursement of expenses against Fresenius Medical Care. Fresenius Medical Care expects to continue as a defendant in the litigation, which is proceeding toward trial in the Chancery Court, and believes that defendants will prevail.

On July 17, 2007, resulting from an investigation begun in 2005, the United States Attorney filed a civil complaint in the United States District Court for the Eastern District of Missouri (St. Louis) against Renal Care Group, Inc., its subsidiary RCG Supply Company, and FMCH in its capacity as RCG's current corporate parent. The complaint seeks monetary damages and penalties

with respect to issues arising out of the operation of RCG's Method II supply company through 2005, prior to FMCH's acquisition of RCG in 2006. The complaint is styled United States of America ex rel. Julie Williams et al. vs. Renal Care Group, Renal Care Group Supply Company and FMCH. On August 11, 2009, the Missouri District Court granted RCG's motion to transfer venue to the United States District Court for the Middle District of Tennessee (Nashville). On March 22, 2010, the Tennessee District Court entered judgment against defendants for approximately US\$23 million in damages and interest under the unjust enrichment count of the complaint but denied all relief under the six False Claims Act counts of the complaint. On June 17, 2011, the District Court entered summary judgment against RCG for US\$82.6 million on one of the False Claims Act counts of the complaint. On June 23, 2011, Fresenius Medical Care appealed to the United States Court of Appeals for the Sixth Circuit. Although Fresenius Medical Care cannot provide any assurance of the outcome, Fresenius Medical Care believes that RCG's operation of its Method II supply company was in compliance with applicable law, that no relief is due to the United States, that the decisions made by the District Court on March 22, 2010 and June 17, 2011 will be reversed, and that its position in the litigation will ultimately be sustained.

On November 27, 2007, the United States District Court for the Western District of Texas (El Paso) unsealed and permitted service of two complaints previously filed under seal by a qui tam relator, a former FMCH local clinic employee. The first complaint alleged that a nephrologist unlawfully employed in his practice an assistant to perform patient care tasks that the assistant was not licensed to perform and that Medicare billings by the nephrologist and FMCH therefore violated the False Claims Act. The second complaint alleged that FMCH unlawfully retaliated against the relator by constructively discharging her from employment. The United States Attorney for the Western District of Texas declined to intervene and to prosecute on behalf of the United States. On March 30, 2010, the District Court issued final judgment in favor of the defendants on all counts based on a jury verdict rendered on February 25, 2010 and on rulings of law made by the Court during the trial. The plaintiff has appealed from the District Court judgment.

On February 15, 2011, a qui tam relator's complaint under the False Claims Act against FMCH was unsealed by order of the United States District Court for the District of Massachusetts and served by the relator. The United States has not intervened in the case United States ex rel. Chris Drennen v. Fresenius Medical Care Holdings, Inc., 2009 Civ. 10179 (D. Mass.). The relator's complaint, which was first filed under seal in February 2009, alleges that Fresenius Medical Care seeks and receives reimbursement from government payors for serum ferritin and hepatitis B laboratory tests that are medically unnecessary or not properly ordered by a physician. FMCH has filed a motion to dismiss the complaint. On March 6, 2011, the United States Attorney for the District of Massachusetts issued a Civil Investigative Demand seeking the production of documents related to the same laboratory tests that are the subject of the relator's complaint. FMCH is cooperating fully in responding to the additional Civil Investigative Demand, and will vigorously contest the relator's complaint.

On June 29, 2011, Fresenius Medical Care received a subpoena from the United States Attorney for the Eastern District of New York ("E.D.N.Y."). On December 6, 2011, a single Company facility in New York received a subpoena from the OIG that was substantially similar to the one issued by the U.S. Attorney for the E.D.N.Y. These subpoenas are part of a criminal and civil investigation into relationships between retail pharmacies and outpatient dialysis facilities in the State of New York and into the reimbursement under government payor programs in New York for medications provided to patients with ESRD. Among the issues encompassed by the investigation is whether retail pharmacies may have provided and received compensation from the New York Medicaid program for pharmaceutical products that should be provided by the dialysis facilities in exchange for the New York Medicaid payment to the dialysis facilities. Fresenius Medical Care is cooperating in the investigation.

In the ordinary course of Fresenius Group's operations, our Group is subject to litigation, arbitration and investigations relating to various aspects of its business. Our Group regularly analyzes current information about such claims for probable losses and provides accruals for such matters, including estimated expenses for legal services, as appropriate.



## Other Potential Exposure

Like other healthcare providers, we conduct our operations under intense government regulation and scrutiny. We and our subsidiaries must comply with regulations which relate to or govern the safety and efficacy of medical products and supplies, the operation of manufacturing facilities, laboratories and dialysis clinics, and environmental and occupational health and safety. We (and, in particular, the U.S.-based operations of Fresenius Medical Care and Fresenius Kabi) must also comply with laws of the United States, such as the U.S. federal Medicare and Medicaid Fraud and Abuse Amendments of 1977, as amended (the “**Anti-Kickback Statute**”), the False Claims Act, the Ethics in Patient Referrals Act of 1989 (the “**Stark Law**”) and other U.S. federal and state fraud and abuse laws. See “— *Regulatory Matters*”. Applicable laws or regulations may be amended, or enforcement agencies or courts may make interpretations that differ from our interpretations or the manner in which we conduct our business. Enforcement has become a high priority for the U.S. federal government and some states of the United States.

In addition, the provisions of the False Claims Act authorizing payment of a portion of any recovery to the party bringing the suit encourage private plaintiffs to commence “qui tam” or “whistle blower” actions. In May 2009, the scope of the False Claims Act was expanded and additional protections for whistle blowers and procedural provisions to aid whistle blowers’ ability to proceed in a False Claims Act case were added. By virtue of this regulatory environment, our business activities and practices are subject to extensive review by regulatory authorities and private parties, and continuing audits, investigative demands, subpoenas, other inquiries, claims and litigation relating to our compliance with applicable laws and regulations. We may not always be aware that an inquiry or action has begun, particularly in the case of “whistle blower” actions, which are initially filed under court seal.

We have a role in overseeing the operation of many facilities throughout the United States. In such a decentralized system, it is often difficult to maintain the desired level of oversight and control over the thousands of individuals employed by many affiliated companies. We rely upon our management structure, regulatory and legal resources, and the effective operation of our compliance program to direct, manage and monitor the activities of these employees. On occasion, we may identify instances where employees, deliberately or inadvertently, have submitted inadequate or false billings. The actions of such persons may subject us and our subsidiaries, particularly those in the United States, to liability under the Anti-Kickback Statute, the Stark Law and the False Claims Act, among other laws, and comparable laws of other countries.

Physicians, hospitals and other participants in the healthcare industry are also subject to a large number of lawsuits alleging professional negligence, malpractice, product liability, worker’s compensation or related claims, many of which involve large claims and significant defense costs. We and our subsidiaries have been and are currently subject to these suits due to the nature of our business and expect that these types of lawsuits may continue. Although we maintain insurance at a level that we believe to be prudent, we cannot assure that the coverage limits will be adequate or that insurance will cover all asserted claims. A successful claim against us or any of our subsidiaries, including Fresenius Medical Care, for an amount exceeding our applicable insurance coverage could have a material adverse effect upon our business and results of its operations. Any claim, regardless of its merit or eventual outcome, could have a material adverse effect on our reputation and business.

We and our subsidiaries also have been the subject of claims and lawsuits relating to alleged patent infringements or businesses that we have acquired or divested. These claims and suits relate both to operation of the businesses and to the acquisition and divestiture transactions. We have, when appropriate, asserted our own claims, and claims for indemnification. A successful claim against us or any of our subsidiaries could have a material adverse effect on our business, financial condition, and results of operations. Any claim, regardless of its merit or eventual outcome, could have a material adverse effect on our reputation and business.

## Accrued Special Charge for Legal Matters

At December 31, 2001, Fresenius Medical Care recorded a pre-tax special charge of US\$258 million to reflect anticipated expenses associated with the defense and resolution of pre-Merger tax claims, Merger-related claims, and commercial insurer claims. The costs associated with the Settlement Agreement and settlements with insurers have been charged against this accrual. With the exception of the proposed US\$115 million payment under the Settlement Agreement, all other matters included in the special charge have been resolved. While Fresenius Medical Care believes that its remaining accrual reasonably estimates its currently anticipated costs related to the continued defense and resolution of this matter, no assurances can be given that its actual costs incurred will not exceed the amount of this accrual.

## REGULATORY MATTERS

### Overview

Our operations are subject to extensive governmental regulation by virtually every country in which we operate, including, most notably, in the United States, at the federal, state and local levels. Although these regulations differ from country to country, in general, non-U.S. regulations are designed to accomplish the same objectives as U.S. regulations regarding the operation of dialysis clinics, laboratories and manufacturing facilities, the provision of quality healthcare for patients, compliance with labor laws, the maintenance of occupational, health, safety and environmental standards and the provision of accurate reporting and billing for governmental payments and/or reimbursement. In the United States, some states establish regulatory processes that must be satisfied prior to the establishment of new dialysis clinics. Outside the United States, each country has its own payment and reimbursement rules and procedures, and some countries prohibit ownership of healthcare providers or establish other regulatory barriers to direct ownership by foreign companies. In all jurisdictions, we work within the framework of applicable laws to establish alternative contractual arrangements to provide services to those facilities.

Any of the following matters could have a material adverse effect on our business, financial condition and results of operations:

- failure to receive required licenses, certifications or other approvals for new facilities or products or significant delays in such receipt;
- complete or partial loss of various federal certifications, licenses, or other permits required under the laws of any state or other governmental authority by withdrawal, revocation, suspension, or termination or restrictions of such certificates and licenses by the imposition of additional requirements or conditions, or the initiation of proceedings possibly leading to such restrictions or the partial or complete loss of the required certificates, licenses or permits;
- a non-appealable finding of material violations of U.S. healthcare laws; and
- changes resulting from healthcare reform or other government actions that reduce reimbursement or reduce or eliminate coverage for particular services we provide.

We must comply with all U.S., German and other legal and regulatory requirements under which we operate, including the Anti-Kickback Statute, the federal False Claims Act, the federal restrictions on certain physician referrals under the Stark Law, U.S. federal rules under the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) that protect the privacy of patient medical records and prohibit inducements to patients to select a particular healthcare provider and other fraud and abuse laws and similar state statutes, as well as similar laws in other countries. The Healthcare and Educational Affordability Reconciliation Act (as amended, “**ACA**”), enacted in the United States in 2010, expanded the reach of many of these laws and expanded federal enforcement authority. Moreover, there can be no assurance that applicable laws, or the regulations thereunder, will not be amended, or that enforcement agencies or the courts will not make interpretations inconsistent with our own, any one of which could have a material adverse effect on our business,



reputation, financial condition and operating results. Sanctions for violations of these statutes may include criminal or civil penalties, such as imprisonment, fines or forfeitures, denial of payments, and suspension or exclusion from the Medicare and Medicaid programs. In the United States, some of these laws have been broadly interpreted by a number of courts, and significant government funds and personnel have been devoted to their enforcement because such enforcement has become a high priority for the federal government and some states. Our company, and the healthcare industry in general, will continue to be subject to extensive federal, state and foreign regulation, the full scope of which cannot be predicted. In addition, the U.S. Congress and federal and state regulatory agencies continue to consider modifications to healthcare laws that may create further restrictions.

## **Product Regulation**

### ***United States***

In the United States, numerous regulatory bodies, including the FDA and comparable U.S. state regulatory agencies, impose requirements on certain of our subsidiaries as a manufacturer and a seller of medical products and supplies under their jurisdiction. We are required to register with the FDA as a device manufacturer. As a result, we are subject to periodic inspection by the FDA for compliance with the FDA's Quality System Regulation (21 C.F.R. Part 820) requirements and other regulations. These regulations require us to manufacture products in accordance with current Good Manufacturing Practices ("**GMP**") and that we comply with FDA requirements regarding the design, safety, advertising, labeling, record keeping and distribution of our products. Further, we are required to comply with various FDA and other agency requirements for labeling and promotion. The Medical Device Reporting regulations require that we provide information to the FDA whenever there is evidence to reasonably suggest that a device may have caused or contributed to a death or serious injury or, if a malfunction were to occur, could cause or contribute to a death or serious injury. In addition, the FDA prohibits us from promoting a product for unapproved indications.

If the FDA believes that a company is not in compliance with applicable laws and regulations, it can pursue various regulatory and enforcement actions, including issuing a warning letter. Our Group companies have received such letters in the past, including a letter issued to Fresenius Medical Care April 6, 2011 in response to which Fresenius Medical Care has ceased marketing and distributing specific products in the United States and as to which it has taken corrective action, and a letter that APP Pharmaceuticals received dated February 22, 2012, from the New York District FDA office regarding Fresenius Medical Care's Grand Island plant following an inspection at the facility which concluded in July 2011. APP responded on July 27, 2011, detailing the corrective and preventative actions planned to address the FDA's concerns, including the significant progress having been made in cooperation with the FDA in remedying these issues. In addition, the letter referenced the marketing status of five "grandfathered" generic products with a total annual sales volume of approximately €15 million. We and Fresenius Medical Care, as applicable, are working constructively with the FDA on these matters, and we do not expect that these matters will result in any material impact on our business or financial condition. Other FDA action may include issuing a recall order, instituting proceedings to detain or seize products, imposing operating restrictions, enjoining future violations and assessing civil penalties against a company, its officers or its employees and can recommend criminal prosecution to the U.S. Department of Justice. In addition, companies may initiate voluntary recalls. For example, on January 14, 2011, Fresenius Medical Care announced a voluntary Class I recall of certain blood tubing sets sold in the United States and Canada due to reports of arterial line kinks.

On July 29, 2011, the Institute of Medicine ("**IOM**") of the U.S. National Institutes of Health issued a report commissioned by the FDA recommending that the FDA establish a new system for the review of certain medical devices to replace the 510(k) notification system. Under the present system, many medical devices do not require premarketing approval. For a medical device that is deemed to have a moderate risk to patients, the FDA grants marketing clearance if data submitted for the device establish that the device is "substantially equivalent" to a legally marketed "predicate" device that did not itself require pre-marketing approval. The FDA has opened a public

docket to receive comments on the IOM report but has not issued a detailed response to the report. It has stated that it does not believe that the 510(k) system should be eliminated but is open to proposals for improvement of its device review program, and that significant changes to the 510(k) clearance process would require legislation. Substantially all of the dialysis products that our Group manufactures or distributes in the United States, other than peritoneal dialysis solutions and renal pharmaceuticals, are marketed on the basis of 510(k) clearances. At the present time, regulatory and legislative changes to the 510(k) process have been proposed, and we cannot predict whether or to what extent the 510(k) process will be modified or replaced or what the effects, if any, of a modified or replacement review process for medical devices would be on Fresenius Medical Care's dialysis products business.

We cannot assure that all necessary regulatory approvals, including approvals for new products or product improvements, will be granted on a timely basis, if at all. Delays in or failure to receive approval, product recalls or warnings and other regulatory actions and penalties can materially affect operating results.

In addition, in order to clinically test, produce and market certain medical products and other disposables (including hemodialysis and peritoneal dialysis equipment and solutions, dialyzers, bloodlines, other disposables and other products) for human use, we must satisfy mandatory procedures and safety and efficacy requirements established by the FDA or comparable state and foreign governmental agencies. After approval or clearance to market a product is given, the FDA, upon the occurrence of certain events, has the power to withdraw the approval or clearance or require changes to a device, its manufacturing process, or its labeling or may require additional proof that regulatory requirements have been met. Such rules generally require that products be approved or cleared by the FDA as safe and effective for their intended use prior to being marketed.

Some of our products are designated as drugs by the FDA and, as such, are subject to additional regulation under the Food, Drug, and Cosmetic Act of 1938, as amended. Many of these requirements are similar to those for devices. Thus, we are required to register with the FDA and are required to comply with regulatory requirements regarding drug manufacturing, labeling, distribution, and recordkeeping. Our drug products must be manufactured in accordance with cGMP (21 C.F.R. Part 211), and we are required to provide information to the FDA whenever we become aware of a report of an adverse drug experience associated with the use of one of our drug products that is both serious and unexpected, as defined in FDA regulations. In addition, as with our medical devices, our drug products must satisfy mandatory procedures and safety and efficacy requirements before they can be marketed and the FDA prohibits us from promoting a pharmaceutical product for unapproved indications. Finally, if the FDA believes that a company is not in compliance with applicable drug regulations, it has similar enforcement authorities as those discussed above with respect to medical devices.

### ***International (Including Germany and Other Non-U.S. Jurisdictions)***

Most countries maintain different regulatory regimes for medicinal products and for medical devices. In almost every country there are rules regarding the quality, effectiveness, and safety of products and regulating their testing, production and distribution. Treaties or other international law and standards and guidelines under treaties or laws may supplement or supersede individual country regulations.

#### ***Drug Regulation***

Many of our products are considered to be medicinal products and are therefore subject to the specific drug-law provisions in various countries.

The EU has issued a directive on medicinal products, No. 65/65/EEG (January 26, 1965), as amended. Each member of the EU is responsible for conforming its laws to comply with this directive. In Germany, the German Drug Law (*Arzneimittelgesetz* — “**AMG**”) which implements EU requirements, is the primary regulation applicable to medicinal products.

The provisions of the German Drug Law are comparable with the legal standards in other European countries. As in many other countries, the AMG provides that in principle a medicinal product may only be placed on the market if it has been granted a corresponding marketing authorization. Such marketing authorization is granted by the competent licensing authorities only if the quality, efficacy and safety of the medicinal product has been scientifically proven. The medicinal products marketed on the basis of a corresponding marketing authorization are subject to ongoing control by the competent authorities. The marketing authorization may also be subsequently restricted or made subject to specific requirements. It may be withdrawn or revoked if there was a reason for the refusal of the marketing authorization upon its grant or such a reason arises subsequently, or if the medicinal product is not an effective therapy or its therapeutic effect has been insufficiently proven according to the relevant state of scientific knowledge. Such a reason for refusal is, inter alia, found to exist if there is the well-founded suspicion that the medicinal product has not been sufficiently examined in accordance with the current state of scientific knowledge, that the medicinal product does not show the appropriate quality, or that there is the well-founded suspicion that the medicinal product, when properly used as intended, produces detrimental effects going beyond the extent justifiable according to the current state of knowledge of medicinal science. The marketing authorization can also be withdrawn or revoked in the case of incorrect or incomplete information supplied in the authorization documents, if the quality checks prescribed for the medicinal product were insufficient or have not been sufficiently carried out, or if the withdrawal or revocation is required to comply with a decision made by the European Commission or the Council of the EU. Instead of a withdrawal or revocation, it is also possible to order the suspension of the marketing authorization for a limited period.

The provisions of the AMG and a German statutory order, the Arzneimittel — und Wirkstoffherstellungsverordnung, also contain special requirements for the manufacture of medicinal products. The production of medicinal products requires a corresponding manufacturing license which is granted by the competent authorities of the relevant Member State for a specific manufacturing facility and for specific medicinal products and forms of medicinal products. The manufacturing license is granted only if the manufacturing facility, production techniques and production processes comply with the national drug law requirements, with the principles and guidelines of EU-good manufacturing practice (“**EU-GMP**”), as well as the terms of the particular marketing authorization. A manufacturer of medicinal products must, inter alia, employ pharmacists, chemists, biologists, or physicians responsible for the quality, safety and efficacy of the medicinal products. The manufacturer must name several responsible persons: a Qualified Person (“**QP**”) for the release of the medicinal product into the market possessing the expert knowledge specified by the AMG, a head of production, a head of quality control, and, if the manufacturer markets the medicinal products itself, a commissioner for the so-called graduated plan (Stufenplanbeauftragter for Germany, a “Qualified Person” for Pharmacovigilance (“**QPP**”) for the EU) and an information officer. It is the responsibility of the QP to ensure that each batch of the medicinal products is produced and examined in compliance with the statutory provisions of the AMG. The QPP must, among other things, collect and assess any reported risks associated with the medicinal products and coordinate any necessary measures according to German Drug Law. The QPP, residing within the European Economic Area, is responsible for pharmacovigilance and the establishment of a system for handling of all suspected adverse reactions that need to be reported. The information officer is in charge of the scientific information relating to the medicinal products. All these persons may be held personally liable under German criminal law for any breach of the AMG, and the manufacturing license may be withdrawn or revoked and it is also possible to order the suspension of the license for a limited period.

International guidelines also govern the manufacture of medicinal products and, in many cases, overlap with national requirements. Material regulations concerning manufacture and registration related to medicinal products have been issued by the European Commission and the International Conference on Harmonisation of Technical Requirements for Human Use (“**ICH**”). The Pharmaceutical Inspection Co-Operation Scheme (“**PIC/S**”), an international treaty, contains rules that, in particular, bind many countries in which medicinal products are manufactured. Among other things, the European Commission, PIC/S, ICH a.s.o. establish requirements for GMP which are then

adopted at the national level. Another international standard, which is non-binding for medicinal products, is the ISO9001:2000 system for assuring quality management system requirements. This system has a broader platform than EU-GMP, which are more detailed and is primarily acknowledged outside the field of medicinal products, for example with respect to medical devices.

### Regulations Applicable to Medical Devices

In the past, medical devices were subject to less stringent regulation than medicinal products in some countries. In the last decade, however, statutory requirements have been increased. In the European Community (“EC”), the requirements to be satisfied by medical devices are laid down in three European directives to be observed by all EC Member States, all Member States of the European Economic Community (“EEC”), as well as all future accession states: (1) Directive 90/385/EEC of June 20, 1990 relating to active implantable medical devices (“AIMDs”), as last amended (“AIMD Directive”), (2) Directive 93/42/EEC of June 14, 1993 relating to medical devices, as last amended (“MD Directive”), (3) Directive 98/79/EC of October 27, 1998 relating to in vitro diagnostic medical devices as last amended (“IVD Directive”). In addition, Directive 2001/95/EC of December 3, 2001, as last amended, concerning product safety should be noted. With regard to the MD Directive, the Commission submitted an amendment, 2007/47/EC, intended to achieve improvements, for instance in the following areas: clinical assessment by specification of the requirements in more detail; monitoring of the devices after their placing on the market; and decision making by enabling the Commission to make binding decisions in case of contradictory opinions of states regarding the classification of a product as a medical device. Member States had until December 21, 2008, to transpose the new Directive into national law, following which there is a transition period for manufacturers to come into compliance by March 21, 2010.

According to the directives relating to medical devices, the “CE mark” (the abbreviation of *Conformité Européenne* signifying that the device complies with all applicable requirements of the European Community) shall serve as a general product passport for all Member States of the EC and the EEC. Upon receipt of a CE certificate for a product according to the applicable conformity assessment procedure, e.g., a certified full quality management system for medical devices according to ISO13485:2003 and AC2007, and the documented declaration and proof of conformity of our products to the harmonized European norms (Declaration of Conformity), we as the legal manufacturer are able to mark products as being in compliance with the EC requirements. If able to do so, the manufacturer has to put a “CE” mark on the products. Medical devices that do not bear the “CE” mark cannot be imported, sold or distributed within the European Community.

The right to affix the CE mark is granted to any manufacturer who has observed the conformity assessment procedure prescribed for the relevant medical device and submitted the EC declaration of conformity before placing the medical device on the market. The conformity assessment procedures were standardized by Council Decision 93/465/EEC of July 22, 1993, which established modules for the various phases of the conformity assessment procedures intended to be used in the technical harmonization norms and the rules for the affixing and use of the CE conformity mark. The conformity assessment modules to be used differ depending on the risk class of the medical device to be placed on the market. The classification rules for medical devices are, as a general rule, based upon the potential risk of causing harm to the human body. Annex IX to the MD Directive (making a distinction between four product classes I, IIa, IIb, and III) and Annex II to the IVD Directive (including a list of the products from lists A and B) contain classification criteria for products and product lists that are, in turn, assigned to specific conformity assessment modules. AIMDs represent a product class of their own and are subject to the separate AIMD Directive. Special rules apply, for example, to custom-made medical devices, medical devices manufactured in-house, medical devices intended for clinical investigation or in vitro diagnostic medical devices intended for performance evaluation, as well as for diagnostic medical devices for in-house use (“lay use”), combination devices and accessories to medical devices.

The conformity assessment procedures for Class I devices with a low degree of invasiveness in the human body (e.g., devices without a measuring function that are not subject to any sterilization requirements), can be made under the sole responsibility of the manufacturer by submitting an EC

declaration of conformity (a self-certification or self-declaration). For Class IIa devices, the participation of a so-called “Notified Body” is binding for the production phase. Devices of classes IIb and III involving a high risk potential are subject to inspection by the Notified Body not only in relation to their manufacture (as for class IIa devices), but also in relation to their specifications and design. Class III is reserved for the most critical devices the marketing of which is subject to an explicit prior authorization with regard to their conformity. In risk categories IIa, IIb and III, the manufacturer can make use of several different conformity assessment modules.

## **Environmental Regulation**

Our Group uses substances regulated under U.S. and non-U.S. environmental laws, primarily in manufacturing and sterilization processes. While it is difficult to quantify, we believe the ongoing impact of compliance with environmental protection laws and regulations will not have a material impact on our financial position or results of operations.

## **Facilities and Operational Regulation**

### ***United States***

The Clinical Laboratory Improvement Amendments of 1988 (“**CLIA**”) subjects virtually all clinical laboratory testing facilities, including ours, to the jurisdiction of the Department of Health and Human Services (“**HHS**”). CLIA establishes national standards for assuring the quality of laboratories based upon the complexity of testing performed by a laboratory. Certain of our operations are also subject to federal laws governing the repackaging and dispensing of drugs and the maintenance and tracking of certain life-sustaining and life-supporting equipment.

Our operations are subject to various U.S. Department of Transportation, Nuclear Regulatory Commission, Environmental Protection Agency, and Occupational Safety and Health Administration (“**OSHA**”) requirements and other federal, state and local hazardous and medical waste disposal laws. As currently in effect, laws governing the disposal of hazardous waste do not classify most of the waste produced in connection with the provision of dialysis, or laboratory services as hazardous, although disposal of non-hazardous medical waste is subject to specific state regulation. Our operations are also subject to various air emission and wastewater discharge regulations.

Federal, state and local regulations require us to meet various standards relating to, among other things, the management of facilities, personnel qualifications and licensing, maintenance of proper records, equipment, quality assurance programs, the operation of pharmacies and dispensing of controlled substances. All of our operations in the United States are subject to periodic inspection by federal and state agencies and other governmental authorities to determine if the operations, premises, equipment, personnel and patient care meet applicable standards. To receive Medicare reimbursement, Fresenius Medical Care’s dialysis centers, renal diagnostic support business and laboratories must be certified by the U.S. Centers for Medicare and Medicaid Services (“**CMS**”), an agency within HHS. All of Fresenius Medical Care’s dialysis centers and laboratories that furnish Medicare or Medicaid services have the required certification.

Certain of our facilities and certain of their employees are also subject to state licensing statutes and regulations. These statutes and regulations are in addition to federal and state rules and standards that must be met to qualify for payments under Medicare, Medicaid and other government reimbursement programs. Licenses and approvals to operate these centers and conduct certain professional activities are customarily subject to periodic renewal and to revocation upon failure to comply with the conditions under which they were granted.

OSHA regulations require employers to provide employees who work with blood or other potentially infectious materials with prescribed protections against blood-borne and air-borne pathogens. The regulatory requirements apply to all healthcare facilities, including dialysis centers and laboratories, and require employers to make a determination as to which employees may be exposed to blood or other potentially infectious materials and to have in effect a written exposure control plan. In addition, employers are required to provide hepatitis B vaccinations, personal



protective equipment, blood-borne and airborne pathogens training, post-exposure evaluation and follow-up, waste disposal techniques and procedures, engineering and work practice controls and other OSHA-mandated programs for blood-borne and air-borne pathogens.

Some states in the United States have certificate of need (“**CON**”) laws that require any person or entity seeking to establish a new healthcare service or to expand an existing service to apply for and receive an administrative determination that the service is needed. Fresenius Medical Care currently operates in several states, as well as the District of Columbia and Puerto Rico that have CON laws applicable to dialysis centers. These requirements could, as a result of a state’s internal determination of its dialysis services needs, prevent entry to new companies seeking to provide services in these states, and could constrain our ability to expand our operations in these states.

### ***International (Including Germany and Other Non-U.S. Jurisdictions)***

Most countries outside the United States regulate operating conditions of dialysis clinics and hospitals and the manufacturing of dialysis products, medicinal products, enteral nutrition products and medical devices.

We are subject to a broad spectrum of regulation in almost all countries. Our operations must comply with various environmental and transportation regulations in the various countries in which we operate. Our manufacturing facilities, hospitals and dialysis clinics are also subject to various standards relating to, among other things, facilities, management, personnel qualifications and licensing, maintenance of proper records, equipment, quality assurance programs, the operation of pharmacies, the protection of workers from blood-borne diseases and the dispensing of controlled substances. All of our operations are subject to periodic inspection by various governmental authorities to determine if the operations, premises, equipment, personnel and patient care meet applicable standards. Our dialysis clinic operations and our related activities generally require licenses, which are subject to periodic renewal and may be revoked for violation of applicable regulatory requirements.

In addition, many countries impose various investment restrictions on foreign companies. For instance, government approval may be required to enter into a joint venture with a local partner. Some countries do not permit foreign investors to own a majority interest in local companies or require that companies organized under their laws have at least one local shareholder. Investment restrictions therefore affect the corporate structure, operating procedures and other characteristics of our subsidiaries and joint ventures in these and other countries.

We believe our facilities are currently in compliance in all material respects with the applicable national and local requirements in the jurisdictions in which they operate.

### **Regulations Relating to Reimbursement**

As a global dialysis care provider and supplier of dialysis services and products, Fresenius Medical Care is represented in more than 120 countries throughout the world facing the challenge of meeting the needs of patients in very different economic environments and healthcare systems.

The healthcare systems and rules for the reimbursement of the treatment of patients suffering from ESRD vary in the individual countries. In general, the government, frequently in coordination with private insurers, is responsible for financing the healthcare system through tax payments and other sources of income, social security contributions or a combination of such sources.

However, in a large number of developing countries, the government or charitable institutions grant only minor aid so that dialysis patients must bear all or a large part of their treatment expenses themselves. In some countries, dialysis patients do not receive treatment on a regular basis, but only if and to the extent available funds so allow.

## **United States**

### *Dialysis Services*

Fresenius Medical Care's dialysis centers provide out-patient hemodialysis treatment and related services for ESRD patients (end-stage renal disease patients). In addition, some of Fresenius Medical Care's centers offer services for the provision of peritoneal dialysis and hemodialysis treatment at home, and dialysis for hospitalized patients.

The Medicare program is the largest single source of Fresenius Medical Care's dialysis services revenues from dialysis treatment. For example, in 2011, approximately 52% of North America dialysis services revenues resulted from Medicare's ESRD program. As a preliminary matter, in order to be eligible for reimbursement by Medicare, ESRD facilities must meet conditions for coverage established by CMS. New conditions for coverage became effective in October of 2008, with the exception of two provisions relating to physical environment and infection control which became effective in February of 2009. Fresenius Medical Care has made the necessary modifications to meet these new requirements.

Certain products and services delivered prior to January 1, 2011 by Fresenius Medical Care's dialysis centers were reimbursed by the Medicare program in accordance with a "basic case-mix adjusted prospective system," which provided a fixed payment for each dialysis treatment, comprised of a composite rate component, a drug add-on adjustment component, case-mix adjustments and a regional wage index adjustment. The payment rates under this system were subject to adjustment from time to time through changes in the Medicare statute (in the case of basic services included in the "composite rate") or through annual adjustments (in the case of a portion of the payment referred to as the drug add-on, case-mix and wage index adjustments). Effective January 1, 2011, Medicare introduced a new ESRD PPS, which encompasses those services that were paid under the composite rate, as well as certain formerly separately payable drugs and laboratory tests. The ESRD PPS is described in greater detail below.

Certain other items and services that Fresenius Medical Care furnishes at its dialysis centers are not currently included in the composite rate and are eligible for separate Medicare reimbursement. The most significant of these items are drugs or biologicals, such as erythropoietin-stimulating agents ("**ESAs**"), vitamin D analogs, and iron, which are reimbursed at 106% of the average sales price as reported to CMS by the manufacturers. Products and support services furnished to ESRD patients receiving dialysis treatment at home are also reimbursed separately under a reimbursement structure comparable to the in-center composite rate. Although these reimbursement methodologies limit the allowable charge per treatment, they provide us with predictable per treatment revenues.

The drugs and biological and clinical laboratory payments that were separately reimbursed are, as of January 1, 2011, included in a single ESRD payment. For a discussion of the rules CMS is using to implement recent Medicare reimbursement rate changes including provisions for implementation of an "expanded bundled rate" for dialysis services provided on or after January 1, 2011, see "*— ESRD Prospective Payment System*", below. Any significant decreases in Medicare reimbursement rates could have material adverse effects on Fresenius Medical Care's provider business and, because the demand for products is affected by Medicare reimbursement, on Fresenius Medical Care's products business. To the extent that increases in operating costs that are affected by inflation, such as labor and supply costs, are not fully reflected in a compensating increase in reimbursement rates, Fresenius Medical Care's business and results of operations may be adversely affected.

Medicare pays as the primary insurer for Medicare-eligible individuals under some circumstances. For details, see "*— Coordination of Benefits*" below. For Medicare-primary patients, Medicare is responsible for payment of 80% of the prospective payment amount and separately reimbursable drugs or biologicals amounts set by the U.S. Congress for dialysis treatments and the patient or third-party insurance payors, including employer-sponsored health insurance plans, commercial insurance carriers and the Medicaid program, are responsible for paying any co-payment amounts for approved services not paid by Medicare (typically the annual deductible and



20% co-insurance), subject to the specific coverage policies of such payors. Each third-party payor, including Medicaid, makes payment under contractual or regulatory reimbursement provisions that may or may not cover the full 20% co-payment or annual deductible. Where the patient has no third-party insurance or the third party insurance does not cover the co-payment or deductible, the patient is responsible for paying the co-payments or the deductible, which Fresenius Medical Care is either precluded from collecting or frequently does not fully collect despite reasonable collection efforts. Under an advisory opinion from the Office of the Inspector General of the Department of Health and Human Services, subject to specified conditions, Fresenius Medical Care and other similarly situated providers may make contributions to a non-profit organization that has agreed to make premium payments for supplemental medical insurance and/or "Medigap" insurance on behalf of indigent ESRD patients, including some of Fresenius Medical Care's patients.

For calendar year 2009, CMS set the drug add-on adjustment at US\$20.33 per treatment, or 15.2% of the total per treatment composite payment. For calendar year 2010, CMS kept the drug add-on amount constant at the 2009 rate of US\$20.33 per treatment, while it increased the base portion of the composite rate by 1% pursuant to the requirement in the Medicare Improvements for Patients and Providers Act of 2008 ("**MIPPA**"). As a result, the drug add-on amount, constant in dollar terms, declined to 15% of the total per-treatment payment in 2010 and 14.7% for 2011. The base portion of the composite rate, unlike many other payment rates in Medicare, had not been automatically updated each year. As a result, this portion of the composite payment rate had not received an annual update in the absence of a statutory change. In MIPPA, Congress provided for a 1.0% increase in the base portion of the composite rate in each of 2009 and 2010. Further, Congress eliminated a provision that previously paid hospital-based facilities slightly more than independent (or "free-standing") facilities. Thus, in 2009, all facilities were paid at the 2008 independent facility rate increased by 1.0%.

For 2010, the base composite rate was US\$135.15 for both independent and hospital-based facilities, an increase of 1.0% from the 2009 rate. CMS updated the wage index adjustment applicable to ESRD facilities from the 25/75 blend between adjustments based on old metropolitan statistical areas ("**MSA**") and those based on new core-based statistical areas ("**CBSAs**") used in 2008. For 2009, CMS completed the transition applicable to ESRD facilities from the 25/75 blend between adjustments based on the old metropolitan statistical areas definition to the new CBSAs definition, and facilities are now paid according to the CBSA rate. For 2010, CMS reduced the wage index floor from 0.70 to 0.65.

#### *Medicaid Rebate Program and Other Government Drug Pricing Program Requirements*

Manufacturers of drugs that are covered by the Medicaid program or that are reimbursed by Part B of the Medicare program are subject to various price determination and reporting requirements under federal statutes, including the Medicaid and Medicare statutes, as well as the Public Health Service Act ("**PHSA**") and the Veterans Healthcare Act ("**VHCA**"). Compliance with the Medicaid rebate statute, the VHCA, the Medicare statute, and Section 340B of the PHSA requires us to calculate and/or report a number of different pricing metrics (e.g., Average Manufacturer Price ("**AMP**"), Best Price ("**BP**"), Average Sales Price ("**ASP**"), Federal Ceiling Price ("**FCP**"), nonfederal average manufacturer price ("**Non-FAMP**"), and 340B ceiling price) to federal authorities responsible for monitoring and enforcing drug manufacturer compliance with federal law and policy.

Fresenius Medical Care participates in the federal Medicaid rebate program established by the Omnibus Budget Reconciliation Act of 1990, as well as several state supplemental rebate programs, and Fresenius Medical Care makes its pharmaceutical products available to authorized users of the Federal Supply Schedule ("**FSS**") of the General Services Administration under an FSS contract negotiated by the Department of Veterans Affairs ("**DVA**"). With the recent acquisition of a license to market and distribute the IV Iron product Venofer to freestanding dialysis clinics, Fresenius Medical Care is also considered, for statutory price reporting purposes, to be the "manufacturer" of Venofer which is reimbursed under Part B of the Medicare program. Fresenius Medical Care's products also are subject to a federal requirement that any company participating in the Medicaid

rebate or Medicare Part B program extend discounts comparable to the rebates paid to State Medicaid agencies to qualified purchasers under the Public Health Services (“**PHS**”) pharmaceutical pricing program managed by the Health Resources and Services Administration of HHS (also known as the “340B program” by virtue of the section of the PHSA that created the program). The PHS pricing program extends these deep discounts on drugs to a variety of community health clinics and other entities that receive health services grants from the PHS, as well as hospitals that serve a disproportionate share of poor Medicare and Medicaid beneficiaries. The ACA expanded the 340B program to include additional providers.

Under the Medicaid rebate program, Fresenius Medical Care pays a rebate to each state Medicaid program based upon sales of our pharmaceutical products that are reimbursed by those programs. The ACA increased the minimum federal Medicaid rebate percentages, effective January 1, 2010. Rebate calculations are complex and, in certain respects, subject to interpretations of law, regulation, or policy guidance by us, government or regulatory agencies and the courts. The Medicaid rebate amount is computed each quarter based on our submission to CMS of our current average manufacturer price and best price for our pharmaceutical products. The VHCA of 1992 imposes a requirement that the prices Fresenius Medical Care charges to certain federal entities under the FSS must be no greater than a FCP determined by applying a statutory discount to the AMP charged to Non-FAMP. Because the amount the U.S. government pays to reimburse the cost of a drug under Part B of the Medicare program is ordinarily based on the ASP charged by the manufacturer to purchasers of the drug, additional price calculation and reporting obligations are imposed on the manufacturers of Part B drugs under that program. Since Venofer is a Part B drug (i.e., one ordinarily administered incident to a physician service), Fresenius Medical Care is responsible for compiling and utilizing a wide range of sales data elements to determine the ASP of Venofer marketed under our labeler code, and reporting it to the CMS. Fresenius Medical Care is subject to specific ASP reporting obligations with respect to our Venofer sales under a consent order issued by the Federal Trade Commission in October 2008 (FTC File No. 081-0146). The ESRD PPS system incorporates payment for Venofer starting January 1, 2011. While most facilities moved to the new system immediately, some facilities will transition to the new system over a four-year period. The extent to which Medicare pays for Venofer for ESRD patients under the ASP-based system has decreased substantially, and will continue to diminish over this period and then terminate.

Government agencies may make changes in program interpretations, requirements or conditions of participation, and retain the right to audit the accuracy of our computations of rebates and pricing, some of which may have or result in implications (such as recoupment) for amounts previously estimated or paid and may have a material adverse effect on Fresenius Medical Care’s revenues, profitability and financial condition.

#### *Laboratory Tests*

Spectra obtains a substantial portion of its net revenues from Medicare, which pays for clinical laboratory services provided to dialysis patients in two ways:

First, payment for certain routine tests is included in the new ESRD PPS bundled rate paid to Fresenius Medical Care’s dialysis centers. The centers obtain the laboratory services from laboratories and pay the laboratories for the services. In accordance with industry practice, Spectra usually provides such testing services under capitation agreements with its customers pursuant to which it bills a fixed amount per patient per month to cover the laboratory tests included in the composite rate at the designated frequencies.

Second, laboratory tests performed by Spectra for Medicare beneficiaries that are not included in Fresenius Medical Care’s ESRD PPS bundled rate are billed separately directly to Medicare. Such tests are paid at 100% of the Medicare fee schedule amounts, which vary to some extent across different geographic areas but which cannot exceed national ceilings on payment rates, called national limitation amounts (“**NLAs**”). The Medicare statute calls for updating the payment rates to reflect inflation by the change in consumer price index, subject to certain reductions. The ACA

imposed a 1.75 percentage point reduction from the rate of change in the consumer price index for calendar years 2011 to 2015 together with a “productivity adjustment,” expected to be slightly above 1 percentage point, applicable (with some restrictions) for years starting with 2011. With the introduction of the new ESRD PPS, most laboratory tests that were separately paid are now paid as part of the expanded bundle.

#### *Erythropoietin Stimulating Agents (“ESAs”)*

ESAs, including Epogen and Aranesp, are used for anemia management of patients with renal disease. The administration of ESAs is separately billable under the Medicare program, and accounted for 19% and 21% of Fresenius Medical Care’s 2010 and 2009 North American dialysis care sales, respectively. Since January 2011, ESAs are included in the expanded bundle under the ESRD PPS.

Anemia severity is commonly monitored by measuring a patient’s hematocrit, an indicator of the proportion of red blood cells in a patient’s whole blood, or by evaluating a patient’s hemoglobin level. The amount of ESA that is appropriate for a patient varies by several factors, including the severity of the patient’s anemia.

We believe Fresenius Medical Care’s policies on billing for ESAs in effect when ESAs were separately billable complied with CMS policies. Fresenius Medical Care continues to recommend to its treating physicians that they review and understand the revised package label insert and the FDA’s guidelines as they make their anemia management decisions.

Any of the following changes relating to ESAs could adversely affect our business and results of operations, possibly materially:

- future changes in the ESA reimbursement methodology and/or rate;
- inclusion of ESAs in the Medicare composite rate without sufficient offsetting increases to such rate;
- increases in the cost of ESAs without offsetting increases in the ESA reimbursement rate; or
- reduction by the manufacturer of ESAs of the amount of overfill in the ESA vials.

#### *ESRD Prospective Payment System*

With the enactment of MIPPA on July 15, 2008, the U.S. Congress mandated the development of an expanded ESRD bundled payment system for services furnished on or after January 1, 2011. The new law requires CMS to implement by January 1, 2011 a bundled ESRD payment system under which CMS will reimburse dialysis facilities with a single payment for (i) all items and services included in the composite rate, (ii) all ESAs and other pharmaceuticals (other drugs and biologicals, other than vaccines) furnished to the patients that were previously reimbursed separately, (iii) diagnostic laboratory tests, and (iv) other services furnished to individuals for the treatment of ESRD. The initial bundled reimbursement rate was set at US\$229.63 per dialysis treatment (representing 98 percent of the estimated 2011 Medicare program costs of dialysis care as calculated under the current reimbursement system). The base ESRD PPS payment is subject to case mix adjustments that take into account individual patient characteristics (e.g., age, body surface area, body mass, time on dialysis) and certain co-morbidities. The base payment is also adjusted for (i) certain high cost patient outliers due to unusual variations in medically necessary care, (ii) disparately high costs incurred by low volume facilities relative to other facilities, (iii) provision of home dialysis training, (iv) wage-related costs in the geographic area in which the provider is located and (v) transition adjustments to ensure a budget-neutral transition to the new reimbursement system (the “**Transition Adjusters**”). For 2011, CMS initially implemented a negative 3.1% adjustment to the base payment to ensure a budget-neutral transition, based on CMS’s assumption that only 43% of dialysis facilities would fully opt into the ESRD PPS in 2011. This adjustment was subsequently eliminated effective April 1, 2011 for the remainder of 2011 because CMS had underestimated the number of providers that would opt out of the transition

payments. No other Transition Adjusters were implemented in 2011. On November 2, 2011, CMS confirmed the elimination of the Transition Adjuster for 2012.

Beginning in 2012, the ESRD PPS payment amounts are subject to annual adjustment based on increases in the costs of a “market basket” of certain healthcare items and services less a productivity adjustment. CMS has implemented a 2.1% productivity adjusted market basket increase for 2012, which, together with a wage-index budget-neutrality adjustment, results in an ESRD PPS base reimbursement rate of US\$234.81 per dialysis treatment. In addition, the ESRD PPS’s pay-for-performance standards, also known as the quality improvement program or QIP, focusing in the first year on anemia management and dialysis adequacy, were fully implemented effective January 1, 2012. Dialysis facilities that fail to achieve the established quality standards will have payments reduced by up to 2%, based on performance in 2010 as an initial performance period. On December 15, 2011, CMS released QIP reduction reimbursement amounts. Fresenius Medical Care expects that the impact of these reduction amounts will not be material. CMS changed the QIP performance measures for 2013 by retiring the lower level of the anemia management range and equally weighting the upper level of such range and hemodialysis adequacy. For 2014, CMS has adopted four additional measures to determine whether dialysis patients are receiving high quality care. The new measures include (i) prevalence of catheter and arteriovenous fistula use; (ii) reporting of infections to the Centers for Disease Control and Prevention; (iii) administration of patient satisfaction surveys; and (iv) monthly monitoring of phosphorus and calcium levels.

The ESRD PPS will be phased in over four years with full implementation for all dialysis facilities on January 1, 2014. However, providers could elect in November 2010 to become fully subject to the new system starting in January 2011. Nearly all of our U.S. dialysis facilities elected to be fully subject to the ESRD PPS effective January 1, 2011.

The ESRD PPS has resulted in lower reimbursement rates on average. Our strategy to mitigate the impact of the ESRD PPS includes three broad measures. First, we worked with other providers, CMS and the U.S. Congress toward favorably revising the calculation of the Transition Adjuster for 2011. Effective April 1, 2011 CMS eliminated the Transition Adjuster for the remainder of that year, and no Transition Adjuster was implemented for 2012. Second, we are working with medical directors and treating physicians to make protocol changes used in treating patients and are negotiating pharmaceutical acquisition cost savings. Finally, we are seeking to achieve greater efficiencies and better patient outcomes by introducing new initiatives to improve patient care upon initiation of dialysis, increase the percentage of patients using home therapies and achieve additional cost reductions in our clinics.

#### *Coordination of Benefits*

Medicare entitlement begins for most patients in the fourth month after the initiation of chronic dialysis treatment at a dialysis center. During the first three months, considered to be a waiting period, the patient or patient’s insurance, Medicaid or a state renal program are responsible for payment.

Patients who are covered by Medicare and are also covered by an employer group health plan (“EGHP”) are subject to a 30-month coordination period during which the EGHP is the primary payor and Medicare the secondary payor. During this coordination period the EGHP pays a negotiated rate or in the absence of such a rate, Fresenius Medical Care’s standard rate or a rate defined by its plan documents. The EGHP payments are generally higher than the Medicare payment. EGHP insurance, when available, will therefore generally cover as the primary payor a total of 33 months, the three-month waiting period plus the 30-month coordination period.

On August 2, 2011 the U.S. Budget Control Act of 2011 (“**Budget Control Act**”) was enacted, which raised the United States’ debt ceiling and put into effect a series of actions for deficit reduction. In addition, the Budget Control Act created a twelve-member Congressional Joint Select Committee on Deficit Reduction that was tasked with proposing additional revenue and spending measures to achieve additional deficit reductions of at least US\$1.5 trillion over ten years, which could include reductions in Medicare and Medicaid. The Joint Congressional Committee failed to

make its recommendations to Congress by the November 23, 2011 deadline established by the Budget Control Act. As a result of this failure, and unless Congress acts in some other fashion, automatic across the board reductions in spending of US\$1.2 trillion over nine fiscal years (fiscal years 2013-2021) will be triggered on January 2, 2013. The President has stated that he would veto any legislation that would repeal the automatic budget cuts without a bipartisan solution to deficit reduction. Medicare payments to providers and suppliers would be subject to the triggered reductions, but these reductions in payments to Medicare providers would be capped at 2% annually. Any such reductions would be independent of annual inflation update mechanisms, such as the ESRD PPS market basket update.

In the current legislative environment, increases in government spending may need to be accompanied by corresponding offsets. For example, the Budget Control Act did not address reductions in physician payments mandated by the sustainable growth rate ("SGR"). The Temporary Payroll Tax Cut Continuation Act of 2011 delayed implementation of these reductions until March 1, 2012. If implemented for the remainder of calendar year 2012, SGR would impose a reduction of 27.4% in physician fees. In order to reduce or eliminate SGR physician payment reductions and not adversely affect deficit reduction, Congress would have to reduce other spending. We cannot predict whether these would include other reductions in Medicare or Medicaid spending.

#### *Possible Changes in Statutes or Regulations*

Legislation or regulations may be enacted in the future that could substantially modify or reduce the amounts paid for services and products offered by us and our subsidiaries. It is also possible that statutes may be adopted or regulations may be promulgated in the future that impose additional eligibility requirements for participation in the federal and state healthcare programs. Such new legislation or regulations could, depending upon the detail of the provisions, have positive or adverse effects, possibly materially, on our businesses and results of operations. See *"Risk Factors — Risks Relating to Our Business — A change in government reimbursement for our products and services, including dialysis care could materially decrease our sales and operating profit"* and *"— Healthcare Reform"* below.

#### ***International (Including Germany and Other Non-U.S. Jurisdictions)***

As a global company delivering dialysis care and dialysis products in more than 120 countries worldwide, Fresenius Medical Care faces the challenge of addressing the needs of dialysis patients in widely varying economic and healthcare environments.

Healthcare systems and reimbursement structures for ESRD treatment vary by country. In general, the government pays for healthcare and finances its payments through taxes and other sources of government income, from social contributions, or a combination of those sources. However, not all healthcare systems provide for dialysis treatment. In many developing countries, only limited subsidies from government or charitable institutions are available, and dialysis patients must finance all or substantially all of the cost of their treatment. In some countries patients in need of dialysis do not receive treatment on a regular basis but rather when the financial resources allow it.

In the major European and British Commonwealth countries, healthcare systems are generally based on one of two models. The "Bismarck system" (Statutory Health Insurance (SHI) System) is mainly based on mandatory employer and employee contributions dedicated to healthcare financing. The "Beveridge system" provides a national healthcare system funded by taxes. Within these systems, provision for the treatment of dialysis has been made either through allocation of a national budget or a billing system reimbursing on a fee-for-service basis or by a weekly flat rate. The healthcare systems of countries such as Germany, Japan, France, Belgium, Austria, the Czech Republic, Poland, Hungary, Turkey and the Netherlands are based on the Bismarck-type system. Countries like the United Kingdom, Canada, Denmark, Finland, Portugal, Sweden, Taiwan and Italy established their national health services using the Beveridge-type system.

Ownership of healthcare providers and, more specifically dialysis care providers, varies within the different systems and from country-to-country. In Europe about 50% of the clinics providing



dialysis care and services are publicly owned, about 35% are privately owned and approximately 15% belong to a healthcare organization. It should be noted that healthcare organizations treating a significant patient population operate only in Germany and France. Publicly operated clinics care for almost 100% of the dialysis populations in Canada and more than 80% in Australia. Within Europe, nearly 100% of the dialysis population is treated in public clinics in the Netherlands, Finland and Belgium and more than 80% in the United Kingdom while the majority of dialysis clinics are privately owned in Spain, Hungary and Portugal.

In Latin America privately owned clinics predominate, constituting more than 75% of all clinics providing dialysis care while in Asia, with the exception of Japan, Republic of Korea, Taiwan and Thailand, publicly owned clinics are predominant. In the United States, less than 2% of all dialysis clinics are publicly operated and in Japan only approximately 15%. Unlike the United States, however, Japan has a premium-based, mandatory social insurance system, and the structure of its healthcare system is more closely comparable to the German system.

Financing policies for ESRD treatment also differ from country-to-country. There are three main types of reimbursement modalities: budget transfer, fee for service and flat rate. In some cases, the reimbursement modality varies within the same country depending on the type of provider (public or private). Budget transfer is a reimbursement modality used mainly for public providers in most of the European countries where the funding is based on taxation and in some of the countries where it is based on social security (e.g., the Czech Republic). Fee for service is the most common reimbursement modality for private providers in all European countries (with exceptions, such as Hungary, where reimbursement to private providers is based on budget) and for public providers in countries where the funding system is based on social security payments. Germany is the only country in Europe in which the reimbursement modality is a flat weekly rate independent of both the type of provider and the type of dialysis therapy provided.

Treatment components included in the cost of dialysis may vary from country-to-country or even within countries, depending on the structure and cost allocation principles. In the highly integrated reimbursement models for dialysis, also often referred to as a bundled reimbursement, (applied e.g., in Poland, Romania and Portugal) the dialysis reimbursement rate covers all — or almost all — directly and indirectly treatment-related components. Countries with a relatively low integration of the treatment components in the base reimbursement (such as the Czech Republic, the United Kingdom or Germany) dedicate correspondently diverse additional payments for services rendered to dialysis patients arising from different budgets (or payment streams), depending on the national healthcare regulations.

Where treatment is reimbursed on a fee-for-service basis, reimbursement rates are sometimes allocated in accordance with the type of treatment performed. Fresenius Medical Care believes that it is not appropriate to calculate a global reimbursement amount, because the services and costs for which reimbursement is provided in any such global amount would likely bear little relation to the actual reimbursement system in any one country. Generally, in countries with established dialysis programs, reimbursements range from US\$100 to more than US\$300 per treatment. However, a comparison from country to country would not be meaningful if made in the absence of a detailed analysis of the cost components reimbursed, services rendered and the structure of the dialysis clinic in each country being compared.

Healthcare expenditures are consuming an ever-increasing portion of gross domestic product worldwide. In the developed economies of Europe, Asia and Latin America, healthcare spending is in the range of 5%-15% of gross domestic product. In many countries, dialysis costs consume a disproportionately high amount of healthcare spending and these costs may be considered a target for implementation of cost containment measures. Today, there is increasing awareness of the correlation between the quality of care delivered in the dialysis unit and the total healthcare expenses incurred by the dialysis patient. Accordingly, developments in reimbursement policies might include higher reimbursement rates for practices which are believed to improve the overall state of health of the ESRD patient and reduce the need for additional medical treatment.

## **Other Applicable U.S. Regulations**

Some of our operations are subject to U.S. federal and state statutes and regulations governing financial relationships between healthcare providers and potential referral sources and reimbursement for services and items provided to Medicare and Medicaid and other federal healthcare program patients. Such laws include the Anti-Kickback Statute, the False Claims Act, the Stark Law, and other U.S. federal healthcare fraud and abuse laws and similar state laws. These laws apply because Fresenius Medical Care's medical directors and other physicians with whom Fresenius Medical Care has financial relationships refer patients to, and order diagnostic and therapeutic services from, its dialysis centers and other operations. As is generally true in the dialysis industry, at each dialysis facility a small number of physicians often account for all or a significant portion of the patient referral base. An ESRD patient generally seeks treatment at a center that is convenient to the patient and at which the patient's nephrologist has staff privileges.

The U.S. Government, many individual states and private third-party risk insurers have devoted increasing resources to combat fraud, waste and abuse in the healthcare sector. The Office of the Inspector General of HHS ("**OIG**"), state Medicaid fraud control units, and other enforcement agencies have dedicated substantial additional resources to their efforts to detect agreements between physicians and service providers that may violate fraud and abuse laws. In its most recent Work Plan for the 2012 fiscal year, the OIG has scheduled an ESRD-related review in the coming year on: (i) claims for ESRD beneficiaries who are entitled to Medicare coverage only because of special circumstances (e.g., beneficiaries who receive 36 months of coverage after a kidney transplant or 12 months after dialysis is terminated) to determine the extent to which these are for beneficiaries receiving Medicare benefits after they no longer require dialysis, (ii) Medicare's oversight of facilities that provide outpatient maintenance dialysis services to Medicare beneficiaries with ESRD, (iii) Medicare pricing and utilization related to renal dialysis services under the bundled prospective payment system for renal dialysis services, and (iv) costs and payments for ESRD drugs under the bundled prospective payment system.

Recent health reform legislation has also enhanced the government's ability to pursue actions against potential violators, by expanding the government's investigative authority, expanding criminal and administrative penalties, and providing the government with expanded opportunities to pursue actions under the federal Anti-Kickback Statute, the False Claims Act, and the Stark Law. For example, ACA narrowed the public disclosure bar under the False Claims Act, allowing increased opportunities for whistleblower litigation. In addition, the legislation modified the intent standard under the federal Anti-Kickback Statute, making it easier for prosecutors to prove that alleged violators had met the requisite knowledge requirement. The ACA also requires providers and suppliers to report any Medicare or Medicaid overpayment and return the overpayment on the later of 60 days of identification of the overpayment or the date the cost report is due (if applicable), or all claims associated with the overpayment will become false claims. Also, beginning in 2012, recent "sunshine" legislation requires pharmaceutical and medical device manufacturers to record any payments made to physicians and hospitals, with disclosures due in 2013. On December 19, 2011, CMS published proposed regulations to implement the legislation. We do not know what form the final rules may take. The ACA also provides that any claim submitted from an arrangement that violates the Anti-Kickback Statute is a false claim.

### ***Anti-Kickback Statutes***

The U.S. federal Anti-Kickback Statute establishes criminal prohibitions against and civil penalties for the knowing and willful solicitation, receipt, offer or payment of any remuneration, whether direct or indirect, in return for or to induce the referral of patients or the ordering or purchasing of items or services payable in whole or in part under Medicare, Medicaid or other federal healthcare programs. Sanctions for violations of the Anti-Kickback statute include criminal and civil penalties, such as imprisonment and/or criminal fines of up to US\$25,000 per violation, and civil penalties of up to US\$50,000 per violation and up to three times the amount received from the healthcare program, and exclusion from the Medicare or Medicaid programs and other federal programs.



The OIG has the authority to promulgate regulations referred to as “safe harbors” that define certain business relationships and arrangements that would not be subject to civil sanction or criminal enforcement under the Anti-Kickback Statute. Failure to comply with a safe harbor provision does not make the activity illegal. Rather, the safe harbors set forth specific criteria that, if fully met, will assure the entities involved of not being prosecuted criminally or civilly for the arrangement under the Anti-Kickback Statute.

Many states also have enacted statutes similar to the Anti-Kickback Statute, which may include criminal penalties, applicable to referrals of patients regardless of payor source, and may contain exceptions different from state to state and from those contained in the federal Anti-Kickback Statute.

### ***False Claims Act and Related Criminal Provisions***

The federal False Claims Act (the “**False Claims Act**”) imposes civil penalties for knowingly making or causing to be made false claims with respect to governmental programs, such as Medicare and Medicaid, for services billed but not rendered, or for misrepresenting actual services rendered, in order to obtain higher reimbursement. Under the interpretation of certain courts, claims submitted for services furnished in violation of the Anti-Kickback Statute or Stark Law could also violate the False Claims Act. Moreover, private individuals may bring qui tam or “whistle blower” suits against providers under the False Claims Act, which authorizes the payment of 15-30% of any recovery to the individual bringing suit. Such actions are initially required to be filed under seal pending their review by the Department of Justice. The False Claims Act generally provides for the imposition of civil penalties of US\$5,500 to US\$11,000 per claim and for treble damages, resulting in the possibility of substantial financial penalties for small billing errors that are replicated in a large number of claims, as each individual claim could be deemed to be a separate violation of the False Claims Act. Some states also have enacted statutes similar to the False Claims Act which may include criminal penalties, substantial fines, and treble damages. Effective, January 1, 2007, section 1909 of the Social Security Act (enacted by section 6031 of the Deficit Reduction Act of 2005) provides a financial incentive for states to enact false claims acts that establish liability to the state for the submission of false or fraudulent claims to the state’s Medicaid program. If a state false claims act is determined to meet certain enumerated requirements, the state is entitled to an increase in the amounts recovered under a state action brought under such law. The OIG, in consultation with the Attorney General of the United States and the Department of Justice, determines whether a state false claims act meets these enumerated requirements to qualify for the added financial incentive. As of November 2010, the OIG had reviewed and approved state false claims acts promulgated by California, Georgia, Hawaii, Illinois, Indiana, Massachusetts, Michigan, Nevada, New York, Rhode Island, Tennessee, Texas, Virginia, and Wisconsin. See “— *Legal Proceedings — Litigation*” and “*Legal Proceedings — Other Potential Exposure*”.

### ***The Health Insurance Portability and Accountability Act of 1996 (HIPAA)***

HIPAA was enacted in August 1996 and expanded federal fraud and abuse laws by increasing their reach to all federal healthcare programs, establishing new bases for exclusions and mandating minimum exclusion terms, creating an additional statutory exception to the Anti-Kickback Statute for risk-sharing arrangements, requiring the Secretary of Health and Human Services to issue advisory opinions, increasing civil money penalties to US\$10,000 (formerly US\$2,000) per item or service and assessments to three times (formerly twice) the amount claimed, creating a specific healthcare fraud offense and related health fraud crimes, and expanding investigative authority and sanctions applicable to healthcare fraud. It also prohibits a provider from offering anything of value which the provider knows or should know would be likely to induce a federal healthcare program beneficiary to select or continue with the provider.

HIPAA included a healthcare fraud provision which prohibits knowingly and willfully executing a scheme or artifice to defraud any “healthcare benefit program,” which includes any public or private plan or contract affecting commerce under which any medical benefit, item, or service is provided to any individual, and includes any individual or entity who is providing a medical benefit,

item, or service for which payment may be made under the plan or contract. Penalties for violating this statute include criminal penalties, exclusion from the Medicare and Medicaid programs, freezing of assets and forfeiture of property traceable to commission of a healthcare fraud.

HIPAA regulations establish national standards for certain electronic healthcare transactions, the use and disclosure of certain individually identifiable patient health information, and the security of the electronic systems maintaining this information. These are commonly known as the HIPAA Privacy and Security Rules. Health insurance payers and healthcare providers like us must comply with the HIPAA Regulations. Violations of these HIPAA regulations may include civil money penalties and potential criminal sanctions.

Many states in the United States also have enacted state healthcare privacy and data security breach laws governing patient information, medical records and personal information, including sensitive information such as financial and identity data. The HIPAA Privacy Rule establishes a minimum federal standard for protecting privacy and preempts all contrary state privacy laws. The HIPAA Privacy Rule does not, however, preempt state privacy laws that are more stringent or more protective. In such instances, we would need to comply with the state privacy law. In addition, almost all states now regulate data breaches (unless the data is effectively encrypted) by requiring burdensome reporting and notification requirements, with significant financial penalties for noncompliance.

The Health Information Technology for Economic and Clinical Health Act ("**HITECH Act**"), pursuant to the American Recovery and Reinvestment Act of 2009 ("**ARRA**"), makes sweeping changes to the health information privacy and security regulations of HIPAA by expanding the scope and application of the statute. These changes include, among other things, (i) establishing an affirmative obligation to provide patient data breach notification in the event of the unauthorized acquisition, access, use or disclosure of unsecured protected health information ("**PHI**"); (ii) defining the "minimum necessary" information that a covered entity may use, disclose or request in the event the disclosure of a limited data set (partially de-identified data) is insufficient to accomplish the appropriate objectives; (iii) restricting the use of PHI for marketing purposes (expanding definition of marketing activities requiring authorization); (iv) prohibiting the sale of PHI; (v) establishing an affirmative obligation to provide an accounting of disclosures made for payment, treatment and healthcare operations (up to 3 years); (vi) permitting individual requests to restrict disclosure in certain circumstances; (vii) applying the privacy and security rules to business associates; and (viii) limiting application of the amendments to personal health records vendors. The U.S. government has promulgated interim final regulations, effective September 23, 2009, that address the obligation to provide patient data breach notifications, which subjects Fresenius Medical Care and us to additional administrative requirements in the United States. The Company cannot estimate the overall effect of the remaining regulatory changes until adoption of final regulations implementing those statutory provisions.

### ***Civil Monetary Penalties Law***

Individuals or entities who have either (1) directly submitted, or caused to be submitted, claims which are improper or false; (2) arranged or contracted with an individual or entity that the person knows or should know is excluded from participation in federal healthcare programs; or (3) offered or received kickbacks may also be subject to monetary penalties or exclusion under the Civil Monetary Penalties Law ("**CMPL**") at the discretion of the OIG. Penalties are generally not more than US\$10,000 for each item or service. However, under the CMPL, violators of the federal Anti-Kickback Statute provisions may also be subject to additional civil money penalties of US\$50,000 per violation. Violators are also subject to an assessment of up to three times the amount claimed for each item or service in lieu of damages sustained by the United States or a State agency because of such claim, or damages of up to three times the total amount of remuneration offered, paid, solicited, or received. In addition, any person or entity who violates this section may be excluded from participation in the federal or state healthcare programs.

## ***Stark Law***

The original Stark Law, was enacted as part of the Omnibus Budget Reconciliation Act (“OBRA”) of 1989, and prohibits a physician from referring Medicare patients for clinical laboratory services to entities with which the physician (or an immediate family member) has a financial relationship, unless an exception applies. Sanctions for violations of the Stark Law may include denial of payment, refund obligations, civil monetary penalties and exclusion of the provider from the Medicare and Medicaid programs. In addition, the Stark Law prohibits the entity receiving the referral from filing a claim or billing for services arising out of the prohibited referral.

Provisions of OBRA 1993, known as “Stark II,” amended the Stark Law to revise and expand upon various statutory exceptions, expanded the services regulated by the statute to a list of “Designated Health Services,” and expanded the reach of the statute to the Medicaid program. The provisions of Stark II generally became effective on January 1, 1995. The additional Designated Health Services include: physical therapy, occupational therapy and speech language pathology services; radiology and certain other imaging services; radiation therapy services and supplies; durable medical equipment and supplies; parenteral and enteral nutrients, equipment and supplies; prosthetics, orthotics, and prosthetic devices and supplies; home health services; out-patient prescription drugs; and inpatient and out-patient hospital services. The first phase of Stark regulations was finalized on January 4, 2001. Most portions of the first phase regulations became effective in 2002. The first phase of the final regulations implementing the Stark Law (the “Phase I regulations”) contains an exception for Epogen and certain other dialysis-related out-patient prescription drugs furnished in or by an ESRD facility under many circumstances. In addition, the regulations made clear that services reimbursed by Medicare to a dialysis facility under the ESRD composite rate do not implicate the Stark Law. Further, the final Phase I regulations also adopted a definition of durable medical equipment which effectively excludes ESRD equipment and supplies furnished under Method II from the category of Designated Health Services. Phase II of the Stark regulations was published on March 26, 2004, and became effective on July 26, 2004. This phase of the regulations finalized all of the compensation exceptions to the Stark Law, including those for “personal services arrangements” and “indirect compensation arrangements”. In addition, Phase II revised the exception for Epogen and certain other dialysis-related out-patient prescription drugs furnished in or by an ESRD facility to include certain additional drugs.

On September 5, 2007, CMS published Phase III of the Stark regulations. While this rulemaking was intended to be the final phase of the Stark rulemaking process, CMS has continued to address the Stark Law as part of its annual rulemaking process for reimbursement under the Medicare Part B Physician Fee Schedule or under the Inpatient Prospective Payment System.

Finally, it should be noted that several U.S. states in which Fresenius Medical Care operates have enacted self-referral statutes similar to the Stark Law. Such state self-referral laws may apply to referrals of patients regardless of payor source and may contain exceptions different from each other and from those contained in the Stark Law.

## ***Other Fraud and Abuse Laws***

Our operations are also subject to a variety of other federal and state fraud and abuse laws, principally designed to ensure that claims for payment to be made with public funds are complete, accurate and fully comply with all applicable program rules.

## ***Healthcare Reform***

The Patient Protection and Affordable Care Act was enacted in the United States on March 23, 2010 and subsequently amended by the ACA. The ACA will implement broad healthcare system reforms, including (i) provisions to facilitate access to affordable health insurance for all Americans, (ii) expansion of the Medicaid program, (iii) an industry fee on pharmaceutical companies starting in 2011 based on sales of brand name pharmaceuticals to government healthcare programs, (iv) a 2.3% excise tax on manufacturers’ medical device sales starting in 2013, (v) increases in Medicaid prescription drug rebates effective January 1, 2010, (vi) commercial insurance market reforms that

protect consumers, such as bans on lifetime and annual limits, coverage of pre-existing conditions, and limits on waiting periods, (vii) provisions encouraging integrated care, efficiency and coordination among providers and (viii) provisions for reduction of healthcare program waste and fraud. ACA's medical device excise tax, Medicaid drug rebate increases and annual pharmaceutical industry fees will adversely impact our product business earnings and cash flows. We expect modest favorable impact from ACA's integrated care and commercial insurance consumer protection provisions.

There are several lawsuits filed in federal courts challenging the constitutionality of ACA, some of which have upheld it with others declaring portions of it a violation of the U.S. Constitution, although none of the orders have enjoined its operation. The 11th Circuit Court of Appeals has held that the U.S. Congress did not have authority to enact the provisions of the ACA requiring the purchase of health insurance. The United States Supreme Court will review challenges to the ACA on March 26th-28th, 2012, including whether, if the health insurance mandate is not constitutional, all or some other portions of the ACA are not severable and cannot be implemented. A decision is expected by June 2012. A recent effort to repeal ACA was approved by the House of Representatives but was rejected by the Senate. Several members of Congress have also expressed interest in repealing certain ACA provisions. We cannot predict the eventual Supreme Court determination or which Congressional proposals, if any, will be adopted or, if the Supreme Court voids the ACA in whole or in part, or if any proposals will be adopted, what the effect would be.

Effective February 15, 2011, the Department of Veterans Affairs ("**VA**") adopted payment rules that reduce its payment rates for non-contracted dialysis services to coincide with those of the Medicare program. As a result of the enactment of these new rules, we expect to experience variability in our aggregated VA reimbursement rates for contracted and non-contracted services. In addition, we may also experience reductions in the volume of VA patients treated in our facilities.

Like in the United States, healthcare reform is considered by many countries to be a national priority. Any significant healthcare reform may bring radical changes in the financing and regulation of the healthcare industry, which could have a material adverse effect on our business and the results of our operations. See *"Risk Factors — Risks Relating To Our Business — Proposals for healthcare reform, or relating to regulatory approvals could decrease sales and operating profit"*.

## **German Regulations Relating to Hospital Management**

### ***General***

The German healthcare sector is dominated by a statutory insurance system which provides a basic protection against most serious hazards. Statutory cost carriers bear the costs that result from a realized risk. The cost carriers in the German healthcare sector are, inter alia, statutory health insurers, statutory pension funds, statutory accident funds, statutory nursing care insurers and social security and welfare authorities. Healthcare providers, like acute care hospitals, post-acute care clinics (medical rehabilitation) or medical care centers require an accreditation to provide services to statutorily insured patients on behalf of, and in return for, payment from the statutory cost carriers. The relations between statutory cost carriers, healthcare providers and policyholders are governed by the German Social Security Code Book (Sozialgesetzbuch — "**SGB**"). Furthermore, there are provisions on licensing and public subsidies. In consequence of this system, the operation of healthcare providers is heavily dependant on the following factors:

- Accreditation for provision of healthcare services on behalf of statutory cost carriers;
- Remuneration agreements with statutory cost carriers;
- Permits;
- Quality requirements; and
- Public subsidies.

## **Accreditation**

Acute care hospitals may provide services to statutorily insured patients on behalf of, and in return for payment from the statutory health insurers, provided they have been included in a state hospital supply plan (*Krankenhausplan*), or they have registered as a university hospital, or they have entered into a medical care contract (*Versorgungsvertrag*) with the relevant state association of health insurers. Accredited hospitals are obliged to supply hospital treatment to statutorily insured patients under the terms of their healthcare mandate. However, there is no referral guarantee.

The hospital supply plan (*Krankenhausplan*) is the result of a governmental planning process designed to ensure that the supply of acute care hospital services available meets public demand. Acceptance as a “plan hospital” is an administrative act issued to the operator of the hospital according to the Hospitals Financing Act (*Krankenhausfinanzierungsgesetz* — “KHG”). Status as plan hospital can be cancelled if the requirements for its inclusion in the plan cease to exist; this can be the case if the hospital either cannot guarantee the effective and economic provision of healthcare services or if the hospital is no longer required to fulfil the public demand for healthcare services. The withdrawal of plan hospital status can be restricted to specific parts of the hospital, such as individual beds or departments.

A written medical care contract (*Versorgungsvertrag*) is concluded with the relevant state association of health insurers and defines the scope of the services provided, particularly in relation to the accommodation capacity, the number and function of departments and the general principles underlying the treatment offered. There is no strict obligation on state associations of health insurers to enter into a contract with all hospitals. In fact, the state associations have a duty to select the most suitable hospitals. The state associations of health insurers may (partially) terminate a contract with one year’s notice only if the relevant hospital either cannot guarantee the effective and economic provision of healthcare services or if the hospital is no longer required for the provision of healthcare services to statutorily insured patients. The termination is also only effective upon approval by the competent authority at state level.

For post-acute care services (medical rehabilitation) statutory health insurers and statutory pension funds are the main cost carriers. Operators of post-acute care services may provide such services to statutorily insured patients on behalf of, and in return for, payment from the cost carriers, provided they have entered into a written medical care contract (with the state associations of health insurers) or a so-called “occupancy-contract” (with statutory pension funds). The contracts do not contain referral guarantees. Since the service provision is based on demand, the operator cannot require a cost carrier to contract and utilize their services. Contracts can be terminated if the services are no longer needed or are inadequate. Whereas a one year notice period applies with regard to contracts concluded with the state associations of health insurers, there is no statutory termination period for contracts concluded with statutory pension funds.

## **Remuneration**

With regard to acute care hospitals, remuneration is subject to the regulation of the KHG and requires written remuneration agreements for each hospital. Such remuneration agreements are negotiated individually for each hospital with the statutory health insurers and the negotiated rates are subject to the approval of the competent regulatory authority at state level. Remuneration agreements generally have a duration of one year. If renegotiation of the remuneration agreement is delayed, the old remuneration continues to apply. For acute care general hospitals, the yearly budget is based on lump sums for diagnosis-related groups and additional fees for certain other services (e.g. for emergency treatment). In respect of acute care psychiatric hospitals remuneration is still calculated per diem according to the Federal Healthcare Tariff Regulation (*Bundespflegesatzverordnung*). The introduction of diagnosis and procedure-related daily lump sums for psychiatric services is planned for 2013.

With regard to post-acute care clinics (medical rehabilitation) remuneration for in-patient treatments is based upon written agreements between the operator and the relevant cost carrier (statutory health insurer/pension funds). There are no legal requirements concerning the level of

payment agreed. It can be stipulated independently, bearing in mind that post acute care clinics do not benefit from public subsidies.

### ***Permits***

Commercially operated acute hospitals and post acute care clinics that provide in-patient treatment require an operating permit according to the German Trade Regulation Act (*Gewerbeordnung*). The permit will be granted upon application if the relevant statutory criteria are met, in particular with regard to the reliability of the operator and the standards of service provision. The permit is issued to the operator and relates to the premises and the business exercised.

### ***Quality Requirements***

Compliance with legal quality requirements is of vital importance. If a healthcare provider fails to comply with the relevant quality requirements the care rates can be reduced, and in the worst case, the medical care contract and the operating permit may be terminated. Acute hospitals and post acute care clinics (medical rehabilitation) are required to both participate in external quality assessment programs and ensure internal quality management within their facilities.

### ***Public Subsidies***

Acute care hospitals included in the hospital supply plan can be granted investment subsidies for specific investment projects and lump sum subsidies for the replacement of assets with a short economic lifetime and for smaller construction measures by state authorities. If subsidies are used contrary to the terms and conditions set out in the administrative act granting the subsidy, they can be reclaimed along with interest. Repayment claims might generally arise if a hospital is released from the hospital supply plan. Furthermore, the subsidy grant, *inter alia*, requires the recipient not to dispose of assets bought with the subsidy during the fixed obligation term without approval of the granting authority.

### ***Medical Care Centers***

In particular with respect to medical care centers, an accreditation from the accreditation committee of the competent Association of Statutory Health Insurance Physicians (*Kassenärztliche Vereinigung*) is required to take part in statutory healthcare. Moreover, also the employment of physicians in a medical care center must be permitted by the accreditation committee. Since January 1, 2012 medical care centers must be medically managed by a physician who is working in the center and who may decide autonomously. Also pre-existing medical care centers have to comply with this requirement until June 30, 2012. Furthermore, since January 1, 2012 only physicians in private practice, acute hospitals, providers of paramedical renal care and non-profit operators who have been accredited for the provision of healthcare services on behalf of the statutory healthcare insurers are eligible to operate a medical care center. With regard to the legal status of the operator of the medical care center, only a company with limited liability, a partnership or an association is permitted. However, pre-existing medical care centers remain unaffected from the new regulations with regard to the eligible operators and the legal entity and are still subject to the former regulations.



## MANAGEMENT

### OVERVIEW

#### General

Fresenius SE & Co. KGaA is the ultimate holding company of our Group. The Issuer and the Subsidiary Guarantors are all wholly owned subsidiaries of the Parent Guarantor. As a partnership limited by shares (*Kommanditgesellschaft auf Aktien*) with a European Company (*Societas Europaea* — SE) as general partner, the corporate bodies of the Company are the general partner, the supervisory board and the general shareholders' meeting.

#### Fresenius Management SE

The sole general partner of the Company is Fresenius Management SE (the “**Management SE**”), a wholly-owned subsidiary of the Else Kröner-Fresenius-Stiftung. The corporate bodies of the Management SE are the management board, the supervisory board and the general shareholders' meeting. The Management SE has a two-tier management and control system consisting of the management board and the supervisory board. The powers of these bodies are governed by the Regulation (EC) No. 2157/2001, the German Law on Implementation of the Regulation (EC) No. 2157/2001 (*SE-Ausführungsgesetz*), the German Stock Corporation Act (*Aktiengesetz*) and the rules of procedure of the management board and the supervisory board. The two boards work independently of each other. No one is allowed to be a member of both bodies simultaneously.

The management board of the Management SE is responsible for managing Management SE's day-to-day business. The supervisory board of the Management SE advises and supervises the management board, in particular the managing of the Company by the Management SE, and is responsible for appointing and removing members of the management board. The supervisory board generally may not exercise any management functions. However, according to the rules of procedure of the management board, certain types of transactions may not be carried out by the management board without the consent of the supervisory board.

#### Fresenius SE & Co. KGaA

As general partner of the Company, the Management SE is solely responsible for the management of the Company, including all exceptional management measures, and solely represents the Company in its dealings with third parties. Members of the management board of the Management SE are not permitted to simultaneously be members of the supervisory boards of the Management SE or the Company. When acting in its capacity as general partner for the Company, the Management SE is always acting through its management board. Therefore, any reference to “Management Board” below refers to the management board of the Management SE, which has replaced the respective management boards of Fresenius AG and Fresenius SE as legal predecessors of the Company (the “**Management Board**”). The supervisory board of Fresenius SE & Co. KGaA oversees and advises Management SE in its acting as general partner of Fresenius SE & Co. KGaA. In addition, the supervisory board represents Fresenius SE & Co. KGaA in transactions between Management SE and Fresenius SE & Co. KGaA. A member of the supervisory board of Management SE can simultaneously be a member of the supervisory board of Fresenius SE & Co. KGaA.

#### MANAGEMENT BOARD OF THE MANAGEMENT SE

As of the date of this prospectus/offering memorandum, the Management Board consists of seven members. The members of the Management Board are appointed and dismissed by the supervisory board of the Management SE.

The rules of procedures of the Management Board assign each member of the board a specific area of responsibility. The members of the Management Board are nevertheless jointly responsible for managing our Group.

The table below lists the members of the Management Board as of the date of this prospectus/ offering memorandum and includes their ages, principal areas of responsibility, the year in which each member was first appointed (such date, if before 2011, indicating the date of appointment to the management board of Fresenius SE or Fresenius AG, as applicable) and all companies in which the members currently hold seats on an administrative, management or supervisory body. This table also indicates the principal activities performed by the members of the Management Board where these are significant with respect to the Company, by listing, in particular, their memberships on an administrative, management or supervisory body at all subsidiaries of the Company.

| <u>Name</u>          | <u>Age</u> | <u>Area of responsibility/ activity</u>                                                                                   | <u>Year first appointed</u> | <u>Year term expires</u> | <u>Memberships on other supervisory or administrative boards or boards of directors</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|----------------------|------------|---------------------------------------------------------------------------------------------------------------------------|-----------------------------|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Dr. Ulf M. Schneider | 46         | Chairman of the management board of the Management SE, as such Chief Executive Officer ("CEO") of Fresenius SE & Co. KGaA | 2003                        | 2013                     | <b>Supervisory Board:</b><br>Fresenius HemoCare Netherlands B.V., Netherlands<br>Fresenius Kabi AG (Chairman)<br>Fresenius Kabi España S.A., Spain<br>Fresenius Medical Care Groupe France S.A.S., France (Chairman)<br>Fresenius Medical Care Management AG (Chairman)<br>HELIOS Kliniken GmbH (Chairman)<br><b>Board of Directors:</b><br>APP Pharmaceuticals, Inc., USA<br>FHC (Holdings) Ltd., United Kingdom<br>Fresenius Kabi Pharmaceuticals Holding, Inc., USA (until February 24, 2011)                                                                                                                                                                                                                                                      |
| Rainer Baule         | 63         | CEO of Fresenius Kabi                                                                                                     | 1997                        | 2012                     | <b>Supervisory Board:</b><br>Fresenius HemoCare Netherlands B.V., Netherlands (Chairman)<br>Fresenius Kabi Austria GmbH, Austria (Chairman)<br>Fresenius Kabi España S.A., Spain<br>Labesfal — Laboratórios Almiro, S.A., Portugal<br><b>Administrative Board:</b><br>Fresenius Kabi Groupe France S.A., France (Chairman)<br>Fresenius Kabi Italia S.p.A., Italy<br><b>Board of Directors:</b><br>APP Pharmaceuticals, Inc., USA<br>Dabur Pharma (Thailand) Co. Ltd., Thailand (until January 14, 2011)<br>FHC (Holdings) Ltd., United Kingdom<br>Fresenius Kabi Asia Pacific Ltd., Hong Kong<br>Fresenius Kabi Oncology Plc., United Kingdom<br>Fresenius Kabi Pharmaceuticals Holding, Inc., USA<br>Fresenius Kabi (Singapore) Pte Ltd., Singapore |
| Dr. Francesco De Meo | 48         | CEO of Fresenius Helios                                                                                                   | 2008                        | 2016                     | <b>Supervisory Board:</b><br>HELIOS Klinikum Bad Saarow GmbH (Chairman)<br>HELIOS Klinikum Emil von Behring GmbH (Chairman)<br>HELIOS Klinikum Erfurt GmbH (Chairman)<br>HELIOS Kliniken Leipziger Land GmbH (Chairman)<br>HELIOS Kliniken Mansfeld-Südharz GmbH<br>HELIOS Kliniken Schwerin GmbH (Chairman)<br>HELIOS Spital Überlingen GmbH (Chairman)<br>Allianz Private Krankenversicherungs-AG (until July 6, 2011)                                                                                                                                                                                                                                                                                                                              |
| Dr. Jürgen Götz      | 48         | Chief Legal and Compliance Officer, and Labor Relations Director of Fresenius SE & Co. KGaA                               | 2007                        | 2015                     | <b>Supervisory Board:</b><br>HELIOS Kliniken GmbH<br>Wittgensteiner Kliniken GmbH (Chairman)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Dr. Ben Lipps        | 71         | CEO of Fresenius Medical Care                                                                                             | 2004                        | 2012                     | <b>Management Board:</b><br>Fresenius Medical Care Management AG (Chairman)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

| <u>Name</u>       | <u>Age</u> | <u>Area of responsibility/ activity</u>            | <u>Year first appointed</u> | <u>Year term expires</u> | <u>Memberships on other supervisory or administrative boards or boards of directors</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-------------------|------------|----------------------------------------------------|-----------------------------|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Stephan Sturm     | 48         | Chief Financial Officer of Fresenius SE & Co. KGaA | 2005                        | 2017                     | <b>Supervisory Board:</b><br>Fresenius HemoCare Netherlands B.V., Netherlands<br>Fresenius Kabi AG (Deputy Chairman)<br>Fresenius Kabi Espana S.A., Spain<br>HELIOS Kliniken GmbH<br>Labesfal — Laboratórios Almiro, S.A. Portugal<br>VAMED AG, Austria (Deputy Chairman)<br>Wittgensteiner Kliniken GmbH<br><b>Administrative Board:</b><br>Fresenius Kabi Groupe France S.A., France<br><b>Board of Directors:</b><br>FHC (Holdings) Ltd., United Kingdom<br><b>Supervisory Board:</b><br>Charité CFM Facility Management GmbH (Deputy Chairman)<br>VAMED-KMB Krankenhausmanagement und Betriebsführungsges. m.b.H, Austria (Chairman) |
| Dr. Ernst Wastler | 53         | CEO of Fresenius Vamed                             | 2008                        | 2015                     | <b>Supervisory Board:</b><br>Charité CFM Facility Management GmbH (Deputy Chairman)<br>VAMED-KMB Krankenhausmanagement und Betriebsführungsges. m.b.H, Austria (Chairman)                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

**Dr. Ulf M. Schneider** is the Chairman of the Management Board. He joined the Company in November 2001 and served as Chief Financial Officer of Fresenius Medical Care before assuming his current position on May 28, 2003. Previously, he was Group Finance Director for Gehe UK plc., a pharmaceutical wholesale and retail distributor, in Coventry, United Kingdom. Dr. Ulf M. Schneider held several senior executive positions since 1989 with Gehe's majority shareholder, Franz Haniel & Cie. GmbH, a diversified German multinational company. Dr. Ulf M. Schneider holds a Lic. oec. degree in Finance and Accounting, a Ph.D. in Economics from the University of St. Gallen and an MBA from Harvard University.

**Rainer Baule** joined the Management Board on June 1, 1997 and has been CEO of Fresenius Kabi AG since May 7, 2001. From 1996 to 1997 he was CEO of EG&G Berthold, Bad Wildbad. Beginning in 1979 he held several leading positions in Germany and the U.S. at Carl Zeiss Group, Oberkochen, most recently as Executive Vice President of a division and as Member of the Zeiss Group Management. Rainer Baule started his professional career as a Management Partner of Komeg-Kontroll-Technik GmbH, Riegelsberg. He holds a degree in Commercial Engineering from TU Darmstadt.

**Dr. Francesco De Meo** joined the Management Board on January 1, 2008 as the CEO of Fresenius Helios. In 2000, Dr. Francesco De Meo became head of the legal and human resources departments of HELIOS Kliniken GmbH. On January 1, 2001, he was appointed to the HELIOS Kliniken Management Board with responsibilities for human resources, legal affairs, research and science. At the same time, he was also appointed Labor Relations Director. Before joining HELIOS, Dr. Francesco De Meo was director of Rauser AG, a management consultancy in Reutlingen, as well as a practicing attorney. He studied law and earned a doctorate at Tübingen University.

**Dr. Jürgen Götz** has been Chief Legal and Compliance Officer and the Labor Relations Director of the Company since July 1, 2007. From April 1, 2005 until his appointment to the Management Board, Jürgen Götz led the Legal and Insurance Department of the Company as Senior Vice President and General Counsel. He began his career in 1993 at Hoechst AG, where he held several senior management positions. In 1997, he became head of the Legal Department of Hoechst Marion Roussel AG. In 1999, Jürgen Götz took over the Legal – Global Corporate department of Aventis Pharma AG, the successor company to Hoechst Marion Roussel. Jürgen Götz studied law in Bonn, Munich and Frankfurt am Main, where he also earned his doctorate.

**Dr. Ben J. Lipps** has been Chairman of the Management Board and CEO of Fresenius Medical Care since May 1, 1999, and a member of the Management Board since March 16, 2004. He was President, CEO, Chief Operating Officer and a director of Fresenius USA from October 1989 through February 2004, and served in various capacities with Fresenius USA's predecessor from 1985 through 1989. In 1966, Dr. Ben Lipps joined Dow Chemical Company where he led the research team that developed the first commercial Hollow Fiber Artificial Kidney at the end of the 1960s. Dr. Ben Lipps earned his master's and doctoral degrees at the Massachusetts Institute of Technology.

**Stephan Sturm** has been Chief Financial Officer of the Company since January 1, 2005. Prior to that, he was a Managing Director of Credit Suisse First Boston ("**CSFB**"), from 2000 as Head of Investment Banking for Germany and Austria, and also served on CSFB's European Management Committee. During his more than thirteen years in investment banking, Stephan Sturm held various executive positions with BHF-Bank, Union Bank of Switzerland and CSFB in Frankfurt and London. Prior to entering investment banking in 1991, he was a management consultant at McKinsey & Co in Duesseldorf and Frankfurt. Stephan Sturm holds a degree in Business from Mannheim University.

**Dr. Ernst Wastler** has served as CEO of VAMED AG since July 1, 2001, and joined the Fresenius Management Board on January 1, 2008. Ernst Wastler became a member of the VAMED AG Management Board in 1998 and was responsible for projects and services central Europe. Prior to that, he held several management positions at international business segments of the VAMED Group. His career began in 1981 in international consulting, engineering and project management at Austroplan GmbH in Vienna. Ernst Wastler studied international business at the Vienna University of Economics and Business Administration and earned a doctorate there in 1983.

On March 9, 2012, the Supervisory Board of Fresenius Management SE appointed Rice Powell and Mats Henriksson as new Management Board members, effective January 1, 2013. On the same date, Rice Powell, 56, will succeed Dr. Ben Lipps, 71, as CEO of Fresenius Medical Care, and Mats Henriksson, 44, will succeed Rainer Baule, 63, as CEO of Fresenius Kabi. Dr. Ben Lipps and Rainer Baule will both retire from the Management Board at the end of 2012. Rice Powell, who currently serves as CEO of Fresenius Medical Care North America, joined Fresenius Medical Care in 1997 and has been a member of the management board of Fresenius Medical Care since 2004, from January 1, 2010 as Deputy Chairman. Rice Powell has more than 30 years of experience in the health care industry, and from 1978 to 1996, he held various management positions, among others at Baxter International Inc. and Biogen Inc. Mats Henriksson joined Fresenius Kabi in 1999 as a member of its management board, and has served as President of the Asia Pacific region since 2001. Before joining the Fresenius Group, Mats Henriksson held several positions in controlling and finance at Pharmacia & Upjohn.

Members of the Management Board can be contacted under the business address of the Company.

## **Compensation**

In 2011, the members of the Management Board received compensation totaling €16,447 thousand for their services to Fresenius SE, until January 28, 2011, and then the Management SE. Of this amount, €4,062 thousand was non-performance related compensation, €5,539 thousand performance-related compensation and €534 thousand of other benefits (such as insurance premiums, private use of company cars, contributions to pension and health insurance) and €6,312 thousand in long-term incentive components. The components with long-term incentive effect can be exercised only after the expiry of the specified vesting period. For more information, see the notes to our consolidated financial statements for the year ended December 31, 2011 found on pages F-4 et seq. in this prospectus/offering memorandum. According to the articles of association of the Company, the Management SE shall be reimbursed by the Company for its management expenses, including the compensation of the Management Board.

Accruals totalling €808 thousand for the Group were recognized in 2011 for pension commitments for the active members of the Management Board. With regard to these pension commitments, our Group had pension obligations of €8,678 thousand as of December 31, 2011.

Compensation for retired members of the management board of Fresenius SE & Co. KGaA and its predecessor companies (Fresenius SE and Fresenius AG) and their surviving dependents amounted to €776 thousand in 2011. Provisions for pension obligations for these individuals amounted to €10,513 thousand.

The contracts of the members of the management board of the Management SE do not provide for any payments if their employment is terminated.

The Company has concluded a consequential loss liability insurance policy (D&O insurance), on an excess amount basis, for the members of the management board and supervisory board of the

Management SE and the supervisory board of the Company and for all representative bodies of affiliates in Germany and elsewhere. The D&O policy applies throughout the world and runs until mid 2012. The policy covers the legal defense costs of a member of a representative body when a claim is made and, where relevant, any damages to be paid which are covered by the policy.

### No Loans or Family Relationships

Neither the Management SE nor the Company have made any loans to the members of the Management Board. The members of the Management Board have not completed any transactions with the Management SE or the Company outside the course of any normal business activities.

There are no family relationships between any members of the Management Board. There are no family relationships between any members of the Management Board and any members of the supervisory board of the Management SE or the Company.

### SUPERVISORY BOARD OF THE MANAGEMENT SE

As of the date of this prospectus/offering memorandum, the supervisory board of the Management SE consists of six members. All six members of the supervisory board of the Management SE are appointed by the general shareholders' meeting of the Management SE.

Resolutions of the supervisory board of the Management SE require a majority of the votes cast, unless otherwise required by mandatory law, the articles of association of the Management SE or the rules of procedures of the supervisory board of the Management SE. In the case of a parity of votes, the vote of the Chairman shall be decisive.

The supervisory board must meet at least twice during each six-month calendar period.

The table below lists the members of and their positions on the supervisory board of the Management SE and includes the year in which each member was first appointed. This table also indicates the principal activities performed by the members of the supervisory board of the Management SE where these are significant with respect to the Management SE, by listing, in particular, not all, but relevant memberships on an administrative, management or supervisory body at subsidiaries of the Company.

| <b>Name (Principal occupation)</b>                            | <b>Position</b> | <b>Member since</b> | <b>Year term expires</b> | <b>Memberships on other supervisory or administrative boards or boards of directors</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|---------------------------------------------------------------|-----------------|---------------------|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Dr. Gerd Krick</b><br>Former CEO of Fresenius AG           | Chairman        | 2010                | 2016                     | <b>Supervisory Board:</b><br>Fresenius SE & Co. KGaA (Chairman)<br>Fresenius Medical Care AG & Co. KGaA (Chairman)<br>Fresenius Medical Care Management AG VAMED AG, Austria (Chairman)                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Prof. Dr. h. c. Roland Berger</b><br>Management Consultant |                 | 2010                | 2016                     | <b>Supervisory Board:</b><br>Fresenius SE & Co. KGaA<br>Prime Office AG (Chairman)<br>Roland Berger Strategy Consultants Holding GmbH (Honorary Chairman)<br>Schuler AG<br>Wilhelm von Finck AG (Deputy Chairman)<br>WMP EuroCom AG (Chairman)<br><b>Administrative Board:</b><br>Wittelbacher Ausgleichsfonds<br><b>Board of Directors:</b><br>3W Power Holdings S.A., Luxembourg (Chairman)<br>Fiat S.p.A., Italy<br>Italy 1 Investment S.A., Luxembourg (Deputy Chairman)<br>Loyalty Partner Holdings S.A., Luxembourg (until March 1, 2011)<br>RSC Mediagruop S.p.A., Italy<br>Telekom Italia S.p.A., Italy (until April 12, 2011) |

| <u>Name (Principal occupation)</u>                                                  | <u>Position</u> | <u>Member since</u> | <u>Year term expires</u> | <u>Memberships on other supervisory or administrative boards or boards of directors</u>                                                                                                                                                                                                                                           |
|-------------------------------------------------------------------------------------|-----------------|---------------------|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Klaus-Peter Müller</b><br>Chairman of the supervisory board of Commerzbank AG    |                 | 2010                | 2016                     | <b>Supervisory Board:</b><br>Commerzbank AG (Chairman)<br>Fresenius SE & Co. KGaA<br>Linde AG<br><b>Administrative Board:</b><br>Landwirtschaftliche Rentenbank<br><b>Board of Directors:</b><br>Parker Hannifin Corporation, USA                                                                                                 |
| <b>Dr. Gerhard Rupprecht</b><br>Former member of the management board of Allianz SE |                 | 2010                | 2016                     | <b>Supervisory Board:</b><br>Euler Hermes Deutschland AG<br>Fresenius SE & Co. KGaA<br>Heidelberger Druckmaschinen AG                                                                                                                                                                                                             |
| <b>Dr. Dieter Schenk</b><br>Lawyer and tax consultant                               | Deputy Chairman | 2010                | 2016                     | <b>Supervisory Board:</b><br>Fresenius Medical Care AG & Co. KGaA (Deputy Chairman)<br>Fresenius Medical Care Management AG (Deputy Chairman)<br>Gabor Shoes AG (Chairman)<br>Greiffenberger AG (Deputy Chairman)<br>TOPTICA Photonics AG (Chairman)<br><b>Administrative Board:</b><br>Else Kröner-Fresenius-Stiftung (Chairman) |
| <b>Dr. Karl Schneider</b><br>Former Spokesman of Südzucker AG                       |                 | 2010                | 2016                     | <b>Administrative Board:</b><br>Else Kröner-Fresenius-Stiftung                                                                                                                                                                                                                                                                    |

Members of the supervisory board of the Management SE can be contacted under the business address of the Company.

### **No Loans or Family Relationships**

Neither the Management SE nor the Company have made any loans to the members of the supervisory board of the Management SE. The members of the supervisory board of the Management SE have not completed any transactions with the Management SE or the Company outside the course of any normal business activities.

There are no family relationships between any members of the supervisory board of the Management SE or between them and any other members of the supervisory board of the Company. There are no family relationships between any members of the supervisory board of the Management SE and any members of the management board of the Management SE.

### **SUPERVISORY BOARD OF FRESENIUS SE & Co. KGAA**

The supervisory board of the Company is composed of six shareholder representatives and six employee representatives. Six members who represent the shareholders are appointed by the general shareholders' meeting, whereby the Else Kröner-Fresenius-Stiftung has no vote in such appointment. Six employee representatives are elected by the Company's European Works Council.

Unless other majorities are mandatory by law, the Supervisory Board passes its resolutions by a simple majority of the votes submitted in the voting. If a vote is tied, the Chairman has the casting vote or, if he does not take part in the voting, the matter is decided by the vote of the Deputy Chairman, who is a shareholder representative.

The Supervisory Board should convene once each calendar quarter, and must convene twice each calendar half-year.



The table below lists the members of and their positions on the supervisory board of the Company and includes the year in which each member was first appointed (such date, if before 2011, indicating the date of appointment to the supervisory board of Fresenius SE or Fresenius AG, as applicable). For those members of the supervisory board of the Company who are not simultaneous members of the supervisory board of the Management SE; this table also indicates the principal activities performed by the members of the supervisory board of the Company where these are significant with respect to the Company, by listing, in particular, not all, but relevant memberships on an administrative, management or supervisory body at subsidiaries of the Company.

| <u>Name (Principal occupation)</u>                                                                                                                                                                                         | <u>Position</u> | <u>Member since</u> | <u>Memberships on other supervisory or administrative boards or boards of directors</u>                                                                                                                                                                                                                                                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|---------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Dr. Gerd Krick</b>                                                                                                                                                                                                      | Chairman        | 2003                | <b>Supervisory Board:</b><br>Fresenius Management SE<br>For others, please see " <i>— Supervisory Board of the Management SE</i> ".                                                                                                                                                                                                       |
| <b>Prof. Dr. med. D. Michael Albrecht</b><br>Medical director and Spokesman of the management board of the Universitätsklinikum Carl Gustav Carus Dresden                                                                  |                 | 2011                | <b>Supervisory Board:</b><br>GÖK Consulting AG<br>Universitätsklinikum Aachen<br>Universitätsklinikum Magdeburg<br>Universitätsklinikum Rostock                                                                                                                                                                                           |
| <b>Niko Stumpfögger</b><br>Secretary of the trade union ver.di, head of Betriebs- und Branchenpolitik im Bereich Gesundheit und Soziales                                                                                   | Deputy Chairman | 2007                | <b>Supervisory Board:</b><br>HELIOS Kliniken GmbH (Deputy Chairman)                                                                                                                                                                                                                                                                       |
| <b>Prof. Dr. h. c. Roland Berger</b>                                                                                                                                                                                       |                 | 2008                | <b>Supervisory Board:</b><br>Fresenius Management SE<br>For others, please see " <i>— Supervisory Board of the Management SE</i> ".                                                                                                                                                                                                       |
| <b>Dario Ilossi</b><br>Trade union officer FEMCA Cisl — Energy, Fashion and Chemicals                                                                                                                                      |                 | 2007                |                                                                                                                                                                                                                                                                                                                                           |
| <b>Konrad Kölbl</b><br>Full-time Works Council member<br>Member of the Manual Workers' Works Council<br>VAMED-KMB Krankenhausmanagement und Betriebsführungsges. m.b.H.<br>Chairman of the Group Works Council<br>VAMED AG |                 | 2007                | <b>Supervisory Board:</b><br>VAMED-KMB Krankenhausmanagement und Betriebsführungsges. m.b.H., Austria                                                                                                                                                                                                                                     |
| <b>Klaus-Peter Müller</b>                                                                                                                                                                                                  |                 | 2008                | <b>Supervisory Board:</b><br>Fresenius Management SE<br>For others, please see " <i>— Supervisory Board of the Management SE</i> ".                                                                                                                                                                                                       |
| <b>Gerhard Roggemann</b><br>Vice Chairman (Mitglied der Geschäftsleitung)<br>Hawkpoint Partners Ltd., United Kingdom                                                                                                       |                 | 2011                | <b>Supervisory Board:</b><br>Deutsche Beteiligungs AG Deutsche Börse AG (Deputy Chairman)<br>P Günter Papenburg AG (Chairman)<br><b>Board of Directors:</b><br>F&C Management plc, United Kingdom (until May 3, 2011)<br>Friends Life Group plc (former Friends Provident Holdings (UK) plc), United Kingdom<br>Resolution Ltd., Guernsey |

| <u>Name (Principal occupation)</u>                                                                                                                                                                                                                                                                                  | <u>Position</u> | <u>Member since</u> | <u>Memberships on other supervisory or administrative boards or boards of directors</u>                                             |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|---------------------|-------------------------------------------------------------------------------------------------------------------------------------|
| <b>Dr. Gerhard Rupprecht</b>                                                                                                                                                                                                                                                                                        | Deputy Chairman | 2004                | <b>Supervisory Board:</b><br>Fresenius Management SE<br>For others, please see " <i>— Supervisory Board of the Management SE</i> ". |
| <b>Dieter Reuß</b><br>Full-time Works Council member<br>Chairman of the Joint Works Council of Fresenius SE & Co. KGaA, Bad Homburg site<br>Member of the General Works Council of Fresenius SE & Co. KGaA                                                                                                          |                 | 2011                |                                                                                                                                     |
| <b>Stefan Schubert</b><br>Hospital nurse and full-time Works Council member<br>Chairman of the Works council of HELIOS Klinik Bad Schwalbach and of HELIOS Klinik Idstein<br>Chairman of the Group Works Council of Wittgensteiner Kliniken GmbH<br>Member of the European Works Council of Fresenius SE & Co. KGaA |                 | 2007                | <b>Supervisory Board:</b><br>Wittgensteiner Kliniken GmbH                                                                           |
| <b>Rainer Stein</b><br>Full-time Works council member Chairman of the Group Works Council HELIOS Kliniken GmbH Member of the European Works Council of Fresenius SE & Co. KGaA                                                                                                                                      |                 | 2007                | <b>Supervisory Board:</b><br>HELIOS Kliniken GmbH                                                                                   |

The term of the current members of the supervisory board of the Company representing the shareholders expires upon completion of the ordinary general shareholders' meeting of the Company in 2016. The term of the employee representatives expires upon new election of these representatives in the same year.

Members of the supervisory board of the Company may be contacted at the business address of the Company.

### **Audit and Nomination Committee**

The supervisory board of the Company has set up two committees: the Audit Committee (*Prüfungsausschuss*) and the Nomination Committee (*Nominierungsausschuss*). The main responsibility of the Audit Committee, whose five members are Prof. Dr. Roland Berger (Chairman), Konrad Kölbl, Dr. Gerd Krick, Gerhard Roggemann and Rainer Stein, is to prepare the review by the supervisory board of the Company to approve the annual financial statements and the consolidated financial statements; to review the interim reports and, following consultation with Management SE, to engage the auditors (including agreement on fees). The Nomination Committee, whose three members are Dr. Gerd Krick, Prof. Dr. Roland Berger and Dr. Gerhard Rupprecht, deliberates on the proposal of the supervisory board of the Company to the ordinary general shareholders' meeting regarding the nomination of the supervisory board members of the Company.

### **Compensation**

The compensation paid to the supervisory board of the Company is determined by Section 14 of the articles of association of the Company as duly approved by the ordinary general shareholders' meeting. The members of the supervisory board of the Company received a total compensation of approximately €2,227 thousand in 2011, approximately €210 thousand of which related to fixed compensation, €1,928 thousand variable compensation and €89 thousand compensation for committee services. Each member of the supervisory board of the Company shall receive a fixed compensation of €13 thousand. The members of the Audit Committee and the Nomination Committee receive an additional €10 thousand each and the Chairman of the committee a further

€10 thousand. For each full fiscal year, the remuneration increases by 10% per percentage point by which that year's dividend paid on each ordinary bearer share (calculated based on the gross dividend according to the resolution of the annual general shareholders' meeting of the Company) exceeds 3.6% of the amount equal to the subscribed capital of the Company divided by the number of non-par value voting ordinary shares; residual amounts are interpolated. The Chairman of the supervisory board of the Company receives twice this amount and the Deputy Chairmen one and a half times the amount of a regular member of the supervisory board of the Company. All members of the supervisory board of the Company receive appropriate reimbursement for costs of travel and accommodation incurred in connection with their duties as members of the supervisory board. The Company provides to the members of its supervisory board insurance coverage in an adequate amount (relating to their function) and on an adequate excess amount basis.

The Company has concluded a consequential loss liability insurance policy (D&O insurance), on an excess amount basis, for the members of the management board and supervisory board of the Management SE and the supervisory board of the Company and for all representative bodies of affiliates in Germany and elsewhere. The D&O insurance policy applies throughout the world and runs until mid 2012. The policy covers the legal defense costs of a member of a representative body when a claim is made and, where relevant, any damages to be paid which are covered by the policy.

### **No Loans or Family Relationships**

Neither the Management SE nor Fresenius SE & Co. KG have made any loans to the members of the supervisory board of the Company. The members of the supervisory board of the Company have not completed any transactions with the Management SE or Fresenius SE & Co. KGaA outside the course of any normal business activities.

There are no family relationships between any members of the supervisory board of the Company or between them and any other members of the supervisory board of the Management SE. There are no family relationships between any members of the supervisory board of the Company and any members of the management board of the Management SE.

### **MANAGEMENT AND EMPLOYEE PARTICIPATION PLANS**

The Company has established three stock option plans for members of the Management Board, and employees in management positions: the 1998 stock option plan, the 2003 stock option plan and the 2008 stock option plan. The latter is the only plan under which options are currently granted.

#### **2008 Stock Option Plan**

Under the 2008 stock option plan of Fresenius SE, now Fresenius SE & Co. KGaA, which was approved by the ordinary general shareholders' meeting of Fresenius SE on May 21, 2008, the management board was authorized to issue up to 6,200,000 subscription rights for an amount of 3,100,000 ordinary bearer shares and 3,100,000 preference bearer shares of Fresenius SE until May 20, 2013. Following the conversion of all preference shares of Fresenius SE into voting ordinary shares of Fresenius SE & Co. KGaA, subscription rights for preference bearer shares which were granted under the 2008 stock option plan prior to such conversion will be satisfied with voting ordinary shares of the Company. Furthermore, any new subscription rights have been granted exclusively for voting ordinary shares of the Company.

Of the up to 6,200,000 option, up to 1,200,000 options have been designated for members of the Management Board, up to 3,200,000 options have been designated for members of the management of directly or indirectly affiliated companies of Fresenius SE & Co. KGaA; and up to 1,800,000 options have been designated for managerial staff members of Fresenius SE & Co. KGaA and its affiliated companies. However, members of the management board of Fresenius Medical Care Management AG, in its capacity as general partner of FMC AG & Co. KGaA, as well as employees of FMC AG & Co. KGaA and of the companies which are connected to the Company solely through FMC AG & Co. KGaA, to the extent that they are in an employment or service relationship solely

with FMC AG & Co. KGaA or solely with a company affiliated with the Company only through FMC AG & Co. KGaA, shall be excluded.

The granting of the subscription rights shall occur in five annual tranches, in each case with effect as of the first bank working day in July and/or with effect as of the first bank working day in December (each of them a “Day of Issue”). With respect to new subscription rights, the supervisory board of the Management SE determines the stock options granted to members of the Management Board, whereas the Management Board determines the other participants in the 2008 stock option plan and the stock options granted to them.

The exercise price of a subscription right shall equal the average stock market price (closing price) of the ordinary bearer share or the preference bearer share, respectively, of Fresenius SE or the Company, respectively, in the electronic XETRA trading of Deutsche Börse AG in Frankfurt am Main, or a comparable successor system, on the last 30 exchange trading days before the granting of the subscription right. For U.S. participants the exercise price may be calculated on the basis of the average share price over the last 30 calendar days prior to the grant date, should such calculation reveal a higher exercise price. The minimum exercise price shall be the proportionate amount of the subscribed capital of the Company attributable to an ordinary bearer share (Section 9 para. 1 German Stock Corporation Act (AktG)).

The exercise of subscription rights shall be subject to the condition precedent, in each case, that the annual success target within a three-year waiting period is achieved. The success target shall be achieved in each case if, after the granting of the subscription rights to the respective entitled person, the adjusted net income, in each case compared with the respective adjusted net income of the previous financial year, has increased by at least eight percent. In the event that for one comparison period or more than one of the three comparison periods within the waiting period the success target is not achieved, the issued subscription rights shall forfeit, in each case, to such proportionate extent as to which the success target has not been achieved during the waiting period, i.e., to the extent of one third, of two thirds or entirely, with an equal share of subscription rights being allocated to ordinary shares and preference shares.

The waiting period for the first-time exercise shall be three years from the respective day of issue. After the expiry of the waiting period, all subscription rights in respect of which the success target has been achieved may be exercised at any time outside the black-out periods. At December 31, 2011, the number of outstanding and exercisable stock options issued under the 2008 stock option program was 806,006.

For details on all stock options outstanding and the prices at which they may be exercised, please see “— *Transactions Relating to and Outstanding Stock Options*”.

### **2003 Stock Option Plan**

The 2003 stock option plan of Fresenius AG, later Fresenius SE and now Fresenius SE & Co. KGaA, which was approved by the ordinary general shareholders’ meeting of Fresenius AG on May 28, 2003, is the only stock option plan under which options in the form of convertible bonds were granted. Such convertible bonds were granted exclusively to the members of the management board of Fresenius AG, later Fresenius SE, to members of the management or affiliated companies, to employees of Fresenius AG, later Fresenius SE, and to employees of its affiliated companies at an interest rate of 5.5% p.a. for a term of ten years. Members of the management board and employees of FMC AG & Co. KGaA and its affiliated companies which were only affiliated with Fresenius AG, later Fresenius SE, through FMC AG & Co. KGaA were excluded.

Under the 2003 stock option plan, up to 1,440,000 convertible bonds with a par value of €2.56 each could be granted in total before the 1:3 shares split in 2006 (the “**Share Split**”). Of these convertible bonds, those granted and converted before the Share Split entitled beneficiaries to subscribe one ordinary or preference share of Fresenius AG, later Fresenius SE, subject to payment of the conversion price; and those granted after the Share Split entitled beneficiaries to subscribe three ordinary or preference shares of Fresenius AG, later Fresenius SE. Following the entry of the

Share Split into the commercial register on January 24, 2007, up to 1,080,000 convertible bonds with a par value of €1.00 each could be granted in total, beneficiaries of which were entitled to subscribe one ordinary or preference share of Fresenius AG, later Fresenius SE, subject to payment of the conversion price.

The 2003 stock option plan of Fresenius AG was followed by the 2008 stock option plan of Fresenius SE, now Fresenius SE & Co. KGaA. Since May 27, 2008, no further stock options have been issued from the 2003 stock option plan. Following the conversion of all preference shares of Fresenius SE into ordinary shares of Fresenius SE & Co. KGaA, convertible bonds which were granted under the 2003 stock option plan and not converted prior to such conversion will be satisfied with ordinary shares of Fresenius SE & Co. KGaA. As of December 31, 2011, the number of outstanding convertible bonds issued under the 2003 stock option plan was 1,412,135, of which all are exercisable. For details on all stock options outstanding and the prices at which they may be exercised, please see “— Transactions Relating to and Outstanding Stock Options”.

### 1998 Stock Option Plan

In 1998, Fresenius AG, later Fresenius SE and now Fresenius SE & Co. KGaA, launched its 1998 stock option plan for members of the management board and other members of senior management of Fresenius AG. This stock-based compensation program was followed by the 2003 stock option plan by Fresenius AG, and since 2003 no further stock options have been issued from the 1998 stock option plan. Under the 1998 stock option plan, beneficiaries with exercisable and outstanding stock options are entitled to purchase three ordinary shares of Fresenius SE & Co. KGaA per each subscription right granted. The stock options granted under this program have a term of ten years, so that in 2012 the last stock options will expire unless previously exercised. At December 31, 2011, all options were exercisable. As of December 31, 2011, the number of outstanding and exercisable stock options issued under the 1998 stock option program was 29,942. For details on all stock options outstanding and the prices at which they may be exercised, please see “— Transactions Relating to and Outstanding Stock Options”.

### Transactions Relating to and Outstanding Stock Options

The transactions relating to stock options are summarized as follows:

| <u>Ordinary shares at December 31,</u>     | <u>Number<br/>of options</u> | <u>Weighted-average<br/>exercise price in €</u> | <u>Number of<br/>exercisable<br/>options</u> |
|--------------------------------------------|------------------------------|-------------------------------------------------|----------------------------------------------|
| <b>Balance in 2009</b> .....               | <b>2,696,726</b>             | <b>39.49</b>                                    | <b>1,205,185</b>                             |
| Granted .....                              | 554,869                      | 53.61                                           |                                              |
| Exercised .....                            | 567,357                      | 32.90                                           |                                              |
| Forfeited .....                            | 39,577                       | 47.82                                           |                                              |
| <b>Balance in 2010</b> .....               | <b>2,644,661</b>             | <b>43.87</b>                                    | <b>906,895</b>                               |
| Thereof options on preference shares ..... | 2,643,773                    | 43.87                                           |                                              |
| Granted .....                              | 1,143,440                    | 71.28                                           |                                              |
| Exercised .....                            | 786,358                      | 38.85                                           |                                              |
| Expired .....                              | 151,389                      | 48.38                                           |                                              |
| Converted into preference shares .....     | 2,643,773                    | 43.87                                           |                                              |
| <b>Balance in 2011</b> .....               | <b>5,494,127</b>             | <b>50.25</b>                                    | <b>2,248,083</b>                             |

| <u>Preference shares at December 31,</u> | <u>Number of options</u> | <u>Weighted-average exercise price in €</u> | <u>Number of exercisable options</u> |
|------------------------------------------|--------------------------|---------------------------------------------|--------------------------------------|
| <b>Balance in 2009</b> .....             | <b>2,696,726</b>         | <b>40.73</b>                                | <b>1,205,185</b>                     |
| Granted .....                            | 554,869                  | 53.54                                       |                                      |
| Exercised .....                          | 567,357                  | 34.63                                       |                                      |
| Forfeited .....                          | 39,577                   | 48.95                                       |                                      |
| <b>Balance in 2010</b> .....             | <b>2,644,661</b>         | <b>44.74</b>                                | <b>906,895</b>                       |
| Granted .....                            | 0                        | not applicable                              |                                      |
| Exercised .....                          | 888                      | 48.71                                       |                                      |
| Converted into ordinary shares .....     | 2,643,773                | 44.74                                       |                                      |
| <b>Balance in 2011</b> .....             | <b>0</b>                 | <b>not applicable</b>                       | <b>0</b>                             |

The following tables set forth the outstanding and exercisable stock options as of December 31, 2011:

| <u>Ordinary shares price range in €</u> | <u>Number of outstanding options</u> | <u>Weighted-average remaining contractual life in years</u> | <u>Weighted-average exercise price in €</u> | <u>Number of exercisable options</u> | <u>Weighted-average exercise price in €</u> |
|-----------------------------------------|--------------------------------------|-------------------------------------------------------------|---------------------------------------------|--------------------------------------|---------------------------------------------|
| 10.01 – 15.00 .....                     | 87,033                               | 1.50                                                        | 13.65                                       | 87,033                               | 13.65                                       |
| 15.01 – 20.00 .....                     | 42,338                               | 0.79                                                        | 19.32                                       | 42,338                               | 19.32                                       |
| 20.01 – 25.00 .....                     | 100,235                              | 2.50                                                        | 21.96                                       | 100,235                              | 21.96                                       |
| 25.01 – 30.00 .....                     | 262,811                              | 3.46                                                        | 28.58                                       | 262,811                              | 28.58                                       |
| 30.01 – 35.00 .....                     | 1,008,816                            | 4.50                                                        | 33.81                                       | 0                                    | 0                                           |
| 35.01 – 40.00 .....                     | 396,164                              | 4.40                                                        | 39.23                                       | 392,664                              | 39.26                                       |
| 40.01 – 45.00 .....                     | 67,310                               | 3.92                                                        | 41.62                                       | 67,310                               | 41.62                                       |
| 45.01 – 50.00 .....                     | 14,496                               | 4.50                                                        | 48.81                                       | 14,496                               | 48.81                                       |
| 50.01 – 55.00 .....                     | 1,819,984                            | 4.72                                                        | 54.00                                       | 738,696                              | 54.69                                       |
| 55.01 – 60.00 .....                     | 525,646                              | 5.50                                                        | 56.43                                       | 525,646                              | 56.43                                       |
| 60.01 – 65.00 .....                     | 9,000                                | 5.92                                                        | 63.53                                       | 0                                    | 0                                           |
| 70.01 – 75.00 .....                     | <u>1,160,294</u>                     | <u>6.49</u>                                                 | <u>71.27</u>                                | <u>16,854</u>                        | <u>70.79</u>                                |
| <b>Total</b> .....                      | <b><u>5,494,127</u></b>              | <b><u>4.91</u></b>                                          | <b><u>50.25</u></b>                         | <b><u>2,248,083</u></b>              | <b><u>45.33</u></b>                         |

## CONFLICTS OF INTEREST

Some members of Management Board and other members of the Company's management are also members of the management board and/or members of the management of subsidiaries of the Company. Members of the Management Board also serve on the managing bodies of FMC AG & Co. KGaA, Fresenius Kabi AG, HELIOS Kliniken GmbH and VAMED AG, as well as of the subsidiaries of these companies. Furthermore, some members of supervisory board of the Management SE are also members of the supervisory board and/or members of supervisory boards of subsidiaries of the Company.

Although the interests of the Company and its subsidiaries are generally in line with each other, there can be no assurance that conflicts of interests will not arise in certain instances. These potential conflicts of interests could be particularly important in light of the minority ownership of the Company in FMC AG & Co. KGaA. The German Stock Corporation Act and the German Corporate Governance Code contain provisions that aim to protect affected companies from the negative effects of potential conflicts of interest.

Beyond this, there are no potential conflicts of interests between the obligations of the members of the Management Board and the supervisory board of Management SE towards the Company and their private interests or other obligations. As far as the Company is aware, there are



no other potential conflicts of interests between the supervisory board members' obligations towards the Company and their private interests or other obligations other than those transactions set forth under "*Certain Relationships and Related Party Transactions*".

None of the members of the Management Board and the supervisory boards were appointed or hired on the basis of an obligation contained in an agreement between the relevant company and a third party.

## CORPORATE GOVERNANCE

The German Corporate Governance Code (the "**Code**") contains recommendations and suggestions for managing and monitoring listed companies in Germany. It is based on internationally and nationally recognized standards for good and responsible corporate governance. The purpose of the Code is to make the German corporate governance system transparent for investors. The Code was passed by the Government Commission of the German Corporate Governance Code on February 26, 2002 and has been last amended since on May 26, 2010.

There is no legal obligation to comply with the recommendations or suggestions of the Code. However, the German Stock Corporation Act requires that the management board and the supervisory board of a German listed company either declare on an annual basis that the recommendations of the Code were and will be adhered to or state which recommendations were or will not be followed. This declaration must be available to shareholders on a constant basis. No disclosure is required when companies deviate from the suggestions in the Code.

The supervisory board of the Company and the Management Board have adopted the following declaration of compliance on December 20, 2011 and have made it available to shareholders. In accordance with clause 3.10 of the Code, this declaration, as well as past declarations, is available on our website, at [www.fresenius.com](http://www.fresenius.com), under the heading "*Who we are/Corporate Governance*":

"The supervisory board of Fresenius SE & Co. KGaA and the management board of the general partner of Fresenius SE & Co. KGaA (hereafter the "management board") declare that the recommendations of the "Government Commission on the German Corporate Governance Code" published by the Federal Ministry of Justice (Justizministerium) in the official section of the electronic Federal Gazette (*Bundesanzeiger*) (hereafter the "Code") in the version of May 26, 2010 have been met since issuance of the previous declaration of conformity in March 2011 and will continue to be met. Only the following recommendations have not been adhered to:

- Clause 4.2.3, para. 4 of the Code: Compensation cap

Pursuant to clause 4.2.3 paragraph 4 of the Code, upon termination of a management board contract, it should be ensured that the payments to the management board member whose service for the company is prematurely terminated shall not, including all ancillary payments, exceed the value of two annual remunerations (compensation cap) and shall remunerate for no more than the remaining term of the management board agreement. The compensation cap shall be calculated on the basis of the total compensation for the previous financial year and, as applicable, also the expected total compensation for the current financial year.

The service agreements of the members of the management board do not include a provision dealing with the early termination of service for the company without good cause. Such compensation provision would contradict the concept to conclude the service agreements with the management board members for the period of their appointment, such concept practiced by Fresenius since long in line with the German Stock Corporation Act (*Aktiengesetz*). Applying this concept, any early termination of the service agreement requires good cause.

- Clause 5.1.2, para. 2, sentence 3 of the Code: Age limit for members of Management Board:

Pursuant to clause 5.1.2, paragraph 2, sentence 3 of the Code, an age limit shall be specified for the members of the management board. As in the past Fresenius will refrain from determining an age limit for the members of the management board in the future since this would generally limit the selection of qualified candidates.

- Clause 5.4.1, paras. 2 and 3 of the Code: Specification of concrete objectives regarding the composition of the Supervisory Board and taking them into account when making recommendations to the competent election bodies:

Pursuant to clause 5.4.1, paragraphs 2 and 3 of the Code, the supervisory board shall specify concrete objectives regarding its composition and, when making recommendations to the competent election bodies, take these objectives into account. The objectives specified by the supervisory board and the status of the implementation shall be published in the Corporate Governance Report. These recommendations are not adhered to. As the composition of the supervisory board needs to be aligned to the enterprise's interest and has to ensure the effective supervision and consultation of the management board, it is a matter of principle and of prime importance that each member is suitably qualified. When discussing its recommendations to the competent election bodies, the supervisory board will take into account the international activities of the enterprise, potential conflicts of interest and diversity. This includes the aim to establish an appropriate female representation on a long-term basis.

However, in the enterprise's interest not to limit the selection of qualified candidates in a general way, the supervisory board confines itself to a general declaration of intent and particularly refrains from fixed diversity quotas and from an age limit. As the next regular elections of the supervisory board will take place in the year 2016, reasonably a report on implementation of the general declaration of intent can not be made till then".

## PRINCIPAL SHAREHOLDERS

The Issuer is a wholly-owned subsidiary of Fresenius SE & Co. KGaA. The share capital of Fresenius SE & Co. KGaA consists of no-par value voting ordinary shares in bearer form. The Company's shares are admitted to trading on the regulated market segment (*regulierter Markt*) and the sub-segment of the regulated market with further post-admission obligations (Prime Standard) of the Frankfurt Stock Exchange (*Frankfurter Wertpapierbörse*) and on the stock exchanges in Dusseldorf and Munich, and are included in the DAX30 performance index (*Deutscher Aktienindex*) of Deutsche Börse AG. In addition, the Company set up a sponsored Level I American Depositary Receipt Program (the "**ADR-Program**") in October 2011 to allow U.S. investors to acquire, hold and trade indirect participations in the Company (the "**Fresenius ADRs**"). In the United States, the Fresenius ADRs are traded on the over-the-counter market. Under the ADR-Program, eight Fresenius ADRs represent one share of the Company.

Unless Fresenius SE & Co. KGaA receives information regarding acquisitions of its shares pursuant to German statutory notification requirements, it has no way of determining who its shareholders are or how many shares any particular shareholder owns. Under the German Securities Trading Act (*Wertpapierhandelsgesetz*), holders of voting securities of a German company listed on the regulated market (*regulierter Markt*) of a German stock exchange or a corresponding trading segment of a stock exchange within the European Union are required to notify the issuer of the level of their holding whenever such holding reaches, exceeds or falls below certain thresholds, which are set at 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75% of an issuer's outstanding voting rights.

The following notifications disclosed in accordance with Sections 21 et seq. of the German Securities Trading Act (*WpHG*) reflect the level of investments held in Fresenius SE & Co. KGaA at the date of the statement of financial position:

- The Else Kröner-Fresenius-Stiftung, Bad Homburg, Germany held, directly or indirectly, 46,871,154 ordinary shares of Fresenius SE & Co. KGaA representing 28.71% of the voting rights as at December 30, 2011.
- BlackRock, Inc., New York, USA held, directly or indirectly, 8,218,197 ordinary shares of Fresenius SE & Co. KGaA representing 5.04% of the voting rights as at September 2, 2011.
- Allianz SE, Munich, Germany held, directly or indirectly, 6,920,552 ordinary shares of Fresenius SE & Co. KGaA representing 4.26% of the voting rights as at January 28, 2011.
- Artio Global Investors, Inc., New York, USA directly or indirectly, held 3,840,708 ordinary shares of Fresenius SE & Co. KGaA representing 2.36% of the voting rights of Fresenius SE & Co. KGaA as at January 28, 2011.
- Skandinaviska Enskilda Banken AB (publ), Stockholm, Sweden held, directly or indirectly, 2,868,446 ordinary shares of Fresenius SE & Co. KGaA representing 1.77% of the voting rights of Fresenius SE & Co. KGaA as at May 16, 2011.
- FMR LLC, Boston, USA held, directly or indirectly, 2,740,382 ordinary shares of Fresenius SE & Co. KGaA representing 1.69% of the voting rights of Fresenius SE & Co. KGaA as at January 28, 2011.

The remaining shares of Fresenius SE & Co. KGaA are in free float. All shares of Fresenius SE & Co. KGaA have identical voting rights, with the exception of certain voting restrictions that apply only to shares held by the Else Kröner-Fresenius-Stiftung. There are no multiple voting rights.

## **CERTAIN RELATIONSHIPS AND RELATED-PARTY TRANSACTIONS**

In connection with the formation of FMC AG, now FMC AG & Co. KGaA, which resulted from the combination of Fresenius Worldwide Dialysis (the dialysis business of Fresenius) and the dialysis business of W.R. Grace, Fresenius SE, now Fresenius SE & Co. KGaA, and its affiliates and Fresenius Medical Care AG, now FMC AG & Co. KGaA, and its affiliates entered into several agreements for the purpose of giving effect to the merger and defining their ongoing relationship. Fresenius SE, now Fresenius SE & Co. KGaA, and W.R. Grace negotiated these agreements. The information below summarizes the material aspects of certain agreements, arrangements and transactions between the Company, FMC AG & Co. KGaA and their affiliates. The Company believes that the leases, the supply agreements and the service agreements are no less favorable to it and no more favorable to FMC AG & Co. KGaA than would have been obtained in arm's length bargaining between independent parties. The trademark and other intellectual property agreements summarized below were negotiated by the Company and W.R. Grace, and, taken independently, are not necessarily indicative of market terms.

### **REAL PROPERTY LEASE**

Fresenius Medical Care AG, now FMC AG & Co. KGaA, did not acquire the land and buildings in Germany that Fresenius Worldwide Dialysis used when it was formed in September 1996. The legal predecessors of the Company or its affiliates have leased part of the real property to Fresenius Medical Care AG (now FMC AG & Co. KGaA) directly, and transferred the remainder of that real property to two limited partnerships. The Company is the sole limited partner of each partnership and the sole shareholder of the general partner of each partnership. These limited partnerships, as landlords, have leased the properties to FMC AG & Co. KGaA and other subsidiaries of the Company, as applicable, for use in their respective businesses. The aggregate annual rent payable by Fresenius Medical Care under these leases was approximately €18.6 million, which was approximately US\$25.8 million as of December 31, 2011, exclusive of maintenance and other costs, and is subject to escalation, based upon the German consumer-price-index determined by the Federal Statistical Office, a specified German cost of living index. The leases for manufacturing facilities have a ten-year term, followed by two successive optional renewal terms of ten years each at the election of Fresenius Medical Care. In December 2006, Fresenius Medical Care exercised its option to renew the leases for manufacturing facilities and the other leases were amended to extend their terms and add renewal options. The leases for the other facilities have a term of ten years. In December 2007, Fresenius SE, now Fresenius SE & Co. KGaA, amended the lease for the Schweinfurt, Germany facility to add additional manufacturing capacity. Based upon an appraisal, we and Fresenius Medical Care believe that the rents under the leases represent fair market value for such properties.

### **INTELLECTUAL PROPERTY**

#### **Trademarks**

The Company continues to own the name and mark "Fresenius" and its "F" logo. The Company and FMC Germany, the principal German subsidiary of Fresenius Medical Care, have entered into agreements containing the following provisions. The Company has granted to FMC Germany, for the benefit of Fresenius Medical Care and its affiliates, an exclusive, worldwide, royalty-free, perpetual license to use "Fresenius Medical Care" in its company names, and to use the Fresenius marks, including some combination marks containing the Fresenius name that were used by the Company's dialysis business, and the Fresenius Medical Care name as a trade name, in all aspects of the renal business. FMC Germany, for the benefit of Fresenius Medical Care and its affiliates, has also been granted a worldwide, royalty-free, perpetual license:

- to use the "Fresenius Medical Care" mark in the then current National Medical Care non-renal business if it is used as part of "Fresenius Medical Care" together with one or more descriptive words, such as "Fresenius Medical Care Home Care" or "Fresenius Medical Care Diagnostics";

- to use the “F” logo mark in the National Medical Care non-renal business, with the consent of the Company. That consent will not be unreasonably withheld if the mark using the logo includes one or more additional descriptive words or symbols; and
- to use “Fresenius Medical Care” as a trade name in both the renal business and the National Medical Care non-renal business.

Fresenius Medical Care and its affiliates have the right to use “Fresenius Medical Care” as a trade name in other medical businesses only with the consent of the Company. The Company may not unreasonably withhold its consent. In the United States and Canada, the Company will not use “Fresenius” or the “F” logo as a trademark or service mark, except that it is permitted to use “Fresenius” in combination with one or more additional words such as “Pharma Home Care” as a service mark in connection with its home care business and may use the “F” logo as a service mark with the consent of FMC Germany. FMC Germany will not unreasonably withhold its consent if the service mark includes one or more additional descriptive words or symbols. Similarly, in the United States and Canada, the Company has the right to use “Fresenius” as a trade name, but not as a mark, only in connection with its home care and other medical businesses other than the renal business and only in combination with one or more other descriptive words, provided that the name used by the Company is not confusingly similar to Fresenius Medical Care’s marks and trade names. After the expiration of the Company’s ten-year covenant not to compete with Fresenius Medical Care, which has occurred, the Company may use “Fresenius” in its corporate names if it is used in combination with one or more additional descriptive word or words, provided that the name used by the Company is not confusingly similar to the Fresenius Medical Care marks or corporate or trade names.

## **Other Intellectual Property**

Some of the patents, patent applications, inventions, know-how and trade secrets that Fresenius Worldwide Dialysis used prior to the formation of Fresenius Medical Care AG, now FMC AG & Co. KGaA were also used by other divisions of the Company. For Biofine, the polyvinyl chloride-free packaging material, the Company has granted to FMC Germany, for the benefit of Fresenius Medical Care and its affiliates, an exclusive license for the renal business and a non-exclusive license for all other fields except other non-renal medical businesses. FMC Germany and the Company will share equally any royalties from licenses of the Biofine intellectual property by either FMC Germany or by the Company to third parties outside the renal business and the other non-renal medical businesses. In addition, the Company transferred to FMC Germany the other patents, patent applications, inventions, know-how and trade secrets that were used predominantly in the Company’s dialysis business prior to the formation of Fresenius Medical Care AG, now FMC AG & Co. KGaA. In certain cases Fresenius Worldwide Dialysis and the other the Company divisions as a whole each paid a significant part of the development costs for patents, patent applications, inventions, know-how and trade secrets that were used by both prior to the merger. Where FMC Germany acquired those jointly funded patents, patent applications, inventions, know-how and trade secrets, FMC Germany licensed them back to the Company exclusively in the other non-renal medical businesses and non-exclusively in all other fields. Where Fresenius Medical Care retained the jointly funded patents, patent applications, inventions, know-how and trade secrets, Fresenius Medical Care licensed them to FMC Germany exclusively in the renal business and non-exclusively in all other fields.

## **Supply Agreements**

Fresenius Kabi manufactures some products, principally dialysis concentrates and other solutions, for FMC AG & Co. KGaA at facilities located in Germany, Brazil, South Africa and France.

Fresenius Medical Care manufactures and supplies products for Fresenius Kabi AG at its facilities in Germany and Italy.

Our local subsidiaries and those of FMC AG & Co. KGaA have entered into supply agreements for the purchase and sale of products from the above facilities. Prices under the supply agreements are determined by good-faith negotiation. During 2011, Fresenius Medical Care sold products to our

Group in the amount of US\$20.2 million. In 2011, Fresenius Medical Care purchased from our Group in the amount of US\$52.6 million.

The parties may modify existing, or enter into additional, supply agreements, arrangements and transactions. Any future modifications, agreements, arrangements and transactions will be negotiated between the parties and will be subject to the approval provisions of the pooling agreements and the regulatory provisions of German law regarding dominating enterprises.

On September 10, 2008, Fresenius Kabi acquired APP, which manufactures and sells sodium heparin. Heparin is a blood thinning drug that is widely and routinely used in the treatment of dialysis patients to prevent life-threatening blood clots. FMCH currently purchases heparin supplied by APP Inc. through MedAssets, Inc. MedAssets Inc. is a publicly-traded U.S. corporation that provides inventory purchasing services to healthcare providers through a group purchasing organization ("GPO") structure. A GPO is an organization that endeavors to manage supply and service costs for hospitals and health care providers by negotiating discounted prices with manufacturers, distributors and other vendors. Vendors discount their prices and pay administrative fees to GPOs because GPOs provide access to a large customer base, thus reducing vendors' sales and marketing costs and overhead. FMCH is one of many U.S. healthcare providers that participate in the MedAssets GPO. FMCH purchases pharmaceuticals and supplies used in its dialysis services business through the MedAssets GPO contract. During 2011, Fresenius Medical Care acquired US\$24.1 million of heparin from APP Inc. through the GPO.

### **Services Agreement**

The Company and certain of its subsidiaries carry out administrative and other services for FMC AG & Co. KGaA at their Bad Homburg headquarters. These services relate to, among other things, administrative services, management information services, employee benefit administration, insurance, IT services, tax services and treasury services. For 2011, the Company and its subsidiaries charged FMC AG & Co. KGaA approximately US\$76.0 million for these services. Conversely, the Company and its subsidiaries have obtained certain services from FMC AG & Co. KGaA, in particular services relating to research and development, central purchasing, patent administration and warehousing. For 2011, FMC AG & Co. KGaA charged approximately US\$6.6 million to the Company and its subsidiaries for services rendered to them. FMC AG & Co. KGaA and the Company may modify existing or enter into additional services agreements, arrangements and transactions. Any such future modifications, agreements, arrangements and transactions will be negotiated between the parties and will be subject to the approval provisions of the pooling agreement and the regulatory provisions of German law regarding dominating enterprises.

### **Total Payments under Intercompany Supply and Services Agreements**

The Company and its subsidiaries (excluding FMC AG & Co. KGaA and its subsidiaries) received payments of €73.2 million in 2011, €62.9 million in 2010 and €65.5 million in 2009 from FMC AG & Co. KGaA and its subsidiaries under inter-company agreements. These payments were partially offset by payments that the Company and its subsidiaries (excluding FMC AG & Co. KGaA and its subsidiaries) made to FMC AG & Co. KGaA and its subsidiaries pursuant to other intercompany agreements in the amount of €4.7 million in 2011, €4.6 million in 2010 and €9.7 million in 2009.

### **Loans to Fresenius Medical Care**

At December 31, 2011, a loan of €18.90 million from the Company to FMC AG & Co. KGaA was outstanding, which mainly related to cash management arrangements.

### **Other Interests**

Prof. Dr. med. D. Michael Albrecht, a member of the supervisory board of the Company, is medical director and spokesman of the management board of the Universitätsklinikum Carl Gustav Carus Dresden and a member of the supervisory boards of the Universitätsklinik Aachen, Rostock



and Magdeburg. Our Group maintains business relations with these clinics in the ordinary course and under customary conditions.

Prof. Dr. h. c. Roland Berger, a member of the supervisory board of the Management SE and the Company, is a partner and was the chairman of the supervisory board of Roland Berger Strategy Consultants Holding GmbH until August 1, 2010. In 2011, our Group paid one or more affiliated companies of the Roland Berger group €675,000 for consulting services rendered (2010: €0.2 million).

Klaus-Peter Müller, a member of the supervisory board of the Management SE and the Company, is the chairman of the supervisory board of Commerzbank AG. Our Group maintains business relations with Commerzbank under customary conditions. In 2011, our Group paid €0.6 million to Commerzbank AG for services provided in connection with the senior notes issuances of Fresenius Medical Care.

Dr. Gerhard Rupprecht, a member of the supervisory board of the Management SE and the Company, was a member of the management board of Allianz SE until December 31, 2010 and the chairman of the management board of Allianz Deutschland AG until June 30, 2010.

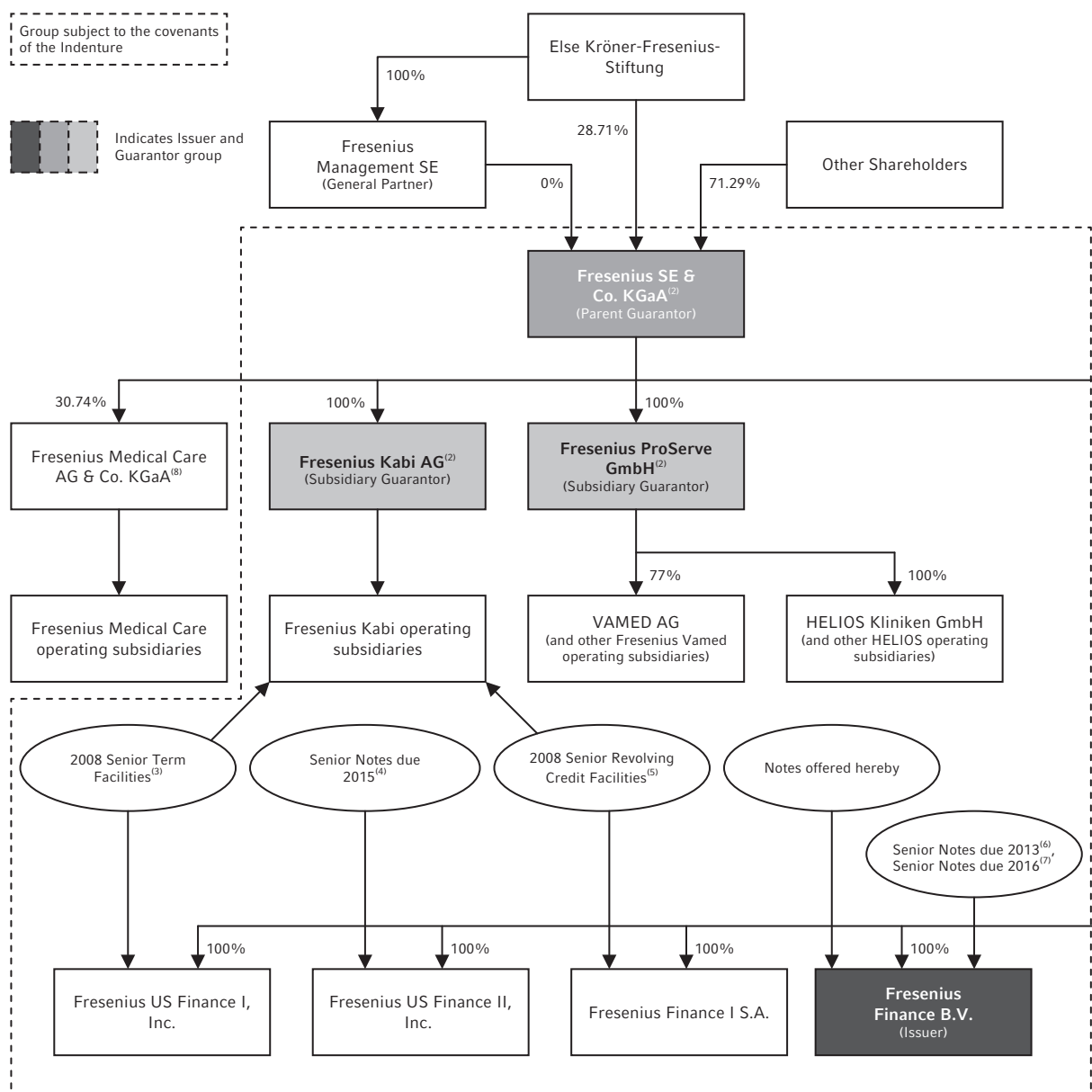
Dr. Francesco De Meo, a member of the Management Board of the sole general partner of the Company, was a member of the supervisory board of Allianz Private Krankenversicherungs-AG until July 6, 2011. In 2011, our Group paid €4.34 million for insurance premiums to Allianz (2010: €3 million).

Dr. Dieter Schenk, Deputy Chairman of the supervisory board of Fresenius SE until January 28, 2011, member of the supervisory board of the Management SE since March 11, 2010 and deputy chairman of the supervisory board of the Management SE since May 12, 2010, is a partner in the law firm Noerr LLP, which provides legal services to our Group. In 2011, our Group paid this law firm €1.43 million for services rendered (2010: €1 million).

## GENERAL INFORMATION ON GROUP STRUCTURE, ISSUER AND GUARANTORS

### Overview Corporate and Finance Structure

The diagram below depicts, in abbreviated form, our corporate structure and certain debt obligations as of December 31, 2011<sup>(1)</sup> after giving effect to the offering of the Notes. Fresenius SE & Co. KGaA, Fresenius Kabi AG and Fresenius ProServe GmbH and certain of their respective subsidiaries will be subject to the restrictive covenants in the Indenture.



<sup>(1)</sup> Our corporate structure as of the date of this prospectus/offering memorandum did not materially change from our corporate structure as of December 31, 2011.

<sup>(2)</sup> Each of Fresenius SE & Co. KGaA, Fresenius Kabi AG and Fresenius ProServe GmbH have given senior guarantees of the Outstanding Senior Notes and the Notes offered hereby. Except as provided under "Description of the Notes — Certain Covenants", the Notes will not be guaranteed by any of the other subsidiaries of Fresenius SE & Co. KGaA. See "Risk Factors — Risks Relating to the Notes — The Notes are subordinate to other creditors of non-guarantors and to our subsidiaries' secured debt, and enforcement of guarantees by our subsidiaries may be limited" and "Description of the Notes". Fresenius SE & Co. KGaA is the holding company for the Group. Fresenius Kabi AG acts as the holding company

for our business segment Fresenius Kabi, and Fresenius ProServe GmbH acts as the holding company for our business segments Fresenius Helios and Fresenius Vamed.

- (3) As of December 31, 2011, an aggregate amount of €1,326 million was outstanding under the 2008 Senior Term Facilities. Fresenius SE & Co. KGaA, Fresenius Kabi AG and Fresenius ProServe GmbH have each given senior guarantees under the 2008 Senior Term Facilities. Fresenius Finance I S.A. has given a senior guarantee in relation to the obligations of Fresenius US Finance I, Inc. under the 2008 Senior Term Facilities. See *"Description of Other Financing Arrangements"*.
- (4) On January 21, 2009, Fresenius US Finance II, Inc. ("**Fresenius US Finance II**"), a wholly-owned subsidiary of Fresenius SE & Co. KGaA issued US\$500 million aggregate principal amount of 9.00% Senior Notes and €275 million aggregate principal amount of 8.75% Senior Notes. See *"Description of Other Financing Arrangements"*.
- (5) The 2008 Senior Revolving Credit Facilities are available in an aggregate amount of up to US\$550 million of which none was drawn as of December 31, 2011. Fresenius US Finance I, Inc. has given a senior guarantee in relation to the obligations of Fresenius Finance I S.A. under the 2008 Senior Revolving Credit Facilities. For a description of the 2008 Senior Credit Agreement, see *"Description of Other Financing Arrangements — Fresenius SE & Co. KGaA and Its Subsidiaries Other Than Fresenius Medical Care — 2008 Senior Credit Agreement"*.
- (6) On January 20, 2006, Fresenius Finance B.V. issued €500 million aggregate principal amount of 5.00% Senior Notes due 2013. See *"Description of Other Financing Arrangements"*.
- (7) On January 20, 2006, Fresenius Finance B.V. issued €500 million aggregate principal amount of 5.50% Senior Notes due 2016. In June 2009, Fresenius Finance B.V. placed a tap to its 5.50% Senior Notes by issuing an aggregate principal amount of €150 million Senior Notes. See *"Description of Other Financing Arrangements"*.
- (8) Fresenius SE & Co. KGaA owned 30.74% of the ordinary voting shares of FMC AG & Co. KGaA and 30.34% of the total subscribed capital of FMC AG & Co. KGaA as at December 31, 2011 (31.44% and 31.03%, respectively, as of February 29, 2012). FMC AG & Co. KGaA is a German partnership limited by shares. Fresenius Medical Care Management AG, the general partner of FMC AG & Co. KGaA, is a wholly owned subsidiary of Fresenius SE & Co. KGaA. Because corporate decisions are taken by the general partner for German partnerships limited by shares, Fresenius SE & Co. KGaA has, and as long as it maintains ownership of more than 25% of the share capital of FMC AG & Co. KGaA will retain, a factual controlling position (*faktische Kontrolle*) in FMC AG & Co. KGaA under the articles of association of FMC AG & Co. KGaA. Since this factual controlling position (*faktische Kontrolle*) meets the control test for purposes of consolidation, Fresenius SE & Co. KGaA fully consolidates Fresenius Medical Care in its consolidated financial statements. See *"General Information on Group Structure, Issuer and Guarantors — Interest of the Company in Fresenius Medical Care AG & Co. KGaA"*.

Although Fresenius SE & Co. KGaA fully consolidates Fresenius Medical Care in its consolidated financial statements, in line with the Group's structure, financing for Fresenius Medical Care and for the rest of our Group is conducted separately. There are no external joint financing facilities and no mutual guarantees. Fresenius Kabi, Fresenius Helios and Fresenius Vamed business segments are financed primarily through Fresenius SE & Co. KGaA in order to minimize any structural subordination. Fresenius Medical Care is not a guarantor in respect of the 2008 Senior Credit Facilities or the senior notes issued by Fresenius SE & Co. KGaA's financing subsidiaries, including the Notes offered hereby. As such, Fresenius Medical Care will not be bound by the terms of the Notes issued hereunder, and neither it nor its subsidiaries will be subject to the covenants of the Indenture or the terms of the Outstanding Senior Notes.

## THE ISSUER

### ***Foundation, Name, Registered Office, Duration, Business Name; Corporate Purpose***

The Issuer was incorporated under the laws of the Netherlands on September 24, 1998 as a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*), with the identification number 1007819 under the name Fresenius Finance B.V. The Issuer has its registered office at Amersfoortseweg 10E, 3705 GJ, Zeist, Netherlands. Its telephone number is +31 30 2428 383. The duration of the Issuer is indefinite. It conducts its business under its legal name. Pursuant to section 3 of its articles of association, the corporate purpose of the Issuer is:

- (a) to incorporate, to participate in any way whatsoever, to manage, to supervise, to operate and to promote enterprises, businesses and companies;
- (b) to finance businesses and companies;
- (c) to borrow, to lend and to raise funds, including the issue of bonds, promissory notes or other securities or evidence indebtedness, as well as to enter into agreements in connection with the aforementioned;
- (d) to supply advice and to render services to enterprises and companies with which the company forms a group and to third parties;

- (e) to render guarantees, to bind the company and to pledge its assets for obligations of the companies and enterprises with which it forms a group and on behalf of third parties;
- (f) to obtain, alienate, manage and exploit registered property and items of property in general;
- (g) to perform any activity and all activity of industrial, financial or commercial nature;

as well as everything pertaining to the foregoing, relating thereto or conducive thereto, all in the widest sense of the word.

### ***Registered Capital, Major Shareholder and Assets***

As of December 31, 2011, the Issuer had a registered capital of €18,151, which has been fully paid up. The Issuer is a wholly-owned subsidiary of the Company. The principal assets of the Issuer are intercompany loans.

### ***Management, Corporate Governance***

The Issuer has a management board which consists of two Managing Directors. The Managing Directors of the Issuer are Mr. Joseph Simons and Mr. Bernard Dierickx. Mr. Simons is also the Managing Director of Fresenius Kabi Netherlands B.V. Mr. Dierickx is also the Commercial Director of Fresenius Kabi Netherlands B.V. The managers can be contacted at the registered office of the Issuer. There are no potential conflicts between any of the Managing Directors' duties to the Issuer and their private interests and or other of their duties. The Issuer does not have a supervisory board and, therefore, has no audit committee.

The Dutch Corporate Governance Code (*De Nederlandse corporate governance code*) of December 10, 2008, which has entered into force on January 1, 2009, does not apply to the Issuer as the Issuer is a company with limited liability the shares in which are neither admitted to trading on a regulated market nor admitted to trading on a multilateral trading facility.

### ***Financial Year, Financial Statements and Auditor***

The Issuer's financial year is the calendar year. The Issuer has appointed KPMG Accountants N.V., Facinatio Boulevard 200, 3065 WB Rotterdam, Netherlands, as independent auditor of its financial statements. KPMG Accountants N.V. is a member of the Royal Dutch Institute of Chartered Accountants.

## **GUARANTORS**

The guarantors of the Notes are Fresenius SE & Co. KGaA, Fresenius Kabi AG and Fresenius ProServe GmbH, whereby the Company acts as Parent Guarantor and Fresenius Kabi AG and Fresenius ProServe GmbH act as Subsidiary Guarantors. The Company directly owns all of the capital stock in Fresenius Kabi AG and Fresenius ProServe GmbH with Fresenius Kabi AG acting as the holding company for its business segment Fresenius Kabi, and Fresenius ProServe GmbH acting as the holding company for its business segments Fresenius Helios and Fresenius Vamed. For a description of the guarantees granted, please see section "*Description of the Notes — Description of the Guarantees*".

### **Fresenius SE & Co. KGaA**

#### ***Foundation, Name, Registered Office, Duration, Business Name***

The Company was originally incorporated on August 20, 1966 as Chemisch-pharmazeutische Verwaltungsgesellschaft mbH, a limited liability company organized under German law. This company was registered with the commercial register of the local court (*Amtsgericht*) of Bad Homburg vor der Höhe, Germany, under registration number HRB 1152. On October 30, 1981, the shareholders' meeting of Chemisch-pharmazeutische Verwaltungsgesellschaft mbH resolved to change the legal form of the Company into a stock corporation (*Aktiengesellschaft*) organized under

German law and the Company's name to Fresenius Verwaltungs-Aktiengesellschaft. These changes became effective upon registration of Fresenius Verwaltungs-Aktiengesellschaft with the commercial register of Bad Homburg vor der Höhe, Germany, under registration number HRB 2617, on December 9, 1981.

On December 23, 1981, the general shareholders' meeting of Fresenius Verwaltungs-Aktiengesellschaft resolved to change the name of the Company to Fresenius AG. This change became effective upon entry into the commercial register on December 28, 1981. On December 4, 2006, the general shareholders' meeting of Fresenius AG resolved to change the Company's legal form into a European Company (*Societas Europaea* — SE) organized under German and European law and the Company's name to Fresenius SE. These changes became effective upon registration of Fresenius SE with the commercial register of Bad Homburg vor der Höhe, Germany, under registration number HRB 10660, on July 13, 2007.

On May 12, 2010, the general shareholders' meeting of Fresenius SE resolved to change the legal form of the Company into a partnership limited by shares (*Kommanditgesellschaft auf Aktien*) with an SE as general partner, organized under German and European law, the Company's name to Fresenius SE & Co. KGaA; and, so as to simplify the company's share structure by creating one share class while maintaining the control position of the Else Kröner-Fresenius-Stiftung, to convert the at that time also existing non-voting no-par value preference bearer shares into voting ordinary shares at a 1:1 exchange ratio. These changes became effective upon registration of the Company with the commercial register of Bad Homburg vor der Höhe, Germany, under registration number HRB 11852, on January 28, 2011.

The Company has its registered office in Bad Homburg vor der Höhe, Germany. Its business address is Else-Kröner-Strasse 1, 61352 Bad Homburg vor der Höhe, Germany, and its telephone number is +49 (0) 6 172-608-0. The duration of the Company is indefinite. The Company conducts its business under its legal name.

### **Corporate Purpose**

Pursuant to section 2 of its articles of association,

"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 healthcare 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.

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."

### **Share Capital, Admission to Trading, Major Shareholders and Assets**

As of December 31, 2011, the Company had issued a share capital of €163,237,336.00 represented by 163,237,336 voting ordinary shares, each of which grants one vote in the general shareholders' meeting of the Company. All shares have been fully paid up. As to the principal

characteristics of the shares, please see section *"Management"*. The major shareholders of the Company are listed in section *"Principal Shareholders"*.

In accordance with U.S. GAAP as of December 31, 2011, the Company had total assets of €5,493 million, total liabilities of €1,527 million and, for the full fiscal year of 2011, a net income of €534 million (including income from participations).

### ***General Partner, Management and Corporate Governance***

The sole general partner of the Company is Fresenius Management SE ("**Management SE**"). Management SE is a wholly-owned subsidiary of the Else Kröner-Fresenius-Stiftung. Management SE is registered with the commercial register of the local court (*Amtsgericht*) of Bad Homburg under the registration number HRB 11673 and has issued a share capital of €1,500,000 million as of December 31, 2011. The registered office of the Management SE is Bad Homburg vor der Höhe, Germany. Its business address is Else-Kröner-Strasse 1, 61352 Bad Homburg vor der Höhe, Germany, and its telephone number is +49 (0) 6 172-608-0. Management SE has not made a contribution to and, therefore, has no share in the Company, and does neither participate in any profit or loss nor in any assets of the Company. The sole corporate purpose of the Management SE is its being general partner of the Company.

For further information on the management of the Company, please see section *"Management"*. For information on the compliance of the Company with the German Corporate Governance Code (*Deutscher Corporate Governance Kodex*), please see section *"Management — Corporate Governance"*.

### ***Financial Year, Auditor of the Financial Statements***

The financial year of the Company is the calendar year.

KPMG AG Wirtschaftsprüfungsgesellschaft, The Squaire, Am Flughafen, 60549 Frankfurt am Main, Germany, a member of the German Chamber of Public Accountants (*Wirtschaftsprüferkammer*), Berlin, is the auditor of the consolidated and unconsolidated financial statements of the Company.

KPMG audited the consolidated financial statements of the Company as of and for the years ended December 31, 2011, December 31, 2010 and December 31, 2009, prepared in accordance with U.S. GAAP, which have been included in this prospectus/offering memorandum and the consolidated financial statements of the Company as of and for the years ended December 31, 2011, December 31, 2010 and December 31, 2009 prepared in accordance with IFRS, and in each case issued an auditors' report (*Bestätigungsvermerk*).

### ***Fresenius Kabi AG***

#### ***Foundation, Name, Registered Office, Duration, Business Name***

Fresenius Kabi AG was incorporated as a stock corporation (*Aktiengesellschaft*) organized under German law on August 21, 1998. It was originally registered with the commercial register of the local court (*Amtsgericht*) of Frankfurt am Main, Germany, under registration number HRB 45881. On May 10, 2010, the general shareholders' meeting of Fresenius Kabi AG resolved to move Fresenius Kabi AG's registered office to Bad Homburg vor der Höhe. The change became effective upon registration of Fresenius Kabi AG with the commercial register of the local court (*Amtsgericht*) of Bad Homburg vor der Höhe, Germany, under registration number HRB 11654, on June 22, 2010.

Fresenius Kabi AG has its registered office in Bad Homburg vor der Höhe, Germany. Its business address is Else-Kröner-Strasse 1, 61352 Bad Homburg vor der Höhe, Germany, and its telephone number is +49 (0) 6 172-686-0. The duration of the Company is indefinite. The Company conducts its business under its legal name.

#### ***Corporate Purpose***

Pursuant to section 2 of its articles of association of Fresenius Kabi AG, the corporate purpose of Fresenius Kabi AG is the participation in German and foreign companies engaged in the



development, production and/or distribution of pharmaceutical and dietary products, in particular for enteral and parenteral nutrition, and infusion solutions: furthermore the development, production and distribution of medical devices and IT software for hospitals.

### ***Share Capital, Major Shareholder and Assets***

As of December 31, 2011, Fresenius Kabi AG had issued a share capital of €66,000,000.00 represented by 27,781,250 voting ordinary shares, each of which grants one vote in the general shareholders' meeting of Fresenius Kabi AG. All shares have been fully paid up. Fresenius Kabi AG is a wholly-owned subsidiary of the Company.

In accordance with German GAAP as of December 31, 2011, Fresenius Kabi AG had total assets of €2,044 million, total liabilities of €530 million and, for the full fiscal year of 2011, a net income of €122 million (including income from participations).

### ***Management and Corporate Governance***

Fresenius Kabi AG has a management board and a supervisory board which has no audit committee.

The management board of Fresenius Kabi AG consists of seven members: Rainer Baule (Chairman), Marc Crouton, John Ducker, Mats Henriksson, Manfred Köhler, Dr. Michael Schönhofen and Gerrit Steen. The supervisory board of Fresenius Kabi AG consists of three members: Dr. Ulf. M. Schneider (Chairman), Stephan Sturm (Deputy Chairman) and Christian Fischer. There are no potential conflicts between any duties to Fresenius Kabi AG of the members of the management board and supervisory board of Fresenius Kabi AG and their private interests and or other of their duties. For the principal activities of Rainer Baule, Dr. Ulf M. Schneider and Stephan Sturm outside Fresenius Kabi AG, see "*Management — Management Board of the Management SE*". Christian Fischer is also Senior Vice President Group Controlling of Fresenius SE & Co. KGaA.

Members of the management board and the supervisory board of Fresenius Kabi AG can be contacted under the business address of the Company.

The German Corporate Governance Code does not apply to Fresenius Kabi AG as Fresenius Kabi AG is a stock corporation the shares in which are not admitted to trading on a regulated market.

### ***Financial Year, Financial Statements and Auditor***

The financial year of Fresenius Kabi AG is the calendar year. Fresenius Kabi AG has appointed KPMG AG Wirtschaftsprüfungsgesellschaft, The Squaire, Am Flughafen, 60549 Frankfurt am Main, Germany, as independent auditor. KPMG AG is a member of the German Chamber of Public Accountants (*Wirtschaftsprüferkammer*), Berlin, Germany.

### ***Fresenius ProServe GmbH***

#### ***Foundation, Name, Registered Office, Duration, Business Name***

Fresenius ProServe GmbH was incorporated as a company with limited liability (*Gesellschaft mit beschränkter Haftung*) organized under the laws of Germany on February 24, 1999. It was originally registered with the commercial register of the local court (*Amtsgericht*) of Frankfurt am Main, Germany, under registration number HRB 46909. On May 10, 2010, the shareholders' meeting of Fresenius ProServe GmbH resolved to move the company' registered office to Bad Homburg von der Höhe. The change became effective upon registration of Fresenius ProServe GmbH with the commercial register of the local court (*Amtsgericht*) of Bad Homburg von der Höhe, Germany, under registration number HRB 7302.

Fresenius ProServe GmbH has its registered office in Bad Homburg vor der Höhe, Germany. Its business address is Else-Kröner-Strasse 1, 61352 Bad Homburg vor der Höhe, Germany, and its

telephone number is +49 (0) 6 172-608-0. The duration of Fresenius ProServe GmbH is indefinite. Fresenius ProServe GmbH conducts its business under its legal name.

### ***Corporate Purpose***

Pursuant to section 2 of its articles of association, the corporate purpose of Fresenius ProServe GmbH is the acquisition, holding and management of participations in German and foreign companies engaged in the following activities: the planning and construction of production facilities, in particular for pharmaceutical and dietary products and medical devices; the planning, construction and operation of curative facilities and hospitals; and project services.

### ***Registered Capital, Major Shareholder and Assets***

As of December 31, 2011, Fresenius ProServe GmbH had a registered capital of €40,000,000. All shares have been fully paid up. Fresenius ProServe GmbH is a wholly-owned subsidiary of the Company.

In accordance with German GAAP as of December 31, 2011, Fresenius ProServe GmbH had total assets of €2,057 million, total liabilities of €462 million and, for the full fiscal year of 2011, a net income of €126 million (including income from participations).

### ***Management and Corporate Governance***

Fresenius ProServe GmbH has a management board which consists of three Managing Directors, The Managing Directors of Fresenius ProServe GmbH are Dr. Francesco De Meo, Dr. Jürgen Götz and Joachim Weith. There are no potential conflicts between any duties to Fresenius ProServe GmbH of the members of the management board of Fresenius ProServe GmbH and their private interests and or other of their duties. Fresenius ProServe GmbH does not have a supervisory board and, therefore, has no audit committee. For the principal activities of Dr. Francesco De Meo and Dr. Jürgen Götz outside Fresenius ProServe GmbH, see "*Management — Management Board of the Management SE*". Joachim Weith is also the Senior Vice President Corporate Communications and Public Affairs of Fresenius SE & Co. KGaA.

Members of the management board of Fresenius ProServe GmbH can be contacted at the registered office of Fresenius SE & CO. KGaA.

The German Corporate Governance Code does not apply to Fresenius ProServe GmbH as Fresenius ProServe GmbH is a company with limited liability the shares in which are not admitted to trading on a regulated market.

### ***Financial Year, Financial Statements and Auditor***

The financial year of Fresenius ProServe GmbH is the calendar year. Fresenius ProServe GmbH has appointed KPMG AG Wirtschaftsprüfungsgesellschaft, The Squire, Am Flughafen, 60549 Frankfurt am Main, Germany, as independent auditor. KPMG AG is a member of the German Chamber of Public Accountants (*Wirtschaftsprüferkammer*), Berlin, Germany.

## **DOCUMENTS AVAILABLE FOR INSPECTION**

For as long as this prospectus/offering memorandum is valid, the following documents, or copies thereof, may be inspected during regular business hours at the offices of the Company at Else-Kröner-Strasse 1, 61352 Bad Homburg vor der Höhe, Germany:

- the articles of association of the Issuer and the Guarantors;
- the audited consolidated financial statements of the Company as of and for the years ended December 31, 2011, December 31, 2010, and December 31, 2009, prepared in accordance with U.S. GAAP;

- the audited consolidated financial statements of the Company as of and for the years ended December 31, 2011, December 31, 2010 and December 31, 2009 prepared in accordance with IFRS.
- Unconsolidated financial statements of the Issuer for the financial years ending December 31, 2011 and 2010
- Unconsolidated financial statements of Fresenius Kabi AG for the financial years ending December 31, 2011 and 2010
- Unconsolidated financial statements of Fresenius ProServe GmbH for the financial years ending December 31, 2011 and 2010

## INTEREST OF THE COMPANY IN FRESENIUS MEDICAL CARE AG & CO. KGAA

*FMC AG & Co. KGaA* is a partnership limited by shares (*Kommanditgesellschaft auf Aktien*). As of December 31, 2011, the Company owned 30.74% of FMC AG & Co. KGaA's outstanding ordinary voting shares and 30.34% of FMC AG & Co. KGaA's total subscribed capital. Fresenius Medical Care Management AG, a wholly-owned subsidiary of the Company in the legal form of a stock corporation (*Aktiengesellschaft*) organized under German law ("**FMC Management AG**"), is the general partner of FMC AG & Co. KGaA. FMC Management AG, represented by its management board, is responsible for the management of FMC AG & Co. KGaA. Because corporate decisions are taken by the general partner for German partnerships limited by shares, the Company has, and as long as it maintains ownership of FMC Management AG and more than 25% of the share capital of FMC AG & Co. KGaA will retain, a controlling position in FMC AG & Co. KGaA under the articles of association of FMC AG & Co. KGaA. Since this controlling position meets the control test for purposes of consolidation under U.S. GAAP, the Company fully consolidates Fresenius Medical Care in its consolidated financial statements under U.S. GAAP.

The Company receives the cash flows generated by Fresenius Medical Care only to the extent they are distributed to the Company as dividends. The Company receives such dividends in proportion to its economic interest in FMC AG & Co. KGaA. The Company received dividend distributions from FMC AG & Co. KGaA in the amount of €69 million in 2011, €65 million in 2010 and €62 million in 2009. In addition, covenants that are contained in Fresenius Medical Care's 2006 Senior Credit Agreement impose limitations on the amount of total annual dividends that Fresenius Medical Care may distribute in any one year, with total dividend distributions capped at US\$360 million for dividends paid in 2012 and US\$390 million for dividends paid in 2013. For more information about Fresenius Medical Care's senior credit facilities, see "*Description of Other Financing Arrangements — Fresenius Medical Care*".

In addition to cash dividends, the Company receives cash payments, primarily in the form of service fees and rental payments, from Fresenius Medical Care under certain intercompany agreements. See "*Certain Relationships and Related Party Transactions*". The Company received payments of €73.2 million in 2011, €62.9 million in 2010 and €65.5 million in 2009. These payments were partially offset by payments that the Company made to Fresenius Medical Care pursuant to other intercompany agreements in the amount of €4.7 million in 2011, €4.6 million in 2010 and €9.7 million in 2009.

The Company does not possess a majority of the outstanding voting ordinary shares of FMC AG & Co. KGaA and is precluded from voting on certain matters that are submitted to the shareholders of FMC AG & Co. KGaA. However, through its ownership of 100% of the outstanding shares of the general partner of FMC AG & Co. KGaA, the Company has the sole right to elect the supervisory board of the general partner, which, in turn, elects the management board of the general partner. The management board of the general partner is responsible for the management of FMC AG & Co. KGaA, but the actions and decisions of the general partner's management board are fully reviewable by the supervisory board of the general partner and by the supervisory board of FMC AG & Co. KGaA. Actions of the management board require only the approval of the supervisory board of the general partner. However, a pooling agreement for the benefit of minority ordinary

shareholders and preference shareholders of FMC AG & Co. KGaA provides that at least one-third of the supervisory board members be independent, that a majority of such independent members approve certain related party transactions involving the Company and its affiliates and that certain extraordinary transactions involving the Company and its affiliates comply with all provisions of German law regarding such transactions.

The articles of association of FMC AG & Co. KGaA can be amended only through a resolution of the general meeting adopted by a qualified 75% majority of shareholders and with the consent of the general partner. Accordingly, neither group of owners (i.e., the shareholders or the general partner) can unilaterally amend the articles of association without the consent of the other group. The Company, however, is able to exert significant influence over amendments to the articles of association of FMC AG & Co. KGaA through its ownership of a significant percentage of FMC AG & Co. KGaA's ordinary shares, since such amendments require a 75% vote of the shares present at the meeting rather than three quarters of the outstanding shares.

Under the articles of association, FMC Management AG is required to withdraw as general partner of FMC AG & Co. KGaA if the Company's holdings decrease to (i) 25% or less of FMC AG & Co. KGaA's share capital or (ii) less than 100% of FMC Management AG's share capital. Alternatively, the Company may sell its interests in the general partner to a third party if the sale also includes more than 25% of FMC AG & Co. KGaA's share capital.

## DESCRIPTION OF OTHER FINANCING ARRANGEMENTS

The following table shows the indebtedness outstanding under our short-term borrowings, our 2008 Senior Credit Agreement, Fresenius Medical Care's 2006 Senior Credit Agreement and our other long-term debt at December 31, 2011, 2010 and 2009.

|                                                                                   | As of December 31,<br>2011 | As of December 31,<br>2010 | As of December 31,<br>2009 |
|-----------------------------------------------------------------------------------|----------------------------|----------------------------|----------------------------|
|                                                                                   |                            | (million €)                |                            |
| <b>Short-term borrowings and other financial liabilities . . . . .</b>            | <b>174</b>                 | <b>1,076</b>               | <b>289</b>                 |
| Thereof: from related parties . . . . .                                           | 3                          | 2                          | 2                          |
| Fresenius 2008 Senior Credit Agreement . .                                        | 1,326                      | 1,484                      | 1,602                      |
| FMC 2006 Senior Credit Agreement. . . . .                                         | 2,161                      | 2,211                      | 2,445                      |
| Outstanding Senior Notes <sup>(1)</sup> . . . . .                                 | 1,773                      | 1,752                      | 1,724                      |
| FMC Senior Notes <sup>(2)</sup> . . . . .                                         | 2,223                      | 617                        | 342                        |
| Euro Notes <sup>(3)</sup> . . . . .                                               | 800                        | 800                        | 800                        |
| EIB Agreements . . . . .                                                          | 527                        | 531                        | 424                        |
| FMC A/R Facility . . . . .                                                        | 413                        | 0                          | —                          |
| Capital lease obligations. . . . .                                                | 53                         | 54                         | 45                         |
| Other . . . . .                                                                   | 349                        | 259                        | 628                        |
| Subtotal . . . . .                                                                | 9,625                      | 7,708                      | 8,010                      |
| Less current portion. . . . .                                                     | <u>1,852</u>               | <u>420</u>                 | <u>261</u>                 |
| <b>Long-term debt and capital lease obligation, less current portion. . . . .</b> | <b><u>7,773</u></b>        | <b><u>7,228</u></b>        | <b><u>7,749</u></b>        |

(1) Includes the following outstanding senior notes issued by finance subsidiaries of Fresenius SE & Co. KGaA: Fresenius Finance B.V. 5.00% senior notes due 2013; Fresenius Finance B.V. 5.50% senior notes due 2016; Fresenius US Finance II Inc. 8.75% senior notes due 2015; Fresenius US Finance II Inc. 9.00% senior notes due 2015.

(2) This figure does not include the following senior notes of Fresenius Medical Care issued in January 2012: Fresenius Medical Care US Finance II Inc. 5½% Senior Notes due 2019 in an aggregate principal amount of US\$800 million; Fresenius Medical Care US Finance II Inc. 5½% Senior Notes due 2022 in an aggregate principal amount of US\$700 million; and FMC Finance VIII S.A. 5.25% Senior Notes due 2019 in an aggregate principal amount of €250 million.

Fresenius Medical Care used the net proceeds of the offering of the aforementioned senior notes for acquisitions, including the acquisition of Liberty Dialysis, to refinance indebtedness, and for general corporate purposes. For more information on Fresenius Medical Care's acquisition of Liberty Dialysis, see "Business — History and Development — Recent Acquisitions". For more information on Fresenius Medical Care's indebtedness, see "Description of Other Financing Arrangements — Fresenius Medical Care".

(3) The various euro notes (*Schuldscheindarlehen*) issued by Fresenius Finance B.V. and Fresenius Medical Care are collectively referred to as the "Euro Notes". On March 16, 2012, Fresenius SE & Co. KGaA issued senior unsecured euro denominated notes (*Schuldscheindarlehen*) totaling €400 million (the "New Fresenius Euro Notes"). The proceeds of the New Fresenius Euro Notes will accrue to the Fresenius Group on April 2, 2012 and will be used to refinance two tranches of the euro notes (*Schuldscheindarlehen*) issued by Fresenius Finance B.V., each as of April 2, 2008 and with maturity on April 2, 2012, in an aggregate amount of €200 million and for general corporate purposes.

For information on maturities of our long-term debt and capital lease obligations, see "Management's Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources — Historical Debt", "Management's Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources — Historical Consolidated Cash Flow — Year Ended December 31, 2011, compared with Year Ended December 31, 2010 — Financing Activities" and "Management's Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources — Historical Consolidated Cash Flow — Year Ended December 31, 2010, compared with Year Ended December 31, 2009 — Financing Activities".

## Fresenius SE & Co. KGAA and its Subsidiaries Other than Fresenius Medical Care

### 2008 Senior Credit Agreement

In connection with the acquisition of APP Pharmaceuticals in 2008, we entered into a syndicated credit agreement (as amended from time to time, the **"2008 Senior Credit Agreement"**) in the original amount of US\$2.45 billion on August 20, 2008. Since then, we have arranged with the lenders several amendments to the 2008 Senior Credit Agreement that, among other things, effected voluntary prepayments, significantly reduced the interest rates under the term loan facilities, replaced the term loan B facilities with the term loan C facilities (which, in turn, were subsequently replaced by the term loan D facilities).

As of December 31, 2011, the 2008 Senior Credit Agreement consists of:

- revolving credit facilities in the aggregate principal amount of US\$550 million (of which US\$150 million is available to APP Pharmaceuticals, LLC, and US\$400 million is available as multicurrency facility to Fresenius Finance I S.A., a wholly-owned subsidiary of Fresenius SE & Co. KGaA), due and payable on September 10, 2013 (the **"2008 Senior Revolving Credit Facilities"**);
- term loan facilities in the aggregate principal amount of US\$537 million (of which equal shares are available to Fresenius US Finance I, Inc., a wholly-owned subsidiary of Fresenius SE & Co. KGaA, and to APP Pharmaceuticals, LLC) (the **"Term Loan A"**). Term Loan A amortizes and is repayable in unequal semi-annual installments with a final maturity date on September 10, 2013; and
- term loan facilities in the aggregate principal amount of US\$971.4 million and €160.5 million (of which US\$572.2 million and €160.5 million are available to Fresenius US Finance I, Inc. and US\$399.2 million is available to APP Pharmaceuticals, LLC) (the **"Term Loan D"**). Term Loan D amortizes and is repayable in equal semi-annual installments with a final bullet payment on September 10, 2014.

The interest rate on each borrowing under the 2008 Senior Credit Agreement is a rate per annum equal to the aggregate of (a) the applicable margin and (b) LIBOR or, in relation to any loan in euro, EURIBOR for the relevant interest period. The applicable margin is variable and depends on the Leverage Ratio as defined in the 2008 Senior Credit Agreement. In the case of Term Loan D, a minimum LIBOR or EURIBOR was set for 1.00%. In addition to scheduled principal payments, indebtedness outstanding under the 2008 Senior Credit Agreement will be reduced by mandatory prepayments in the case of certain sales of assets, incurrence of additional indebtedness, equity issuances and certain intercompany loan repayments, with the amount to be prepaid depending on the proceeds which are generated by the respective transaction.

The 2008 Senior Credit Agreement is guaranteed by Fresenius SE & Co. KGaA, Fresenius ProServe GmbH and Fresenius Kabi AG. The obligations of APP Pharmaceuticals under the 2008 Senior Credit Agreement that refinanced indebtedness under the former APP Pharmaceuticals' credit facility are secured by the assets of APP Pharmaceuticals and its subsidiaries and guaranteed by APP Pharmaceuticals' subsidiaries on the same basis as the former APP Pharmaceuticals' credit facility. All lenders also benefit from indirect security through pledges over the shares of certain subsidiaries of Fresenius Kabi AG and pledges over certain intercompany loans.

The 2008 Senior Credit Agreement contains a number of customary affirmative and negative covenants and other payment restrictions. These covenants include, among others, limitations on liens, sale of assets, incurrence of debt, investments and acquisitions and restrictions on the payment of dividends. The 2008 Senior Credit Agreement also includes financial covenants – as defined in the agreement – that require Fresenius SE & Co. KGaA and its subsidiaries (other than Fresenius Medical Care and its subsidiaries) to maintain a maximum leverage ratio, a minimum fixed charge coverage ratio, a minimum interest coverage ratio and limits amounts spent on capital expenditure. As of December 31, 2011, Fresenius SE & Co. KGaA was in compliance with all covenants under the 2008 Senior Credit Agreement.



The following table shows the available and outstanding amounts under the 2008 Senior Credit Agreement at December 31, 2011:

|                                            | Maximum amount available |                     | Balance outstanding |                     |
|--------------------------------------------|--------------------------|---------------------|---------------------|---------------------|
|                                            | (million US\$)           | (million €)         | (million US\$)      | (million €)         |
| Revolving Credit Facilities . . . . .      | 550                      | 425                 | 0                   | 0                   |
| Term Loan A Facilities . . . . .           | 537                      | 415                 | 537                 | 415                 |
| Term Loan D Facilities (in US\$) . . . . . | 971                      | 751                 | 971                 | 751                 |
| Term Loan D Facilities (in €) . . . . .    | —                        | 160                 | —                   | 160                 |
| <b>Total</b> . . . . .                     | <b><u>2,058</u></b>      | <b><u>1,751</u></b> | <b><u>1,508</u></b> | <b><u>1,326</u></b> |

### Other Bank Facilities

As of December 31, 2011, Fresenius SE & Co. KGaA and its subsidiaries (other than Fresenius Medical Care) had approximately €510 million in indebtedness outstanding under bilateral bank facilities, including bilateral facilities with the European Investment Bank. Of such amount, approximately €300 million was incurred by subsidiaries (other than Fresenius Medical Care). We had additional borrowing capacity of approximately €280 million under committed bilateral facilities available and approximately €380 million of uncommitted short-term lines available. Borrowings under these facilities are generally used to finance our working capital needs and are unsecured.

### Fresenius Euro Notes (*Schuldscheindarlehen*)

As of December 31, 2011, our outstanding tranches of euro-denominated notes (*Schuldscheindarlehen*) issued by the Issuer (the “**Fresenius Euro Notes**”) consist of:

| <u>Tranche</u>                             | <u>Maturity</u> | <u>Interest rate</u> | <u>Book value/<br/>nominal value<br/>(million €)<br/>Amount</u> |
|--------------------------------------------|-----------------|----------------------|-----------------------------------------------------------------|
| Fresenius Finance B.V. 2008/2012 . . . . . | April 2, 2012   | 5.59%                | 62                                                              |
| Fresenius Finance B.V. 2008/2012 . . . . . | April 2, 2012   | variable             | 138                                                             |
| Fresenius Finance B.V. 2007/2012 . . . . . | July 2, 2012    | 5.51%                | 26                                                              |
| Fresenius Finance B.V. 2007/2012 . . . . . | July 2, 2012    | variable             | 74                                                              |
| Fresenius Finance B.V. 2008/2014 . . . . . | April 2, 2014   | 5.98%                | 112                                                             |
| Fresenius Finance B.V. 2008/2014 . . . . . | April 2, 2014   | variable             | 88                                                              |
| Fresenius Finance B.V. 2007/2014 . . . . . | July 2, 2014    | 5.75%                | 38                                                              |
| Fresenius Finance B.V. 2007/2014 . . . . . | July 2, 2014    | variable             | <u>62</u>                                                       |
| Total . . . . .                            |                 |                      | <b><u>600</u></b>                                               |

The Fresenius Euro Notes are guaranteed by Fresenius SE & Co. KGaA. On March 16, 2012, Fresenius SE & Co. KGaA issued senior unsecured euro denominated notes (*Schuldscheindarlehen*) totaling €400 million (the “**New Fresenius Euro Notes**”). The proceeds of the New Fresenius Euro Notes will accrue to the Fresenius Group on April 2, 2012 and will be used to refinance two tranches of the euro notes (*Schuldscheindarlehen*) issued by Fresenius Finance B.V., each as of April 2, 2008 and with maturity on April 2, 2012, in an aggregate amount of €200 million and for general corporate purposes.

### Commercial Paper Program

Fresenius SE & Co. KGaA has a commercial paper program for the issuance of a maximum of €250 million of short-term notes. Notes issued under this program may be denominated in euros or in any other freely convertible currency of an OECD member state. The maturity may not exceed two years less one day. The obligations represented by the notes rank pari passu with all other senior unsecured obligations of Fresenius SE & Co. KGaA. As of December 31, 2011, no commercial papers were outstanding.

## **Outstanding Senior Notes**

### ***€500 Million 5.00% Senior Notes Due 2013***

On January 20, 2006, Fresenius Finance B.V. issued €500 million aggregate principal amount of 5.00% senior notes due 2013. The notes bear an interest rate of 5.00% per annum and mature on January 31, 2013. Fresenius Finance B.V. may redeem all or part of the notes at any time prior to their maturity at a redemption price equal to 100% of the principal amount of the notes redeemed plus a make-whole premium. The 5.00% senior notes due 2013 contain covenants that are customary for senior notes issued by European issuers. Fresenius SE & Co. KGaA, Fresenius Kabi AG and Fresenius ProServe GmbH have provided senior unsecured guarantees of the notes.

### ***€650 Million 5.50% Senior Notes Due 2016***

On January 20, 2006, Fresenius Finance B.V. issued €500 million aggregate principal amount of 5.50% senior notes due 2016. The notes bear an interest rate of 5.50% per annum and mature on January 31, 2016. In June 2009, Fresenius Finance B.V. placed a tap to its 5.50% senior notes by issuing an aggregate principal amount of €150 million senior notes at a price of 92%. Thereby, the outstanding amount under the senior notes was increased to €650 million. Fresenius Finance B.V. may redeem all or a part of the notes on at the following redemption prices: 101.833% from January 31, 2012 to January 30, 2013; 100.916% from January 31, 2013 to January 30, 2014 and 100% thereafter. The 5.50% senior notes due 2016 contain covenants that are customary for senior notes issued by European issuers. Fresenius SE & Co. KGaA, Fresenius Kabi AG and Fresenius ProServe GmbH have provided senior unsecured guarantees of the notes.

### ***US\$500 Million 9.00% Senior Notes Due 2015 and €275 Million 8.75% Senior Notes Due 2015***

On January 21, 2009, Fresenius US Finance II, Inc. ("**Fresenius US Finance II**"), a wholly-owned subsidiary of Fresenius SE & Co. KGaA issued US\$500 million aggregate principal amount of 9.00% senior notes and €275 million aggregate principal amount of 8.75% senior notes. The notes were issued at a price of 93.076% and 93.024%, respectively. Both tranches mature on July 15, 2015 and are guaranteed by Fresenius SE & Co. KGaA, Fresenius Kabi AG and Fresenius ProServe GmbH. The holders have the right to request that Fresenius US Finance II repurchases the senior notes for 101% of their principal amount plus accrued interest upon the occurrence of a change of control of Fresenius SE & Co. KGaA followed by a decline in the rating of the respective senior notes. Fresenius US Finance II may redeem the senior notes prior to their maturity at the option of Fresenius US Finance II, in whole but not in part, at a price of 100% plus accrued interest and a premium calculated pursuant to the terms of the indentures under observance of certain notice periods. Fresenius US Finance II's senior notes due 2015 contain covenants that are customary for senior notes issued in the European market or by companies with a European parent guarantor.

## **FRESENIUS MEDICAL CARE**

### **2006 Senior Credit Agreement**

On March 31, 2006, Fresenius Medical Care entered into a US\$4.6 billion syndicated credit agreement (the "**2006 Senior Credit Agreement**") with several banks and institutional investors which replaced a prior credit agreement. Since then, Fresenius Medical Care arranged with the lenders several amendments to the 2006 Senior Credit Agreement and effected voluntary prepayments on the term loans which, in particular, led to a change in the total amount available under these facilities and an extension of the maturity of some facilities.

As of December 31, 2011, the 2006 Senior Credit Agreement, as amended, consists of:

- a US\$1.2 billion revolving credit facility (with specified sub-facilities for letters of credit, borrowings in certain non-U.S. currencies, and swing line loans in U.S. dollars and certain non-U.S. currencies, with the total outstanding under those sub-facilities not exceeding US\$1,200 million), due and payable on March 31, 2013;

- a US\$1.215 billion term loan facility (Term Loan A), due and payable on March 31, 2013. Fresenius Medical Care is making quarterly repayments of US\$30 million each, with the remaining amount outstanding due and payable on March 31, 2013; and
- a US\$1.522 billion term loan facility (Term Loan B), due and payable on March 31, 2013. Repayment is arranged in one remaining quarterly payment of US\$4.0 million, followed by four quarterly payments of US\$379.4 million, each due at the end of the respective quarter.

Interest on these facilities will be, at Fresenius Medical Care's option, depending on the interest periods chosen, at a rate equal to either (i) LIBOR plus an applicable margin or (ii) the higher of (a) BofA's prime rate or (b) the Federal Funds rate plus 0.5%, plus an applicable margin.

The applicable margin is variable and depends on Fresenius Medical Care's Consolidated Leverage Ratio which is a ratio of its Consolidated Funded Debt less all cash and cash equivalents to Consolidated EBITDA (as these terms are defined in the 2006 Senior Credit Agreement, as amended).

In addition to scheduled principal payments, indebtedness outstanding under the 2006 Senior Credit Agreement will be reduced by mandatory prepayments utilizing portions of the net cash proceeds from certain sales of assets, securitization transactions other than the FMC A/R Facility, the issuance of subordinated debt other than certain intercompany transactions, certain issuances of equity and excess cash flow.

The obligations under the 2006 Senior Credit Agreement are secured in favor of the lenders by pledges of capital stock of certain material subsidiaries of FMC AG & Co. KG, including FMCH and FMC Germany. The 2006 Senior Credit Agreement contains affirmative and negative covenants with respect to Fresenius Medical Care and other payment restrictions. Certain of the covenants limit indebtedness of Fresenius Medical Care and investments by Fresenius Medical Care, and require Fresenius Medical Care to maintain certain financial ratios. In addition, the 2006 Senior Credit Agreement provides for a limitation on dividends and other restricted payments which is US\$360 million for dividends paid in 2012 and will be US\$390 million for dividends in 2013. Fresenius Medical Care paid US\$281 million for dividends in 2011 which was in compliance with the restrictions set forth in the 2006 Senior Credit Agreement. In the event of default, the outstanding balance under the 2006 Senior Credit Agreement will become immediately due and payable at the option of the lenders. As of December 31, 2011, Fresenius Medical Care was in compliance with all covenants under the 2006 Senior Credit Agreement.

The following table shows the available and outstanding amounts under the 2006 Senior Credit Agreement at December 31, 2011:

|                            | Maximum amount available |                     | Balance outstanding |                     |
|----------------------------|--------------------------|---------------------|---------------------|---------------------|
|                            | (million US\$)           | (million €)         | (million US\$)      | (million €)         |
| Revolving Credit . . . . . | 1,200                    | 927                 | 59                  | 46                  |
| Term Loan A . . . . .      | 1,215                    | 939                 | 1,215               | 939                 |
| Term Loan B . . . . .      | <u>1,522</u>             | <u>1,176</u>        | <u>1,522</u>        | <u>1,176</u>        |
| <b>Total . . . . .</b>     | <b><u>3,937</u></b>      | <b><u>3,042</u></b> | <b><u>2,796</u></b> | <b><u>2,161</u></b> |

### Fresenius Medical Care's Senior Notes

In the years 2007, 2010, 2011 and 2012 Fresenius Medical Care issued various senior unsecured notes through its wholly owned subsidiaries FMC Finance VI, S.A., FMC, Finance VII S.A., FMC Finance VIII S.A., Fresenius Medical Care US Finance, Inc. and Fresenius Medical Care US Finance II, Inc.

The table below list the currently outstanding senior notes of Fresenius Medical Care:

| <u>Tranche</u>                                                | <u>Notional amount<br/>in millions</u> | <u>Maturity</u>    | <u>Coupon</u> |
|---------------------------------------------------------------|----------------------------------------|--------------------|---------------|
| Fresenius Medical Care Finance VI S.A.<br>2010/2016 .....     | €250                                   | July 15, 2016      | 5.50%         |
| Fresenius Medical Care Finance VIII S.A.<br>2011/2016 .....   | €100                                   | October 15, 2016   | floating      |
| Fresenius Medical Care US Finance, Inc.<br>2007/2017 .....    | US\$500                                | July 15, 2017      | 6.875%        |
| Fresenius Medical Care Finance VIII S.A.<br>2011/2018 .....   | €400                                   | September 15, 2018 | 6.50%         |
| Fresenius Medical Care US Finance II, Inc.<br>2011/2018 ..... | US\$400                                | September 15, 2018 | 6.50%         |
| Fresenius Medical Care Finance VIII S.A.<br>2012/2019 .....   | €250                                   | July 31, 2019      | 5.25%         |
| Fresenius Medical Care US Finance II, Inc.<br>2012/2019 ..... | US\$800                                | July 31, 2019      | 5.625%        |
| Fresenius Medical Care US Finance II, Inc.<br>2011/2021 ..... | US\$650                                | February 15, 2021  | 5.75%         |
| Fresenius Medical Care Finance VII S.A.<br>2011/2021 .....    | €300                                   | February 15, 2021  | 5.25%         |
| Fresenius Medical Care US Finance II, Inc.<br>2012/2022 ..... | US\$700                                | January 31, 2022   | 5.875%        |

All of Fresenius Medical Care's existing senior notes are unsecured and guaranteed on a senior basis jointly and severally by FMC AG & Co. KGaA and by its subsidiaries, FMCH and FMC Germany. The issuers of the respective notes may redeem the senior notes (except the floating rate notes issued by FMC Finance VIII S.A.) at any time at 100% of principal plus accrued interest and a premium calculated pursuant to the terms of the indenture. The holders have the right to request that the respective issuers repurchase the applicable issue of notes at 101% of principal plus accrued interest upon the occurrence of a change of control of FMC AG & Co. KGaA followed by a decline in the rating of the respective senior notes.

The indentures governing Fresenius Medical Care's senior notes contain various negative covenants that restrict the ability of Fresenius Medical Care to incur debt, incur liens, engage in sale-leaseback transactions and merge or consolidate with other companies or sell assets.

For additional information regarding Fresenius Medical Care's senior notes, see Note 22, "Senior Notes" in the notes to our 2011 audited consolidated financial statements.

### **Euro Notes** (*Schuldscheindarlehen*)

In April 2009, FMC-AG & Co. KGaA issued senior unsecured euro denominated notes (*Schuldscheindarlehen*) totalling €200 million (the "**FMC Euro Notes**"). The FMC Euro Notes consist of 4 tranches having terms of 3.5 and 5.5 years with floating and fixed interest rate tranches and are guaranteed by FMCH and FMC Germany.

### **EIB Agreements**

Fresenius Medical Care entered into various credit agreements with the European Investment Bank ("**EIB**") in 2005, 2006 and 2009 totalling €271 million (the "**EIB Agreements**"). Fresenius Medical Care had four credit facilities available under these agreements, all of which are fully drawn as of December 31, 2011. Borrowings under the 2005 and 2006 agreements are secured by bank guarantees while the 2009 agreement is guaranteed by FMCH and FMC Germany. All EIB agreements have customary covenants.

### **Accounts Receivable Facility**

Fresenius Medical Care has an accounts receivable facility (the “**FMC A/R Facility**”) that typically was renewed in October of each year, but was most recently renewed for a term expiring on July 31, 2014 and increased from US\$700 million to US\$800 million. Under the FMC A/R Facility, certain receivables are sold to NMC Funding Corporation (“**NMC Funding**”), a wholly-owned subsidiary of Fresenius Medical Care. NMC Funding then assigns percentage ownership interests in the accounts receivable to certain bank investors. Under the terms of the FMC A/R Facility, NMC Funding retains the right, at any time, to recall all the then outstanding transferred interests in the accounts receivable. Consequently, the receivables remain on Fresenius Medical Care’s consolidated balance sheet and the proceeds from the transfer of percentage ownership interests are recorded as debt.

As of December 31, 2011, Fresenius Medical Care had US\$534.5 million outstanding under the FMC A/R Facility.

## DESCRIPTION OF THE NOTES

The Issuer will issue €500 million aggregate principal amount of 4.25% senior notes due 2019 (the “**Notes**”). The Notes will be issued under an indenture (the “**Indenture**”), expected to be dated March 28, 2012, among the Issuer, the Guarantors and Deutsche Trustee Company Limited, as Trustee. A copy of the form of the Indenture is available upon request to the Issuer.

You will find the definitions of capitalized terms used in this description either in the body of this section or at the end of this section under “— *Certain Definitions*.” For purposes of this description, references to the “Company” refer only to Fresenius SE & Co. KGaA and not to its subsidiaries.

We have applied to list the Notes on the Official List of the Luxembourg Stock Exchange and for admission for trading on the regulated market of the Luxembourg Stock Exchange.

This Description of the Notes is intended to be a useful overview of the material provisions of the Notes and the Indenture. Since this description is only a summary, you should refer to the Indenture for a complete description of the obligations of the Issuer and your rights. The Indenture will not be qualified under the U.S. Trust Indenture Act of 1939, as amended. The terms of the Notes will include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act.

### GENERAL

#### The Notes

The Notes:

- are general unsecured, senior obligations of the Issuer;
- mature on April 15, 2019;
- have a yield-to-maturity of 4.25%;
- are being offered in an aggregate principal amount of €500 million;
- will be issued in minimum denominations of €1,000 and integral multiples of €1,000 in excess thereof;
- will be represented by one or more registered Notes in global form, but in certain circumstances may be represented by registered Notes in definitive form. See “*Book-Entry, Delivery, and Form*”;
- rank equally in right of payment to any existing and future senior Indebtedness of the Issuer; and
- will be repaid at par in Euros at maturity and not be subject to any sinking fund provision.

#### Additional Notes

The Issuer in a supplemental indenture relating to additional notes may issue additional notes (“**Additional Notes**”) from time to time after this offering subject to the provisions of the Indenture described below under “— *Certain Covenants*”, including, without limitation, the covenant set forth under “— *Certain Covenants — Limitation on Incurrence of Indebtedness*”. The Notes offered hereby and, if issued, any Additional Notes subsequently issued under the Indenture will be treated as a single class for all purposes under the Indenture, including, without limitation, waivers, amendments, redemptions and offers to purchase (*provided that*, if any Additional Notes are not fungible with existing notes of the same class for U.S. federal income tax purposes, such Additional Notes shall have a separate ISIN number, if any). As a result, among other things, holders of each series of Notes will not have separate and independent rights to give notice of a Default or to direct the Trustee to exercise remedies in the event of a Default with respect to the Notes or otherwise. The term “Notes” shall, except where otherwise expressly stated, include the Additional Notes.



## Interest

Interest on the Notes will accrue at a rate of 4.25% per annum. Interest on the Notes will compound semi-annually and will:

- accrue from the date of issuance or the most recent interest payment date;
- be payable in cash semi-annually in arrears on April 15 and October 15, commencing on October 15, 2012, with the first interest payment covering the period from the Issue Date to October 15, 2012;
- be payable to the holders of record on April 1 and October 1 immediately preceding the related interest payment dates; and
- be computed on the basis of a 360-day year comprised of twelve 30-day months.

## Description of the Guarantees

The obligations of the Issuer under the Notes, including the repurchase obligation of the Issuer resulting from a Change of Control, will be unconditionally and irrevocably guaranteed, on a joint and several basis, by the Guarantors. At a time when (i) a Guarantor (other than the Company) is no longer an obligor under the Senior Credit Agreement, and (ii) none of the 2013 Notes, 2015 Notes and 2016 Notes (as each such term is defined below) are outstanding, such Guarantor will no longer be a Guarantor of the Notes. Each Note Guarantee by a Subsidiary will not exceed the maximum amount that can be guaranteed by the applicable Subsidiary Guarantor without rendering the Subsidiary's Guarantee, as it relates to the Subsidiary Guarantor, voidable or unenforceable under applicable laws affecting the rights of creditors generally. In the case of each Subsidiary Guarantor, the maximum amount of its Note Guarantee and its enforcement may be limited in circumstances that could otherwise give rise to personal liability of the management board members or managing directors of the Subsidiary Guarantors under applicable laws of Germany, including German Federal Supreme Court decisions. In this description, we refer to the guarantee of each of the Guarantors as the **"Note Guarantees."**

Under the Indenture, a Guarantor may consolidate with, merge with or into, or transfer all or substantially all of its assets to any other Person as described below under *"— Certain Covenants — Limitation on Mergers and Sales of Assets."* However, if the other Person is not the Issuer or a Guarantor, such Guarantor's obligations under its Note Guarantees must be expressly assumed by such other Person. Upon the sale or other disposition (including by way of consolidation or merger) of a Guarantor, or the sale or disposition of all or substantially all the assets of a Guarantor (in each case other than to the Issuer or, for so long as any of the 2013 Notes, 2015 Notes or 2016 Notes remain outstanding, to any Affiliate thereof), such Guarantor will be released and relieved from all of its obligations under its Note Guarantees, subject to the limitations below under *"— Certain Covenants — Limitation on Mergers and Sales of Assets."*

## Ranking

The Notes will be general unsecured obligations of the Issuer that rank senior in right of payment to all of the Issuer's existing and future Indebtedness that is expressly subordinated in right of payment to the Notes. The Notes will rank equally in right of payment with all existing and future Indebtedness of the Issuer that is not so subordinated. The Notes will be effectively subordinated in right of payment to all of the Issuer's existing and future Indebtedness that is secured by liens on assets to the extent of the value of the collateral securing such Indebtedness, and will be structurally subordinated in right of payment to any obligations of the Parent Guarantor's subsidiaries, other than Subsidiary Guarantors and Finance Subsidiaries.

The Notes will be equal in right of payment with each other and the Fresenius Finance B.V.'s 5.00% Senior Notes due 2013 (the **"2013 Notes"**) and 5.50% Senior Notes due 2016 (the **"2016 Notes"**), as well as Fresenius US Finance II, Inc.'s 9% Senior Dollar Notes due 2015 (the **"2015**

**Dollar Notes**") and 8¾% Senior Euro Notes due 2015 (the "**2015 Euro Notes**" and, together with the 2015 Dollar Notes, the "**2015 Notes**").

The guarantees of the Notes granted by the Subsidiary Guarantors will rank equal in right of payment with the guarantees of the previously issued notes. For more information, see "*Risk Factors — Risks Related to the Notes — The Notes are subordinate to other creditors of non-guarantors and to our subsidiaries' secured debt, and enforcement of guarantees by our subsidiaries may be limited*".

### **Form of Notes**

The Notes will be represented initially by global notes in registered form. Notes initially offered and sold to qualified institutional buyers in reliance on Rule 144A (the "**Rule 144A Notes**") under the Securities Act (as defined below) will be represented by one or more global notes without interest coupons attached (collectively, the "**Rule 144A Global Notes**"). Notes initially offered and sold in reliance on Regulation S (the "**Reg S Notes**") under the Securities Act will be represented by one or more global notes without interest coupons attached (collectively, the "**Reg S Global Notes**" and, together with the Rule 144A Global Notes, the "**Global Notes**"). The combined principal amounts of the Rule 144A Global Notes and the Reg S Global Notes will at all times represent the total outstanding principal amount of the Notes represented thereby.

Holders of beneficial interest in the Notes will be entitled to receive definitive Notes in registered form ("**Definitive Registered Notes**") in exchange for their holdings of beneficial interest in the Notes only in the limited circumstances set forth in "*Book Entry, Delivery, and Form — Issuance of Definitive Registered Notes*." Title to the Definitive Registered Notes will pass upon registration of transfer in accordance with the provisions of the Indenture. In no event will definitive Notes in bearer form be issued. Ownership of registered Notes shall be established by an entry in the noteholders' register maintained under each Indenture.

### **Payment of the Notes**

Principal of, premium, if any, interest and Additional Amounts, if any, on the Notes will be payable at the office of the Paying Agent and the Notes may be exchanged or transferred at the corporate trust office or agency of the Trustee. Payment of principal of, premium, if any, interest and Additional Amounts, if any, on Notes in global form registered in the name of or held by the common depositary or its nominee will be made in immediately available funds to the common depositary or its nominee, as the case may be, as the registered holder of the Global Notes; *provided* that at the option of the Issuer, payment of interest on the Notes may be made by check mailed to the holders of such Notes as such addresses appear in the applicable Note register. Upon the issuance of Definitive Registered Notes, holders of the Notes will be able to receive principal and interest on the Notes at the office of the applicable Paying and Transfer Agent, subject to the right of the Issuer to mail payments in accordance with the terms of the Indenture. The Issuer will pay interest on the Notes to Persons who are registered holders at the close of business on the record date immediately preceding the interest payment date for such interest. Such holders must surrender the Notes to the Paying Agent to collect principal payments.

### **Paying Agent and Registrar**

Deutsche Bank Aktiengesellschaft will initially act as paying agent and registrar for the Notes (the "**Paying Agent**" or the "**Registrar**"). The Issuer may change the Paying Agent or Registrar for the Notes, and the Issuer may act as Registrar for the Notes.

### **Transfer and Exchange**

A holder of Notes may transfer or exchange Notes in accordance with the Indenture. The Registrar and the Trustee for the Notes may require a holder of a Note, among other things, to furnish appropriate endorsements and transfer documents, and the Issuer may require such holder to pay any taxes and fees required by law or permitted by the Indenture. The Issuer is not required

to transfer or exchange any Note selected for redemption. Also, the Issuer is not required to transfer or exchange any Note for a period of 15 days before a selection of Notes to be redeemed. The registered holder of a Note will be treated as the owner of it for all purposes. No service charge will be made for any registration of transfer or exchange of Notes, but the Issuer may require payment of a sum to cover any transfer tax or other similar governmental charge payable in connection therewith.

### ***Optional Redemption***

The Issuer may redeem all or, from time to time, a part of the Notes, at its option, at redemption prices equal to 100% of the principal amount of such Notes being redeemed plus accrued interest, if any, to the redemption date, plus the excess of:

- as determined by the calculation agent (which shall initially be the Trustee), the sum of the present values of the remaining scheduled payments of principal and interest on the Notes being redeemed not including any portion of such payment of interest accrued on the date of redemption, from the redemption date to the maturity date, discounted to the redemption date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Bund Rate plus 50 basis points; over
- 100% of the principal amount of the Notes being redeemed.

If the optional redemption date is on or after an interest date and on or before the related interest payment date, the accrued and unpaid interest, if any, will be paid to the Person in whose name the Note is registered at the close of business on such record date, and no additional interest will be payable to beneficial holders whose Notes will be subject to redemption by the Issuer .

In the case of any partial redemption, the Trustee will select the Notes due for redemption in compliance with the requirements of the principal securities exchange, if any, on which the Notes are listed or, if the Notes are not listed, then on a pro rata basis, by lot or by such other method as the Trustee in its sole discretion will deem to be fair and appropriate, although no Note of €1,000 in original principal amount or less, will be redeemed in part. If any Note is to be redeemed in part only, the notice redemption relating to that Note will state the portion of the principal amount thereof to be redeemed. A new Note in principal amount equal to the unredeemed portion thereof will be issued and delivered to the Trustee, or in the case of Definitive Registered Notes, issued in the name of the holder thereof upon cancellation of the original Note.

### ***Redemption for Changes in Withholding Taxes***

The Issuer is entitled to redeem the Notes, at its option, in whole but not in part, upon not less than 30 nor more than 60 days' notice, at 100% of the principal amount of the Notes, plus accrued and unpaid interest (if any) to the date of redemption (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date), in the event the Issuer has become or would become obligated to pay, on the next date on which any amount would be payable with respect to the Notes, any additional amounts as a result of:

- (a) any change in or amendment to the laws, treaties or regulations of any Relevant Taxing Jurisdiction (as defined below); or
- (b) any change in or amendment to any official position regarding the application, administration or interpretation of such laws, treaties, regulations or rulings (including by virtue of a holding, judgment or order by a court of competent jurisdiction);

which change or amendment to such laws, treaties, regulations or official position is announced and becomes effective on or after the date of issuance of the Notes (or, if the applicable Relevant Taxing Jurisdiction did not become a Relevant Taxing Jurisdiction until a later date, after such later date); *provided* that the Issuer determines, in its reasonable judgment, that the obligation to pay such additional amounts cannot be avoided by the use of reasonable measures available to it; *provided*,

further, that at the time such notice is given, such obligation to pay Additional Amounts (as defined below) remains in effect.

Notice of any such redemption must be given within 270 days of the earlier of the announcement or effectiveness of any such change.

### **Additional Amounts**

All payments made under or with respect to the Notes under the Indenture or pursuant to any Note Guarantee must be made free and clear of and without withholding or deduction for or on account of any present or future tax, duty, levy, impost, assessment or other governmental charge (including penalties, interest and other liabilities related thereto) imposed or levied by or on behalf of (1) the United States, Germany, Luxembourg, the Netherlands, the United Kingdom or any political subdivision or governmental authority thereof or therein having the power to tax, (2) any jurisdiction from or through which payment on the Notes or any Note Guarantee is made, or any political subdivision or governmental authority thereof or therein having the power to tax or (3) any other jurisdiction in which the payor is organized or otherwise considered to be resident or doing business for tax purposes, or any political subdivision or governmental authority thereof or therein having the power to tax (each a **"Relevant Taxing Jurisdiction"**), collectively, **"Taxes"**, unless the Issuer, Guarantor or other applicable withholding agent is required to withhold or deduct Taxes by law or by the interpretation or administration thereof by the relevant government authority or agency. If the Issuer, any Guarantor or other applicable withholding agent is so required to withhold or deduct any amount for or on account of Taxes from any payment made under or with respect to the Notes or any Note Guarantee, the Issuer or such Guarantor, as the case may be, will be required to pay such amount — **"Additional Amounts"** — as may be necessary so that the net amount received by each holder after such withholding or deduction (including any withholding or deduction on such Additional Amounts) will not be less than the amount such holder would have received if such Taxes had not been withheld or deducted; *provided, however*, that no Additional Amounts will be payable for or on account of:

- (a) any Taxes that would not have been so imposed but for the existence of any present or former connection between such holder (or between a fiduciary, settlor, beneficiary, member or shareholder of, or a person having a power over, such holder) and any Relevant Taxing Jurisdiction including, without limitation, such holder (or such fiduciary, settlor, beneficiary, member, shareholder or person having such a power) being or having been a citizen or resident or treated as a resident of, being or having been engaged in a trade or business in, or having or having had a permanent establishment in, a Relevant Taxing Jurisdiction other than any connections arising solely from a holder acquiring, holding or disposing of, receiving any payment under or with respect to or enforcing a Note or any Note Guarantee;
- (b) any Taxes that would not have been so imposed but for the presentation by the holder of such Note for payment on a date more than 30 days after the date on which such payment became due and payable or the date on which payment thereof is duly provided for, whichever occurs later;
- (c) any estate, inheritance, gift, sales, transfer, personal property, wealth or any similar Taxes;
- (d) any Taxes that are payable otherwise than by withholding from payments under or with respect to the Notes or any Note Guarantee;
- (e) any Taxes that would not have been imposed but for the failure to comply with certification, information, documentation or other reporting requirements concerning the nationality, residence, identity or connection with a Relevant Taxing Jurisdiction of the holder or beneficial owner of such Note or coupon, if such holder is legally eligible to comply with such requirement and such compliance is required by statute or by regulation or pursuant to an applicable tax treaty as a precondition to relief or exemption from such Taxes, assessment or other governmental charge (including, without limitation, providing prior to the receipt of any payment under or with respect to a Note a complete, correct

and executed IRS Form W-8 or W-9 or successor form, as applicable, with all appropriate attachments);

- (f) any Taxes that are payable by a holder that is not the beneficial owner of such Note but only to the extent that a beneficial owner would not have been entitled to the payment of any additional amounts had the beneficial owner owned such Note directly;
- (g) any withholding or deduction that is imposed on a payment pursuant to (i) European Council Directive 2003/48/EC or any other Directive implementing the conclusions of the ECOFIN Council meeting of November 26-27, 2000 on the taxation of savings or any law implementing or complying with, or introduced in order to conform to, such Directive, (ii) section 1471 – 1474 of the United States Internal Revenue Code of 1986, as amended; or
- (h) any combination of items (a) through (g) above.

The Issuer or applicable Guarantor, if it is the applicable withholding agent, will make any required withholding or deduction and remit the full amount deducted or withheld to the relevant authority as and when required in accordance with applicable law. The Issuer will furnish to the Trustee, within 30 days after the date the payment of any Taxes is due under applicable law, certified copies of tax receipts evidencing such payment by the Issuer or any Guarantor.

Wherever in the Indenture or the Notes or any Note Guarantee there are mentioned, in any context, (1) the payment of principal, (2) purchase prices in connection with a purchase of Notes under the Indenture or the Notes, (3) interest or (4) any other amount payable under or with respect to any of the Notes, such reference shall be deemed to include payment of Additional Amounts as described under this heading to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof.

The Issuer will pay any present stamp, court or documentary taxes, or any other excise, property or similar taxes, charges or levies (including any penalties, interest or other liabilities related thereto) which arise in The Netherlands (or any political subdivision thereof or therein having the power to tax) from the execution, delivery and registration of Notes upon original issuance and initial resale of the Notes or any other document or instrument referred to therein. If at any time the Issuer changes its place of organization to outside of The Netherlands or there is a new issuer organized outside of The Netherlands, the Issuer or new issuer, as applicable, will pay any stamp, court or documentary taxes, or any other excise, property or similar taxes, charges or levies (including any penalties, interest or other liabilities related thereto) which arise in the jurisdiction in which the Issuer or new issuer is organized (or any political subdivision thereof or therein having the power to tax) and are payable by the holders of the Notes in respect of the Notes or any Note Guarantee or any other document or instrument referred to therein under any law, rule or regulation in effect at the time of such change, or in connection with, the enforcement of the Notes or any Note Guarantee or any such other document or instrument.

The foregoing obligations in this section will survive any termination, defeasance or discharge of the Indenture. References in this section (“— *Additional Amounts*”) to the Issuer or any Guarantor shall apply to any successor(s) thereto.

### ***Change of Control***

Each holder of the Notes, upon the occurrence of a Change of Control Triggering Event, will have the right to require that the Issuer repurchase such holder’s Notes, at a purchase price in cash equal to 101% of the principal amount thereof plus accrued and unpaid interest, if any, to the date of purchase (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date).

Within 30 days following a Change of Control Triggering Event, the Issuer will mail a notice to each holder with a copy to the Trustee stating:

- (a) that a Change of Control Triggering Event has occurred and that such holder has the right to require the Issuer to purchase such holder's Notes, at a purchase price in cash equal to 101% of the principal amount thereof plus accrued and unpaid interest, if any, to the date of purchase (subject to the right of holders of record on the relevant record date to receive interest on the relevant interest payment date);
- (b) the circumstances and relevant facts regarding such Change of Control Triggering Event;
- (c) the repurchase date (which shall be no earlier than 30 days nor later than 60 days from the date such notice is mailed);
- (d) that each Note will be subject to repurchase only in integral multiples of €1,000; and
- (e) the instructions determined by the Issuer, consistent with the covenant described hereunder, that a holder must follow in order to have its Notes purchased.

The Issuer will comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Notes pursuant to this covenant. To the extent that the provisions of any securities laws or regulations or applicable listing requirements conflict with the provisions of this covenant, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this covenant by virtue thereof.

The Change of Control Triggering Event repurchase feature is a result of negotiations between the Company and the Initial Purchasers. We have no present intention to engage in a transaction involving a Change of Control, although it is possible that we would decide to do so in the future. Subject to the limitations discussed below, we could, in the future, enter into certain transactions, including acquisitions, refinancings or other recapitalizations, that would not constitute a Change of Control under the Indenture, but that could increase the amount of Indebtedness outstanding at such time or otherwise affect our capital structure or credit ratings. Restrictions on our ability to Incur additional Indebtedness are contained in the covenant described under "*Certain Covenants — Limitation on Incurrence of Indebtedness*". These restrictions can only be waived with the consent of the holders of a majority in principal amount of the Notes then outstanding under the Indenture. Except for the limitations contained in such covenant (for so long as such covenant is effective), the Indenture will not contain any covenants or provisions that may afford holders of the Notes protection in the event of a highly leveraged transaction.

The Issuer's ability to repurchase Notes upon a Change of Control Triggering Event may be limited by a number of factors. The occurrence of certain events that constitute a Change of Control would constitute a default under the Senior Credit Agreement and could constitute a default under certain other Indebtedness of the Company or its Subsidiaries which, in the event of a Change of Control, could make it difficult for the Issuer to repurchase the Notes. Our future indebtedness may contain prohibitions on the occurrence of certain events that would constitute a Change of Control Triggering Event or require such indebtedness to be repurchased upon a Change of Control Triggering Event. Moreover, the exercise by the holders of their right to require the Issuer to repurchase the Notes could cause a default under such Indebtedness, even if the Change of Control Triggering Event itself does not, due to the financial effect of such repurchase on us. Finally, the Issuer's ability to pay cash to the holders of Notes following the occurrence of a Change of Control Triggering Event may be limited by our then existing financial resources. We cannot assure you that sufficient funds will be available when necessary to make any required repurchases. The provisions under the Indenture relating to the Issuer's obligation to make an offer to repurchase Notes as a result of a Change of Control Triggering Event may be waived or modified with the written consent of the holders of a majority in principal amount of the Notes issued under the Indenture.



### **Certain Covenants**

For purposes of the Indenture, FMC AG & Co. KGaA and its Subsidiaries are not treated as Subsidiaries of the Company. As a result, these covenants will not apply to FMC AG & Co. KGaA and its Subsidiaries and the term "Subsidiary" in these covenants, the events of default and the related definitions do not include FMC AG & Co. KGaA and its Subsidiaries. However, it will be an event of default under the Indenture if, at any time that FMC AG & Co. KGaA is a Subsidiary of the Company (other than during such time that the Notes have achieved and continue to maintain Investment Grade Status), the principal amount of any Indebtedness of FMC AG & Co. KGaA or its Subsidiaries that has been accelerated or not paid at maturity exceeds €300 million and such acceleration has not been rescinded or principal amount paid for 60 days.

### **Limitation on Incurrence of Indebtedness**

- (a) The Company shall not, and shall not permit any of its Subsidiaries to, Incur, directly or indirectly, any Indebtedness; provided, however, that the Company and any Subsidiary may Incur Indebtedness (including Acquired Indebtedness) if on the date thereof:
  - (1) the Consolidated Coverage Ratio of the Company is at least 2.0 to 1.0; and
  - (2) no Default or Event of Default will have occurred and be continuing or would occur as a consequence of Incurring the Indebtedness.
- (b) The foregoing limitations contained in paragraph (a) do not apply to the Incurrence of any of the following Indebtedness:
  - (1) Indebtedness incurred pursuant to the Senior Credit Agreement and the guarantees thereof in an aggregate amount not to exceed US\$3,050 million principal amount at any time outstanding;
  - (2) Indebtedness Incurred to fund working capital requirements and other general corporate purposes under bank agreements, commercial paper programs or other agreements, facilities or programs, outstanding from time to time in an aggregate amount of €750 million;
  - (3) Indebtedness of the Company owed to and held by a Subsidiary or Indebtedness of a Subsidiary owing to and held by the Company; *provided, however*, that any subsequent issuance or transfer of any Capital Stock that results in any such Indebtedness being held by a Person other than the Company or another Subsidiary or any subsequent transfer of such Indebtedness (other than to the Company or another Subsidiary) shall be deemed, in each case, to constitute the Incurrence of such Indebtedness by the Company or the Subsidiary, as the case may be;
  - (4) Indebtedness in respect of the Notes issued on the Issue Date, and the related Note Guarantees by the Company and the Subsidiary Guarantors;
  - (5) Capital Lease Obligations and Indebtedness Incurred, in each case, to provide all or a portion of the purchase price or cost of construction of an asset or, in the case of a Sale and Leaseback transaction to finance the value of such asset owned by the Company or a Subsidiary,
  - (6) Indebtedness (other than Indebtedness described in clause (1)) outstanding on the Issue Date after giving effect to the application of proceeds from the Notes;
  - (7) Refinancing Indebtedness in respect of Indebtedness Incurred pursuant to paragraph (a) or pursuant to clause (4) or (6) of this paragraph (b);
  - (8) Hedging Obligations entered into in the ordinary course of the business and not for speculative purposes as determined in good faith by the Company;
  - (9) customer deposits and advance payments received from customers for goods purchased in the ordinary course of business;

- (10) Indebtedness of the Company owed to FMC AG & Co. KGaA or the Subsidiaries of FMC AG & Co. KGaA;
  - (11) Indebtedness arising under the Cash Management Arrangements; and
  - (12) Indebtedness Incurred by the Company or a Subsidiary of the Company in an aggregate principal amount which, together with all other Indebtedness of the Company and its Subsidiaries outstanding on the date of such Incurrence (other than Indebtedness permitted by paragraph (a) or clauses (1) through (11) of this paragraph (b)), does not exceed €750 million.
- (c) For purposes of determining compliance with the foregoing covenant:
- (1) in the event that an item of Indebtedness meets the criteria of more than one of the types of Indebtedness described above, the Company, in its sole discretion, will classify and from time to time may reclassify such item of Indebtedness and only be required to include the amount and type of such Indebtedness in one of the above clauses;
  - (2) an item of Indebtedness may be divided and classified, or reclassified, in more than one of the types of Indebtedness described above; and
  - (3) in the event Indebtedness relates to Guarantees of Indebtedness otherwise permitted by this covenant by Kabi or ProServe (or any Subsidiary that is required to guarantee the Issuer's obligations under the Notes pursuant to the terms of the Indenture), such Guarantees shall not be treated as an additional Incurrence of Indebtedness, *provided* that the respective Note Guarantees of such Guarantors remain in full force and effect.
- (d) If during any period the Notes have achieved and continue to maintain Investment Grade Status and no Event of Default has occurred and is continuing (such period is referred to herein as an "Investment Grade Status Period"), then upon notice by the Company to the Trustee by the delivery of an Officers' Certificate that it has achieved Investment Grade Status, this covenant and clause (5) of "*— Events of Default*" will be suspended and will not during such period be applicable to the Company and its Subsidiaries and shall only be applicable if such Investment Grade Status Period ends.

As a result, during any such period, the Notes will lose the protection initially provided under this covenant and clause (5) of "*— Event of Default*". No action taken during an Investment Grade Status Period or prior to an Investment Grade Status Period in compliance with this covenant will require reversal or constitute a default under the Notes in the event that this covenant is subsequently reinstated or suspended, as the case may be. An Investment Grade Status Period will not commence until the Company has delivered the Officers' Certificate referred to above and will terminate immediately upon the failure of the Notes to maintain Investment Grade Status or an Event of Default.

### **Limitation on Liens**

The Company will not, and will not permit any of its Subsidiaries to directly, or indirectly, create, incur or suffer to exist any Lien (other than Permitted Liens) upon any of its property or assets (including Capital Stock), whether owned on the date of the Indenture or acquired after that date, securing any Indebtedness, unless contemporaneously with (or prior to) the Incurrences of the Liens effective provision is made to secure the Indebtedness due under the Indenture and the Notes, equally and ratably with (or prior to in the case of Liens with respect to Subordinated Obligations) the Indebtedness secured by such Lien for so long as such Indebtedness is so secured.

### **Limitation on Mergers and Sales of Assets**

The Issuer and the Company may not, and may not permit any Guarantor to, consolidate or merge with or into (whether or not the Issuer or such Guarantor is the Surviving Person), or sell,

assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties and assets in one or more related transactions, to another Person unless:

- (1) the Surviving Person is an entity organized and existing under the laws of Germany, the United Kingdom, any other member state of the European Union (as of December 31, 2003), Luxembourg, Switzerland, the United States of America, or any State thereof or the District of Columbia, or the jurisdiction of formation of the Issuer or any Guarantor; or, if the Surviving Person is an entity organized and existing under the laws of any other jurisdiction, the Issuer delivers to the Trustee an Opinion of Counsel to the effect that the rights of the holders of the Notes, would not be affected adversely as a result of the law of the jurisdiction of organization of the Surviving Person, insofar as such law affects the ability of the Surviving Person to pay and perform its obligations and undertakings in connection with the Notes (in a transaction involving the Issuer) or its Note Guarantee or the ability of the Surviving Person to obligate itself to pay and perform such obligations and undertakings or the ability of the holders to enforce such obligations and undertakings;
- (2) the Surviving Person (if other than the Issuer or a Guarantor) shall expressly assume, (A) in a transaction or series of transactions involving the Issuer, by a supplemental indenture in a form satisfactory to the Trustee, all of the obligations of the Issuer under the Indenture, or (B) in a transaction or series of transactions not involving the Issuer, by a Guarantee Agreement, in a form satisfactory to the Trustee, all of the obligations of such Guarantor under its Note Guarantee;
- (3) at the time of and immediately after such transaction, no Default or Event of Default shall have occurred and be continuing; and
- (4) the Issuer or such Guarantor delivers to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, transfer, assignment, sale, lease or other disposition and such supplemental indenture and Guarantee Agreement, if any, comply with the Indenture.

#### **Limitation on Sale and Leaseback Transactions**

The Issuer and the Company may not, and may not permit any Guarantor or any Subsidiary to, enter into any Sale and Leaseback Transaction unless:

- (1) the Issuer or such Guarantor or Subsidiary, as the case may be, receives consideration at the time of such Sale and Leaseback Transaction at least equal to the fair market value (as evidenced by an Officers' Certificate of a Responsible Officer, or, if the value exceeds €50 million, a resolution of the Board of Directors of the Issuer or such Guarantor or Subsidiary), of the property subject to such transaction;
- (2) the Issuer or such Guarantor or Subsidiary, as the case may be, could have created a Lien on the property subject to such Sale and Leaseback Transaction if such transaction was financed with Indebtedness without securing the Notes by the covenant described under "*— Limitation on Liens*"; and
- (3) the Issuer or such Guarantor or Subsidiary, as the case may be, can Incur an amount of Indebtedness equal to the Attributable Debt in respect of such Sale and Leaseback Transaction.

#### **Additional Subsidiary Note Guarantees**

To the extent not prohibited by applicable law and for only so long as any of the 2013 Notes, 2015 Notes or 2016 Notes are outstanding, if any Subsidiary Guarantor transfers or causes to be

transferred, in one transaction or a series of related transactions, any property to any Subsidiary of the Company that is not a Subsidiary Guarantor, then such transferee Subsidiary shall:

- (1) execute and deliver to the Trustee a supplemental indenture in form reasonably acceptable to the Trustee pursuant to which such Subsidiary shall unconditionally guarantee all of the Issuer's obligations under the Notes and the Indenture on the terms set forth in the Indenture; and
- (2) deliver to the Trustee an Opinion of Counsel that such supplemental indenture has been duly authorized, executed and delivered by such Subsidiary and constitutes a legal, valid, binding and enforceable obligation of such Subsidiary. Thereafter, such Subsidiary shall be a Guarantor for all purposes of the Indenture.

Notwithstanding the foregoing, any Subsidiary Guarantor may transfer (or cause to be transferred) in one transaction or a series of related transactions property representing in aggregate not more than 5% of its EBITDA as reflected on its financial statements.

So long as the Notes are listed on the Official List of the Luxembourg Stock Exchange and the rules of such exchange still require, notice of any additional Subsidiary becoming a Subsidiary Guarantor will be provided to the Luxembourg Stock Exchange for publication on its website ([www.bourse.lu](http://www.bourse.lu)), and the Issuer will prepare a supplement in relation to such Subsidiary Guarantor for the Luxembourg Stock Exchange.

## Reports

For so long as any Notes are outstanding, the Company will provide the Trustee (in physical or electronic form, as the Company and the Trustee may agree) with:

- (1) its consolidated annual financial statements and related notes thereto for the most recent two fiscal years prepared in accordance with U.S. GAAP (or IFRS, with appropriate reconciliation to U.S. GAAP, in the event the Company is required by applicable law to prepare its financial statements in accordance with IFRS) and including segment data, together with an audit report thereon, together with a discussion of the "Results of Operations and Liquidity" for such fiscal years prepared in a manner substantially consistent with the "Management's Discussion and Analysis of Financial Conditions and Results of Operations" appearing herein and a "Summary of the Fiscal Year" and a discussion of "Business Segments" provided in a manner consistent with its annual report, a description of "Related Party Transactions" and a description of Indebtedness, within 90 days of the end of each fiscal year; and
- (2) consolidated quarterly financial information as of and for the period from the beginning of each year to the close of each quarterly period (other than the fourth quarter), together with comparable information for the corresponding period of the preceding year, and a summary "Management's Discussion and Analysis of Financial Conditions and Results of Operations" providing a brief discussion of the results of operations for the period within 45 days following the end of the fiscal quarter.

Contemporaneously with the provision of each report discussed above, the Company will also file a press release with the appropriate internationally recognized wire services with respect to such report and (i) post copies of such reports on such website as may be then maintained by the Company or (ii) otherwise provide substantially comparable public availability of such reports.

In addition, so long as the Notes remain outstanding and during any period when the Issuer or the Company is not subject to Section 13 or 15(d) of the U.S. Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), nor exempt therefrom pursuant to Rule 12g3-2(b) under the Exchange Act, the Company will furnish to any holder or beneficial owner of Notes initially offered and sold in the United States to "qualified institutional buyers" as defined in Rule 144A under the U.S. Securities Act of 1933, as amended (the "**Securities Act**"), pursuant to such rule and any prospective purchaser in the United States designated by such holder or beneficial owner, upon

request, any information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

### ***Ownership of the Issuer***

The Indenture provides that the Company will continue to directly or indirectly maintain 100% ownership of the Capital Stock of the Issuer or any permitted successor of the Issuer, *provided* that any permitted successor of the Company under the Indenture may succeed to the Company's ownership of such Capital Stock.

The Company will cause the Issuer or its successor to engage in those activities that are necessary, convenient or incidental to (i) issuing and selling the Notes and any additional Indebtedness permitted by the Indenture, and advancing or distributing the proceeds thereof to the Company and its Subsidiaries and performing its obligations relating to the Notes and any such additional Indebtedness, pursuant to the terms thereof and of the Indenture and any other applicable indenture, and/or (ii) engaging in intercompany financing transactions with the Company or any of its Subsidiaries, which transactions would include the acquisition, disposition or other receipt or transfer of financial instruments to or from the Company or any of its Subsidiaries in accordance with the Indenture.

### ***Substitution of the Issuer***

The Company, any other Guarantor or a Finance Subsidiary (a "Successor") may assume the obligations of the Issuer under the Notes by executing and delivering to the Trustee (a) a supplemental indenture which subjects such Person to all of the provisions of the Indenture and (b) an opinion of counsel to the effect that such supplemental indenture has been duly authorized and executed by such Person, and constitutes the legal, valid, binding and enforceable obligation of such Person, subject to customary exceptions; *provided that* (i) the Successor is formed under the laws of the United States of America, or any State thereof or the District of Columbia, Germany, the Netherlands, the United Kingdom or any other member state of the European Union (as of December 31, 2003) and (ii) no Additional Amounts would be or become payable with respect to the Notes at the time of such assumption, or as a result of any change in the laws of the jurisdiction of formation of such Successor that was reasonably foreseeable at such time. The Successor shall succeed to, and be substituted for, and may exercise every right and power of, the Issuer under the Indenture with the same effect as if it were the Issuer thereunder, and the former Issuer shall be discharged from all obligations and covenants under the Indenture and Notes.

### ***Events of Default***

The Indenture provides that any one or more of the following described events, which has occurred and is continuing, constitutes an "Event of Default" with respect to the Notes:

- (1) failure for 30 days to pay interest on the Notes, including any Additional Amounts in respect thereof, when due; or
- (2) failure to pay principal of or premium, if any, on the Notes when due, whether at maturity, upon redemption, by declaration or otherwise; or
- (3) failure to observe or perform any other covenant contained in the Indenture for 60 days after notice as provided in the Indenture; or
- (4) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed by us or any of our Subsidiaries (or the payment of which is guaranteed by the Company), whether such Indebtedness or Guarantee now exists or is Incurred after the Issue Date, if (A) such default results in the acceleration of such Indebtedness prior to its express maturity or will constitute a default in the payment of such Indebtedness and (B) the principal amount of any such Indebtedness that has been accelerated or not paid at

maturity, when added to the aggregate principal amount of all other such Indebtedness, at such time, that has been accelerated or not paid at maturity, exceeds €75 million; or

- (5) at any time that FMC AG & Co. KGaA is a Subsidiary of the Company, the principal amount of any Indebtedness of FMC AG & Co. KGaA or its Subsidiaries in an amount in excess of €300 million shall have been accelerated or not paid at maturity and such acceleration shall not have been rescinded or any such amount due (whether by acceleration or at maturity) shall have remained unpaid for at least 60 days from the date of such acceleration or maturity; or
- (6) any final judgment or judgments (not covered by insurance) which can no longer be appealed for the payment of money in excess of €75 million shall be rendered against the Company or any of its Subsidiaries and shall not be discharged for any period of 60 consecutive days during which a stay of enforcement shall not be in effect; or
- (7) any Note Guarantee shall cease to be in full force and effect in accordance with its terms for any reason except pursuant to the terms of the Indenture governing the release of Note Guarantees or the satisfaction in full of all the obligations thereunder or shall be declared invalid or unenforceable other than as contemplated by its terms, or any Guarantor shall repudiate, deny or disaffirm any of its obligations thereunder or under the Indenture; or
- (8) certain events in bankruptcy, insolvency or reorganization of the Company, the Issuer or any of the Company's Significant Subsidiaries.

A default under clause (3) of this paragraph will not constitute an Event of Default under the Indenture unless the Trustee or holders of 25% in principal amount of the outstanding Notes under the Indenture notify the Issuer and the Company of such default and such default is not cured within the time specified in clause (3). During any period of time the Notes shall have Investment Grade Status, the occurrence or continuation of an event described under clause (5) above shall not constitute an Event of Default with respect to the Notes.

The Trustee or the holders of not less than 25% in aggregate outstanding principal amount of the Notes may declare the principal of and interest (including any Additional Amounts) on the Notes due and payable immediately on the occurrence of an Event of Default under the Indenture; *provided, however,* that, after such acceleration, the holders of a majority in aggregate principal amount of the outstanding Notes may, under certain circumstances, rescind and annul such acceleration if the rescission would not conflict with any judgment or decree of a court of competent jurisdiction and all Events of Default under the Indenture, other than the nonpayment of accelerated principal, have been cured or waived as provided under the Indenture.

Subject to the provisions of the Indenture relating to the duties of the Trustee, in case an Event of Default shall occur and be continuing, the Trustee will be under no obligation to exercise any of its rights or powers under the Indenture at the request or direction of any holders of Notes issued thereunder unless such holders shall have agreed in writing to fully indemnify the Trustee. Subject to the provisions for the indemnification of the Trustee, the holders of a majority in aggregate principal amount of the Notes issued thereunder, then outstanding, will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee.

No holder of any Note will have any right to institute any proceeding with respect to the Indenture or for any remedy thereunder, unless written notice of a continuing Event of Default shall have previously been given in accordance with the terms of the Indenture and full indemnity shall have been offered, to the Trustee to institute such proceeding as Trustee, and the Trustee will not have received from the holders of a majority in aggregate principal amount of the outstanding Notes issued thereunder a direction inconsistent with such request and shall have failed to institute such proceeding within 60 days. However, such limitations do not apply to a suit instituted by a holder of a Note for enforcement of payment of the principal of and premium, if any, or interest on such Note on or after the respective due dates expressed in such Note.



The holders of a majority in aggregate outstanding principal amount of the Notes may, on behalf of the holders of all the Notes, waive any existing default, except a default in the payment of principal, premium, if any, or interest or a default in respect of a covenant or provision that cannot be modified or amended without consent of the holder of each Note affected. The Issuer is required to file annually with the Trustee a certificate as to whether or not the Issuer is in compliance with all the conditions and covenants under the Indenture.

### **Amendments and Waivers**

Subject to certain exceptions, the Indenture may be amended or supplemented with the consent of the holders of a majority in principal amount of the Notes then outstanding (including without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for Notes) and, subject to certain exceptions, any existing default or compliance with any provisions may be waived with the consent of the holders of a majority in principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for Notes).

However, without the consent of each holder of an outstanding Note affected, an amendment may not (with respect to any Notes held by a non-consenting holder), among other things:

- (1) reduce the percentage of principal amount of Notes whose holders must consent to an amendment;
- (2) reduce the stated rate of or extend the stated time for payment of interest on any Note;
- (3) reduce the principal of or extend the Stated Maturity of any Note;
- (4) change the time at which any Note may be redeemed as described above under "*— Optional Redemption*";
- (5) reduce the premium payable upon the repurchase of any Note, change the time at which any Note may be repurchased or change any of the associated definitions related to the provisions of "*Change of Control*" once the obligation to repurchase the Notes has arisen;
- (6) make any Note payable in money other than that stated in the Note;
- (7) impair the right of any holder to receive payment of premium, if any, principal of and interest on such holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such holder's Notes; or
- (8) make any change in the amendment provisions which require each holder's consent or in the waiver provisions.

Without the consent of any holder, the Issuer and the Trustee may amend the Indenture to:

- (1) cure any ambiguity, omission, defect or inconsistency;
- (2) provide for the assumption by an entity of the obligations of the Issuer under the Indenture or of a Guarantor (other than the Company) under the Note Guarantees;
- (3) provide for uncertificated Notes in addition to or in place of certificated Notes;
- (4) add Note Guarantees with respect to the Notes;
- (5) secure the Notes;
- (6) add to the covenants of the Issuer and the Guarantors for the benefit of the holders or surrender any right or power conferred upon the Issuer;
- (7) provide for the issuance of Additional Notes in accordance with the Indenture;
- (8) make any change that does not adversely affect the rights of any holder;
- (9) evidence and provide for the acceptance and appointment under the Indenture by any successor Trustee;

- (10) conform the text of the Indenture, the Notes or the Note Guarantees to any provision of this "*Description of the Notes*" to the extent such provision in this "*Description of the Notes*" was intended to be a verbatim recitation of a provision of the Indenture, the Notes or the Note Guarantees; or
- (11) comply with the rules of any applicable securities depository.

The consent of the holders is not necessary under the Indenture to approve the particular form of any proposed amendment to, or waiver of, the Indenture. It is sufficient if such consent approves the substance of the proposed amendment or waiver. After an amendment, supplement or waiver under the Indenture becomes effective, the Issuer is required to mail to the holders a notice briefly describing such amendment, supplement or waiver. However, the failure to give such notice to all the holders, or any defect in the notice, will not impair or affect the validity of the amendment, supplement or waiver.

### ***Defeasance***

The Issuer at any time may terminate all its obligations under the Notes and the Indenture ("*legal defeasance*"), except for certain obligations, including those respecting the defeasance trust and obligations to register the transfer or exchange of the Notes, to replace mutilated, destroyed, lost or stolen Notes and to maintain a registrar and paying agent in respect of the relevant Notes.

The Issuer at any time may terminate its obligations under covenants described under "*Certain Covenants*" (other than "*— Limitation on Mergers and Sales of Assets*"), the operation of the cross-default upon a payment default, cross-acceleration provisions, the bankruptcy provisions with respect to Subsidiaries, the judgment default provision described under "*Events of Default*" above and the limitations contained in clause (4) under "*Certain Covenants — Limitation on Mergers and Sales of Assets*" above ("*covenant defeasance*").

The Issuer may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option. If the Issuer exercises its legal defeasance option, payment of the Notes may not be accelerated because of an Event of Default with respect to the Notes. If the Issuer exercises its covenant defeasance option, payment of the Notes may not be accelerated because of an Event of Default specified in clause (3), (4), (5) or (6) (with respect only to Subsidiaries other than the Issuer) under "*— Events of Default*" above or because of the failure of the Issuer to comply with clause (4) under "*— Certain Covenants — Limitation on Mergers and Sales of Assets*" above.

In order to exercise either defeasance option, the Issuer must irrevocably deposit in trust (the "*defeasance trust*") with the Trustee for the benefit of the holders euro or euro-denominated Designated Government Obligations for the payment of principal, premium, if any, and interest on the Notes to redemption or maturity, as the case may be, and must comply with certain other conditions, including delivery to the relevant Trustee of

- (1) an Opinion of Counsel (subject to customary exceptions and exclusions) to the effect that holders of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such deposit and defeasance and will be subject to U.S. federal income tax on the same amount and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred. In the case of legal defeasance only, such Opinion of Counsel must be based on a ruling of the Internal Revenue Service or other change in applicable U.S. federal income tax law; and
- (2) an Opinion of Counsel in the Federal Republic of Germany (subject to customary exceptions and exclusions) to the effect that holders of the Notes will not recognize income, gain or loss for income tax purposes of the Federal Republic of Germany as a result of such deposit and defeasance and will be subject to income tax in the Federal Republic of Germany on the same amount and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred.

### ***No Personal Liability of Directors, Officers, Employees and Stockholders***

No member of the Board of Directors, director, officer, employee, incorporator or stockholder of the Issuer, the Company, the General Partner of the Company, or the other Guarantors, as such, shall have any liability for any obligations of the Issuer or any Guarantor under the Notes, the Indenture or the Note Guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each holder by accepting a Note waives and releases all such liability and agrees not to enforce any claim in respect of the Notes, the Indenture or the Note Guarantees to the extent it would give rise to such personal liability. The waiver and release are part of the consideration for issuance of the Notes and Note Guarantees. Such waiver and release may not be effective to waive liabilities under the U.S. federal securities laws and it is the view of the SEC that such a waiver is against public policy. In addition, such waiver and release may not be effective under the laws of the Federal Republic of Germany.

### ***Consent to Jurisdiction and Service of Process***

The Indenture provides that the Issuer irrevocably agrees to accept notice and service of process in any suit, action or proceeding with respect to the Indenture and the Notes, as the case may be, brought in any federal or state court located in the Borough of Manhattan in the City of New York and that the Issuer submit to the jurisdiction thereof.

### ***Concerning the Trustee***

Deutsche Trustee Company Limited is the Trustee under the Indenture and has been appointed by the Issuer as Registrar (in the case of Definitive Registered Notes) with regard to the Notes. The Trustee's principal office is located at Winchester House, 1 Great Winchester Street, London EC2N 2DB, United Kingdom. An affiliate of the Trustee has been appointed as Paying Agent with regard to the Notes. The Trustee authenticates each Global Note and each Definitive Registered Note and, as Registrar, is responsible for the transfer and registration of Notes exchanged in accordance with the Indenture. Upon the occurrence of an Event of Default as defined under the Indenture, the Trustee must notify the holders of the Notes of such default and thereafter the Trustee may pursue various actions and remedies on behalf of the holders of the Notes as set out in the Indenture and approved by the holders of the Notes. In its capacity as Trustee, the Trustee may sue on its own behalf the holders of the Notes. The Trustee will not be liable for any action it takes or omits to take in good faith which it reasonably believes to be authorized under the Indenture. The Trustee is further entitled to require and rely in good faith on an Officers' Certificate or Opinion of Counsel before taking action. The Trustee is indemnified by the Issuer under the Indenture for any and all losses, damages, claims, proceedings, demands, costs, expenses or liability including taxes incurred by the Trustee without negligence or wilful misconduct on its part in connection with the acceptance of administration of the trust under the Indenture. The Trustee may resign at any time by notifying the Issuer in writing. The Trustee may be removed by the holders of a majority in principal amount of the Notes by notifying the Issuer and the Trustee in writing, and such majority holders may appoint a successor trustee with the Issuer's consent. In addition, the Issuer may remove the Trustee upon certain bankruptcy and similar events relating to the Trustee or if the Trustee becomes incapable of acting with respect to its duties under the Indenture.

### ***Validity of Claims***

The time of validity for a payment of interest, principal, the redemption price or another amount payable under the Indenture is six years from the date on which such payment is due.

### ***Governing Law***

The Indenture and the Notes will be governed by, and construed in accordance with, the laws of the State of New York. The Note Guarantees will be governed by, and construed in accordance with, the laws of the State of New York, except that certain matters concerning the limitations thereof will be construed in accordance with the laws of the Federal Republic of Germany.

## ***Certain Definitions***

In the discussion below, the “Company” refers to Fresenius SE & Co. KGaA. As used in the Indenture:

“*Acquired Indebtedness*” means Indebtedness of a Person existing at the time such Person becomes a Subsidiary or is merged into or consolidated with any other Person or that is assumed in connection with the acquisition of assets from such Person and, in each case, not Incurred by such Person in connection with, or in anticipation or contemplation of, such Person becoming a Subsidiary or such merger, consolidation or acquisition.

“*Affiliate*” of any specified Person means:

- (1) any other Person, directly or indirectly, controlling or controlled by, or
- (2) under direct or indirect common control with such specified Person.

For the purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“*Asset Disposition*” means any direct or indirect sale, issuance, conveyance, transfer, lease (other than operating leases entered into in the ordinary course of business), assignment or other transfer for value by the Company or any of its Subsidiaries (including any Sale and Leaseback Transaction) to any Person other than the Company or a Subsidiary of the Company, including any disposition by means of a merger, consolidation or similar transaction (each referred to for the purposes of this definition as a “disposition”), of:

- (1) any shares of Capital Stock of any Subsidiary (other than directors qualifying shares or shares required by applicable law to be held by a Person other than the Company or a Subsidiary),
- (2) all or substantially all the assets of any division or line of business of the Company or any Subsidiary, or
- (3) any other assets of the Company or any Subsidiary outside of the ordinary course of business of the Company or such Subsidiary,

other than, in the case of (1), (2) and (3) above,

- (a) a disposition of assets or issuance of Capital Stock by a Subsidiary to the Company or by the Company or a Subsidiary to a Person that becomes a Subsidiary at the time of such disposition or issue,
- (b) transactions permitted under “*Certain Covenants — Limitation on Mergers and Sales of Assets*”, and
- (c) dispositions in connection with Permitted Liens, foreclosures on assets and any release of claims which have been written down or written off.

“*Attributable Debt*” means, in respect of any Sale and Leaseback Transaction, as of the time of determination, the total obligation (discounted to present value at the rate per annum equal to the discount rate which would be applicable to a Capital Lease Obligation with the like term in accordance with GAAP) of the lessee for rental payments (other than amounts required to be paid on account of property taxes, maintenance, repairs, insurance, water rates and other items which do not constitute payments for property rights) during the remaining portion of the initial term of the lease included in such Sale and Leaseback Transaction.

*"Average Life"* means, as of the date of determination, with respect to any Indebtedness or Preferred Stock, the quotient obtained by dividing:

- (1) the sum of the products of numbers of years from the date of determination to the dates of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Preferred Stock multiplied by the amount of such payment by
- (2) the sum of all such payments.

*"Board of Directors"* means, with respect to the Issuer, the Company or a Subsidiary, as the case may be, the Board of Directors (or other body performing functions similar to any of those performed by a Board of Directors including those performed, in the case of a German stock corporation, by the Management Board) of such person or any committee thereof duly authorized to act on behalf of such Board (or other body).

*"Bund Rate"* means the yield to maturity at the time of computation of direct obligations of the Federal Republic of Germany (*Bund* or *Bundesanleihen*) with a constant maturity (as officially compiled and published in the most recent financial statistics that have become publicly available at least two Business Days (but not more than five Business Days) prior to the redemption date (or, if such financial statistics are not so published or available, any publicly available source of similar market data selected by the Issuer in good faith)) most nearly equal to the period from the redemption date to April 15, 2019; *provided, however* that if the period from the redemption date to April 15, 2019 is not equal to the constant maturity of the direct obligations of the Federal Republic of Germany for which a weekly average yield is given, the Bund Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of direct obligations of the Federal Republic of Germany for which such yields are given, except that if the period from such redemption date to April 15, 2019 is less than one year, the weekly average yield on actually traded direct obligations of the Federal Republic of Germany adjusted to a constant maturity of one year shall be used.

*"Business Day"* means any day other than:

- (1) a Saturday or Sunday, or
- (2) a day on which banking institutions in Frankfurt am Main or the jurisdiction of organization of the Issuer or of the office of the Paying Agent (other than the Trustee) are authorized or required by law or executive order to remain closed.

*"Capital Lease Obligation"* means an obligation that is required to be classified and accounted for as a capital lease for financial reporting purposes in accordance with GAAP, and the amount of Indebtedness represented by such obligation shall be the capitalized amount of such obligation determined in accordance with GAAP; and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty.

*"Capital Stock"* of any Person means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into such equity.

*"Cash Management Arrangements"* means the cash management arrangements of the Company and its Affiliates (including any Indebtedness arising thereunder) which arrangements are in the ordinary course of business consistent with past practice.

*"Change of Control"* means the occurrence of one or more of the following events:

- (1) so long as the Company is organized as a KGaA, if the General Partner of the Company charged with the management of the Company shall at any time fail to be a Subsidiary of Else Kroner-Fresenius-Stiftung, or if Else Kroner-Fresenius-Stiftung shall fail at any time

to own or control more than 10% of the capital stock with ordinary voting power in the Company;

- (2) if the Company is no longer organized as a KGaA, any event the result of which is that (A) any "person" or "group" (as such terms are used in Section 13(d) and 14(d) of the Exchange Act), other than the Permitted Holder, is or becomes the beneficial owner (as defined in Rule 13d-3 and 13d-5 under the Exchange Act, except that such Person or group shall be deemed to have "beneficial ownership" of all shares that any such Person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 35% of the total voting power of the Voting Stock of the Company, and (B) the Permitted Holder does not "beneficially own" (as defined in Rules 13d-3 and 13d-5 of the Exchange Act), directly or indirectly, in the aggregate a greater percentage of the total voting power of the Voting Stock of the Company;
- (3) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all of the assets of the Company to any Person or group of related Persons for purposes of Section 13(d) of the Exchange Act (a "Group"), together with any Affiliates thereof (whether or not otherwise in compliance with the provisions of the Indenture);
- (4) any event following which the financial results of FMC AG & Co. KGaA are not fully consolidated with the financial results of the Company in accordance with GAAP; or
- (5) the occurrence of a Change of Control Triggering Event (as such term is defined in the respective indentures referred to in the following clause (i), (ii) and (iii)) pursuant to either (i) for only so long as any of the 2015 Notes remain outstanding, the indenture dated as of January 21, 2009 among Fresenius US Finance II, Inc., the Guarantors and The Bank of New York Mellon, as Trustee, (ii) for only so long as any of the 2013 Notes remain outstanding, the indenture dated as of January 20, 2006 with respect to the 5.00% Senior Note Due 2013 among the Issuer, the Guarantors and Deutsche Trustee Company Limited, as Trustee, or (iii) for only so long as any of the 2016 Notes remain outstanding, the indenture dated as of January 20, 2006 with respect to the 5.50% Senior Notes Due 2016 among the Issuer, the Guarantor and Deutsche Trustee Company Limited, as Trustee.

*"Change of Control Triggering Event"* means either (i) the occurrence of either of the events specified in clause (4) or (5) of the definition of Change of Control or (ii) the occurrence of any of the events specified in clause (1), (2), or (3) of the definition of Change of Control and a Ratings Decline.

*"Consolidated Coverage Ratio"* of any Person as of any date of determination means the ratio of (x) the aggregate amount of EBITDA for such Person's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date of such determination to (y) Consolidated Interest Expense for such four fiscal quarters; *provided, however*, that:

- (1) if such Person or any of its Subsidiaries has Incurred or repaid, repurchased, defeased or otherwise discharged (in each case other than Indebtedness under any revolving credit facility unless such Indebtedness has been permanently repaid and any related commitment has been terminated) any Indebtedness since the beginning of such period that remains outstanding or discharged or if the transaction giving rise to the need to calculate the Consolidated Coverage Ratio is an Incurrence or discharge of Indebtedness, or both, EBITDA and Consolidated Interest Expense for such period shall be calculated after giving effect on a pro forma basis to such Indebtedness as if such Indebtedness had been Incurred or discharged on the first day of such period and the Incurrence or discharge of any other Indebtedness as if such Incurrence or discharge had occurred on the first day of such period,



- (2) if since the beginning of such period such Person or any of its Subsidiaries shall have made any Asset Disposition, the EBITDA for such period shall be reduced by an amount equal to the EBITDA (if positive) directly attributable to the assets which are the subject of such Asset Disposition for such period, or increased by an amount equal to the EBITDA (if negative), directly attributable thereto for such period and Consolidated Interest Expense for such period shall be reduced by an amount equal to the Consolidated Interest Expense directly attributable to any Indebtedness of such Person or any of its Subsidiaries repaid, repurchased, defeased or otherwise discharged with respect to such Person and its continuing Subsidiaries in connection with such Asset Disposition for such period (or, if the Capital Stock of any Subsidiary is sold, the Consolidated Interest Expense for such period of credit and directly attributable to the Indebtedness of such Subsidiary to the extent such Person and its continuing Subsidiaries are no longer liable for such Indebtedness after such Asset Disposition),
- (3) if since the beginning of such period such Person or any of its Subsidiaries (by merger or otherwise) shall have made an Investment in any Subsidiary (or any Person which becomes a Subsidiary) or an acquisition of assets, which constitutes all or substantially all of an operating unit of a business, EBITDA and Consolidated Interest Expense for such period shall be calculated after giving pro forma effect thereto (including the Incurrence of any Indebtedness) as if such Investment or acquisition occurred on the first day of such period, and
- (4) if since the beginning of such period any Person (that subsequently became a Subsidiary or was merged with or into such Person or any of its Subsidiaries since the beginning of such period) shall have made any Asset Disposition, any Investment or acquisition of assets that would have required an adjustment pursuant to clause (2) or (3) above if made by such Person or a Subsidiary of such Person during such period, EBITDA and Consolidated Interest Expense for such period shall be calculated after giving pro forma effect thereto as if such Asset Disposition, Investment or acquisition occurred on the first day of such period.

For purposes of this definition (but not, for the avoidance of doubt, for the purpose of any other defined terms used in this definition), whenever pro forma effect is to be given to an acquisition of assets, the amount of income or earnings relating thereto and the amount of Consolidated Interest Expense associated with any Indebtedness Incurred in connection therewith, the pro forma calculations shall be determined in good faith by a responsible financial or accounting officer of the Company, as applicable. If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Interest Rate Agreement applicable to such Indebtedness if such Interest Rate Agreement has a remaining term in excess of 12 months); and, in the case of the Company, Subsidiaries will include FMC AG & Co. KGaA and its Subsidiaries.

*"Consolidated Interest Expense"* means, with respect to any Person for any period, the total interest expense of such Person (the "Relevant Person") and its consolidated Subsidiaries (which, in the case of the Company, will include FMC AG & Co. KGaA and its Subsidiaries), plus, to the extent not included in such total interest expense, and to the extent Incurred by such Relevant Person or its Subsidiaries,

- (1) interest expense attributable to capital leases,
- (2) amortization of debt discount and debt issuance cost,
- (3) capitalized interest,
- (4) non-cash interest expenses,
- (5) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing,

- (6) net costs associated with Hedging Obligations (including amortization of fees),
- (7) Preferred Stock dividends in respect of all Preferred Stock held by Persons other than the Relevant Person or a Subsidiary of the Relevant Person,
- (8) interest Incurred in connection with Investments in discontinued operations,
- (9) interest accruing on any Indebtedness of any other Person to the extent such Indebtedness is Guaranteed by the Relevant Person or any of its Subsidiaries, and
- (10) the cash contributions to any employee stock ownership plan or similar trust to the extent such contributions are used by such plan or trust to pay interest or fees to any Person (other than the Relevant Person) in connection with Indebtedness Incurred by such plan or trust.

Notwithstanding the above, for purposes of calculating Consolidated Interest Expense of the Company and its Subsidiaries, for so long as Consolidated Net Income of the Company does not include the full Consolidated Net Income of FMC AG & Co. KGaA and its Subsidiaries as a result of clause (3) of the definition thereof, the Consolidated Interest Expense of FMC AG & Co. KGaA and its Subsidiaries shall be excluded as well.

*"Consolidated Net Income"* means, with respect to any Person for any period, the net income of such Person (the "Relevant Person") and its consolidated Subsidiaries (which, in the case of the Company, will include FMC AG & Co. KGaA and its Subsidiaries); *provided, however*, that there shall not be included in such Consolidated Net Income:

- (1) any net income of any Person if such Person is not a Subsidiary, except that (A) subject to the exclusion contained in clause (4) below, the Relevant Person's equity in the net income of any such Person for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such period to the Relevant Person or a Subsidiary of the Relevant Person as a dividend or other distribution (subject, in the case of a dividend or other distribution paid to a Subsidiary, to the limitations contained in clause (3) below) and (B) the Relevant Person's equity in a net loss of any such Person for such period shall be included in determining such Consolidated Net Income,
- (2) any net income (or loss) of any Person acquired by the Relevant Person or a Subsidiary in a pooling of interests transaction for any period prior to the date of such acquisition,
- (3) any net income of any Subsidiary of the Relevant Person if such Subsidiary is subject to contractual, governmental or regulatory restrictions, directly or indirectly, on the payment of dividends or the making of distributions by such Subsidiary, directly or indirectly, to the Relevant Person, except that (A) subject to the exclusion contained in clause (4) below, the Relevant Person's equity in the net income of any such Subsidiary for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash actually distributed by such Subsidiary during such period to the Relevant Person or another of its Subsidiaries as a dividend or other distribution (subject, in the case of a dividend or other distribution paid to another Subsidiary, to the limitation contained in this clause) and (B) the Relevant Person's equity in a net loss of any such Subsidiary for such period shall be included in determining such Consolidated Net Income,
- (4) any gain or loss realized upon the sale or other disposition of any assets of the Relevant Person or its consolidated Subsidiaries (including pursuant to any sale and leaseback arrangement) that is not sold or otherwise disposed of in the ordinary course of business and any gain or loss realized upon the sale or other disposition of any Capital Stock of any Person,
- (5) extraordinary gains or losses, and
- (6) the cumulative effect of a change in accounting principles.

*"Currency Agreement"* means any foreign currency exchange contract, currency swap agreement or other similar agreement or arrangement.

*"Default"* means any event that is, or after notice or passage of time or both would be, an Event of Default (as defined herein).

*"Designated Government Obligations"* means direct non-callable and non-redeemable obligations (in each case, with respect to the issuer thereof) of any member state of the European Union that is a member of the European Union as of the date of the Indenture or of the United States of America (including, in each case, any agency or instrumentality thereof), as the case may be, the payment of which is secured by the full faith and credit of the applicable member state or of the United States of America, as the case may be.

*"Disqualified Stock"* means, with respect to any Person, any Capital Stock that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event:

- (1) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise;
- (2) is convertible or exchangeable for Indebtedness or Disqualified Stock; or
- (3) is redeemable at the option of the holder thereof, in whole or in part,

in each case on or prior to the first anniversary of the Stated Maturity of the Notes; *provided, however*, that any Capital Stock that would not constitute Disqualified Stock but for provisions thereof giving holders thereof the right to require such Person to repurchase or redeem such Capital Stock upon the occurrence of an "asset sale" or "change of control" occurring prior to the first anniversary of the Stated Maturity of the Notes shall not constitute Disqualified Stock if the "asset sale" or "change of control" provisions applicable to such Capital Stock are not more favorable to the holders of such Capital Stock than the provisions described under "*— Change of Control*".

*"EBITDA"* for any Person for any period means the sum of Consolidated Net Income of such Person, plus Consolidated Interest Expense of such Person plus the following to the extent deducted in calculating such Consolidated Net Income:

- (1) all income tax expense of such Person and its Subsidiaries (which, in the case of the Company, will include FMC AG & Co. KGaA and its Subsidiaries);
- (2) depreciation expense;
- (3) amortization expense, in each case for such period; and
- (4) other non-cash charges (excluding (1) restructuring charges which do not initially involve a cash payment but as for which there will be a subsequent cash payment and (2) charges resulting from accruals of costs incurred in the ordinary course of business, other than those relating to pension liabilities).

Notwithstanding the foregoing, the provision for taxes based on the income or profits of, and the depreciation and amortization and other non-cash charges of, a Subsidiary shall be added to Consolidated Net Income to compute EBITDA only to the extent (and in the same proportion) that the net income of such Subsidiary was included in calculating Consolidated Net Income and only if a corresponding amount would be permitted at the date of determination to be dividended to such Person by such Subsidiary without prior approval (that has not been obtained), pursuant to the terms of its charter and all agreements, instruments, judgments, decrees, orders, statutes, rules and governmental regulations applicable to such Subsidiary or its stockholders.

*"€" or "euro"* means the single currency of the Participating Member States.

*"Exchange Act"* means the U.S. Securities Exchange Act of 1934, as amended.

*"Finance Subsidiary"* means the Issuer and any other Wholly Owned Subsidiary of the Company created for the purpose of issuing evidences of Indebtedness and which is subject to similar restrictions on its activities as the Issuer.

"Fitch" means Fitch, Inc. and its successors.

"FMC AG & Co. KGaA" means Fresenius Medical Care AG & Co. KGaA (or any successor thereto) but not any of its subsidiaries.

"FSE EBITDA" means EBITDA for the Company but, for purposes of this definition, excluding the results of operations of FMC AG & Co. KGaA and its Subsidiaries in calculating Consolidated Interest Expense, Consolidated Net Income and EBITDA (but, for the avoidance of doubt, including any distributions actually paid to the Company or one of its Subsidiaries (other than FMC AG & Co. KGaA and its Subsidiaries) by FMC AG & Co. KGaA in the relevant period); *provided, however*, that:

- (1) if since the beginning of such period the Company or any of its Subsidiaries (other than FMC AG & Co. KGaA and its Subsidiaries) shall have made any Asset Disposition, the EBITDA for such period shall be reduced by an amount equal to the EBITDA (if positive) directly attributable to the assets which are the subject of such Asset Disposition for such period, or increased by an amount equal to the EBITDA (if negative), directly attributable thereto for such period,
- (2) if since the beginning of such period the Company or any of its Subsidiaries (other than FMC AG & Co. KGaA and its Subsidiaries) (by merger or otherwise) shall have made an Investment in any Subsidiary (or any Person which becomes a Subsidiary) or an acquisition of assets, including any acquisition of assets occurring in connection with a transaction requiring a calculation to be made hereunder, which constitutes all or substantially all of an operating unit of a business, EBITDA for such period shall be calculated after giving pro forma effect thereto as if such Investment or acquisition occurred on the first day of such period, and
- (3) if since the beginning of such period the Company or any of its Subsidiaries (other than FMC AG & Co. KGaA and its Subsidiaries) (that subsequently became a Subsidiary or was merged with or into the Company or such Subsidiary since the beginning of such period) shall have made any Asset Disposition, any Investment or acquisition of assets that would have required an adjustment pursuant to clause (1) or (2) above if made by the Company or such Subsidiary during such period, EBITDA for such period shall be calculated after giving pro forma effect thereto as if such Asset Disposition, Investment or acquisition occurred on the first day of such period.

For purposes of this definition (but not, for the avoidance of doubt, for the purpose of any other defined terms used in this definition): whenever pro forma effect is to be given to an acquisition of assets, the amount of income or earnings relating thereto, the pro forma calculations shall be determined in good faith by a responsible financial or accounting officer of the Company, as applicable.

"GAAP" means generally accepted accounting principles in the United States of America as in effect as of the Issue Date, including those set forth in:

- (4) the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants,
- (5) statements and pronouncements of the Financial Accounting Standards Board,
- (6) such other statements by such other entity as approved by a significant segment of the accounting profession, and
- (7) the rules and regulations of the SEC governing the inclusion of financial statements (including pro forma financial statements) in periodic reports required to be filed pursuant to Section 13 of the Exchange Act, including opinions and pronouncements in staff accounting bulletins and similar written statements from the accounting staff of the SEC.

"General Partner" means Fresenius Management SE, a *societas europaea* organized under the laws of Germany, including its successors and assigns and other Persons, in each case who serve as the general partner (*persönlich haftender Gesellschafter*) of the Company from time to time.

*"Guarantee"* means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness or other obligation of any Person (other than, in the case of subsidiaries, obligations which would not constitute Indebtedness) and any obligation, direct or indirect, contingent or otherwise, of such Person:

- (1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation of such Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise); or
- (2) entered into for the purpose of assuring in any other manner the obligee of such Indebtedness or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part);

*provided, however*, that the term *"Guarantee"* shall not include endorsements for collection or deposit in the ordinary course of business. The term *"Guarantee"* used as a verb has a corresponding meaning. The term *"Guarantor"* shall mean any Person Guaranteeing any obligation.

*"Guarantee Agreement"* means, in the context of a consolidation, merger or sale of all or substantially all of the assets of a Guarantor, an agreement by which the Surviving Person from such a transaction expressly assumes all of the obligations of such Guarantor under its Note Guarantee.

*"Guarantor"* means each of the Company, Fresenius Kabi AG and Fresenius ProServe GmbH unless released from all obligations under their Note Guarantee in accordance with the terms of the Indenture.

*"Hedging Obligations"* of any Person means the obligations of such Person pursuant to any Interest Rate Agreement or Currency Agreement.

*"HELIOS Group"* means Helios Kliniken GmbH and its Subsidiaries.

*"Incur"* means issue, assume, Guarantee, incur or otherwise become liable for; *provided, however*, that any Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Subsidiary at the time it becomes a Subsidiary. The term *"Incurrence"* when used as a noun shall have a correlative meaning. The accretion of principal of a non-interest bearing or other discount security shall be deemed the Incurrence of Indebtedness.

*"Indebtedness"* means, with respect to any Person on any date of determination (without duplication):

- (1) the principal of and premium (if any) in respect of (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable,
- (2) all Capital Lease Obligations of such Person,
- (3) all obligations of such Person issued or assumed as the deferred purchase price of property or services, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (other than (x) customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business, (y) trade debt Incurred in the ordinary course of business and not overdue by 90 days or more and (z) obligations Incurred under a pension, retirement or deferred compensation program or arrangement regulated under the Employee Retirement Income Security Act of 1974, as amended, or the laws of a foreign government, or referred to in clause (1) below),
- (4) all obligations of such Person for the reimbursement of any obligor on any letter of credit, bank guarantee, banker's acceptance or similar credit transaction (except to the extent such reimbursement obligation relates to trade debt in the ordinary course of business

and such reimbursement obligation is paid within 30 days after payment of the trade debt or is referred to in clause (1) below),

- (5) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock or, with respect to any subsidiary of such Person, any Preferred Stock (but excluding, in each case, any accrued dividends),
- (6) all obligations of the type referred to in clauses (1) through (5) of other Persons and all dividends of other Persons for the payment of which, in either case, such Person is responsible or liable, directly or indirectly, as obligor, guarantor or otherwise, including by means of any Guarantee,
- (7) all obligations of the type referred to in clauses (1) through (6) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person), the amount of such obligation being deemed to be the lesser of the value of such property or assets or the amount of the obligation so secured, and
- (8) to the extent not otherwise included in this definition, Hedging Obligations of such Person.

The amount of Indebtedness of any Person at any date shall be the outstanding balance at such date of all unconditional obligations as described above and the maximum liability, upon the occurrence of the contingency giving rise to the obligation, of any contingent obligations at such date. For the avoidance of doubt, the following will not be treated as Indebtedness:

- (1) Indebtedness incurred in respect of workers' compensation claims, self insurance obligations, performance, surety and similar bonds and completion guarantees provided in the ordinary course of business;
- (2) Indebtedness arising from agreements providing for indemnification, adjustment of purchase price or similar obligations, in each case, incurred or assured in connection with the disposition or acquisition of any business, assets or Capital Stock of a Subsidiary, provided, that the maximum aggregate liability in respect of all such Indebtedness (other than in respect of tax and environmental indemnities) shall at no time exceed, in the case of a disposition, the gross proceeds actually received by the Company and its Subsidiaries in connection with such disposition and, in the case of an acquisition, the fair market value of any business assets or Capital Stock acquired; and
- (3) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business, provided that such Indebtedness is extinguished within five business days of the Incurrence.

*"Interest Rate Agreement"* means any interest rate swap agreement, interest rate cap agreement or other financial agreement or arrangement.

*"Investment"* in any Person means any direct or indirect advance, loan (other than advances to customers in the ordinary course of business that are recorded as accounts receivable on the balance sheet of such Person) or other extensions of credit (including by way of Guarantee or similar arrangement) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or any purchase or acquisition of Capital Stock, Indebtedness or other similar instruments issued by such Person; *provided, however*, that advances, loans or other extensions of credit arising under the Cash Management Arrangements shall not be deemed Investments.

*"Investment Grade"* means a rating of (i) BBB- or higher by S&P, (ii) Baa3 or higher by Moody's and (iii) BBB- or higher by Fitch, or the equivalent of such ratings by S&P, Moody's or Fitch and the equivalent in respect of rating categories of any Rating Agencies substituted for S&P, Moody's or Fitch.

*"Investment Grade Status"* exists as of any time if at such time any two of the following three are satisfied: (i) the rating assigned to the Notes by Moody's is at least Baa3 (or the equivalent) or



higher, (ii) the rating assigned to the Notes by S&P is at least BBB- (or the equivalent) or higher or (iii) the rating assigned to the Notes by Fitch is at least BBB- (or the equivalent) or higher.

*"Issue Date"* means the first date on which any Notes are issued.

*"KGaA"* means a German partnership limited by shares (*Kommanditsgesellschaft auf Aktien*).

*"Lien"* means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

*"Moody's"* means Moody's Investors Service, Inc. and its successors.

*"Note Guarantee"* means the Guarantee by a Guarantor of the Issuer's obligations under the Notes.

*"Officers' Certificate"* means a certificate signed by two Responsible Officers of the Issuer, the Company or any of the Guarantors, as applicable.

*"Opinion of Counsel"* means a written opinion from legal counsel, which opinion is acceptable to the Trustee. The counsel may be an employee of or counsel to the Issuer.

*"Participating Member State"* means a member state of the European Union which has adopted or adopts the single currency in accordance with the treaty establishing the European Community (as that treaty is amended from time to time).

*"Permitted Holder"* means Else Kroner-Fresenius-Stiftung and any of its Affiliates.

*"Permitted Liens"* means, with respect to any Person:

- (1) Liens on assets of the Company or any of its Subsidiaries securing Indebtedness permitted under paragraph (a) and clause (1), (7) and (12) of paragraph (b) set forth under *"— Limitation on Incurrence of Indebtedness"* above;
- (2) pledges or deposits by such Person under workmen's compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits or cash or Designated Government Obligations to secure surety or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import or customs duties or for the payment of rent, in each case Incurred in the ordinary course of business;
- (3) Liens imposed by law, including carriers', warehousemen's and mechanics' Liens, in each case for sums not yet due or being contested in good faith if a reserve or other appropriate provisions, if any, as are required by GAAP have been made in respect thereof;
- (4) Liens for taxes, assessments or other governmental charges not yet subject to penalties for nonpayment or which are being contested in good faith provided appropriate reserves, if any, as are required by GAAP have been made in respect thereof;
- (5) Liens in favor of issuers of surety or performance bonds or letters of credit or bankers' acceptances issued pursuant to the request of and for the account of such Person in the ordinary course of its business;
- (6) encumbrances, easements or reservations of, or rights of others for, licenses, rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real properties or liens incidental to the conduct of the business of such Person or to the ownership of its properties which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;
- (7) Liens securing Hedging Obligations so long as the related Indebtedness is, and is permitted to be under the Indenture, secured by a Lien on the same property securing such Hedging Obligation or Interest Rate Agreement;

- (8) leases, subleases and licenses of real property which do not materially interfere with the ordinary conduct of the business of the Company or any of its Subsidiaries and leases, subleases and licenses of other assets in the ordinary course of business;
- (9) judgment Liens not giving rise to an Event of Default so long as such Lien is adequately bonded and any appropriate legal proceedings which may have been duly initiated for the review of such judgment have not been finally terminated or the period within which such proceedings may be initiated has not expired;
- (10) Liens for the purpose of securing the payment (or the refinancing of the payment) of all or a part of the purchase price of, or Capitalized Lease Obligations with respect to, assets or property acquired or constructed for use in a Related Business; provided that:
  - (a) the aggregate principal amount secured by such Liens does not exceed the cost of the assets or property so acquired or constructed; and
  - (b) such Liens are created within 180 days of construction or acquisition of such assets or property (or, upon a refinancing, replace Liens created within such period) and do not encumber any other assets or property of the Company or any Subsidiary other than such assets or property and assets affixed or appurtenant thereto;
- (11) Liens arising solely by virtue of any statutory or common law provisions relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a depository institution; *provided* that such deposit account is not intended by the Company or any Subsidiary to provide collateral to the depository institution;
- (12) Liens arising from United States Uniform Commercial Code financing statement filings (or similar filings in other applicable jurisdictions) regarding operating leases entered into by the Company and its Subsidiaries in the ordinary course of business;
- (13) Liens existing on the Issue Date, other than Liens described in clause (1) above and clause (20) below;
- (14) Liens on property or shares of stock of a Person at the time such Person becomes a Subsidiary; *provided, however*, that such Liens are not created, Incurred or assumed in connection with, or in contemplation of, such other Person becoming a Subsidiary; *provided further, however*, that any such Lien may not extend to any other property owned by the Company or any Subsidiary;
- (15) Liens on property at the time the Company or a Subsidiary acquired the property, including any acquisition by means of a merger or consolidation with or into the Company or any Subsidiary; *provided, however*, that such Liens are not created, Incurred or assumed in connection with, or in contemplation of, such acquisition; *provided further, however*, that such Liens may not extend to any other property owned by the Company or any Subsidiary (except in the case of an acquisition by the Helios Group, in which case the Liens may be granted in connection with, or in contemplation of, such acquisition on assets of any member of the Helios Group);
- (16) Liens securing the Notes and all other Indebtedness which by its terms must be secured if the Notes are secured;
- (17) Liens securing Indebtedness or other obligations of the Company to a Subsidiary or of a Subsidiary owing to the Company or a Subsidiary;
- (18) Liens securing Refinancing Indebtedness Incurred to refinance Indebtedness that was previously secured; *provided*, that such Lien is limited to all or part of the same property or assets that secured the Indebtedness refinanced;
- (19) Liens arising by operation of law or by agreement to the same effect in the ordinary course of business; and

- (20) Liens on assets of any Subsidiary of the Company securing Indebtedness of such Subsidiary permitted under clauses (a), (b)(2) and (b)(12) set forth under "*Limitation on Incurrence of Indebtedness*", which Indebtedness shall not exceed €750 million;

*provided however*, that the sum of (i) the aggregate principal amount of Indebtedness secured by a Lien permitted under clause (1) above and (ii) the aggregate principal amount of Indebtedness owed to a Subsidiary that is not a Guarantor secured by a Lien permitted under clauses (17) above may not exceed the greater of (i) \$3,050 million and (ii) the multiple of 2.5 times FSE EBITDA at the time of the Incurrence of such Indebtedness.

"*Person*" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency, instrumentality or political subdivision thereof, or any other entity.

"*Preferred Stock*", as applied to the Capital Stock of any corporation, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such corporation, over shares of Capital Stock of any other class of such corporation.

"*Rating Agencies*" means:

- (1) S&P,
- (2) Moody's, and
- (3) Fitch, or
- (4) if S&P, Moody's or Fitch, or all three shall not make rating of the Notes publicly available, a European-wide reputable securities rating agency or agencies, as the case may be, selected by the Company, which shall be substituted for S&P, Moody's or Fitch or all three, as the case may be.

"*Rating Category*" means:

- (1) with respect to S&P, any of the following categories: BB, B, CCC, CC, C and D (or equivalent successor categories),
- (2) with respect to Moody's, any of the following categories: Ba, B, Caa, Ca, C and D (or equivalent successor categories),
- (3) with respect to Fitch, any of the following categories: BB, B, CCC, CC, C and D (or equivalent successor categories), and
- (4) the equivalent of any such category of S&P, Moody's or Fitch used by another rating agency in determining whether the rating of the notes has decreased by one or more gradations, gradations within rating categories (+ and - for S&P, 1, 2 and 3 for Moody's, (+ and - for Fitch; or the equivalent gradations for another rating agency) shall be taken into account (e.g., with respect to S&P, a decline in a rating from BB+ to BB, as well as from BB- to B+, will constitute a decrease of one gradation).

"*Rating Date*" means the date which is 90 days prior to the earlier of (1) a Change of Control and (2) public notice of the occurrence of a Change of Control or of the intention by the Company or any Person to effect a Change of Control.

"*Ratings Decline*" means the occurrence on or within 90 days after the date of the first public notice of either the occurrence of a Change of Control or of a transaction which will effect a Change of Control, whichever is earlier (which period shall be extended so long as any of the Rating Agencies have publicly announced that it is considering a possible downgrade of the Notes) of: (1) in the event the Notes are rated by each of (i) Moody's, (ii) S&P and (iii) Fitch on the Rating Date as Investment Grade, a decrease in the rating of the Notes by two of the three Rating Agencies to a rating that is below Investment Grade, or (2) in the event the Notes are rated below Investment Grade by two of the three Rating Agencies on the Rating Date, a decrease in the rating of the Notes

by either such Rating Agency by one or more gradations (including gradations within Rating Categories as well as between Rating Categories).

*"Refinance"* means, in respect of any Indebtedness, to refinance, extend, renew, refund, repay, prepay, redeem, defease or retire, or to issue other Indebtedness in exchange or replacement for, such Indebtedness. *"Refinanced"* and *"Refinancing"* shall have correlative meanings.

*"Refinancing Indebtedness"* means Indebtedness that Refinances any Indebtedness of the Company or any Subsidiary existing on the Issue Date or Incurred in compliance with the Indenture, including Indebtedness that Refinances Refinancing Indebtedness; *provided, however*, that:

- (1) such Refinancing Indebtedness has a Stated Maturity no earlier than the Stated Maturity of the Indebtedness being Refinanced,
- (2) such Refinancing Indebtedness has an Average Life at the time such Refinancing Indebtedness is Incurred that is equal to or greater than the Average Life of the Indebtedness being Refinanced, and
- (3) such Refinancing Indebtedness has an aggregate principal amount (or if Incurred with original issue discount, an aggregate issue price) that is equal to or less than the aggregate principal amount (or if Incurred with original issue discount, the aggregate accredit value) then outstanding or committed (plus fees and expenses, including any premium and defeasance costs) under the Indebtedness being Refinanced; *provided further, however*, that Refinancing Indebtedness shall not include (x) Indebtedness of a Subsidiary that Refinances Indebtedness of the Company or (y) Indebtedness of the Company or a Subsidiary that Refinances Indebtedness of another Subsidiary.

*"Related Business"* means the businesses of the Company and its Subsidiaries on the Issue Date and any business related, ancillary or complementary to such businesses.

*"Responsible Officer"* means the chief executive officer, president, chief financial officer, senior vice president-finance, treasurer, assistant treasurer, managing director, management board member, other authorized signatory (*Prokurist*) or director of a company (or in the case of the Company, a Responsible Officer of its General Partner, other managing entity or other Person authorized to act on its behalf, and if such Person is also a partnership, limited liability company or similarly organized entity, a Responsible Officer of the entity that may be authorized to act on behalf of such Person).

*"Sale and Leaseback Transaction"* means any direct or indirect arrangement with any Person or to which any such Person is a party, providing for the leasing to the Company or a Subsidiary of any property, whether owned by the Company or any Subsidiary at the Issue Date or later acquired, which has been or is to be sold or transferred by the Company or such Subsidiary to such Person or to any other Person from whom funds have been or are to be advanced by such Person on the security of such Property.

*"SEC"* means the U.S. Securities and Exchange Commission.

*"Senior Credit Agreement"* means the credit agreement, dated as of August 20, 2008, as amended, restated, modified, extended, renewed and/or supplemented or as refinanced or replaced from time to time, among the Company, Deutsche Bank AG, London Branch, as administrative agent, and the other borrowers, guarantors and lenders identified therein.

*"Significant Subsidiary"*, with respect to any Person, means any Subsidiary of such Person that satisfies the criteria for a "significant subsidiary" set forth in Rule 1.02 of Regulation S-X under the Exchange Act.

*"S&P"* means Standard & Poor's Corporation and its successors.

*"Stated Maturity"* means, with respect to any security, the date specified in such security as the fixed date on which the final payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the

repurchase of such security the option of the holder thereof upon the happening of any contingency unless such contingency has occurred).

*"Subordinated Obligation"* means any Indebtedness of the Issuer or the Company (whether outstanding on the Issue Date or thereafter Incurred) that is subordinate or junior in right of payment to the Notes pursuant to a written agreement to that effect.

*"Subsidiary"* means, with respect to any Person, any corporation, limited liability company, association, partnership or other business entity whose results of operations are consolidated in accordance with GAAP with those of:

- (1) such Person;
- (2) such Person and one or more Subsidiaries of such Person; or
- (3) one or more Subsidiaries of such Person;

*provided, however*, that for purposes of the covenants described under "*Certain Covenants*" above and the related definitions, and the events described under "*Events of Default*" above and the related definitions, subsidiaries of the Company shall not include FMC AG & Co. KGaA and its subsidiaries unless otherwise specified.

*"Subsidiary Guarantor"* means any person that executes the Indenture or who in the future executes a supplemental indenture in which such person agrees to be bound by the terms of the Indenture as a Subsidiary Guarantor.

*"Surviving Person"* means, with respect to any Person involved in any merger, consolidation or other business combination or the sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of such Person's assets, the Person formed by or surviving such transaction or the Person to which such disposition is made.

*"Voting Stock"* of a Person means all classes of Capital Stock or other interests (including partnership interests) of such Person then outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof.

*"Wholly Owned Subsidiary"* means a Subsidiary all the Capital Stock of which (other than directors' qualifying shares and shares held by other Persons to the extent such shares are required by applicable law to be held by a Person other than its parent or a Subsidiary of its parent) is owned by the relevant Person or by one or more Wholly Owned Subsidiaries of the relevant Person, or by the relevant Person and one or more of its Wholly Owned Subsidiaries.

## **Rating Agencies**

Moody's is established in the European Community and has applied for registrations under Regulation (EC) No. 1060/2009 of the European Parliament and of the Council of September 16, 2009 on credit rating agencies.

S&P is established in the European Community and has applied for registration under Regulation (EC) No. 1060/2009 of the European Parliament and of the Council of September 16, 2009 on credit rating agencies.

Fitch is established in the European Community and has applied for registrations under Regulation (EC) No. 1060/2009 of the European Parliament and of the Council of September 16, 2009 on credit rating agencies.

A list of registered and certified credit rating agencies is available at the website of the European Securities and Markets Authority at [www.esma.europa.eu/index.php](http://www.esma.europa.eu/index.php).

## BOOK-ENTRY, DELIVERY AND FORM

### GENERAL

Notes sold to qualified institutional buyers in reliance on Rule 144A under the Securities Act (the “**Rule 144A Notes**”) will be represented by one or more global notes in registered form without interest coupons attached (collectively, the “**Rule 144A Global Notes**”). The Rule 144A Global Notes will be deposited with, or on behalf of, a common depositary (the “**Common Depositary**”) for the accounts of Euroclear Bank S.A./N.V. (“**Euroclear**”), Boulevard du Roi Albert II, 1210 Brussels, Belgium and Clearstream Banking S.A., Luxembourg (“**Clearstream**”), 42 Avenue JF Kennedy, 1855 Luxembourg, Luxembourg and registered in the name of the nominee of the Common Depositary.

Notes sold in reliance on Regulation S under the Securities Act (the “**Regulation S Notes**”) will be represented by one or more global notes in registered form without interest coupons attached (collectively, the “**Regulation S Global Notes**” and, together with the Rule 144A Global Notes, the “**Global Notes**”). The Regulation S Global Notes will be deposited with, or on behalf of, the Common Depositary for the accounts of Euroclear and Clearstream and registered in the name of the nominee of the Common Depositary.

Ownership of interests in the rule 144A Global Notes (“**Restricted Book-Entry Interests**”) and in the Regulation S Global Notes (the “**Unrestricted Book-Entry Interests**” and, together with the Restricted Book-Entry Interests, the “**Book-Entry Interests**”) will be limited to persons that have accounts with Euroclear and/or Clearstream, or persons that hold interests through such participants.

Euroclear and Clearstream will hold interests in the global Notes on behalf of their participants through customers’ securities accounts in their respective names on the books of their respective depositaries. Except under the limited circumstances described below, owner of beneficial interests in the Global Notes will not be entitled to receive physical delivery of certificated notes.

Book-Entry Interests will be shown on, and transfers thereof will be effected only through, record maintained by Euroclear and Clearstream and their participants. The laws of some jurisdictions, including some states of the United States, may require that certain purchasers of securities take physical delivery of those securities in definitive form. The foregoing limitations may impair your ability to own, transfer or pledge Book-Entry Interests. In addition, while the Notes are in global form, holders of Book-Entry Interests will not be considered the owners of “holders” of Notes for any purpose.

As long as the Notes are held in global form, Euroclear and/or Clearstream, as applicable (or their respective nominees), will be considered the sole holders of Global Notes for all purposes under the Indenture. In addition, participants in Euroclear and/or Clearstream must rely on the procedures of Euroclear and/or Clearstream, as the case may be, and indirect participants must rely on the procedures of Euroclear, Clearstream and the participants through which they own Book-Entry Interests in order to transfer their interests or to exercise any rights of holders under the Indenture.

Neither the Issuer, the trustee, the Registrar, the Paying Agent, nor any other agent will have any responsibility or be liable for any aspect of the records relating to the Book-Entry Interests.

### ISSUANCE OF DEFINITIVE REGISTERED NOTES

Under the terms of the Indenture, owners of Book-Entry Interests will receive definitive Notes in registered form (“**Definitive Registered Notes**”):

- if Euroclear or Clearstream notifies the Issuer that it is unwilling or unable to continue to act as depositary and a successor depositary is not appointed by the Issuer within 120 days;
- in whole, but not in part, if the Issuer, Euroclear or Clearstream so request following an event of default under the Indenture; or



- if the owner of a Book-Entry Interest requests such exchange in writing delivered through Euroclear and/or Clearstream or the Issuer following an event of default under the Indenture.

In such an event, the Registrar will issue Definitive Registered Notes, registered in the name or names and issued in any approved denominations, requested by or on behalf of Euroclear and/or Clearstream or the Issuer, as applicable (in accordance with their respective customary procedures and applicable legal requirements and based upon directions received from participants reflecting the beneficial ownership of Book-Entry Interests).

Upon the issuance of Definitive Registered Notes, and for so long as the Notes are listed on the Luxembourg Stock Exchange and the rules of such stock exchange so require, holders of the Notes will be able to receive principal and interest on the Notes at the Luxembourg office of the Paying Agent, subject to the right of an Issuer to mail payments in accordance with the terms of the applicable Indenture. The Issuer will pay interest in the Notes to Persons who are registered holders at the close of business on the record date immediately preceding the interest payment date for such interest. Such holders must surrender the Notes to a Paying Agent to collect principal payments.

If Definitive Registered Notes are issued and a holder thereof claims that such Definitive Registered Notes have been lost, destroyed or wrongfully taken or if such Definitive Registered Notes are mutilated and are surrendered to the Registrar or at the office of a transfer agent, the Issuer shall issue and the Trustee shall authenticate a replacement Definitive Registered Note of the Trustee's and such Issuer's requirements are met. The Trustee of the Issuer may require a holder requesting replacement of a Definitive Registered Note to furnish an indemnity bond sufficient in the judgment of both the Trustee and the Issuer to protect the Issuer, the Trustee or the Paying Agent appointed pursuant to the Indenture from any loss which any of them may suffer if a Definitive Registered Note is replaced. The Issuer may charge for its expenses in replacing a Definitive Registered Note.

In case of such mutilated, destroyed, lost or stolen Definitive Registered Note has become or is about to become due and payable, or is about to be redeemed or purchased by the Issuer pursuant to the provisions of the Indenture, the Issuer in its discretion may, instead of issuing a new Definitive Registered Note, pay, redeem or purchase such Definitive Registered Note, as the case may be.

Definitive Registered Notes may be transferred and exchanged for Book-Entry Interests in a Global Note only in accordance with the applicable Indenture and, if required, only after the transferor first delivers to the transfer agent a written certification (in the form provided in the Indenture) to the effect that such transfer will comply with the transfer restrictions applicable to such Notes and the Issuer may require a holder to pay any taxes and fees required by law or permitted by the applicable Indenture and the Notes. See *"Notice to Investors"*.

## **REDEMPTION OF GLOBAL NOTES**

In the event any Global Note, or any portion thereof, is redeemed, Euroclear and/or Clearstream, as applicable, will distribute the amount received by it in respect of the Global Note so redeemed to the holders of the Book-Entry Interests in such Global Note from the amount received by it in respect of the redemption of such Global Note. The redemption price payable in connection with the redemption of such Book-Entry Interests will be equal to the amount received by Euroclear or Clearstream, as applicable, in connection with the redemption of such Global Note (or any portion thereof). The Issuer understands that under existing practices of Euroclear and Clearstream, if fewer than all of the Notes are to be redeemed at any time, Euroclear and Clearstream will credit their respective participants' accounts on a proportionate basis (with adjustments to prevent fractions) or by lot or on such other basis as they deem fair and appropriate; provided, however, that no Book-Entry Interest of less than €1,000 principal amount or less, may be redeemed in part.

## PAYMENTS ON GLOBAL NOTES

Payments of amounts owing in respect of the Global Notes (including principal, premium, interest, and Additional Amounts, if any) will be made by the Issuer to the Principal Paying Agent. The Principal Paying Agent will, in turn, make such payments to the common depositary for Euroclear and Clearstream, or its nominee, which will distribute such payments to their respective participants in accordance with their respective procedures, *provided*, that at the option of the Issuer payment of interest on the Notes may be made by check mailed to the holders of such Notes as such addresses appear in the applicable Note register. Payments of all such amounts will be made without deduction or withholding for or an account of any present or future taxes, duties, assessments or governmental charges of whatever nature except as may be required by law. If any such deduction or withholding is required to be made by any applicable law or regulation or otherwise described under “*Description of the Notes — Additional Amounts*” then, to the extent described under “*Description of the Notes — Additional Amounts*”, such Additional Amounts will be paid as may be necessary in order that the net amounts received by any holder of the Global Notes or owner of Book-Entry Interests after such deduction or withholding will equal the net amounts that such holder or owner would have otherwise received in respect of such Global Note or Book-Entry Interest, as the case may be, absent such withholding or deduction. We expect that payments by participants to owners of Book-Entry Interests held through those participants will be governed by standing customer instructions any customary practices.

Under the terms of the Indenture, the Issuer, the Trustee and the Registrar will treat the registered holder of the Global Notes (i.e., Euroclear or Clearstream (or their respective nominees)) as the owner thereof for the purpose of receiving payments and for all other purposes. Consequently, neither the Issuer, the Trustee nor the Registrar, nor any of their respective agents has or will have any responsibility or liability for:

- any aspects of the records of Euroclear, Clearstream or any participant or indirect participant relating to, or payments made on account of, a Book-Entry Interest for any such payments made by Euroclear, Clearstream or any participant or indirect participants, or for maintaining supervising or reviewing the records of Euroclear, Clearstream or any participant or indirect participant relating to, or payments made on account of, a Book-Entry Interest;
- Euroclear, Clearstream or any participant or indirect participant; or
- the records of the common depositary for the Global Notes.

Payments by participants to owners of Book-Entry Interests held through participants are the responsibility of such participants, as is now the case with securities held for the accounts of customers registered in “street name”.

## CURRENCY OF PAYMENT FOR THE GLOBAL NOTES

Payments will be subject in all cases to any fiscal or other laws and regulations (including any regulations of the applicable clearing system) applicable thereto. None of the Issuer, the Trustee, the Initial Purchasers or any of their respective agents will be liable to any holder of a Global Note or any other person for any commissions, costs, losses or expenses in relation to or resulting from any currency conversion or rounding effected in connection with any such payment.

Except as may otherwise be agreed between Euroclear and/or Clearstream and any holder, the principal of, premium, if any, and interest on, and all other amounts payable in respect of, the Global Notes will be paid to holders of interests in such Notes through Euroclear or Clearstream in Euro.

## ACTION BY OWNERS OF BOOK-ENTRY INTERESTS

Euroclear and Clearstream have advised the Issuer that they will take any action permitted to be taken by a holder of Notes (including the presentation of Notes for exchange as described below)

only at the direction of one or more participants to whose account the Book-Entry Interests in the Global Notes are credited and only in respect of such portion of the aggregate principal amount of Notes as to which such participant or participants has or have given such direction. Euroclear and Clearstream will not exercise any discretion in the granting of consents, waivers or the taking of any other action in respect of the Global Notes. However, if there is an event of default under the Notes, each of Euroclear and Clearstream reserves the right to exchange the Global Notes for Definitive Registered Notes in certificated form, and to distribute such Definitive Registered Notes to their respective participants.

## **TRANSFERS**

Transfers between participants in Euroclear and Clearstream will be done in accordance with Euroclear and Clearstream rules and will be settled in immediately available funds. If a holder requires physical delivery of Definitive Registered Notes for any reason, including to sell the Notes to persons in states which require physical delivery of such securities or to pledge such securities, such holder must transfer its interest in the Global Notes in accordance with the normal procedures of Euroclear and Clearstream and in accordance with the provisions of the Indenture.

The Global Notes will bear a legend to the effect set forth in *"Notice to Investors"*. Book-Entry Interests in the Global Notes will be subject to the restrictions on transfers and certification requirements as discussed in *"Notice to Investors"*.

Transfers of Restricted Book-Entry Interests to persons wishing to take delivery of Restricted Book-Entry Interests will at all times be subject to such transfer restrictions.

Restricted Book-Entry Interests may be transferred to a person who takes delivery in the form of Unrestricted Book-Entry Interest only upon delivery by the transferor of a written certification (in the form provided in the relevant Indenture) to the effect that such transfer is being made in accordance with Regulation S or Rule 144 (if available) under the Securities Act. Unrestricted Book-Entry Interests may be transferred to a person who takes delivery in the form of Restricted Book-Entry Interests only upon delivery by the transferor of a written certification (in the form provided in the Indenture) to the effect that such transfer is being made to a person who the transferor reasonably believed is a "qualified institutional buyer" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A or otherwise in accordance with the transfer restrictions described under *"Notice to Investors"* and in accordance with any applicable securities laws of any other jurisdiction.

Any Book-Entry Interest in one of the Global Notes that is transferred to a person who takes delivery in the form of a Book-Entry Interest in the other Global Note will, upon transfer, cease to be a Book-Entry Interest in the first-mentioned Global Note and become a Book-Entry Interest in such other Global Note, and accordingly will thereafter be subject to all transfer restrictions, if any, and other procedures applicable to Book-Entry Interests in such other Global Note for as long as it remains such a Book-Entry Interest.

## **INFORMATION CONCERNING EUROCLEAR AND CLEARSTREAM BANKING**

All Book-Entry Interests will be subject to the operations and procedures of Euroclear and Clearstream, as applicable. We provide the following summaries of those operations and procedures solely for the convenience of investors. The operations and procedures of each settlement system are controlled by that settlement system and may be changed at any time. None of the Issuer or the Initial Purchasers is responsible for those operations or procedures.

Euroclear and Clearstream hold securities for participating organisations. They also facilitate the clearance and settlement of securities transactions between their respective participants through electronic book-entry changes in the accounts of such participants. Euroclear and Clearstream provide various services to their participants, including the safekeeping, administration, clearance, settlement, lending and borrowing of internationally traded securities. Euroclear and Clearstream interface with domestic securities markets. Euroclear and Clearstream participants are financial

institutions such as underwriters, securities brokers and dealers, banks, trust companies and certain other organisations. Indirect access to Euroclear and Clearstream is also available to others such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a Euroclear and Clearstream Banking participant, either directly or indirectly.

Because Euroclear and Clearstream can only act on behalf of participants, who in turn act on behalf of indirect participants and certain banks, the ability of an owner of a beneficial interest to pledge such interest to persons or entities that do not participate in the Euroclear or Clearstream systems, or otherwise take actions in respect of such interest, may be limited by the lack of a definite certificate for that interest. The laws of some jurisdictions require that certain persons take physical delivery of securities in definitive form. Consequently, the ability to transfer beneficial interests to such persons may be limited.

### **INITIAL SETTLEMENT**

Initial settlement for the Notes will be made against payment in euro. Book-Entry Interests owned through Euroclear or Clearstream accounts will follow the settlement procedures applicable to conventional eurobonds in registered form. Book-Entry Interests will be credited to the securities custody accounts of Euroclear and Clearstream holders on the business day following the settlement date against payment for value on the settlement date.

### **SECONDARY MARKET TRADING**

The Book-Entry Interests will trade through participants of Euroclear or Clearstream and will settle in same-day funds. Since the purchase determines the place of delivery, it is important to establish at the time of trading of any Book-Entry Interests where both the purchaser's and the seller's accounts are located to ensure that settlement can be made on the desired value date.

## **TAXATION CONSIDERATIONS**

### **NETHERLANDS TAX CONSIDERATIONS**

This is a general summary and the tax consequences as described here may not apply to a holder of Notes. Any potential investor should consult his own tax adviser for more information about the tax consequences of acquiring, owning and disposing of Notes in his particular circumstances.

This taxation summary solely addresses the principal Netherlands tax consequences of the acquisition, the ownership and disposition of Notes issued by Issuer after the date hereof held by a holder of Notes who is not a resident of the Netherlands. It does not consider every aspect of taxation that may be relevant to a particular holder of Notes under special circumstances or who is subject to special treatment under applicable law. Where in this summary English terms and expressions are used to refer to Netherlands concepts, the meaning to be attributed to such terms and expressions shall be the meaning to be attributed to the equivalent Netherlands concepts under Netherlands tax law.

This summary is based on the tax laws of the Netherlands as they are in force and in effect on the date of this Prospectus. The Netherlands means the part of the Kingdom of the Netherlands located in Europe. The laws upon which this summary is based are subject to change, potentially with retroactive effect. A change to such laws may invalidate the contents of this summary, which will not be updated to reflect any such change. This summary assumes that each transaction with respect to Notes is at arm's length.

Issuer has been advised that under the existing laws of the Netherlands:

#### **Withholding Tax**

All payments by Issuer under Notes can be made free of withholding or deduction of any taxes of whatever nature imposed, levied, withheld or assessed by the Netherlands or any political subdivision or taxing authority thereof or therein

#### **Taxes on Income and Capital Gains**

A holder of Notes will not be subject to any Netherlands taxes on income or capital gains in respect of Notes, including such tax on any payment under Notes or in respect of any gain realised on the disposal, deemed disposal or exchange of Notes, provided that:

such holder is neither a resident nor deemed to be a resident of the Netherlands, nor, if he is an individual, has elected to be taxed as a resident of the Netherlands;

such holder does not have an enterprise or an interest in an enterprise that is, in whole or in part, carried on through a permanent establishment or a permanent representative in the Netherlands and to which enterprise or part of an enterprise, as the case may be, Notes are attributable;

if such holder is an individual, neither such holder nor any of his spouse, his partner, a person deemed to be his partner, or other persons sharing such person's house or household, or certain other of such persons' relatives (including foster children), whether directly and/or indirectly as (deemed) settlor, grantor or similar originator (the Settlor), or upon the death of the Settlor, his/her beneficiaries (the Beneficiaries) in proportion to their entitlement to the estate of the Settlor of a trust, foundation or similar arrangement (a Trust), (a) indirectly has control of the proceeds of Notes, Coupons, Talons or Receipts in the Netherlands, nor (b) has a substantial interest in Issuer and/or any other entity that legally or de facto, directly or indirectly, has control of the proceeds of Notes in the Netherlands. For purposes of this clause (iii), a substantial interest is generally not present if a holder does not hold, alone or together with his spouse, his partner, a person deemed to be his partner, other persons sharing such person's house or household, certain other of such person's relatives (including foster children), or a Trust of which he or any of the aforementioned

persons is a Settlor or a Beneficiary, whether directly or indirectly, (a) the ownership of, certain other rights, such as usufruct, over, or rights to acquire (whether or not already issued), shares representing five per cent. or more of the total issued and outstanding capital (or the issued and outstanding capital of any class of shares) of a company; (b) the ownership of, or certain other rights, such as usufruct, over profit participating certificates (*winstbewijzen*), or membership rights in a co-operative association, that relate to five per cent. or more of the annual profit of a company or co-operative association or to five per cent. or more of the liquidation proceeds of a company or co-operative association; or (c) membership rights representing five per cent. or more of the voting rights in a co-operative association's general meeting; if such holder is a company, such holder does not have a substantial interest in Issuer or if such holder does have such a substantial interest, it can be allocated to the holder's business assets. For purpose of this clause (iv), a substantial interest is generally not present if a holder does not hold, whether directly or indirectly, (a) the ownership of, certain other rights, such as usufruct, over, or rights to acquire (whether or not already issued) shares representing five per cent. or more of the total issued and outstanding capital (or of the issued and outstanding capital of any class of shares) of a company; or (b) the ownership of, or certain other rights, such as usufruct, over profit participating certificates (*winstbewijzen*) that relate to five per cent. or more of the annual profit of a company or to five per cent. or more of the liquidation proceeds of a company; and if such holder is an individual, such income or capital gain does not form a "benefit from miscellaneous activities" in the Netherlands (*resultaat uit overige werkzaamheden*) which, for instance, would be the case if the activities in the Netherlands with respect to Notes exceed "normal active asset management" (*normaal, actief vermogensbeheer*) or if income and gains are derived from the holding, whether directly or indirectly, of (a combination of) shares, debt claims or other rights (together, a *lucratief belang*) that the holder thereof has acquired under such circumstances that such income and gains are intended to be remuneration for work or services performed by such holder (or a related person) in the Netherlands, whether within or outside an employment relation, where such lucrative interest provides the holder thereof, economically speaking, with certain benefits that have a relation to the relevant work or services. A holder of Notes will not be subject to taxation in the Netherlands by reason only of the execution, delivery and/or enforcement of the documents relating to an issue of Notes or the performance by Issuer of its obligations thereunder or under the Notes.

### **Gift, Estate or Inheritance Taxes**

No gift, estate or inheritance taxes will arise in the Netherlands with respect to an acquisition of Notes by way of a gift by, or on the death of, a holder who is neither resident nor deemed to be resident in the Netherlands for Netherlands inheritance and gift tax purposes, unless in the case of a gift of Notes by an individual who at the date of the gift was neither resident nor deemed to be resident in the Netherlands, such individual dies within 180 days after the date of the gift, while being resident or deemed to be resident in the Netherlands.

For purposes of Netherlands gift and inheritance tax, an individual with the Netherlands nationality will be deemed to be resident in the Netherlands if he has been resident in the Netherlands at any time during the ten years preceding the date of the gift or his death.

For purposes of Netherlands gift tax, an individual not holding the Netherlands nationality will be deemed to be resident in the Netherlands if he has been resident in the Netherlands at any time during the twelve months preceding the date of the gift.

For purposes of Netherlands gift and inheritance tax, a gift that is made under a condition precedent is deemed to have been made at the moment such condition precedent is satisfied. If the condition precedent is fulfilled after the death of the donor, the gift is deemed to be made upon the death of the donor.

For purposes of Netherlands gift, estate and inheritance taxes, (i) a gift by a Trust, will be construed as a gift by the Settlor, and (ii) upon the death of the Settlor, as a rule, his/her Beneficiaries, will be deemed to have inherited directly from the Settlor. Subsequently, the



Beneficiaries will be deemed the Settlor of the Trust for purposes of the Netherlands gift, estate and inheritance tax in case of subsequent gifts or inheritances.

### **Value Added Tax**

There is no Netherlands value added tax payable in respect of payments in consideration for the issue of the Notes, in respect of the payment of interest or principal under the Notes, or the transfer of the Notes.

### **Other Taxes and Duties**

There is no Netherlands registration tax, capital tax, stamp duty or any other similar tax or duty payable in the Netherlands by a holder of Notes in respect of or in connection with the execution, delivery and/or enforcement by legal proceedings (including any foreign judgment in the courts of the Netherlands) of the Notes or the performance of the obligations of Issuer under the Notes.

### **Residence**

A holder of Notes will not be treated as a resident of the Netherlands by reason only of the holding of the Notes or the execution, performance, delivery and/or enforcement of the Notes.

### **EU Savings Directive**

Under Council Directive 2003/48/EC on the taxation of savings income Member States are required to provide to the tax authorities of another Member State details of payments of interest and other similar income paid by a person within its jurisdiction to, or for, an individual or certain limited types of entity established in that other Member State. However, for a transitional period Austria and Luxembourg are instead required (unless during such period they elect otherwise) to operate a withholding tax in relation to such payments. The transitional period will end after agreement on exchange of information is reached between the European Union and certain non-European Union states. No withholding will be required where a holder of Notes authorises the person making the payments to report the payment or presents a certificate from the relevant tax authority establishing exemption therefrom. A number of third countries (including Switzerland) have adopted equivalent measures (a withholding system in the case of Switzerland), and certain British and Dutch dependent or associated territories have adopted the same measures, with effect from the same date.

The European Commission has proposed certain amendments to Council Directive 2003/48/EC, which may, if implemented, amend or broaden the scope of the requirements described above.

## **GERMAN TAX CONSIDERATIONS**

### **General**

The following tax section deals in a general manner with the taxation of indirect income and capital gains derived from the Notes and the deduction of withholding tax to be made under German law from the proceeds from the investment in the Notes. This tax section is based on the laws in force on the date of this prospectus/offering memorandum, and it is of general nature only and neither intended as, nor to be understood as, legal or tax advice. Any information given hereafter reflects the opinion of the Issuer. It must not be misunderstood as a representation or guarantee with regard to a specific tax treatment, and courts or other relevant authorities may come to different interpretations of applicable law. Further, this tax section is not intended as the sole basis for an investment in the Notes, and the individual tax position of the investor should always be investigated because the tax consequences depend on the individual facts and circumstances at the level of the investor and may be subject to alteration due to future changes in law.

**Prospective investors are recommended to consult their own tax advisors as to the individual tax consequences arising from the investment in the Notes.**

## Withholding Tax

For German tax residents (e.g. persons whose residence, habitual abode, statutory seat or place of management is located in Germany), interest payments on the Notes are subject to withholding tax, provided that the Notes are held in custody with a German custodian, who is required to deduct the withholding tax from such interest payments (the “**Disbursing Agent**”). Disbursing Agents are German resident credit institutions, financial services institutions (including German permanent establishments of foreign institutions), securities trading companies or securities trading banks. The applicable withholding tax rate is 25% (plus 5.5% solidarity surcharge thereon and, if applicable, church tax).

The withholding tax regime should also apply to any gains from the sale or redemption of Notes realized by private investors holding the Notes as private (and not as business) assets in custody with a Disbursing Agent. Subject to exceptions, the amount of capital gains on which the withholding tax charge is applied is generally levied on the difference between the proceeds received upon the disposition or redemption of the Notes and (after the deduction of actual expenses directly related thereto) the acquisition costs. If custody has changed since the acquisition and the acquisition data is not proved to the Disbursing Agent, the tax at a rate of 25% (plus 5.5% solidarity surcharge and, if applicable, church tax) will be imposed on an amount equal to 30% of the proceeds from the sale or redemption of the Notes

The withholding tax is not applied if the total investment income of a private investor is not exceeding the lump sum deduction (*Sparer-Pauschbetrag*) of €801 (€1,602 for married couples filing jointly) provided the investor has obtained a withholding tax exemption certificate (*Freistellungsauftrag*). Expenses actually incurred are not deductible.

German resident corporate and, upon application, other German resident business investors should in essence not be subject to the withholding tax on gains from the disposition, sale or redemption of the Notes (i.e., for these investors only coupon payments, but not gains from the sale or redemption of the Notes are subject to the withholding tax regime).

The Issuer of the Notes should under German law not be required to deduct withholding tax from the proceeds from the investment in the Notes.

## Private Investors

For private investors the withholding tax is — without prejudice to certain exceptions — definite. Private investors can apply to have their income from the investment into the Notes assessed in accordance with the general rules on determining an individual’s tax bracket if this would result in a lower tax burden. An assessment is mandatory for income from the investment into the Notes where the Notes are held in custody outside of Germany. Losses resulting from the sale or redemption of the Notes can only be off-set against other investment income. In the event that a set-off is not possible in the assessment period in which the losses have been realized, such losses can be carried forward into future assessment periods only and can be offset against investment income generated in future assessment periods.

## Business Investors

Interest payments and capital gains from the disposition or redemption of the Notes held as business assets by German tax resident business investors are generally subject to German income tax or corporate income tax (plus 5.5% solidarity surcharge thereon). Any withholding tax deducted from interest payments is — subject to certain requirements — creditable. To the extent the amount withheld exceeds the (corporate) income tax liability, the withholding tax is — as a rule — refundable. The coupon payments and capital gains are also subject to trade tax, if the Notes are attributable to a trade or business.

## Foreign Tax Residents

Investors not resident in Germany should, in essence, not be taxable in Germany with the proceeds from the investment in the Notes, and no German withholding tax should be withheld from such income, even if the Notes are held in custody with a German credit (or comparable) institution. Exceptions apply, e.g., where the Notes are held as business assets in a German permanent establishment of the investor.

## LUXEMBOURG TAX CONSIDERATIONS

The following is a summary discussion of certain material Luxembourg tax consequences with respect to the Notes. The summary does not purport to be a comprehensive description of all of the tax considerations that may be relevant to any particular holder of Notes, and does not purport to include tax considerations that arise from rules of general application or that are generally assumed to be known to holders of Notes. It is not intended to be, nor should it be construed to be, legal or tax advice. This discussion is based on Luxembourg laws and regulations as they stand on the date of this prospectus/offering memorandum and is subject to any change in law or regulations or changes in interpretation or application thereof that may take effect after such date. Prospective investors in the Notes should therefore consult their own professional advisers as to the effects of state, local or foreign laws and regulations, including Luxembourg tax law and regulations, to which they may be subject.

All payments of interest and principal by the Issuers under the Notes can be made free of withholding or deduction for or on account of any taxes of whatsoever nature imposed, levied, withheld, or assessed by Luxembourg or any political subdivision or taxing authority thereof or therein in accordance with applicable law, subject however to:

1. the application of the Luxembourg law of June 21, 2005 implementing the EU Savings Directive and providing for the possible application of a withholding tax (35% from July 1, 2011) on interest paid to certain non-Luxembourg resident investors (individuals and certain types of entities called “residual entities”) in the event the Issuer appoints a paying agent in Luxembourg within the meaning of the above-mentioned directive (see “— *EU Savings Tax Directive*”, below); and
2. (ii) the application of the Luxembourg law of December 23, 2005 which has introduced a 10% final withholding tax on savings income (i.e., with certain exemptions, savings income within the meaning of the Luxembourg law of June 21, 2005 implementing the EU Savings Directive) in respect of Luxembourg resident individuals. The law of July 17, 2008 (amending the law of December 23, 2005) extended the possibility to benefit, under conditions, from such final withholding tax of 10% for interest payments to Luxembourg resident individuals not holding the Notes as business assets, that are made through a paying agent established in another EU-Member State, in a Member State of the European Economic Area or in a jurisdiction that has concluded an international accord in relation to the EU Savings Tax Directive.

Responsibility for the withholding of tax in connection with the above-mentioned Luxembourg laws of June 21, 2005 and December 23, 2005 shall be assumed by the Luxembourg paying agent within the meaning of these laws and not by the relevant Issuer. As of January 1, 2006 a 10% withholding tax applies on interest payments made by Luxembourg paying agents to Luxembourg individual residents on interest accrued since July 1, 2005, but paid after January 1, 2005. This withholding tax also applies on accrued interest received upon sale, redemption or repurchase of the Notes. Regarding individual resident in another European Union member state, the withholding tax treatment is subject to the EU Savings Directive.

A holder of a Note who derives income from such Note or who realizes a gain on the disposal or redemption or exchange thereof will not be subject to Luxembourg taxation on income or capital gains unless: (i) such holder is, or is deemed to be, resident in Luxembourg; or (ii) such income or gain is attributable to an enterprise or part thereof which is carried on through a permanent establishment or a permanent representative in Luxembourg.

Luxembourg net wealth tax will not be levied on a holder of a Note unless: (i) such holder is, or is deemed to be, a fully taxable company resident in Luxembourg for the purpose of the relevant provisions; or (ii) such Note is attributable to an enterprise or part thereof which is carried on through a permanent establishment or a permanent representative in Luxembourg. In respect of individuals, the Luxembourg law of December 23, 2005 has abolished the net wealth tax with effect from January 1, 2006. No Luxembourg inheritance tax is levied on the transfer of the Notes upon death of a Noteholder in cases where the deceased was not a resident of Luxembourg for inheritance tax purposes.

Luxembourg gift tax will be levied in case the gift is made pursuant to a notarial deed signed before a Luxembourg notary. It is not compulsory that the Notes be filed, recorded or enrolled with any court, or other authority in Luxembourg or that registration tax, transfer tax, capital tax, stamp duty or any other similar tax or duty be paid in respect of or in connection with the execution, delivery and/or enforcement by legal proceedings (including any foreign judgment in the courts of Luxembourg) of the Notes, in accordance therewith, except that, in case of use of the Notes, either directly or by way of reference, (i) in a public deed, (ii) in a judicial proceeding in Luxembourg or (iii) before any other Luxembourg official authority (*autorité constituée*), registration will in principle be ordered which implies the application of a fixed or an ad valorem registration duty of 0.24% calculated on the amounts mentioned in the Notes. Indeed, a 0.24% registration duty could be levied on any notarial or other public deed making a precise reference to a loan or obligation of a sum of money.

There is no Luxembourg value-added tax payable in respect of payments in consideration for the issue of the Notes or in respect of the payment of interest or principal under the Notes or the transfer of Notes, provided that Luxembourg value-added tax may, however, be payable in respect of fees charged for certain services rendered to the Issuer, if for Luxembourg value-added tax purposes such services are rendered, or are deemed to be rendered, in Luxembourg and an exemption from Luxembourg value-added tax does not apply with respect to such services.

A holder of a Note will not become resident, or deemed to be resident, in Luxembourg by reason only of the holding of such Note or the execution, performance, delivery and/or enforcement of that or any other Note.

## **EU SAVINGS TAX DIRECTIVE**

Under EC Council Directive 2003/48/EC on the taxation of savings income, Member States are required to provide to the tax authorities of another Member State details of payments of interest (or similar income) paid by a person within its jurisdiction to an individual resident in that other Member State. However, for a transitional period, Luxembourg and Austria are instead required (unless during that period they elect otherwise) to operate a withholding system in relation to such payments (the ending of such transitional period being dependent upon the conclusion of certain other agreements relating to information exchange with certain other countries). A number of non-EU countries and territories including Switzerland have agreed to adopt similar measures (a withholding system in the case of Switzerland).

On September 15, 2008 the European Commission issued a report to the Council of the European Union on the operation of the Directive, which included the Commission's advice on the need for changes to the Directive. On November 13, 2008 the European Commission published a more detailed proposal for amendments to the Directive, which included a number of suggested changes. If any of those proposed changes are made in relation to the Directive, they may amend or broaden the scope of the requirements described above.

## **U.S. FEDERAL INCOME TAX CONSIDERATIONS**

### **General**

The following discussion is a summary based on present law of certain U.S. federal income tax considerations relevant to the purchase, ownership and disposition of the Notes. The discussion

addresses only U.S. Holders (as defined below) who purchase Notes in the original offering at the original offering price, hold the Notes as capital assets and use the U.S. dollar as their functional currency. The discussion is not a complete description of all U.S. tax considerations that may be relevant to particular purchasers. It does not address the tax treatment of prospective purchasers subject to special rules, such as banks, dealers, traders that elect to mark-to-market, insurance companies, investors liable for the alternative minimum tax, U.S. expatriates, tax-exempt entities or persons holding the Notes as part of a hedge, straddle, conversion or other integrated financial transaction. It also does not address the tax treatment of prospective purchasers that will hold the Notes in connection with a permanent establishment outside of the United States. It does not consider U.S. state or local tax matters, non-U.S. tax matters or U.S. federal tax matters other than U.S. income taxes (such as estate or gift taxes). It also does not consider the recently enacted Medicare tax on certain investment income. The Issuer believes, and this discussion assumes, that the Notes will be treated as debt for U.S. federal income tax purposes.

**THE FOLLOWING STATEMENTS ABOUT U.S. FEDERAL TAX ISSUES ARE MADE TO SUPPORT MARKETING OF THE NOTES. NO TAXPAYER CAN RELY ON THEM TO AVOID TAX PENALTIES. EACH PROSPECTIVE PURCHASER SHOULD SEEK ADVICE FROM AN INDEPENDENT TAX ADVISOR ABOUT THE TAX CONSEQUENCES UNDER ITS OWN PARTICULAR CIRCUMSTANCES OF INVESTING IN THE NOTES UNDER THE LAWS THE NETHERLANDS, THE UNITED STATES, ITS CONSTITUENT JURISDICTIONS AND ANY OTHER JURISDICTION WHERE THE PURCHASER MAY BE SUBJECT TO TAXATION.**

For purposes of this discussion, a “U.S. Holder” is a beneficial owner of a Note that is for U.S. federal income tax purposes (i) a citizen or individual resident of the United States, (ii) a corporation created or organized under the laws of the United States, any state thereof or the District of Columbia, (iii) a trust subject to the control of a U.S. person and the primary supervision of a U.S. court or (iv) an estate the income of which is subject to U.S. federal income taxation regardless of its source.

The tax treatment of a partner in a partnership that holds the Notes generally will depend upon the status of the partner and the activities of the partnership. A partnership considering an investment in the Notes should consult its own tax advisors about the tax consequences for its partners.

## **Interest**

A U.S. Holder must include stated interest on the Notes in gross income in accordance with its regular method of tax accounting. Interest on the Notes, including any additional amounts paid on account of withholding tax, will be ordinary income from sources outside the United States.

A cash basis U.S. Holder receiving interest in euro must include in income a U.S. dollar amount based on the spot exchange rate on the date of receipt whether or not the payment is converted to U.S. dollars. An accrual basis U.S. Holder generally must include in income a U.S. dollar amount based on the average exchange rate during the accrual period (or, for an accrual period that spans two taxable years, the partial accrual period within each taxable year), unless such U.S. Holder elects to translate accrued interest into U.S. dollars at the spot exchange rate on the last day of the accrual period (or the last day of each portion of an accrual period, in the case of an accrual period that spans two taxable years) or the spot exchange rate on the date of receipt in the case of interest received within five business days of the last day of the accrual period. Currency translation elections apply to all debt instruments that the electing U.S. Holder holds or acquires, and they cannot be revoked without the consent of the U.S. Internal Revenue Service. Upon receipt of an interest payment in euro, an accrual basis U.S. Holder will recognize exchange gain or loss equal to any difference between the U.S. dollar amount accrued and the U.S. dollar value of the payment received at the spot exchange rate on the date of receipt. Exchange gain or loss will be U.S. source ordinary income or loss.

## **Disposition**

A U.S. Holder generally will recognize gain or loss on a sale, redemption or other disposition of a Note in an amount equal to the difference between the amount realized (less any accrued but unpaid interest, which will be taxable as interest to the extent not previously taxed) and the U.S. Holder's adjusted tax basis in the Note. A U.S. Holder's adjusted U.S. dollar tax basis in a Note generally will be the U.S. dollar value of the amount paid for the Note (based on the spot exchange rate on the date of purchase, or if the Notes are considered to be traded on an established securities market for applicable U.S. federal income tax purposes and the U.S. Holder is a cash basis taxpayer or an accrual basis taxpayer that so elects, the spot exchange rate on the settlement date).

Gain or loss on disposition of a Note generally will be U.S. source capital gain or loss except to the extent of exchange gain or loss (as described below). Any capital gain or loss will be long-term capital gain or loss if the U.S. Holder has held the Note for more than one year. A non-corporate U.S. Holder's long-term capital gain may be taxed at lower rates. Deductions for capital losses are subject to limitations.

A U.S. Holder that receives currency other than U.S. dollars upon a sale or other disposition of the Notes will have an amount realized equal to the U.S. dollar value of the currency on the date of sale; provided that if the Notes are considered to be traded on an established securities market for applicable U.S. federal income tax purposes, a cash basis U.S. Holder or electing accrual basis taxpayer will determine the amount realized based on the spot exchange rate on the settlement date.

To the extent gain or loss recognized on the disposition of a Note arises from currency exchange gain or loss attributable to changes in the euro exchange rate between the dates of acquisition and disposition of the Note (or, in some cases, the settlement dates of the acquisition and/or disposition), such gain or loss will be treated as U.S. source ordinary income or loss and generally will not be considered additional interest income or expense. Exchange gain or loss (including with respect to any accrued interest) is taken into account only to the extent of total gain or loss realized on the transaction.

A U.S. Holder will have a tax basis in the currency equal to the U.S. dollar amount realized. Any gain or loss realized by a U.S. Holder on a subsequent conversion of currency for U.S. dollars will be U.S. source ordinary income or loss.

## **Further Notes**

Further notes issued in additional offerings by the Issuer that have identical terms to the Notes issued in this offering may not be fungible for U.S. federal income tax purposes with the Notes issued in this offering. Further notes may not be fungible unless they are issued in a qualified reopening of the offering. Whether the issuance of further notes is a qualified reopening will depend on the interval after the original offering, the yield of the outstanding Notes at that time (based on their fair market value), whether the further notes would otherwise be issued with original issue discount and whether any outstanding Notes are publicly traded or quoted at the time of the new issuance. If issuance of the further notes is not a qualified reopening, the further notes may have original issue discount. If the further notes have original issue discount that may adversely affect the market value of the previously outstanding Notes unless the further notes can be distinguished from the Notes.

## **Reporting and Withholding**

Payments of interest and proceeds from the sale, redemption or other disposition of a Note may be reported to the U.S. Internal Revenue Service unless the holder establishes a basis for exemption. Backup withholding tax may apply to amounts subject to reporting if the U.S. Holder fails to provide an accurate taxpayer identification number or has become subject to backup withholding due to a prior failure to report its interest and dividends income. A holder can claim a



credit against its U.S. federal income tax liability for the amount of any backup withholding tax and a refund of any excess if it timely follows proper procedures.

Payments on the Notes are not expected to be subject to withholding under the recently enacted FATCA rules because proposed regulations would not apply the rules to obligations that were outstanding before 2013. FATCA withholding could apply if final regulations were to adopt an earlier date or if the terms of the Notes were modified materially after their issue date.

#### **Tax Filing Disclosure Requirement**

Certain U.S. Holders are required to report to the Internal Revenue Service information with respect to Notes not held through an account with certain financial institutions. Investors who fail to report required information could become subject to substantial penalties. Potential investors should consult their own tax advisors regarding the possible implications of this new legislation for their investment in Notes.

**THE DISCUSSION ABOVE IS A GENERAL SUMMARY. IT DOES NOT COVER ALL TAX MATTERS THAT MAY BE OF IMPORTANCE TO A PARTICULAR PURCHASER. EACH PROSPECTIVE PURCHASER IS URGED TO CONSULT ITS OWN TAX ADVISOR ABOUT THE TAX CONSEQUENCES TO IT OF AN INVESTMENT IN THE NOTES IN LIGHT OF THE PURCHASER'S OWN CIRCUMSTANCES.**

## PLAN OF DISTRIBUTION AND OFFER OF THE NOTES

### PLAN OF DISTRIBUTION

Under the terms and conditions contained in the purchase agreement, the Issuer will agree to sell the Notes to the Initial Purchasers named therein and below and, subject to certain conditions contained therein, the Initial Purchasers will severally agree to purchase the Notes from the Issuer pursuant to the terms of the purchase agreement. Under the purchase agreement, each Initial Purchaser is obligated to purchase and accept delivery of all the Notes it has agreed to purchase under the purchase agreement if any such Notes are purchased.

The following table sets forth the amount of Notes to be purchased by each Initial Purchaser in the offering of the Notes:

| Initial Purchasers                                                           | Aggregate<br>Principal<br>Amount of<br>Notes to be<br>Purchased |
|------------------------------------------------------------------------------|-----------------------------------------------------------------|
| Deutsche Bank AG, London Branch. . . . .                                     | € 90,000,000                                                    |
| Bayerische Landesbank. . . . .                                               | 60,000,000                                                      |
| Commerzbank Aktiengesellschaft . . . . .                                     | 60,000,000                                                      |
| The Royal Bank of Scotland plc. . . . .                                      | 60,000,000                                                      |
| Landesbank Baden-Württemberg . . . . .                                       | 50,000,000                                                      |
| Banco Bilbao Vizcaya Argentaria, S.A. . . . .                                | 15,000,000                                                      |
| BNP Paribas . . . . .                                                        | 15,000,000                                                      |
| DNB Markets, Inc. . . . .                                                    | 15,000,000                                                      |
| DZ BANK AG Deutsche Zentral-Genossenschaftsbank, Frankfurt am Main . . . . . | 15,000,000                                                      |
| Landesbank Hessen-Thüringen, Girozentrale . . . . .                          | 15,000,000                                                      |
| HSBC Bank plc . . . . .                                                      | 15,000,000                                                      |
| Mediobanca — Banca di Credito Finanziario S.p.A. . . . .                     | 15,000,000                                                      |
| Mizuho International plc . . . . .                                           | 15,000,000                                                      |
| Raiffeisen Bank International AG. . . . .                                    | 15,000,000                                                      |
| SMBC Nikko Capital Markets Limited . . . . .                                 | 15,000,000                                                      |
| Société Générale . . . . .                                                   | 15,000,000                                                      |
| WestLB AG . . . . .                                                          | 15,000,000                                                      |
| <b>Total . . . . .</b>                                                       | <b>€500,000,000</b>                                             |

The Initial Purchasers are entitled, under certain circumstances, to terminate the purchase agreement. In such event, no Notes will be delivered to the investors.

We have agreed to indemnify the Initial Purchasers and their controlling persons against certain liabilities in connection with this offering, including liabilities under the Securities Act, and to contribute to payments that the Initial Purchasers may be required to make in respect thereof.

The Notes and the Guarantees have not been and will not be registered under the Securities Act and may be offered or sold within the United States or to, or for the account or benefit of, U.S. persons except to qualified institutional buyers in reliance on Rule 144A under the Securities Act and to certain persons in offshore transactions in reliance on Regulation S under the Securities Act. Terms used in this paragraph have the meanings given to them by Regulation S under the Securities Act. Resales of the Notes are restricted as described under “*Notice to Investors*”.

In addition, until 40 days after the later of (i) the commencement of the offering and (ii) the issue date of the Notes, an offer or sale of the Notes initially sold in reliance on Regulation S within the United States by a dealer (whether or not participating in the offering) may violate the registration requirements of the Securities Act if such offer or sale is made otherwise than in accordance with Rule 144A.

The Initial Purchasers may make offers and sales of the Notes in the United States through certain of their respective affiliates. One or more of the Initial Purchasers may sell through affiliates or appropriately licensed entities (each, a **"Selling Agent"**) for sales of the Notes in jurisdictions in which they are otherwise not prohibited. To that end, such Initial Purchaser and its Selling Agent may enter into an agreement pursuant to which the Selling Agent provides certain advisory and/or other services with respect to this offering. In return for the provision of such services by the Selling Agent, an Initial Purchaser may pay a mutually agreed-fee to its Selling Agent.

Resales of the Notes are restricted as described under *"Notice to Investors"*.

Each Initial Purchaser has agreed that:

- (a) it has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of section 21 of FSMA) received by it in connection with the issue or sale of any Securities in circumstances in which section 21(1) of FSMA does not apply to the Issuer or the Parent Guarantor; and
- (b) it has complied and will comply with all applicable provisions of FSMA with respect to anything done by it in relation to the Securities in, from or otherwise involving the United Kingdom.

Persons who purchase Notes from the Initial Purchasers may be required to pay stamp duty, taxes and other charges in accordance with the laws and practice of the country of purchase in addition to the offering price set forth on the cover page of this prospectus.

Application has been made to list the Notes on the official list of the Luxembourg Stock Exchange and to admit the Notes to trading on the regulated market of the Luxembourg Stock Exchange, a market appearing on the list of regulated markets issued by the European Commission pursuant to Directive 2004/39/EC of April 21, 2004 on markets in financial instruments.

The Notes may not be offered or sold, directly or indirectly, and neither this prospectus/offering memorandum nor any other offering material or advertisements in connection with the Notes may be distributed or published, in or from any country or jurisdiction, except in compliance with any applicable rules and regulations of any such country or jurisdiction. This prospectus/offering memorandum does not constitute an offer to sell or a solicitation of an offer to purchase in any jurisdiction where such offer or solicitation would be unlawful. Persons into whose possession this prospectus/offering memorandum comes are advised to inform themselves about and to observe any restrictions relating to the offering of the Notes, the distribution of this prospectus/offering memorandum and resale of the Notes. See *"Notice to Investors"*.

The Notes are a new issue of securities for which there currently is no market. The Issuer has applied to list the Notes on the official list of the Luxembourg Stock Exchange and to admit the Notes to trading on the regulated market of the Luxembourg Stock Exchange, a market appearing on the list of regulated markets issued by the European Commission pursuant to Directive 2004/39/EC of April 21, 2004 on markets in financial instruments; however, the Issuer cannot assure you that such listing will be maintained. The Initial Purchasers have advised the Issuer that they intend to make a market in the Notes as permitted by applicable law. The Initial Purchasers are not obligated, however, to make a market in the Notes, and any market-making may be discontinued at any time at their sole discretion without notice. In addition, any such market-making activity will be subject to the limits imposed by the Securities Act and the U.S. Securities Exchange Act of 1934, as amended (the **"Exchange Act"**). Accordingly, the Issuer cannot assure you that any market for the Notes will develop, or that it will be liquid if it does develop.

In connection with this offering, the Stabilizing Manager (as defined below) or any person acting for it may over-allot or effect transactions with a view to supporting the market price of the Notes at a level higher than that which might otherwise prevail for a limited period after the issue date. However, there may be no obligation on the Stabilizing Manager or its agent to do this. Such

stabilizing, if commenced, may be discontinued at any time, and must be brought to an end after a limited period.

In connection with this offering, Deutsche Bank AG, London Branch (the “**Stabilizing Manager**”) or any person acting for it may engage in over-allotment, stabilizing, transactions, covering transactions and penalty bids in accordance with Regulation M under the Exchange Act.

Over-allotment involves sales in excess of the offering size, which creates a short position for the Initial Purchasers.

Stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum.

Syndicate covering transactions involve purchases of the Notes in the open market after the distribution has been completed in order to cover short positions. Penalty bids permit the Initial Purchasers to reclaim a selling concession from a broker/dealer when the Notes originally sold by that broker/dealer are purchased in a stabilizing or covering transaction to cover short positions.

These stabilizing transactions, syndicate covering transactions and penalty bids may cause the price of the Notes to be higher than it would otherwise be in the absence of these transactions. These transactions, if commenced, may be discontinued at any time.

The Initial Purchasers and certain of their affiliates have provided and may provide in the future certain commercial banking, financial advisory and investment banking services for us, our subsidiaries, the guarantors and certain of our affiliates, for which they receive, or will receive customary fees and expense reimbursement. The Initial Purchasers and/or their affiliates have acted as managers and/or arrangers on several of our offerings of debt securities and have acted and/or currently act as agents and/or lenders under our credit facilities or other lines of credit, where in each case, we have paid customary fees in connection therewith. In addition, in the ordinary course of their business activities, the Initial Purchasers and their affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers. Such investments and securities activities may involve securities and/or instruments of ours or our affiliates. If the Initial Purchasers or their affiliates have a lending relationship with us, they routinely hedge their credit exposure to us consistent with their customary risk management policies. In addition, it is likely that certain of the Initial Purchasers and/or their affiliates will hedge their credit exposure. Typically, the Initial Purchasers and their affiliates would hedge such exposure by entering into transactions which consist of either the purchase of credit default swaps or the creation of short positions in our securities including, potentially, the Notes offered hereby. Any such short positions could adversely affect future trading prices of the Notes offered hereby. The Initial Purchasers and their affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

## **OFFER OF THE NOTES**

The respective Notes will be offered and sold by the applicable Initial Purchasers only to (i) institutional investors in the European Economic Area in compliance with Regulation S under the Securities Act, and (ii) “qualified institutional buyers” as defined in Rule 144A under the Securities Act. In the case of a secondary market public offer, specific procedures relating to the (i) time period, including any possible amendments, during which the offer will be open and the description of the application process, (ii) details of the minimum and/or maximum amount of application (whether in number of Notes or aggregate amount to invest), (iii) method and time limits for paying and for delivery of the Notes, (iv) the full description of the manner in and the date on which results of the offer are to be made public and (v) plan of distribution and allotment (including the various categories of potential investors to which the Notes are offered, the process for notification to applicants of the amount allotted and indication whether dealing may begin before this notification

is made) may be determined and communicated by any person making an offer. Any investor intending to acquire or acquiring any Notes from any person making an offer ("offeror") should be aware that, in the context of an offer to the public as defined in the Prospectus Directive, the Issuer may be responsible to the investor for the prospectus only if the Issuer is acting in association with that offeror to make the offer to the investor. **Each investor should therefore verify with the offeror whether or not the offeror is acting in association with the Issuer. If the offeror is not acting in association with the Issuer, the investor should confirm with the offeror whether anyone is responsible for a prospectus for the purposes of Article 6 of the Prospectus Directive as implemented by the national legislation of each Relevant Member State in the context of the offer to the public and, if so, who that person is. If the investor is in any doubt about whether it can rely on the prospectus and/or who is responsible for its contents it should seek legal advice.**

In relation to each Relevant Member State, each Initial Purchaser has agreed that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the "Relevant Implementation Date") it has not made and will not make an offer of Notes to the public in that Relevant Member State, and that such offers may not be made unless and until a prospectus has been approved by the competent regulatory authority and, as applicable, published and notified to the relevant competent authority in another Relevant Member State in accordance with the Prospectus Directive as implemented in such other Relevant Member State, except that it may make an offer of such Notes in such Relevant Member State:

- (a) to any legal entity which is a "qualified investor" as defined in the Prospectus Directive;
- (b) to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive (as defined below) 150 natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the relevant initial purchaser or Initial Purchasers nominated by the Issuer for any such offer; or
- (c) in any other circumstances falling within Article 3 para. 2 of the Prospectus Directive;

*provided* that no such offer of Notes shall require the Issuer or any Initial Purchaser to publish a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an "offer of Notes to the public" in relation to any Notes in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the Notes to be offered so as to enable an investor to decide to purchase or subscribe for the Notes, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State, the expression "Prospectus Directive" means Directive 2003/71/EC (and amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State), and includes any relevant implementing measure in the Relevant Member State and the expression "2010 PD Amending Directive" means Directive 2010/73/EU.

Any investor who submitted an order in relation to the Notes whose order has been accepted will be notified of its allotment of Notes. Before an investor receives a confirmation that its purchase order for the Notes has been accepted, the investor may reduce or withdraw its purchase orders. There is no minimum or maximum amount of Notes to be purchased. Investors may place offers to purchase Notes in any amount, subject to minimum denomination requirements.

Subscription rights for the Notes will not be issued; therefore, there are no procedures in place for the exercise of any rights of pre-emption, the negotiability of subscription rights or the treatment of subscription rights not exercised. There are no conditions to which the offer is subject. In particular, there is no minimum or maximum amount of the Notes required to be purchased. Investors may place offers to purchase the Notes in any amount.

The Issuer will not charge any costs, expenses or taxes directly to any investor to participate in the offer of the Notes. Investors must inform themselves about any costs, expenses or taxes in

connection with the purchase of Notes which are generally applicable in their respective country of residence, including any charges of their own depository banks, financial intermediaries or other entities in connection with the purchase or holding of securities.

We announced the results of the offering on March 21, 2012, and expect to deliver the Notes in book-entry form to investors on or about March 28, 2012. The Notes will be delivered via book-entry through the Clearing Systems and their participants against payment of the Issue Price. Applicable law in certain jurisdictions, including the United States, requires trades in the secondary market to settle within a limited number of days (except, in some cases, where the parties to such trade expressly agree otherwise). Accordingly, purchasers who wish to trade Notes prior to delivery of the Notes will be required, by virtue of the fact that the Notes initially settle on or about March 28, 2012, to specify an alternate settlement arrangement at the time of any such trade to prevent a failed settlement. Purchasers of the Notes who wish to trade the Notes prior to their date of delivery should consult with their advisors.



## NOTICE TO INVESTORS

These Notes have not been registered under the Securities Act and they may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act. Accordingly, the Notes offered hereby are being offered and sold only (a) to Qualified Institutional Buyers in compliance with Rule 144A under the Securities Act and (b) pursuant to offers and sales that occur outside the United States to persons other than U.S. persons ("**foreign purchasers**"), which term includes dealers or other professional fiduciaries in the United States acting on a discretionary basis for foreign beneficial owners, other than an estate or trust) in offshore transactions meeting the requirements of Rule 903 of Regulation S under the Securities Act. As used herein, the terms "**offshore transaction**," "**United States**" and "**U.S. person**" have the respective meanings given to them in Regulation S.

Each purchaser of Notes, by its acceptance thereof, will be deemed to have acknowledged, represented to and agreed with us and the Initial Purchasers as follows:

- (1) It understands and acknowledges that the Notes have not been registered under the Securities Act or any other applicable securities law, are being offered for resale in transactions not requiring registration under the Securities Act or any other securities laws, including sales pursuant to Rule 144A under the Securities Act, and may not be offered, sold or otherwise transferred except in compliance with the registration requirements of the Securities Act or any other applicable securities law, pursuant to an exemption therefrom, or in a transaction not subject thereto, and in each case in compliance with the conditions for transfer set forth in paragraph (4) below.
- (2) It is not an "affiliate," as defined in Rule 144 under the Securities Act, of us, or acting on our behalf and it is either:
  - (a) a Qualified Institutional Buyer within the meaning of Rule 144A under the Securities Act and is aware that any sale of Notes to it will be made in reliance on Rule 144A. Such acquisition will be for its own account or for the account of another Qualified Institutional Buyer, or
  - (b) an institution that, at the time the buy order for the Notes was originated, was outside the United States and was not a U.S. person (and was not purchasing for the account or benefit of a U.S. person) within the meaning of Regulation S under the Securities Act.
- (3) It acknowledges that none of us or the Initial Purchasers or any person representing us or the Initial Purchasers has made any representation to it with respect to us or the offering or sale of any Notes, other than the information contained in the prospectus/offering memorandum, which has been delivered to it and upon which it is relying in making its investment decision with respect to the Notes. Accordingly, it acknowledges that no representation or warranty is made by the Initial Purchasers as to the accuracy or completeness of such materials. It has had access to such financial and other information concerning us and the Notes as it has deemed necessary in connection with its decision to purchase any of the Notes, including an opportunity to ask questions of and request information from us and the Initial Purchasers.
- (4) It is purchasing the Notes for its own account, or for one or more investor accounts for which it is acting as a fiduciary agent, in each case for investment, and not with a view to, or for offer or sale in connection with, any distribution thereof in violation of the Securities Act, subject to any requirement of law that the disposition of its property or the property of such investor account or accounts be at all times within its or their control and subject to its or their ability to resell Notes pursuant to Rule 144A, Regulation S or any exemption from registration available under the Securities Act. It agrees on its own behalf and on behalf of any investor account for which it is purchasing the Notes, and each subsequent holder of the Notes by its acceptance thereof will agree, to offer, sell or

otherwise transfer such Notes during the holding period then imposed by Rule 144, or its successor, after the later of the date of the original issue and the last date on which we or any of our affiliates were the owner of such Notes, or any predecessor thereto (the "Resale Restriction Termination Date"), only:

- (a) to us or any of our subsidiaries,
- (b) pursuant to a registration statement which has been declared effective under the Securities Act,
- (c) for so long as the Notes are eligible for resale pursuant to Rule 144A, to a person it reasonably believes is a Qualified Institutional Buyer that purchases for its own account or for the account of a Qualified Institutional Buyer to whom notice is given that the transfer is being made in reliance on Rule 144A,
- (d) pursuant to offers and sales to non-U.S. persons that occur outside the United States within the meaning of Regulation S under the Securities Act, or
- (e) pursuant to any other available exemption from the registration requirements of the Securities Act, subject in each of the foregoing cases to any requirement of law that the disposition of its property or the property of such investor account or accounts be at all times within its or their control and in compliance with any applicable state securities laws.

Each purchaser acknowledges that we and the trustee reserve the right prior to any offer, sale or other transfer of the Notes pursuant to clause (e) above prior to the Resale Restriction Termination Date to require delivery of an opinion of counsel, certifications and/or other information satisfactory to us and the trustee.

Each purchaser acknowledges that each security will contain a legend substantially to the following effect:

"THE SECURITY (OR ITS PREDECESSOR) EVIDENCED HEREBY WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER SECTION 5 OF THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THE SECURITY EVIDENCED HEREBY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THE SECURITY EVIDENCED HEREBY IS HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. THE HOLDER OF THE SECURITY EVIDENCED HEREBY AGREES FOR THE BENEFIT OF THE ISSUER THAT (A) SUCH SECURITY MAY BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (1)(a) INSIDE THE UNITED STATES TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A UNDER THE SECURITIES ACT, (b) OUTSIDE THE UNITED STATES TO A FOREIGN PERSON IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (c) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF APPLICABLE) OR (d) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (AND BASED UPON AN OPINION OF COUNSEL ACCEPTABLE TO THE ISSUER IF THE ISSUER SO REQUESTS), (2) TO THE ISSUER OR (3) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT AND, IN EACH CASE, IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER APPLICABLE JURISDICTION AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THE SECURITY EVIDENCED HEREBY OF THE RESALE RESTRICTIONS SET FORTH IN CLAUSE (A) ABOVE. NO REPRESENTATION CAN BE MADE AS TO

THE AVAILABILITY OF THE EXEMPTION PROVIDED BY RULE 144 FOR RESALE OF THE SECURITY EVIDENCED HEREBY.”

- (5) It agrees that it will give to each person to whom it transfers Notes notice of any restrictions on transfer of such security.
- (6) If it is a purchaser in a sale that occurs outside the United States within the meaning of Regulation S, it acknowledges that until the expiration of the 40-day distribution compliance period within the meaning of Rule 903 of Regulation S, any offer or sale of the Notes shall not be made by it to a U.S. person or for the account or benefit of a U.S. person within the meaning of Rule 902(k) of the Securities Act except in accordance with Regulation S.
- (7) It acknowledges that the trustee will not be required to accept for registration of transfer any Notes acquired by it, except upon presentation of evidence satisfactory to us and the trustee that the restrictions set forth herein have been complied with.
- (8) It acknowledges that we, the Initial Purchasers and others will rely upon the truth and accuracy of the foregoing acknowledgments, representations, warranties and agreements, and agrees that if any of the acknowledgments, representations, warranties and agreements deemed to have been made by it by its purchase of the Notes are no longer accurate, it shall promptly notify us and the Initial Purchasers. If it is acquiring any Notes as a fiduciary or agent for one or more investor accounts, it represents that it has sole investment discretion with respect to each such investor account and that it has full power to make the foregoing acknowledgments, representations and agreements on behalf of each such investor account.
- (9) It understands that no action has been taken in any jurisdiction (including the United States) by us or the Initial Purchasers that would result in a public offering of the Notes or the possession, circulation or distribution of this Prospectus/Offering Memorandum or any other material relating to us or the Notes in any jurisdiction where action for such purpose is required, except that we have requested the CSSF to provide the competent authority in Germany with a certificate of approval attesting that the prospectus/offering memorandum has been prepared in accordance with the Luxembourg Prospectus Law (the “**Notification**”). Consequently, any transfer of the Notes will be subject to the selling restrictions set forth under “Notice to Investors”, “Notice to Investors in the European Economic Area”, “Notice to Certain Investors in the United Kingdom”, “Plan of Distribution” and, unless and until the Notification is given in Germany, “Notice to Investors in Germany and Luxembourg”.

## INDEPENDENT AUDITORS

The (i) consolidated financial statements of Fresenius SE & Co. KGaA for the years ended December 31, 2011, December 31, 2010, and December 31, 2009, (ii) unconsolidated financial statements of Fresenius Kabi AG for the years ended December 31, 2011 and December 31, 2010, and (iii) unconsolidated financial statements of Fresenius ProServe GmbH for the years ended December 31, 2011 and December 31, 2010, included in this prospectus/offering memorandum have been audited by KPMG AG Wirtschaftsprüfungsgesellschaft. The auditors' address is The Squire, Am Flughafen, 60549 Frankfurt am Main, Germany. KPMG AG is a member of the German Chamber of Public Accountants (*Wirtschaftsprüferkammer*), Berlin, Germany.

The unconsolidated financial statements of Fresenius Finance B.V. for the years ended December 31, 2011, and December 31, 2010, included in this prospectus/offering memorandum have been audited by KPMG Accountants, N.V., Facinatio Boulevard 200, 3065 WB Rotterdam, Netherlands. KPMG Accountants N.V. is a member of the Royal Dutch Institute of Chartered Accountants.

## **LISTING AND GENERAL INFORMATION**

### **LISTING**

Application has been made to admit the Notes to listing on the Official List of the Luxembourg Stock Exchange and to trading on the regulated market of the Luxembourg Stock Exchange.

For so long as the Notes are listed on the regulated market of the Luxembourg Stock Exchange and the rules of that exchange require, copies of the following documents may be inspected and obtained free of charge at the specified office of the listing agent in Luxembourg during normal business hours of any weekday:

- the Indenture;
- the articles of association and/or articles of incorporation of the Issuer and each of the Guarantors;
- the most recent audited consolidated financial statements published by the Parent Guarantor; and
- the most recent audited unconsolidated financial statements published by the Issuer and each of the Subsidiary Guarantors.

Financial notices concerning the Issuer and intended for holders of the Notes will be published on the website of the Luxembourg Stock Exchange [www.bourse.lu](http://www.bourse.lu).

We will maintain a paying and transfer agent in Luxembourg for as long as any of the Notes are listed on the Regulated Market of the Luxembourg Stock Exchange. We reserve the right to vary such appointment and will publish notice on the website of the Luxembourg Stock Exchange.

As of the date of this prospectus/offering memorandum, our most recent audited financial statements available were as of and for the year ended December 31, 2011. KPMG AG Wirtschaftsprüfungsgesellschaft, our auditor, has given and not withdrawn its consent to the inclusion in this prospectus/offering memorandum of their audit reports for the years ended December 31, 2011, 2010 and 2009. Fresenius SE & Co. KGaA's consolidated financial statements are published annually and are audited.

Each of the Subsidiary Guarantors prepares its audited annual statutory financial statements in accordance with German GAAP. The audited German GAAP financial statements for each of the Guarantors for the year ended December 31, 2011 are available at the principal executive offices of Fresenius SE & Co. KGaA.

### **CLEARING INFORMATION**

The Notes sold pursuant to Regulation S and the Notes sold pursuant to Rule 144A of the Securities Act have been accepted for clearance through the facilities of Clearstream and Euroclear under common codes 075920032 and 075920229, respectively. The international securities identification number for the Notes sold pursuant to Regulation S is XS0759200321 and the international securities identification number for the Notes sold pursuant to Rule 144A is XS0759202293.

### **LITIGATION**

Except as disclosed under "*Business — Legal Proceedings*" on pages 116 et seq. in this prospectus/offering memorandum, none of the Issuer or the Guarantors has been involved in any litigation, administrative proceeding or arbitration relating to the claims or amounts which are material in the context of the issue of the Notes and, so far as we are aware, no such litigation, administrative proceeding or arbitration is pending or threatened.

### **NO SIGNIFICANT CHANGE**

There has been no significant change in the financial or trading position of the Issuer, the Group or any Guarantor since December 31, 2011.

## TREND INFORMATION

There has been no material adverse change in the financial and trading position of our Group or the financial position and prospects of the Issuer or any of the Guarantors since the date of the last published audited financials statements as of December 31, 2011.

## GENERAL INFORMATION ABOUT THE ISSUER AND THE GUARANTORS

### The Issuer

Fresenius Finance B.V. is a wholly owned subsidiary of the Company. The Issuer was formed under the laws of the Netherlands on September 24, 1998 as a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*), with the identification number 1007819, to act as a financing company in connection with the issuance of securities. Its registered office is located at Amersfoortseweg 10E, 3705 GJ, Zeist, Netherlands.

### The Guarantors

#### *The Parent Guarantor*

Fresenius SE & Co. KGaA is registered with the commercial register of the local court (*Amtsgericht*) of Bad Homburg vor der Höhe, Germany, under registration number HRB 11852. The Company's registered office is Bad Homburg vor der Höhe, Germany. Its business address is Else-Kröner-Strasse 1, 61352 Bad Homburg vor der Höhe, Germany, and its telephone number is +49 (0) 6 172-608-0.

#### *The Subsidiary Guarantors*

Fresenius Kabi AG is a wholly owned subsidiary of the Company. It was incorporated as a stock corporation (*Aktiengesellschaft*) organized under the laws of Germany and registered with the commercial register of the local court (*Amtsgericht*) of Bad Homburg vor der Höhe under registration number HRB 11654. Fresenius Kabi AG acts as the holding company for our business segment Fresenius Kabi. Its business address is Else-Kröner-Strasse 1, 61352 Bad Homburg vor der Höhe, Germany.

Fresenius ProServe GmbH is a wholly owned subsidiary of the Company. Fresenius ProServe GmbH is a company with limited liability (*Gesellschaft mit beschränkter Haftung*) organized under the laws of Germany and registered in the commercial register of the local court (*Amtsgericht*) of Bad Homburg, under registration number HRB 7302. Fresenius ProServe GmbH acts as the holding company for our business segments Fresenius Helios and Fresenius Vamed. Its business address is Else-Kröner-Strasse 1, 61352 Bad Homburg vor der Höhe, Germany.

### Credit Ratings

Credit ratings included or referred to in this Prospectus which have been issued by (i) Moody's Deutschland GmbH, (ii) Standard & Poor's Credit Market Services Europe Limited, and (iii) Fitch Ratings Limited, each of which is established in the European Union and is registered under Regulation (EC) No. 1060/2009 of the European Parliament and of the Council of September 16, 2009 on credit rating agencies as amended by Regulation (EU) No. 513/2011 and is included in the list of registered credit rating agencies published on the website of the European Securities and Markets Authority at <http://www.esma.europa.eu/page/Listregistered-and-CRAs> (last updated January 6, 2012).

## AUTHORIZATION

The issue of the Notes was authorized by the Management board and the Shareholders' meeting of the issuer on February 6, 2012.



## DOCUMENTS INCORPORATED BY REFERENCE

The pages specified below of the following documents which have previously been published or are published simultaneously with this Prospectus and which have been filed with the CSSF are incorporated by reference into this Prospectus: (i) the Annual Report of the Issuer for the fiscal year ended December 31, 2011 and (ii) the Annual Report of the Issuer for the fiscal year ended December 31, 2010.

(1) Extracted from: Fresenius SE & Co. KGaA — Group Annual Report 2011 (IFRS)

|                                               |                 |
|-----------------------------------------------|-----------------|
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| • Income statement . . . . .                  | page 74         |
| • Statement of comprehensive income . . . . . | page 75         |
| • Balance sheet . . . . .                     | pages 76 to 77  |
| • Cash flow statement . . . . .               | pages 78 to 79  |
| • Statement of changes in equity . . . . .    | pages 80 to 81  |
| • Notes to the financial statements . . . . . | pages 86 to 159 |
| • Audit Opinion* . . . . .                    | page 168        |

(2) Extracted from: Fresenius SE & Co. Co. KGaA — Group Annual Report 2010 (IFRS)

|                                               |                 |
|-----------------------------------------------|-----------------|
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| • Notes to the financial statements . . . . . | pages 82 to 151 |
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Any information not listed under (1) to (2) but included in the documents incorporated by reference is given for information purposes only.

Copies of documents incorporated by reference in this Prospectus may be obtained (without charge) from the registered office of the Issuer and the website of the Luxembourg Stock Exchange ([www.bourse.lu](http://www.bourse.lu)).

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\* The audit opinion refers to the respective consolidated financial statements and the combined management report of the Group and the Issuer as a whole and not solely to the respective consolidated financial statements incorporated by reference.

## GLOSSARY

### HEALTHCARE TERMS

|                                |                                                                                                                                                                                                                                                                                                                                                              |
|--------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Acute care hospital            | a hospital for the inpatient and outpatient of acute diseases and injuries, as well as for scheduled surgery                                                                                                                                                                                                                                                 |
| Antibodies                     | Antibodies are proteins that bind specifically to a particular substance, its antigen. Antibodies are known collectively as immunoglobulins. Antibodies are produced by B-lymphocytes and plasma cells in response to infection or immunisation, and bind to and neutralize specific pathogens thus preparing them for uptake and destruction of phagocytes. |
| Arteriovenous fistula          | a direct, surgically created connection between an artery and a vein in a patient's forearm (vascular access)                                                                                                                                                                                                                                                |
| Ascites                        | accumulation of excess fluid in the abdomen due to disturbed balance of influx and efflux as a result of a malignant disease                                                                                                                                                                                                                                 |
| Blood volume replacement       | infusion solution to compensate for blood loss                                                                                                                                                                                                                                                                                                               |
| Clinical nutrition             | Clinical nutrition is medically administered nutritional support. When normal nutritional intake is insufficient, clinical nutrition is necessary. There are two types of clinical nutrition: parenteral nutrition and enteral nutrition.                                                                                                                    |
| Colloids                       | blood and plasma substitutes                                                                                                                                                                                                                                                                                                                                 |
| Dialysis                       | a type of renal replacement therapy where a semi-permeable membrane — in peritoneal dialysis the peritoneum of the patient, and in hemodialysis the membrane of the dialyzer — is used for selective solute removal                                                                                                                                          |
| Dialysis machine               | The hemodialysis process is controlled by a dialysis machine which pumps blood, adds anticoagulants, regulates the cleansing process, and controls the mixture of dialysate and its flow rate through the system.                                                                                                                                            |
| Dialysis solution              | fluid used in the process of dialysis                                                                                                                                                                                                                                                                                                                        |
| Dialyzer                       | special filter used in hemodialysis for removing toxic substances and excess water from the blood                                                                                                                                                                                                                                                            |
| Diagnosis related group (DRG)  | a case-based reimbursement system for hospitals introduced in Germany in 2003 for inpatients                                                                                                                                                                                                                                                                 |
| End-Stage Renal Disease (ESRD) | chronic kidney failure that is accompanied by severe complications, such as renal anemia, high blood pressure and other cardiovascular problems, as well as bone diseases, loss of appetite and malnutrition                                                                                                                                                 |
| Enteral nutrition              | application of liquid nutrition as tube or sip feed via the gastrointestinal tract                                                                                                                                                                                                                                                                           |
| EPO                            | EPO stands for erythropoietin, which is a hormone that stimulates red blood cell production. Recombinant (i.e., artificially produced) human EPO is commonly prescribed to patients on dialysis who suffer from anemia.                                                                                                                                      |

|                                                |                                                                                                                                                                                                                                                        |
|------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ESA                                            | ESA stands for erythropoietin stimulating agents, which is the generic term for artificially produced human erythropoietin.                                                                                                                            |
| HACCP (Hazard Analysis Critical Control Point) | a process that proves conformity with valid norms                                                                                                                                                                                                      |
| Hemodiafiltration (HDF)                        | Special mode of ESRD (end-stage renal disease) treatment, combining advantages of hemodialysis and hemofiltration, i.e., high elimination rates for small and large molecular weight substances via diffusive and convective mechanisms, respectively. |
| Hemodialysis (HD)                              | A treatment method for dialysis patients where the blood of the patient is cleansed by a dialyzer. The solute exchange between blood and dialysate is dominated by diffusive processes.                                                                |
| Immunosuppressive agent                        | An immunosuppressive agent is a drug that artificially suppresses or weakens the immune reaction of the organism. It is used in the treatment of autoimmune diseases or to prevent transplanted organs being rejected.                                 |
| Infusion management system                     | a modular infusion system, consisting of infusion and syringe pumps, which allows the simultaneous administration of different intravenously administered drugs and infusion solutions and at the same time records the infused volume                 |
| IV drugs                                       | intravenously administered generic drugs                                                                                                                                                                                                               |
| Lipid emulsions/fatty emulsions                | Lipid emulsions are elements of parenteral nutrition and primarily provide energy and essential fatty acids.                                                                                                                                           |
| Maximum care hospital                          | a hospital with the capability to provide all levels of clinical care. Hospitals in this category offer the highest level of care and medical-technical equipment, including large medical installations (1,000 beds and above).                       |
| Parenteral nutrition                           | application of nutrients directly into the bloodstream of the patient (intravenously)                                                                                                                                                                  |
| Peritoneal dialysis (PD)                       | dialysis treatment method using the patient's peritoneum as a "filter" to cleanse the patient's blood                                                                                                                                                  |
| Polyclonal antibodies                          | antibodies that recognize one specific structure, but are produced by different cell clones                                                                                                                                                            |
| Trifunctional antibodies                       | antibodies that bind to three different cell types in parallel (e.g., tumor cells, T-cells and accessory cells) resulting in a tumor-specific immune reaction                                                                                          |

## PRODUCTS

|                                              |                                       |
|----------------------------------------------|---------------------------------------|
| ATG-Fresenius S (anti T-lymphocyte globulin) | protein that suppresses T-lymphocytes |
|----------------------------------------------|---------------------------------------|

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**Consolidated Financial Statements of Fresenius SE & Co. KGaA for 2011 (US-GAAP)**



# FRESENIUS SE & CO. KGAA

## CONSOLIDATED STATEMENT OF INCOME

| € in millions                                                 | Note | 2011         | 2010         |
|---------------------------------------------------------------|------|--------------|--------------|
| Sales                                                         | 4    | 16,522       | 15,972       |
| Cost of sales                                                 | 5    | -10,883      | -10,646      |
| <b>Gross profit</b>                                           |      | <b>5,639</b> | <b>5,326</b> |
| Selling, general and administrative expenses                  | 8    | -2,809       | -2,664       |
| Research and development expenses                             |      | -267         | -244         |
| <b>Operating income (EBIT)</b>                                |      | <b>2,563</b> | <b>2,418</b> |
| Interest income                                               | 9    | 56           | 30           |
| Interest expenses                                             | 9    | -587         | -596         |
| Other financial result                                        | 10   | -100         | -66          |
| <b>Financial result</b>                                       |      | <b>-631</b>  | <b>-632</b>  |
| <b>Income before income taxes</b>                             |      | <b>1,932</b> | <b>1,786</b> |
| Income taxes                                                  | 11   | -604         | -581         |
| <b>Net income</b>                                             |      | <b>1,328</b> | <b>1,205</b> |
| Less noncontrolling interest                                  | 26   | 638          | 583          |
| <b>Net income attributable to Fresenius SE &amp; Co. KGaA</b> |      | <b>690</b>   | <b>622</b>   |
| <b>Earnings per ordinary share in €</b>                       | 12   | <b>4.24</b>  | <b>3.85</b>  |
| Fully diluted earnings per ordinary share in €                | 12   | <b>4.18</b>  | <b>3.79</b>  |
| <b>Earnings per preference share in €</b>                     | 12   | <b>n/a</b>   | <b>3.85</b>  |
| Fully diluted earnings per preference share in €              | 12   | <b>n/a</b>   | <b>3.79</b>  |

The following notes are an integral part of the consolidated financial statements.

**FRESENIUS SE & CO. KGAA**  
**CONSOLIDATED STATEMENT OF COMPREHENSIVE INCOME**

| € in millions                                                                                     | Note   | 2011         | 2010         |
|---------------------------------------------------------------------------------------------------|--------|--------------|--------------|
| <b>Net income</b>                                                                                 |        | <b>1,328</b> | <b>1,205</b> |
| <b>Other comprehensive income (loss)</b>                                                          |        |              |              |
| Foreign currency translation                                                                      | 28, 30 | 71           | 377          |
| Cash flow hedges                                                                                  | 28, 30 | -81          | -15          |
| Actuarial losses on defined benefit pension plans                                                 | 25, 28 | -66          | -54          |
| Income taxes related to components of other comprehensive income (loss)                           | 28     | 48           | 11           |
| <b>Other comprehensive income (loss)</b>                                                          |        | <b>-28</b>   | <b>319</b>   |
| <b>Total comprehensive income</b>                                                                 |        | <b>1,300</b> | <b>1,524</b> |
| <b>Comprehensive income attributable to noncontrolling interest subject to put provisions</b>     |        | <b>39</b>    | <b>33</b>    |
| <b>Comprehensive income attributable to noncontrolling interest not subject to put provisions</b> |        | <b>571</b>   | <b>689</b>   |
| <b>Comprehensive income attributable to Fresenius SE &amp; Co. KGaA</b>                           |        | <b>690</b>   | <b>802</b>   |

The following notes are an integral part of the consolidated financial statements.

**FRESENIUS SE & CO. KGAA**  
**CONSOLIDATED STATEMENT OF FINANCIAL POSITION**  
**ASSETS**

| as of December 31, € in millions                                | Note | 2011          | 2010          |
|-----------------------------------------------------------------|------|---------------|---------------|
| Cash and cash equivalents                                       | 13   | 635           | 769           |
| Trade accounts receivable, less allowance for doubtful accounts | 14   | 3,234         | 2,935         |
| Accounts receivable from and loans to related parties           |      | 13            | 15            |
| Inventories                                                     | 15   | 1,717         | 1,411         |
| Other current assets                                            | 16   | 1,184         | 925           |
| Deferred taxes                                                  | 11   | 368           | 380           |
| <b>I. Total current assets</b>                                  |      | <b>7,151</b>  | <b>6,435</b>  |
| Property, plant and equipment                                   | 17   | 4,210         | 3,954         |
| Goodwill                                                        | 18   | 12,669        | 11,464        |
| Other intangible assets                                         | 18   | 981           | 984           |
| Other non-current assets                                        | 16   | 1,185         | 628           |
| Deferred taxes                                                  | 11   | 125           | 112           |
| <b>II. Total non-current assets</b>                             |      | <b>19,170</b> | <b>17,142</b> |
| <b>Total assets</b>                                             |      | <b>26,321</b> | <b>23,577</b> |

## LIABILITIES AND SHAREHOLDERS' EQUITY

as of December 31, € in millions

|                                                                     | Note   | 2011          | 2010          |
|---------------------------------------------------------------------|--------|---------------|---------------|
| Trade accounts payable                                              |        | 807           | 691           |
| Short-term accounts payable to related parties                      |        | 21            | 2             |
| Short-term accrued expenses and other short-term liabilities        | 19, 20 | 2,898         | 2,731         |
| Short-term debt                                                     | 21     | 171           | 606           |
| Short-term loans from related parties                               |        | 3             | 2             |
| Current portion of long-term debt and capital lease obligations     | 21     | 1,852         | 420           |
| Mandatory Exchangeable Bonds                                        | 23     | 0             | 554           |
| Trust preferred securities of Fresenius Medical Care Capital Trusts | 24     | 0             | 468           |
| Short-term accruals for income taxes                                |        | 184           | 163           |
| Deferred taxes                                                      | 11     | 52            | 74            |
| <b>A. Total short-term liabilities</b>                              |        | <b>5,988</b>  | <b>5,711</b>  |
| Long-term debt and capital lease obligations, less current portion  | 21     | 3,777         | 4,919         |
| Senior Notes                                                        | 22     | 3,996         | 2,369         |
| Long-term accrued expenses and other long-term liabilities          | 19, 20 | 409           | 458           |
| Pension liabilities                                                 | 25     | 484           | 383           |
| Long-term accruals for income taxes                                 |        | 200           | 196           |
| Deferred taxes                                                      | 11     | 573           | 488           |
| <b>B. Total long-term liabilities</b>                               |        | <b>9,439</b>  | <b>8,813</b>  |
| <b>I. Total liabilities</b>                                         |        | <b>15,427</b> | <b>14,524</b> |
| <b>II. Noncontrolling interest subject to put provisions</b>        | 26     | <b>317</b>    | <b>209</b>    |
| <b>A. Noncontrolling interest not subject to put provisions</b>     | 26     | <b>4,606</b>  | <b>3,879</b>  |
| Subscribed capital                                                  | 27     | 163           | 162           |
| Capital reserve                                                     | 27     | 2,115         | 2,085         |
| Other reserves                                                      | 27     | 3,658         | 2,683         |
| Accumulated other comprehensive income                              | 28     | 35            | 35            |
| <b>B. Total Fresenius SE &amp; Co. KGaA shareholders' equity</b>    |        | <b>5,971</b>  | <b>4,965</b>  |
| <b>III. Total shareholders' equity</b>                              |        | <b>10,577</b> | <b>8,844</b>  |
| <b>Total liabilities and shareholders' equity</b>                   |        | <b>26,321</b> | <b>23,577</b> |

The following notes are an integral part of the consolidated financial statements.

**FRESENIUS SE & CO. KGAA**  
**CONSOLIDATED STATEMENT OF CASH FLOWS**

January 1 to December 31, € in millions

|                                                                                                          | Note       | 2011          | 2010          |
|----------------------------------------------------------------------------------------------------------|------------|---------------|---------------|
| <b>Operating activities</b>                                                                              |            |               |               |
| Net income                                                                                               |            | 1,328         | 1,205         |
| <b>Adjustments to reconcile net income to cash and cash equivalents provided by operating activities</b> |            |               |               |
| Depreciation and amortization                                                                            | 16, 17, 18 | 674           | 639           |
| Change in deferred taxes                                                                                 | 11         | 81            | 11            |
| Gain/loss on sale of fixed assets                                                                        |            | -3            | 1             |
| <b>Changes in assets and liabilities, net of amounts from businesses acquired or disposed of</b>         |            |               |               |
| Trade accounts receivable, net                                                                           | 14         | -222          | -275          |
| Inventories                                                                                              | 15         | -264          | -81           |
| Other current and non-current assets                                                                     | 16         | -114          | 57            |
| Accounts receivable from/payable to related parties                                                      |            | 23            | 6             |
| Trade accounts payable, accrued expenses and other short-term and long-term liabilities                  |            | 165           | 346           |
| Accruals for income taxes                                                                                |            | 21            | 2             |
| <b>Net cash provided by operating activities</b>                                                         |            | <b>1,689</b>  | <b>1,911</b>  |
| <b>Investing activities</b>                                                                              |            |               |               |
| Purchase of property, plant and equipment                                                                |            | -783          | -754          |
| Proceeds from sales of property, plant and equipment                                                     |            | 25            | 21            |
| Acquisitions and investments, net of cash acquired and net purchases of intangible assets                | 2, 32      | -1,326        | -615          |
| Proceeds from investments and divestitures                                                               |            | 12            | 111           |
| <b>Net cash used in investing activities</b>                                                             |            | <b>-2,072</b> | <b>-1,237</b> |

January 1 to December 31, € in millions

|                                                                                   | Note | 2011        | 2010        |
|-----------------------------------------------------------------------------------|------|-------------|-------------|
| <b>Financing activities</b>                                                       |      |             |             |
| Proceeds from short-term loans                                                    | 21   | 146         | 233         |
| Repayments of short-term loans                                                    | 21   | -191        | -196        |
| Proceeds from short-term loans from related parties                               |      | –           | –           |
| Repayments of short-term loans from related parties                               |      | –           | –           |
| Proceeds from long-term debt and capital lease obligations                        | 21   | 543         | 541         |
| Repayments of long-term debt and capital lease obligations                        | 21   | -936        | -1,185      |
| Proceeds from the issuance of Senior Notes                                        | 22   | 1,471       | 242         |
| Changes of accounts receivable securitization program                             | 21   | 18          | 223         |
| Proceeds from the exercise of stock options                                       | 34   | 99          | 121         |
| Redemption of trust preferred securities of Fresenius Medical Care Capital Trusts | 24   | -470        | 0           |
| Dividends paid                                                                    |      | -365        | -329        |
| Change in noncontrolling interest                                                 | 26   | -73         | -3          |
| Exchange rate effect due to corporate financing                                   |      | –           | 1           |
| <b>Net cash provided by/used in financing activities</b>                          |      | <b>242</b>  | <b>-352</b> |
| <b>Effect of exchange rate changes on cash and cash equivalents</b>               |      | <b>7</b>    | <b>27</b>   |
| <b>Net decrease/increase in cash and cash equivalents</b>                         |      | <b>-134</b> | <b>349</b>  |
| <b>Cash and cash equivalents at the beginning of the reporting period</b>         | 13   | <b>769</b>  | <b>420</b>  |
| <b>Cash and cash equivalents at the end of the reporting period</b>               | 13   | <b>635</b>  | <b>769</b>  |

The following notes are an integral part of the consolidated financial statements.

# FRESENIUS SE & CO. KGAA

## CONSOLIDATED STATEMENT OF CHANGES IN EQUITY

|                                                                           |        | Ordinary shares              |                       | Preference shares            |                       | Subscribed Capital    |                      |
|---------------------------------------------------------------------------|--------|------------------------------|-----------------------|------------------------------|-----------------------|-----------------------|----------------------|
|                                                                           | Note   | Number of shares in thousand | Amount € in thousands | Number of shares in thousand | Amount € in thousands | Amount € in thousands | Amount € in millions |
| <b>As of December 31, 2009</b>                                            |        | <b>80,658</b>                | <b>80,658</b>         | <b>80,658</b>                | <b>80,658</b>         | <b>161,316</b>        | <b>161</b>           |
| Proceeds from the exercise of stock options                               | 34     | 567                          | 567                   | 567                          | 567                   | 1,134                 | 1                    |
| Compensation expense related to stock options                             | 34     |                              |                       |                              |                       |                       |                      |
| Dividends paid                                                            | 27     |                              |                       |                              |                       |                       |                      |
| Purchase of noncontrolling interest not subject to put provisions         | 26     |                              |                       |                              |                       |                       |                      |
| Change in fair value of noncontrolling interest subject to put provisions | 26     |                              |                       |                              |                       |                       |                      |
| Comprehensive income (loss)                                               |        |                              |                       |                              |                       |                       |                      |
| Net income                                                                |        |                              |                       |                              |                       |                       |                      |
| Other comprehensive income (loss)                                         |        |                              |                       |                              |                       |                       |                      |
| Cash flow hedges                                                          | 28, 30 |                              |                       |                              |                       |                       |                      |
| Foreign currency translation                                              | 28, 30 |                              |                       |                              |                       |                       |                      |
| Actuarial losses on defined benefit pension plans                         | 25, 28 |                              |                       |                              |                       |                       |                      |
| Comprehensive income                                                      |        |                              |                       |                              |                       |                       |                      |
| <b>As of December 31, 2010</b>                                            |        | <b>81,225</b>                | <b>81,225</b>         | <b>81,225</b>                | <b>81,225</b>         | <b>162,450</b>        | <b>162</b>           |
| Conversion of the preference shares into ordinary shares                  | 1      | 81,225                       | 81,225                | -81,225                      | -81,225               | 0                     | 0                    |
| Proceeds from the exercise of stock options                               | 34     | 787                          | 787                   |                              |                       | 787                   | 1                    |
| Compensation expense related to stock options                             | 34     |                              |                       |                              |                       |                       |                      |
| Dividends paid                                                            | 27     |                              |                       |                              |                       |                       |                      |
| Purchase of noncontrolling interest not subject to put provisions         | 26     |                              |                       |                              |                       |                       |                      |
| Maturity of Mandatory Exchangeable Bonds                                  | 23     |                              |                       |                              |                       |                       |                      |
| Purchase of ordinary shares of Fresenius Medical Care AG & Co. KGaA       | 2, 26  |                              |                       |                              |                       |                       |                      |
| Change in fair value of noncontrolling interest subject to put provisions | 26     |                              |                       |                              |                       |                       |                      |
| Comprehensive income (loss)                                               |        |                              |                       |                              |                       |                       |                      |
| Net income                                                                |        |                              |                       |                              |                       |                       |                      |
| Other comprehensive income (loss)                                         |        |                              |                       |                              |                       |                       |                      |
| Cash flow hedges                                                          | 28, 30 |                              |                       |                              |                       |                       |                      |
| Foreign currency translation                                              | 28, 30 |                              |                       |                              |                       |                       |                      |
| Actuarial losses on defined benefit pension plans                         | 25, 28 |                              |                       |                              |                       |                       |                      |
| Comprehensive income                                                      |        |                              |                       |                              |                       |                       |                      |
| <b>As of December 31, 2011</b>                                            |        | <b>163,237</b>               | <b>163,237</b>        | <b>0</b>                     | <b>0</b>              | <b>163,237</b>        | <b>163</b>           |



|                                                                           | Note   | Reserves                         |                                 | Accumulated other comprehensive income (loss)<br>€ in millions | Total Fresenius SE & Co. KGaA shareholders' equity<br>€ in millions | Noncontrolling interest not subject to put provisions<br>€ in millions | Total shareholders' equity<br>€ in millions |
|---------------------------------------------------------------------------|--------|----------------------------------|---------------------------------|----------------------------------------------------------------|---------------------------------------------------------------------|------------------------------------------------------------------------|---------------------------------------------|
|                                                                           |        | Capital reserve<br>€ in millions | Other reserves<br>€ in millions |                                                                |                                                                     |                                                                        |                                             |
| <b>As of December 31, 2009</b>                                            |        | <b>2,035</b>                     | <b>2,183</b>                    | <b>-145</b>                                                    | <b>4,234</b>                                                        | <b>3,257</b>                                                           | <b>7,491</b>                                |
| Proceeds from the exercise of stock options                               | 34     | 37                               |                                 |                                                                | 38                                                                  | 83                                                                     | 121                                         |
| Compensation expense related to stock options                             | 34     | 19                               |                                 |                                                                | 19                                                                  | 14                                                                     | 33                                          |
| Dividends paid                                                            | 27     |                                  | -122                            |                                                                | -122                                                                | -172                                                                   | -294                                        |
| Purchase of noncontrolling interest not subject to put provisions         | 26     |                                  |                                 |                                                                | 0                                                                   | 35                                                                     | 35                                          |
| Change in fair value of noncontrolling interest subject to put provisions | 26     | -6                               |                                 |                                                                | -6                                                                  | -27                                                                    | -33                                         |
| Comprehensive income (loss)                                               |        |                                  |                                 |                                                                |                                                                     |                                                                        |                                             |
| Net income                                                                |        |                                  | 622                             |                                                                | 622                                                                 | 561                                                                    | 1,183                                       |
| Other comprehensive income (loss)                                         |        |                                  |                                 |                                                                |                                                                     |                                                                        |                                             |
| Cash flow hedges                                                          | 28, 30 |                                  |                                 | -12                                                            | -12                                                                 | 0                                                                      | -12                                         |
| Foreign currency translation                                              | 28, 30 |                                  |                                 | 230                                                            | 230                                                                 | 128                                                                    | 358                                         |
| Actuarial losses on defined benefit pension plans                         | 25, 28 |                                  |                                 | -38                                                            | -38                                                                 | 0                                                                      | -38                                         |
| Comprehensive income                                                      |        |                                  | 622                             | 180                                                            | 802                                                                 | 689                                                                    | 1,491                                       |
| <b>As of December 31, 2010</b>                                            |        | <b>2,085</b>                     | <b>2,683</b>                    | <b>35</b>                                                      | <b>4,965</b>                                                        | <b>3,879</b>                                                           | <b>8,844</b>                                |
| Conversion of the preference shares into ordinary shares                  | 1      |                                  |                                 |                                                                | 0                                                                   | 0                                                                      | 0                                           |
| Proceeds from the exercise of stock options                               | 34     | 30                               |                                 |                                                                | 31                                                                  | 68                                                                     | 99                                          |
| Compensation expense related to stock options                             | 34     | 20                               |                                 |                                                                | 20                                                                  | 15                                                                     | 35                                          |
| Dividends paid                                                            | 27     |                                  | -140                            |                                                                | -140                                                                | -192                                                                   | -332                                        |
| Purchase of noncontrolling interest not subject to put provisions         | 26     |                                  |                                 |                                                                | 0                                                                   | 42                                                                     | 42                                          |
| Maturity of Mandatory Exchangeable Bonds                                  | 23     |                                  | 467                             |                                                                | 467                                                                 | 298                                                                    | 765                                         |
| Purchase of ordinary shares of Fresenius Medical Care AG & Co. KGaA       | 2, 26  |                                  | -42                             |                                                                | -42                                                                 | -28                                                                    | -70                                         |
| Change in fair value of noncontrolling interest subject to put provisions | 26     | -20                              |                                 |                                                                | -20                                                                 | -47                                                                    | -67                                         |
| Comprehensive income (loss)                                               |        |                                  |                                 |                                                                |                                                                     |                                                                        |                                             |
| Net income                                                                |        |                                  | 690                             |                                                                | 690                                                                 | 605                                                                    | 1,295                                       |
| Other comprehensive income (loss)                                         |        |                                  |                                 |                                                                |                                                                     |                                                                        |                                             |
| Cash flow hedges                                                          | 28, 30 |                                  |                                 | -54                                                            | -54                                                                 | 0                                                                      | -54                                         |
| Foreign currency translation                                              | 28, 30 |                                  |                                 | 95                                                             | 95                                                                  | -34                                                                    | 61                                          |
| Actuarial losses on defined benefit pension plans                         | 25, 28 |                                  |                                 | -41                                                            | -41                                                                 | 0                                                                      | -41                                         |
| Comprehensive income                                                      |        |                                  | 690                             | —                                                              | 690                                                                 | 571                                                                    | 1,261                                       |
| <b>As of December 31, 2011</b>                                            |        | <b>2,115</b>                     | <b>3,658</b>                    | <b>35</b>                                                      | <b>5,971</b>                                                        | <b>4,606</b>                                                           | <b>10,577</b>                               |

The following notes are an integral part of the consolidated financial statements.

# FRESENIUS SE & CO. KGAA

## CONSOLIDATED SEGMENT REPORTING

by business segment

| € in millions                                      | Fresenius Medical Care |        |        | Fresenius Kabi |        |        |
|----------------------------------------------------|------------------------|--------|--------|----------------|--------|--------|
|                                                    | 2011                   | 2010   | Change | 2011           | 2010   | Change |
| Sales                                              | 9,192                  | 9,091  | 1%     | 3,964          | 3,672  | 8%     |
| thereof contribution to consolidated sales         | 9,177                  | 9,088  | 1%     | 3,916          | 3,629  | 8%     |
| thereof intercompany sales                         | 15                     | 3      | --     | 48             | 43     | 12%    |
| contribution to consolidated sales                 | 56%                    | 57%    |        | 24%            | 23%    |        |
| EBITDA                                             | 1,891                  | 1,830  | 3%     | 955            | 893    | 7%     |
| Depreciation and amortization                      | 400                    | 379    | 6%     | 152            | 156    | -3%    |
| EBIT                                               | 1,491                  | 1,451  | 3%     | 803            | 737    | 9%     |
| Net interest                                       | -213                   | -211   | -1%    | -278           | -279   | 0%     |
| Income taxes                                       | -432                   | -436   | 1%     | -145           | -142   | -2%    |
| Net income attributable to Fresenius SE & Co. KGaA | 770                    | 738    | 4%     | 354            | 294    | 20%    |
| Operating cash flow                                | 1,039                  | 1,032  | 1%     | 462            | 567    | -19%   |
| Cash flow before acquisitions and dividends        | 629                    | 649    | -3%    | 289            | 401    | -28%   |
| Total assets                                       | 15,096                 | 12,793 | 18%    | 7,282          | 6,860  | 6%     |
| Debt                                               | 5,573                  | 4,400  | 27%    | 4,395          | 4,298  | 2%     |
| Capital expenditure, gross                         | 429                    | 395    | 9%     | 177            | 174    | 2%     |
| Acquisitions, gross/investments                    | 1,429                  | 596    | 140%   | 11             | 31     | -65%   |
| Research and development expenses                  | 80                     | 73     | 10%    | 162            | 143    | 13%    |
| Employees (per capita on balance sheet date)       | 83,476                 | 77,442 | 8%     | 24,106         | 22,851 | 5%     |
| Key figures                                        |                        |        |        |                |        |        |
| EBITDA margin                                      | 20.6%                  | 20.1%  |        | 24.1%          | 24.3%  |        |
| EBIT margin                                        | 16.2%                  | 16.0%  |        | 20.3%          | 20.1%  |        |
| Depreciation and amortization in % of sales        | 4.4%                   | 4.2%   |        | 3.8%           | 4.2%   |        |
| Operating cash flow in % of sales                  | 11.3%                  | 11.4%  |        | 11.7%          | 15.4%  |        |
| ROOA                                               | 12.0%                  | 12.5%  |        | 12.4%          | 11.9%  |        |

<sup>1</sup> Including special items from the acquisition of APP Pharmaceuticals, Inc.

|  | Fresenius Helios |        |        | Fresenius Vamed |       |        | Corporate/Other <sup>1</sup> |        |        | Fresenius Group |         |        |
|--|------------------|--------|--------|-----------------|-------|--------|------------------------------|--------|--------|-----------------|---------|--------|
|  | 2011             | 2010   | Change | 2011            | 2010  | Change | 2011                         | 2010   | Change | 2011            | 2010    | Change |
|  | 2,665            | 2,520  | 6%     | 737             | 713   | 3%     | -36                          | -24    | -50%   | 16,522          | 15,972  | 3%     |
|  | 2,665            | 2,520  | 6%     | 737             | 713   | 3%     | 27                           | 22     | 23%    | 16,522          | 15,972  | 3%     |
|  | 0                | 0      |        | –               | –     | --     | -63                          | -46    | -37%   | 0               | 0       |        |
|  | 16%              | 16%    |        | 4%              | 4%    |        | 0%                           | 0%     |        | 100%            | 100%    |        |
|  | 369              | 318    | 16%    | 51              | 49    | 4%     | -29                          | -33    | 12%    | 3,237           | 3,057   | 6%     |
|  | 99               | 83     | 19%    | 7               | 8     | -13%   | 16                           | 13     | 23%    | 674             | 639     | 5%     |
|  | 270              | 235    | 15%    | 44              | 41    | 7%     | -45                          | -46    | 2%     | 2,563           | 2,418   | 6%     |
|  | -51              | -55    | 7%     | 2               | 2     | 0%     | 9                            | -23    | 139%   | -531            | -566    | 6%     |
|  | -43              | -37    | -16%   | -11             | -12   | 8%     | 27                           | 46     | -41%   | -604            | -581    | -4%    |
|  | 163              | 131    | 24%    | 34              | 30    | 13%    | -631                         | -571   | -11%   | 690             | 622     | 11%    |
|  |                  |        |        |                 |       |        |                              |        |        |                 |         |        |
|  | 294              | 311    | -5%    | -83             | 47    | --     | -23                          | -46    | 50%    | 1,689           | 1,911   | -12%   |
|  | 138              | 150    | -8%    | -89             | 38    | --     | -36                          | -60    | 40%    | 931             | 1,178   | -21%   |
|  |                  |        |        |                 |       |        |                              |        |        |                 |         |        |
|  | 3,495            | 3,270  | 7%     | 594             | 549   | 8%     | -146                         | 105    | --     | 26,321          | 23,577  | 12%    |
|  | 1,104            | 1,096  | 1%     | 44              | 16    | 175%   | -1,317                       | -1,026 | -28%   | 9,799           | 8,784   | 12%    |
|  | 157              | 166    | -5%    | 7               | 9     | -22%   | 13                           | 14     | -7%    | 783             | 758     | 3%     |
|  | 45               | 13     | --     | 3               | 5     | -40%   | 124                          | -1     | --     | 1,612           | 644     | 150%   |
|  |                  |        |        |                 |       |        |                              |        |        |                 |         |        |
|  | –                | –      | --     | 0               | 0     |        | 25                           | 28     | -11%   | 267             | 244     | 9%     |
|  | 37,198           | 33,321 | 12%    | 3,724           | 3,110 | 20%    | 847                          | 828    | 2%     | 149,351         | 137,552 | 9%     |
|  |                  |        |        |                 |       |        |                              |        |        |                 |         |        |
|  | 13.8%            | 12.6%  |        | 6.9%            | 6.9%  |        |                              |        |        | 19.6%           | 19.1%   |        |
|  | 10.1%            | 9.3%   |        | 6.0%            | 5.8%  |        |                              |        |        | 15.5%           | 15.1%   |        |
|  | 3.7%             | 3.3%   |        | 0.9%            | 1.1%  |        |                              |        |        | 4.1%            | 4.0%    |        |
|  | 11.0%            | 12.3%  |        | -11.3%          | 6.6%  |        |                              |        |        | 10.2%           | 12.0%   |        |
|  | 8.4%             | 7.8%   |        | 16.0%           | 22.2% |        |                              |        |        | 10.9%           | 11.6%   |        |

The consolidated segment reporting by business segment is an integral part of the notes.  
The following notes are an integral part of the consolidated financial statements.

## FRESENIUS SE & CO. KGAA

### CONSOLIDATED SEGMENT REPORTING

by region

| € in millions                                | Europe        |        |        | North America |        |        |
|----------------------------------------------|---------------|--------|--------|---------------|--------|--------|
|                                              | 2011          | 2010   | Change | 2011          | 2010   | Change |
| Sales                                        | <b>6,919</b>  | 6,515  | 6%     | <b>6,762</b>  | 7,020  | -4%    |
| contribution to consolidated sales           | <b>42%</b>    | 41%    |        | <b>41%</b>    | 44%    |        |
| EBIT                                         | <b>758</b>    | 723    | 5%     | <b>1,382</b>  | 1,347  | 3%     |
| Depreciation and amortization                | <b>322</b>    | 294    | 10%    | <b>268</b>    | 265    | 1%     |
| Total assets                                 | <b>9,759</b>  | 8,935  | 9%     | <b>13,670</b> | 12,152 | 12%    |
| Capital expenditure, gross                   | <b>422</b>    | 400    | 6%     | <b>210</b>    | 223    | -6%    |
| Acquisitions, gross/investments              | <b>924</b>    | 267    | --     | <b>596</b>    | 277    | 115%   |
| Employees (per capita on balance sheet date) | <b>74,415</b> | 66,179 | 12%    | <b>47,701</b> | 46,082 | 4%     |

|  | Asia-Pacific |        |        | Latin America |        |        | Africa |       |        | Fresenius Group |         |        |
|--|--------------|--------|--------|---------------|--------|--------|--------|-------|--------|-----------------|---------|--------|
|  | 2011         | 2010   | Change | 2011          | 2010   | Change | 2011   | 2010  | Change | 2011            | 2010    | Change |
|  | 1,582        | 1,307  | 21%    | 899           | 814    | 10%    | 360    | 316   | 14%    | 16,522          | 15,972  | 3%     |
|  | 10%          | 8%     |        | 5%            | 5%     |        | 2%     | 2%    |        | 100%            | 100%    |        |
|  | 251          | 205    | 22%    | 125           | 107    | 17%    | 47     | 36    | 31%    | 2,563           | 2,418   | 6%     |
|  | 50           | 47     | 6%     | 29            | 27     | 7%     | 5      | 6     | -17%   | 674             | 639     | 5%     |
|  |              |        |        |               |        |        |        |       |        |                 |         |        |
|  | 1,888        | 1,610  | 17%    | 877           | 755    | 16%    | 127    | 125   | 2%     | 26,321          | 23,577  | 12%    |
|  | 69           | 73     | -5%    | 71            | 52     | 37%    | 11     | 10    | 10%    | 783             | 758     | 3%     |
|  | 75           | 89     | -16%   | 17            | 11     | 55%    | –      | –     | --     | 1,612           | 644     | 150%   |
|  |              |        |        |               |        |        |        |       |        |                 |         |        |
|  | 13,134       | 12,258 | 7%     | 12,754        | 11,726 | 9%     | 1,347  | 1,307 | 3%     | 149,351         | 137,552 | 9%     |

The consolidated segment reporting by region is an integral part of the notes.  
The following notes are an integral part of the consolidated financial statements.

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## GENERAL NOTES

### 1. PRINCIPLES

#### I. GROUP STRUCTURE

Fresenius is a worldwide operating health care group with products and services for dialysis, the hospital and the medical care of patients at home. Further areas of activity are hospital operations as well as engineering and services for hospitals and other health care facilities. In addition to the activities of the parent company Fresenius SE & Co. KGaA, Bad Homburg v. d. Höhe, the operating activities were split into the following legally-independent business segments (subgroups) in the fiscal year 2011:

- ▶ Fresenius Medical Care
- ▶ Fresenius Kabi
- ▶ Fresenius Helios
- ▶ Fresenius Vamed

Fresenius Medical Care is the world's leading provider of dialysis products and dialysis care for the life-saving treatment of patients with chronic kidney failure. Fresenius Medical Care treats 233,156 patients in its 2,898 own dialysis clinics.

Fresenius Kabi is a globally active company, providing infusion therapies, intravenously administered generic drugs, clinical nutrition and the related medical devices. The products are used for the therapy and care of critically and chronically ill patients in and outside the hospital. In Europe, Fresenius Kabi is the market leader in infusion therapies and clinical nutrition, in the U.S., the company is a leading provider of intravenously administered generic drugs.

Fresenius Helios is one of the largest private hospital operators in Germany.

Fresenius Vamed provides engineering and services for hospitals and other health care facilities internationally.

Fresenius SE & Co. KGaA owned 30.74% of the ordinary voting shares of Fresenius Medical Care AG & Co. KGaA (FMC-AG & Co. KGaA) and 30.34% of the total subscribed capital of FMC-AG & Co. KGaA at the end of the fiscal year 2011. Fresenius Medical Care Management AG, the general

partner of FMC-AG & Co. KGaA, is a wholly-owned subsidiary of Fresenius SE & Co. KGaA. Therefore, FMC-AG & Co. KGaA is fully consolidated in the consolidated financial statements of the Fresenius Group. Fresenius SE & Co. KGaA continued to hold 100% of the management companies of the business segments Fresenius Kabi (Fresenius Kabi AG) as well as Fresenius Helios and Fresenius Vamed (both held through Fresenius ProServe GmbH) on December 31, 2011. Through Fresenius ProServe GmbH, Fresenius SE & Co. KGaA holds a 100% stake in HELIOS Kliniken GmbH and a 77% stake in VAMED AG. In addition, Fresenius SE & Co. KGaA holds interests in companies with holding functions regarding real estate, financing and insurance, as well as in Fresenius Netcare GmbH which offers services in the field of information technology and in Fresenius Biotech Beteiligungs GmbH.

The reporting currency in the Fresenius Group is the euro. In order to make the presentation clearer, amounts are mostly shown in million euros. Amounts under €1 million after rounding are marked with "–".

#### II. CHANGE OF FRESENIUS SE'S LEGAL FORM INTO A PARTNERSHIP LIMITED BY SHARES (KOMMANDITGESELLSCHAFT AUF AKTIEN) AND CONVERSION OF THE PREFERENCE SHARES INTO ORDINARY SHARES

On May 12, 2010, Fresenius SE's Annual General Meeting approved the change of Fresenius SE's legal form into a partnership limited by shares (Kommanditgesellschaft auf Aktien, KGaA) with the name Fresenius SE & Co. KGaA in combination with the conversion of all non-voting preference shares into voting ordinary shares. The change of legal form as well as the conversion of shares was also approved by the preference shareholders through a special resolution.

Upon registration with the commercial register of the local court in Bad Homburg v. d. H., the change of legal form into Fresenius SE & Co. KGaA became effective on January 28, 2011. According to the resolution passed, the holders of preference shares received one ordinary share of Fresenius SE & Co. KGaA for each preference share held in Fresenius SE; the ordinary



shareholders received one ordinary share of Fresenius SE & Co. KGaA for each ordinary share held in Fresenius SE. The notional proportion of each non-par value share in the subscribed capital as well as the subscribed capital itself remained unchanged. The change of Fresenius SE's legal form into a KGaA neither led to the liquidation of the Company nor to the formation of a new legal entity. The legal and commercial identity of the Company was preserved.

The legal form of the KGaA enables Fresenius to achieve the benefits of a single share class while maintaining the control position of the Else Kröner-Fresenius-Stiftung which held approximately 58% of the ordinary shares in Fresenius SE prior to the change. The European company Fresenius Management SE, a wholly-owned subsidiary of the Else Kröner-Fresenius-Stiftung, is the general partner (Komplementärin) of Fresenius SE & Co. KGaA. The Else Kröner-Fresenius-Stiftung's right to provide the general partner is tied to the holding of more than 10% of the subscribed capital in Fresenius SE & Co. KGaA.

The effects of the change of legal form are described in the respective notes.

The registration of the change of legal form with the commercial register was finally cleared following a court settlement of pending disputes initiated by minority shareholders.

### III. BASIS OF PRESENTATION

The accompanying consolidated financial statements have been prepared in accordance with the United States Generally Accepted Accounting Principles (U.S. GAAP).

Fresenius SE & Co. KGaA, as a stock exchange listed company with a domicile in a member state of the European Union, fulfills its obligation to prepare and publish the consolidated financial statements in accordance with the International Financial Reporting Standards (IFRS) applying Section 315a of

the German Commercial Code (HGB). Simultaneously, the Fresenius Group voluntarily prepares and publishes the consolidated financial statements in accordance with U.S. GAAP.

In order to improve readability, various items are aggregated in the consolidated statement of financial position and in the consolidated statement of income. These items are shown separately in the notes to provide useful information to the readers of the consolidated financial statements.

The consolidated statement of financial position is classified on the basis of the maturity of assets and liabilities; the consolidated statement of income is classified using the cost-of-sales accounting format.

### IV. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### a) Principles of consolidation

The financial statements of consolidated entities have been prepared using uniform accounting methods.

Capital consolidation is performed by offsetting investments in subsidiaries against the underlying revaluated equity at the date of acquisition. The identifiable assets and liabilities of subsidiaries as well as the noncontrolling interest are recognized at their fair values. Any remaining debit balance is recognized as goodwill and is tested at least once a year for impairment.

Associated companies (over which Fresenius SE & Co. KGaA has significant exercisable influence, even when it holds less than 50% ownership) are consolidated using the equity method. Investments that are not classified as in associated companies are recorded at acquisition costs.

All significant intercompany sales, expenses, income, receivables and payables are eliminated. Profits and losses on items of property, plant and equipment and inventory acquired from other Group entities are also eliminated. Deferred tax assets and liabilities are recognized on temporary differences resulting from consolidation procedures.

Noncontrolling interest subject to put provisions is recognized between liabilities and equity in the consolidated statement of financial position. Noncontrolling interest not subject

to put provisions comprises the interest of noncontrolling shareholders in the consolidated equity of Group entities. Profits and losses attributable to the noncontrolling shareholders are separately disclosed in the consolidated statement of income. Noncontrolling interest not subject to put provisions of recently acquired entities is valued at fair value.

## b) Composition of the Group

The consolidated financial statements include all material companies in which Fresenius SE & Co. KGaA has legal or effective control. In addition, the Fresenius Group consolidates variable interest entities (VIEs) for which it is deemed the primary beneficiary.

Fresenius Medical Care entered into various arrangements with certain dialysis clinics and a dialysis product distributor to provide management services, financing and product supply. The dialysis clinics and the dialysis product distributor have either negative equity or are unable to provide their own funding and operations. Therefore, Fresenius Medical Care has agreed to fund their operations through loans.

The compensation for the funding can carry interest, exclusive product supply agreements or Fresenius Medical Care is entitled to a prorata share of profits, if any, and has a right of first refusal in the event the owners sell the business or assets. These clinics and the dialysis product distributor are VIEs, in which Fresenius Medical Care has been determined to be the primary beneficiary and which therefore have been fully consolidated. They generated approximately €140 million (US\$195 million) and €100 million (US\$133 million) in sales in 2011 and 2010, respectively. Fresenius Medical Care provided funding to these VIEs through loans and accounts receivable of €114 million (US\$148 million) and €83 million (US\$111 million) in 2011 and 2010, respectively. Relating to the VIEs, in 2011, Fresenius Medical Care consolidated assets in an amount of €168 million (US\$217 million), liabilities in an amount of €125 million (US\$162 million) and €43 million

(US\$55 million) in equity. In 2010, €130 million (US\$174 million) assets, €89 million (US\$119 million) liabilities and €41 million (US\$55 million) equity were consolidated. The interest held by the other shareholders in the consolidated VIEs is reported as noncontrolling interest in the consolidated statement of financial position at December 31, 2011.

Fresenius Vamed participates in long-term project entities which are set up for long-term defined periods of time and for the specific purpose of constructing and operating thermal centers. Some of these project entities qualify as VIEs, in which Fresenius Vamed is not the primary beneficiary based on the cash flow analysis of the involved parties. The project entities generated approximately €78 million in sales in 2011 (2010: €54 million). The VIEs finance themselves mainly through debt, profit participation rights and investment grants. Assets and liabilities relating to the VIEs are not material. Fresenius Vamed made no payments to the VIEs other than contractually stipulated. From today's perspective and due to the contractual situation, Fresenius Vamed is not exposed to any material risk of loss from these VIEs.

The consolidated financial statements of 2011 included, in addition to Fresenius SE & Co. KGaA, 163 (2010: 144) German and 1,094 (2010: 972) foreign companies.

The composition of the Group changed as follows:

|                                 | Germany    | Abroad       | Total        |
|---------------------------------|------------|--------------|--------------|
| <b>December 31, 2010</b>        | <b>144</b> | <b>972</b>   | <b>1,116</b> |
| Additions                       | 20         | 159          | 179          |
| of which newly founded          | 4          | 45           | 49           |
| of which acquired               | 9          | 100          | 109          |
| Disposals                       | 1          | 37           | 38           |
| of which no longer consolidated | 1          | 17           | 18           |
| of which merged                 | 0          | 20           | 20           |
| <b>December 31, 2011</b>        | <b>163</b> | <b>1,094</b> | <b>1,257</b> |

19 companies (2010: 17) were accounted for under the equity method.

The complete list of the investments of Fresenius SE & Co. KGaA, registered office in Bad Homburg v. d. H., will be submitted to the electronic Federal Gazette and the electronic companies register.

In 2011, the following fully consolidated German subsidiaries of the Fresenius Group applied the exemption provided in Sections 264 (3) and 264b, respectively, of the German Commercial Code (HGB):

| Name of the company                                               | Registered office    |
|-------------------------------------------------------------------|----------------------|
| <b>Corporate/Other</b>                                            |                      |
| Fresenius Biotech GmbH                                            | Gräfelfing           |
| Fresenius Biotech Beteiligungs GmbH                               | Bad Homburg v. d. H. |
| Fresenius Immobilien-Verwaltungs-GmbH & Co. Objekt Friedberg KG   | Bad Homburg v. d. H. |
| Fresenius Immobilien-Verwaltungs-GmbH & Co. Objekt St. Wendel KG  | Bad Homburg v. d. H. |
| Fresenius Immobilien-Verwaltungs-GmbH & Co. Objekt Schweinfurt KG | Bad Homburg v. d. H. |
| Fresenius Netcare GmbH                                            | Bad Homburg v. d. H. |
| Fresenius ProServe GmbH                                           | Bad Homburg v. d. H. |
| FPS Immobilien Verwaltungs GmbH & Co. Reichenbach KG              | Bad Homburg v. d. H. |
| ProServe Krankenhaus Beteiligungs-gesellschaft mbH & Co. KG       | München              |
| <b>Fresenius Kabi</b>                                             |                      |
| CFL GmbH                                                          | Frankfurt am Main    |
| Fresenius HemoCare GmbH                                           | Bad Homburg v. d. H. |
| Fresenius HemoCare Beteiligungs GmbH                              | Bad Homburg v. d. H. |
| Fresenius Kabi AG                                                 | Bad Homburg v. d. H. |
| Fresenius Kabi Deutschland GmbH                                   | Bad Homburg v. d. H. |
| Hosped GmbH                                                       | Friedberg            |
| MC Medizintechnik GmbH                                            | Alzenau              |
| V. Krütten Medizinische Einmalgeräte GmbH                         | Idstein              |

| Name of the company                           | Registered office    |
|-----------------------------------------------|----------------------|
| <b>Fresenius Helios</b>                       |                      |
| D.i.a.-Solution GmbH                          | Erfurt               |
| HELIOS Agnes Karll Krankenhaus GmbH           | Bochum               |
| HELIOS Care GmbH                              | Berlin               |
| HELIOS Catering GmbH                          | Berlin               |
| HELIOS Kids in Pflege GmbH                    | Geesthacht           |
| HELIOS Klinik Dresden-Wachwitz GmbH           | Dresden              |
| HELIOS Klinik Geesthacht GmbH                 | Geesthacht           |
| HELIOS Klinik Lengerich GmbH                  | Lengerich            |
| HELIOS Kliniken GmbH                          | Berlin               |
| HELIOS Kliniken Breisgau-Hochschwarzwald GmbH | Müllheim             |
| HELIOS Kliniken Leipziger Land GmbH           | Borna                |
| HELIOS Klinikum Bad Saarow GmbH               | Bad Saarow           |
| HELIOS Klinikum Erfurt GmbH                   | Erfurt               |
| HELIOS Klinikum Wuppertal GmbH                | Wuppertal            |
| HELIOS Privatkliniken GmbH                    | Bad Homburg v. d. H. |
| HELIOS Schlossbergklinik Oberstaufen GmbH     | Oberstaufen          |
| HELIOS Service GmbH                           | Berlin               |
| HELIOS Versorgungszentren GmbH                | Berlin               |
| HELIOS Versorgungszentrum Bad Saarow GmbH     | Bad Saarow           |
| HELIOS Vogtland-Klinikum Plauen GmbH          | Plauen               |
| HUMAINE Kliniken GmbH                         | Berlin               |
| Poliklinik am HELIOS Klinikum Buch GmbH       | Berlin               |
| Senioren- und Pflegeheim Erfurt GmbH          | Erfurt               |
| St. Josefs-Hospital GmbH                      | Bochum               |

### c) Classifications

Certain items in the consolidated financial statements of 2010 have been reclassified to conform with the presentation in 2011.

### d) Hyperinflationary accounting

Due to the inflationary development in Venezuela, Fresenius Medical Care's subsidiaries operating in Venezuela apply Financial Accounting Standards Board Accounting Standards Codification Topic 830, Foreign Currency Matters, as of January 1, 2010. All gains and losses resulting from the remeasurement of assets and liabilities were recognized in 2010 in the consolidated statement of income.

#### **e) Sales recognition policy**

Sales from services are recognized at the amount estimated to be received under reimbursement arrangements with third party payors. Sales are recognized on the date services and related products are provided and the customer is obligated to pay.

Product sales are recognized when the title to the product passes to the customers, either at the time of shipment, upon receipt by the customer or upon any other terms that clearly define passage of title. As product returns are not typical, no return allowances are established. In the event that a return is required, the appropriate reductions to sales, cost of sales and accounts receivable are made. Sales are presented net of discounts, allowances and rebates.

In the business segment Fresenius Vamed, sales for long-term production contracts are recognized using the percentage of completion (PoC) method when the accounting conditions are met. The sales to be recognized are calculated as a percentage of the costs already incurred based on the estimated total cost of the contract, milestones laid down in the contract or the percentage of completion. Profits are only recognized when the outcome of a production contract accounted for using the PoC method can be measured reliably.

Any tax assessed by a governmental authority that is incurred as a result of a sales transaction (e. g. sales tax) is excluded from sales and the related sale is reported on a net basis.

#### **f) Government grants**

Public sector grants are not recognized until there is reasonable assurance that the respective conditions are met and the grants will be received. Initially, the grant is recorded as a liability and as soon as the asset is acquired, the grant is offset against the acquisition costs. Expense-related grants are recognized as income in the periods in which related costs occur.

#### **g) Research and development expenses**

Research is original and planned investigation undertaken with the prospect of gaining new scientific or technical knowledge and understanding. Development is the technical and commercial implementation of research findings. Research and development expenses are expensed as incurred.

#### **h) Impairment**

The Fresenius Group reviews the carrying amounts of its property, plant and equipment, intangible assets and other non-current assets for impairment whenever events or changes in circumstances indicate that the carrying amount of these assets may not be recoverable. Recoverability of these assets is measured by comparing the carrying amount of an asset to the future net cash flow directly associated with the asset. If assets are considered to be impaired, the impairment recognized is the amount by which the carrying amount exceeds the fair value of the asset. The Fresenius Group uses a discounted cash flow approach or other methods, if appropriate, to assess fair value. Long-lived assets to be disposed of by sale are reported at the lower of carrying amount or fair value less cost to sell and depreciation is ceased.

### **i) Capitalized interest**

The Fresenius Group includes capitalized interest as part of the cost of the asset if it is directly attributable to the acquisition, construction or manufacture of qualifying assets. For the fiscal years 2011 and 2010, interest of €4 million, based on an average interest rate of 4.12% and 4.90%, respectively, was recognized as a component of the cost of assets.

### **j) Deferred taxes**

Deferred tax assets and liabilities are recognized for the future consequences attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. Furthermore, deferred taxes are recognized on consolidation procedures affecting net income attributable to Fresenius SE & Co. KGaA. Deferred tax assets also include claims to future tax reductions which arise from the more likely than not expected usage of existing tax losses available for carryforward. The recognition of deferred tax assets from net operating losses and their utilization is based on the budget planning of the Fresenius Group and implemented tax strategies.

Deferred taxes are computed using enacted or adopted tax rates in the relevant national jurisdictions when the amounts are recovered. Tax rates which will be valid in the future but are not adopted till the date of the statement of financial position are not considered.

The realizability of the carrying amount of a deferred tax asset is reviewed at each date of the statement of financial position. In assessing the realizability of deferred taxes, the Management considers whether it is more likely than not that some portion or all of a deferred tax asset will be realized or whether deferred tax liabilities will be reversed. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. The Management considers the scheduled reversal of deferred tax liabilities and projected future taxable income in making this assessment.

If it is no longer more likely than not that sufficient taxable income will be available to allow the benefit of part or of the entire deferred tax asset to be utilized, the carrying amount of

the deferred tax asset is reduced to that certain extent. The reduction is reversed to the date and extent that it becomes probable that sufficient taxable profit will be available.

### **k) Unrecognized tax benefits**

The recognition and measurement of all tax positions taken or expected to be taken on a tax return requires a two step approach. The Fresenius Group must determine whether it is more likely than not that a tax position will be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. If the threshold is met, the tax position is measured at the largest amount of benefit that is greater than 50% likely of being realized upon ultimate settlement and is recognized in the consolidated financial statements.

### **l) Earnings per ordinary share and preference share**

Basic earnings per ordinary share are computed by dividing net income attributable to Fresenius SE & Co. KGaA by the weighted-average number of ordinary shares outstanding during the year. Diluted earnings per share include the effect of all potentially dilutive instruments on ordinary shares that would have been outstanding during the fiscal year. The equity-settled awards granted under Fresenius' and Fresenius Medical Care's stock option plans can result in a dilutive effect. In prior year, basic earnings per ordinary share were computed by dividing net income attributable to Fresenius SE & Co. KGaA less preference amounts by the weighted-average number of ordinary shares and preference shares outstanding during the year. Basic earnings per preference share were derived by adding the preference dividend per preference share to the basic earnings per ordinary share.

Due to the conversion of the preference shares into ordinary shares in combination with the change of legal form, the dilutive effects are only calculated on ordinary shares as of fiscal year 2011.

### **m) Cash and cash equivalents**

Cash and cash equivalents comprise cash funds and all short-term, liquid investments with original maturities of up to three months (time deposits and securities).

#### **n) Trade accounts receivable**

Trade accounts receivable are stated at their nominal value less an allowance for doubtful accounts. Allowances are estimated mainly on the basis of payment history to date, the age structure of balances and the contractual partner involved. In order to assess the appropriateness of allowances, the Fresenius Group checks regularly whether there have been any divergences to previous payment history.

#### **o) Inventories**

Inventories comprise all assets which are held for sale in the normal course of business (finished goods), in the process of production for such sale (work in process) or consumed in the production process or in the rendering of services (raw materials and purchased components).

Inventories are stated at the lower of acquisition and manufacturing cost (determined by using the average or first-in, first-out method) or market value. Manufacturing costs comprise direct costs, production and material overhead, including depreciation charges.

#### **p) Property, plant and equipment**

Property, plant and equipment are stated at acquisition and manufacturing cost less accumulated depreciation. Significant improvements are capitalized; repairs and maintenance costs that do not extend the useful lives of the assets are charged to expense as incurred. Depreciation on property, plant and equipment is calculated using the straight-line method over the estimated useful lives of the assets ranging from 3 to 50 years for buildings and improvements (with a weighted-average life of 16 years) and 2 to 15 years for machinery and equipment (with a weighted-average life of 11 years).

#### **q) Intangible assets with finite useful lives**

Intangible assets with finite useful lives, such as patents, product and distribution rights, non-compete agreements, technology as well as licenses to manufacture, distribute and sell pharmaceutical drugs, are amortized using the straight-line method over their respective useful lives to their residual values and reviewed for impairment (see note 1. IV h, Impairment). The useful life of patents, product and distribution rights ranges from 5 to 20 years. Non-compete agreements with finite useful lives have useful lives ranging from 2 to 25 years with an average useful life of 8 years. The useful life of management contracts with finite useful lives ranges from 5 to 40 years. Technology has a finite useful life of 15 years. Licenses to manufacture, distribute and sell pharmaceutical drugs are amortized over the contractual license period based upon the annual estimated units of sale of the licensed product. All other intangible assets are amortized over their individual estimated useful lives between 3 and 15 years.

Losses in value of a lasting nature are recorded as an impairment.

#### **r) Goodwill and other intangible assets with indefinite useful lives**

The Fresenius Group identified intangible assets with indefinite useful lives because, based on an analysis of all of the relevant factors, there is no foreseeable limit to the period over which those assets are expected to generate net cash inflows for the Group. The identified intangible assets with indefinite useful lives such as trade names and certain qualified management contracts acquired in a purchase method business combination are recognized and reported apart from goodwill. They are recorded at acquisition costs. Goodwill and intangible assets with indefinite useful lives are not amortized but tested for impairment annually or when an event becomes known that could trigger an impairment (impairment test).

To perform the annual impairment test of goodwill, the Fresenius Group identified several reporting units and determined their carrying amount by assigning the assets and liabilities, including the existing goodwill and intangible assets, to those reporting units. A reporting unit is usually defined one level below the segment level based on regions or legal entities. Four reporting units were identified in the segment Fresenius Medical Care (Europe, Latin America, Asia-Pacific and North America). In the segment Fresenius Kabi there is one reporting unit for the region North America and one reporting unit for the business outside of North America. According to the regional organizational structure, the segment Fresenius Helios consists of seven reporting units, which are managed by a central division. The segment Fresenius Vamed consists of two reporting units (Project business and Service business). At least once a year, the Fresenius Group compares the fair value of each reporting unit to the reporting unit's carrying amount. The fair value of a reporting unit is determined using a discounted cash flow approach based upon the cash flow expected to be generated by the reporting unit. In case that the fair value of the reporting unit is less than its carrying amount, the difference is at first recorded as an impairment of the fair value of the goodwill.

To evaluate the recoverability of separable intangible assets with indefinite useful lives, the Fresenius Group compares the fair values of these intangible assets with their carrying amounts. An intangible asset's fair value is determined using a discounted cash flow approach and other methods, if appropriate.

The recoverability of goodwill and other separable intangible assets with indefinite useful lives recorded in the Group's consolidated statement of financial position was verified. As a result, the Fresenius Group did not record any impairment losses in 2011 and 2010.

Any excess of the net fair value of identifiable assets and liabilities over cost (badwill) still existing after reassessing the purchase price allocation is recognized immediately in profit or loss.

## s) Leases

Leased assets assigned to the Fresenius Group based on the risk and rewards approach (finance leases) are recognized as property, plant and equipment and measured on receipt date at the present values of lease payments as long as their fair values are not lower. Leased assets are depreciated in straight-line over their useful lives. If there is doubt as to whether title to the asset passes at a later stage and there is no opportune purchase option, the asset is depreciated over the lease term if this is shorter. An impairment loss is recognized if the recoverable amount is lower than the amortized cost of the leased asset.

Finance lease liabilities are measured at the present value of the future lease payments and are recognized as a financial liability.

Property, plant and equipment that is rented by the Fresenius Group is accounted for at its purchase cost. Depreciation is calculated using the straight-line method over the leasing time and its expected residual value.

## t) Financial instruments

A financial instrument is any contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another entity. The following categories (according to International Accounting Standard 39, Financial Instruments: Recognition and Measurement) are relevant for the Fresenius Group: loans and receivables, financial liabilities measured at amortized cost as well as financial liabilities/assets measured at fair value. Other categories are immaterial or not existing in the Fresenius Group. According to their character, the Fresenius Group classifies its financial instruments into the following classes: cash and cash equivalents, assets recognized at carrying amount, liabilities recognized at carrying amount, derivatives for hedging purposes as well as liabilities recognized at fair value and noncontrolling interest subject to put provisions recognized at fair value.

The relationship between classes and categories as well as the reconciliation to the consolidated statement of financial position is shown in tabular form in note 30, Financial instruments.



The Fresenius Group has potential obligations to purchase noncontrolling interests held by third parties in certain of its consolidated subsidiaries. These obligations are in the form of put provisions and are exercisable at the third-party owners' discretion within specified periods as outlined in each specific put provision. If these put provisions were exercised, the Fresenius Group would be required to purchase all or part of the third-party owners' noncontrolling interests at the appraised fair value. The methodology the Fresenius Group uses to estimate the fair values of the noncontrolling interest subject to put provisions assumes the greater of net book value or a multiple of earnings, based on historical earnings, development stage of the underlying business and other factors. The estimated fair values of the noncontrolling interests subject to these put provisions can also fluctuate and the implicit multiple of earnings at which these noncontrolling interest obligations may ultimately be settled could vary significantly from Fresenius Group's current estimates depending upon market conditions.

Derivative financial instruments, which primarily include foreign currency forward contracts and interest rate swaps, are recognized at fair value as assets or liabilities in the consolidated statement of financial position. Changes in the fair value of derivative financial instruments classified as fair value hedges and in the corresponding underlyings are recognized periodically in earnings. The effective portion of changes in fair value of cash flow hedges is recognized in accumulated other comprehensive income (loss) in shareholders' equity until the secured underlying transaction is realized (see note 30, Financial instruments). The ineffective portion of cash flow hedges is recognized in current earnings. Changes in the fair value of derivatives that are not designated as hedging instruments are recognized periodically in earnings.

#### **u) Liabilities**

Liabilities are generally stated at present value, which normally corresponds to the value of products or services which are delivered. As a general policy, short-term liabilities are measured at their repayment amount.

#### **v) Legal contingencies**

In the ordinary course of Fresenius Group's operations, the Fresenius Group is involved in litigation, arbitration, administrative procedure and investigations relating to various aspects of its business. The Fresenius Group regularly analyzes current information about such claims for probable losses and provides accruals for such matters, including estimated expenses for legal services, as appropriate. The Fresenius Group utilizes its internal legal department as well as external resources for these assessments. In making the decision regarding the need for a loss accrual, the Fresenius Group considers the degree of probability of an unfavorable outcome and its ability to make a reasonable estimate of the amount of loss.

The filing of a suit or formal assertion of a claim, or the disclosure of any such suit or assertion, does not necessarily indicate that an accrual of a loss is appropriate.

#### **w) Other accrued expenses**

Accruals for taxes and other obligations are recognized when there is a present obligation to a third party arising from past events, it is probable that the obligation will be settled in the future and the amount can be reliably estimated.

Tax accruals include obligations for the current year and for prior years.

#### **x) Pension liabilities and similar obligations**

The Fresenius Group recognizes the underfunded status of its defined benefit plans, measured as the difference between the benefit obligation and plan assets at fair value, as a liability. Changes in the funded status of a plan, net of tax, resulting from actuarial gains or losses, prior service costs or costs that are not recognized as components of the net periodic benefit cost, will be recognized through accumulated other comprehensive income (loss) in the year in which they occur. Actuarial gains or losses and prior service costs are subsequently recognized as components of net periodic benefit cost when realized.

### y) Debt issuance costs

Debt issuance costs are capitalized separately from the underlying debt and are amortized over the term of the related obligation.

### z) Stock option plans

In line with the standard for share-based payment, the Fresenius Group uses the modified prospective transition method. Under this transition method, in 2010 and 2011, the Fresenius Group recognized compensation cost for all stock-based payments subsequent to January 1, 2006 (based on the grant-date fair value estimated).

### aa) Self-insurance programs

Under the insurance programs for professional, product and general liability, auto liability and worker's compensation claims, the largest subsidiary of Fresenius Medical Care AG & Co. KGaA (FMC-AG & Co. KGaA), located in North America, is partially self-insured for professional liability claims. For all other coverages, FMC-AG & Co. KGaA assumes responsibility for incurred claims up to predetermined amounts, above which third party insurance applies. Reported liabilities for the year represent estimated future payments of the anticipated expense for claims incurred (both reported and incurred but

not reported) based on historical experience and existing claim activity. This experience includes both the rate of claims incidence (number) and claim severity (cost) and is combined with individual claim expectations to estimate the reported amounts.

### bb) Foreign currency translation

The reporting currency is the euro. Substantially all assets and liabilities of the foreign subsidiaries are translated at the mid-closing rate on the date of the statement of financial position, while income and expense are translated at average exchange rates. Adjustments due to foreign currency translation fluctuations are excluded from net earnings and are reported in accumulated other comprehensive income (loss). In addition, the translation adjustments of certain intercompany borrowings, which are considered foreign equity investments, are also reported in accumulated other comprehensive income (loss).

Gains and losses arising from the translation of foreign currency positions as well as those arising from the elimination of foreign currency intercompany loans are recorded as general and administrative expenses, as far as they are not considered foreign equity instruments. In the fiscal year 2011, only immaterial losses resulted out of this transaction.

The exchange rates of the main currencies affecting foreign currency translation developed as follows:

|                        | Year-end exchange rate <sup>1</sup> |               | Average exchange rate |        |
|------------------------|-------------------------------------|---------------|-----------------------|--------|
|                        | Dec. 31, 2011                       | Dec. 31, 2010 | 2011                  | 2010   |
| U.S. dollar per €      | 1.2939                              | 1.3362        | 1.3920                | 1.3259 |
| Pound sterling per €   | 0.8353                              | 0.8608        | 0.8679                | 0.8581 |
| Swedish krona per €    | 8.9120                              | 8.9655        | 9.0298                | 9.5387 |
| Chinese renminbi per € | 8.1588                              | 8.8220        | 8.9960                | 8.9729 |
| Japanese yen per €     | 100.20                              | 108.65        | 110.96                | 116.32 |

<sup>1</sup> Mid-closing rate on the date of the statement of financial position

### cc) Fair value hierarchy

The three-tier fair value hierarchy as defined in Financial Accounting Standards Board's Accounting Standards Codification Topic 820, Fair Value Measurements and Disclosures, classifies assets and liabilities recognized at fair value based on the inputs used in estimating the fair value. Level 1 is defined as observable inputs, such as quoted prices in active markets. Level 2 is defined as inputs other than quoted prices in active markets that are directly or indirectly observable. Level 3 is defined as unobservable inputs for which little or no market data exists, therefore requiring the company to develop its own assumptions. The three-tier fair value hierarchy is used in note 25, Pensions and similar obligations, and in note 30, Financial instruments.

### dd) Use of estimates

The preparation of consolidated financial statements in conformity with U.S. GAAP requires the management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of income and expenses during the reporting period. Actual results could differ from those estimates.

### ee) Receivables management

The entities of the Fresenius Group perform ongoing evaluations of the financial situation of their customers and generally do not require a collateral from the customers for the supply of products and provision of services. Approximately 17% and 18% of Fresenius Group's sales were earned and subject to the regulations under governmental health care programs, Medicare and Medicaid, administered by the United States government in 2011 and 2010, respectively.

### ff) Recent pronouncements, applied

The Fresenius Group has prepared its consolidated financial statements at December 31, 2011 in conformity with U.S. GAAP that have to be applied for fiscal years beginning on January 1, 2011 or U.S. GAAP that can be applied earlier on a voluntary basis.

In 2011, the Fresenius Group did not apply any new standards relevant for its business for the first time.

### gg) Recent pronouncements, not yet applied

The Financial Accounting Standards Board (FASB) issued the following for the Fresenius Group relevant new standards, which are mandatory for fiscal years commencing on or after January 1, 2012:

In December 2011, the FASB issued **Accounting Standards Update 2011-11** (ASU 2011-11), FASB Accounting Standards Codification (ASC) Topic 210, Balance Sheet – Disclosures about Offsetting Assets and Liabilities. This amendment requires disclosing and reconciling gross and net amounts for financial instruments that are offset in the statement of financial position, and amounts for financial instruments that are subject to master netting arrangements and other similar clearing and repurchase arrangements. ASU 2011-11 is effective for annual reporting periods beginning on or after January 1, 2013, and interim periods within those annual periods. The Fresenius Group is currently evaluating the impact on its consolidated financial statements.

In July 2011, the FASB issued **Accounting Standards Update 2011-07** (ASU 2011-07), FASB ASC Topic 954, Health Care Entities – Presentation and Disclosure of Patient Service Revenue, Provision for Bad Debts and the Allowance for Doubtful Accounts for Certain Health Care Entities, in order to provide financial statement users with greater transparency about a health care entity's net patient service revenue and the related allowance for doubtful accounts. The amendments require health care entities that recognize significant amounts of patient service revenue at the time the services are rendered even though they do not assess the patient's ability to pay to present the provision for bad debts related to patient service revenue as a deduction from patient service revenue (net of contractual allowances and discounts) on their statement of operations. The provision for bad debts must be reclassified from an operating expense to a deduction from patient service revenue. Additionally, these health care entities are required to provide enhanced disclosures about their policies for recognizing revenue and assessing bad debts. The amendments also require disclosures of patient service revenue (net of contractual allowances and discounts) as well as qualitative and quantitative information about changes in the allowance for doubtful accounts. For public entities, the disclosures required under ASU 2011-07 are effective for fiscal years

and interim periods within those fiscal years beginning after December 15, 2011, with early adoption permitted. The amendments to the presentation of the provision for bad debts related to patient service revenue in the statement of operations should be applied retrospectively to all prior periods presented. The Fresenius Group adopted the provisions of ASU 2011-07 as of January 1, 2012. The Fresenius Group estimates that this reduced 2011 revenue by approximately €161 million and will reduce revenues by approximately €214 million in 2012 with corresponding reductions to the selling, general and administrative expenses.

In July 2011, the FASB issued **Accounting Standards Update 2011-06** (ASU 2011-06), FASB ASC Topic 720, Other Expenses – Fees Paid to the Federal Government by Health Insurers. The amendments in ASU 2011-06 address how health insurers should recognize and classify their income statement fees mandated by the Health Care and Educational Affordability Reconciliation Act. The amendments require that the liability for the fee be estimated and recorded in full once the entity provides qualifying health insurance in the applicable calendar year in which the fee is payable with a corresponding deferred cost that is amortized to expense using a straight-line allocation method unless a another method better allocates the fee over the entire calendar year for which it is payable. In addition, the amendments state that this fee does not meet the definition of an acquisition cost. The disclosures required under ASU 2011-06 are effective for calendar years beginning after December 31, 2013, when the fee initially becomes effective. The Fresenius Group will apply the guidance under ASU 2011-06 beginning January 1, 2014.

In June 2011, the FASB issued **Accounting Standards Update 2011-05** (ASU 2011-05), FASB ASC Topic 220, Comprehensive Income – Presentation of Comprehensive Income. The amendments in ASU 2011-05 require that all components of comprehensive income be presented either in a single continuous statement of comprehensive income or in two separate but continuous statements. In the two statement approach, the first statement should present total net income and its components followed consecutively by a second statement presenting total other comprehensive income, the components of other comprehensive income and total of comprehensive

income. The disclosures required under ASU 2011-05 are effective retrospectively for fiscal years and interim periods within those years, beginning after December 15, 2011, with earlier adoption permitted. As the Fresenius Group currently presents two separate but continuous statements of net income and comprehensive income, the Fresenius Group is already in compliance with the amended guidance issued in ASU 2011-05.

In May 2011, the FASB issued **Accounting Standards Update 2011-04** (ASU 2011-04), FASB ASC Topic 820, Fair Value Measurement – Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRSs. The amendments in ASU 2011-04 result in common fair value measurement and disclosure requirements in U.S. GAAP and IFRSs. These amendments include clarifications of the application of highest and best use and valuation premise concepts, the measurement of the fair value of an instrument classified in a reporting entity's shareholders' equity, and disclosures about fair value measurements. ASU 2011-04 also changes the measurement or disclosure requirements related to measuring the fair value of financial instruments that are managed within a portfolio, the application of premiums and discounts in a fair value measurement, and additional disclosure about fair value measurements. The disclosures required under ASU 2011-04 are effective for interim and annual reporting periods beginning on or after December 15, 2011. Earlier adoption by public entities is not permitted. The Fresenius Group will apply the guidance under ASU 2011-04 beginning January 1, 2012.

The Fresenius Group generally does not adopt new accounting standards before compulsory adoption date.

## V. CRITICAL ACCOUNTING POLICIES

In the opinion of the Management of the Fresenius Group, the following accounting policies and topics are critical for the consolidated financial statements in the present economic environment. The influences and judgments as well as the uncertainties which affect them are also important factors to be considered when looking at present and future operating earnings of the Fresenius Group.

#### **a) Recoverability of goodwill and intangible assets with indefinite useful lives**

The amount of intangible assets, including goodwill, product rights, tradenames and management contracts, represents a considerable part of the total assets of the Fresenius Group. At December 31, 2011 and December 31, 2010, the carrying amount of goodwill and non-amortizable intangible assets with indefinite useful lives was €12,853 million and €11,641 million, respectively. This represented 49%, respectively, of total assets.

An impairment test of goodwill and non-amortizable intangible assets with indefinite useful lives is performed at least once a year, or if events occur or circumstances change that would indicate the carrying amount might be impaired (Impairment test).

To determine possible impairments of these assets, the fair value of the reporting units is compared to their carrying amount. The fair value of each reporting unit is determined using estimated future cash flows for the unit discounted by a weighted-average cost of capital (WACC) specific to that reporting unit. Estimating the discounted future cash flows involves significant assumptions, especially regarding future reimbursement rates and sales prices, number of treatments, sales volumes and costs. In determining discounted cash flows, the Fresenius Group utilizes for every reporting unit its approved three-year budget, projections for years 4 to 10 and a corresponding growth rate for all remaining years. These growth rates are 0% to 4% for Fresenius Medical Care, 3% for Fresenius Kabi and 1% for Fresenius Helios and Fresenius Vamed. Projections for up to 10 years are possible due to historical experience and the stability of Fresenius Group's business, which is largely independent from the economic cycle. The discount factor is determined by the WACC of the respective reporting unit. Fresenius Medical Care's WACC consisted of a basic rate of 6.27% for 2011. This basic rate is then adjusted by a country-specific risk rate within each reporting unit. In 2011, WACCs (after tax) for the reporting units of Fresenius Medical Care ranged from 6.27% to 12.73%. In the business segments Fresenius Kabi, Fresenius Helios and Fresenius Vamed, the WACC (after tax) was 5.87%, country-specific adjustments did not occur. If the fair value of the

reporting unit is less than its carrying amount, the difference is recorded as an impairment of the fair value of the goodwill at first. An increase of the WACC (after tax) by 0.5% would not have resulted in the recognition of an impairment loss in 2011.

A prolonged downturn in the health care industry with lower than expected increases in reimbursement rates and/or higher than expected costs for providing health care services could adversely affect the estimated future cash flows of certain countries or segments. Future adverse changes in a reporting unit's economic environment could affect the discount rate. A decrease in the estimated future cash flows and/or a decline in the reporting unit's economic environment could result in impairment charges to goodwill and other intangible assets with indefinite useful lives which could materially and adversely affect Fresenius Group's future operating results.

#### **b) Legal contingencies**

The Fresenius Group is involved in several legal matters arising from the ordinary course of its business. The outcome of these matters may have a material effect on the financial position, results of operations or cash flows of the Fresenius Group. For details, please see note 29, Commitments and contingent liabilities.

The Fresenius Group regularly analyzes current information about such claims for probable losses and provides accruals for such matters, including estimated expenses for legal services, as appropriate. The Fresenius Group utilizes its internal legal department as well as external resources for these assessments. In making the decision regarding the need for a loss accrual, the Fresenius Group considers the degree of probability of an unfavorable outcome and its ability to make a reasonable estimate of the amount of loss.

The filing of a suit or formal assertion of a claim, or the disclosure of any such suit or assertion, does not necessarily indicate that an accrual of a loss is appropriate.

### c) Allowance for doubtful accounts

Trade accounts receivable are a significant asset and the allowance for doubtful accounts is a significant estimate made by the Management. Trade accounts receivable were €3,234 million and €2,935 million in 2011 and 2010, respectively, net of allowance. Approximately two thirds of receivables derive from the business segment Fresenius Medical Care and mainly relate to the dialysis care business in North America.

The major debtors or debtor groups of trade accounts receivable were U.S. Medicare and Medicaid health care programs with 14% and private insurers in the U.S. with 12% at December 31, 2011. Other than that, the Fresenius Group has no significant risk concentration, due to its international and heterogeneous customer structure.

The allowance for doubtful accounts was €383 million and €317 million as of December 31, 2011 and December 31, 2010, respectively.

Sales are invoiced at amounts estimated to be receivable under reimbursement arrangements with third party payors. Estimates for the allowance for doubtful accounts are mainly based on historic collection experience, taking into account the aging of accounts receivable and the contract partners. The Fresenius Group believes that these analyses result in a well-founded estimate of allowances for doubtful accounts. From time to time, the Fresenius Group reviews changes in collection experience to ensure the appropriateness of the allowances.

Deterioration in the ageing of receivables and collection difficulties could require that the Fresenius Group increases the estimates of allowances for doubtful accounts. Additional expenses for uncollectible receivables could have a significant negative impact on future operating results.

### d) Self-insurance programs

Under the insurance programs for professional, product and general liability, auto liability and worker's compensation claims, the largest subsidiary of Fresenius Medical Care AG & Co. KGaA, located in North America, is partially self-insured for professional liability claims. For further details regarding the accounting policies for self-insurance programs, please see note 1. IV aa, Self-insurance programs.

## 2. ACQUISITIONS, DIVESTITURES AND INVESTMENTS

### ACQUISITIONS, DIVESTITURES AND INVESTMENTS

The Fresenius Group made acquisitions and investments of €1,612 million and €644 million in 2011 and 2010, respectively. Of this amount, €1,397 million was paid in cash and €215 million was assumed obligations in 2011.

#### Fresenius Medical Care

In 2011, Fresenius Medical Care spent €1,429 million on acquisitions, primarily for acquisitions of International Dialysis Centers, the dialysis service business of Euromedic International, and American Access Care Holdings, LLC, which operates vascular access centers, and for loans provided to, as well as the purchase of a 49% ownership of, the related party Renal Advantage Partners, LLC, the parent company of Renal Advantage, Inc., a provider of dialysis services.

In December 2010, Fresenius Medical Care announced a renal pharmaceutical joint venture between Fresenius Medical Care and Galenica Ltd., Vifor Fresenius Medical Care Renal Pharma Ltd. (VFMCRP), to develop and distribute products to treat iron deficiency anemia and bone mineral metabolism for pre-dialysis and dialysis patients. Closing in the U.S. occurred at the end of 2010. In the fourth quarter of 2011, VFMCRP received approval from the responsible European Union anti-trust commission and formal closing occurred on November 1, 2011. After closing in the European Union, VFMCRP now operates worldwide, except for in Turkey and Ukraine, where antitrust approval has not yet been granted.

Further acquisition spending related mainly to the purchase of dialysis clinics.

In the year 2010, Fresenius Medical Care spent €596 million, primarily for acquisitions of dialysis clinics, the formation of VFMC RP, the acquisition of licenses and the acquisition of Gambro's peritoneal dialysis business outside the United States.

### Fresenius Kabi

Fresenius Kabi spent €11 million on acquisitions in the year 2011, mainly for compounding companies in Germany.

In the year 2010, Fresenius Kabi spent €31 million on acquisitions, mainly for the purchase of the cas central compounding baden-württemberg GmbH, Germany and the Fortuna Herstellung GmbH, Germany.

### Fresenius Helios

In 2011, Fresenius Helios spent €45 million on acquisitions, mainly for the acquisition of 51% of the share capital in the Katholisches Klinikum Duisburg GmbH, Germany, in December 2011 and for the acquisition of the Gesundheitszentren Landkreis Rottweil GmbH, Germany, in May 2011. Furthermore, Fresenius Helios made an additional purchase price payment for the HELIOS St. Marienberg Klinik Helmstedt GmbH, Germany.

In 2010, Fresenius Helios spent €13 million on acquisitions, mainly for the purchase of the Kreiskrankenhaus St. Marienberg in Helmstedt, Germany and medical centres.

### Fresenius Vamed

In the years 2011 and 2010, Fresenius Vamed did not make any material acquisition.

### Corporate/Other

In November and December 2011, Fresenius SE & Co. KGaA purchased 1,399,996 ordinary shares of Fresenius Medical Care AG & Co. KGaA. Therefore, the voting rights in Fresenius Medical Care AG & Co. KGaA increased to 30.74% at December 31, 2011. A total of 3.5 million shares shall be acquired.

Furthermore, in the first quarter of 2011, in the segment Corporate/Other, the remaining shares of HELIOS Kliniken GmbH, Germany, were acquired for a purchase price of €54 million.

### IMPACTS ON FRESENIUS GROUP'S CONSOLIDATED FINANCIAL STATEMENTS RESULTING FROM ACQUISITIONS

In the fiscal year 2011, all acquisitions have been accounted for applying the purchase method and accordingly have been consolidated starting with the date of acquisition. Each single acquisition is not material. The excess of the total acquisition costs over the fair value of the net assets acquired was €1,057 million and €480 million in 2011 and 2010, respectively.

The purchase price allocations are not yet finalized for all acquisitions. Based on preliminary purchase price allocations, the recognized goodwill was €931 million and the other intangible assets were €126 million. Of this goodwill, €822 million is attributable to the acquisitions of Fresenius Medical Care, €14 million to Fresenius Kabi's acquisitions and €95 million to the acquisitions of Fresenius Helios.

The acquisitions completed in 2011 or included in the consolidated statements for the first time for a full year, contributed the following amounts to the development of sales and earnings:

| € in millions                                      | 2011 |
|----------------------------------------------------|------|
| Sales                                              | 178  |
| EBITDA                                             | 25   |
| EBIT                                               | 19   |
| Net interest                                       | 14   |
| Net income attributable to Fresenius SE & Co. KGaA | 6    |

The acquisitions increased the total assets of the Fresenius Group by €1,442 million.



## NOTES ON THE CONSOLIDATED STATEMENT OF INCOME

### 3. SPECIAL ITEMS

The consolidated statement of income for the year 2011 ultimately includes several special items relating to the acquisition of APP Pharmaceuticals, Inc. in 2008. The tables below reconcile adjusted earnings to earnings according to U.S. GAAP in 2011 and 2010.

| € in millions                                 | Other financial result | Net income attributable to Fresenius SE & Co. KGaA |
|-----------------------------------------------|------------------------|----------------------------------------------------|
| <b>Earnings 2011, adjusted</b>                |                        | <b>770</b>                                         |
| Mandatory Exchangeable Bonds (mark-to-market) | -105                   | -85                                                |
| Contingent Value Rights (mark-to-market)      | 5                      | 5                                                  |
| <b>Earnings 2011 according to U.S. GAAP</b>   |                        | <b>690</b>                                         |

| € in millions                                 | Other financial result | Net income attributable to Fresenius SE & Co. KGaA |
|-----------------------------------------------|------------------------|----------------------------------------------------|
| <b>Earnings 2010, adjusted</b>                |                        | <b>660</b>                                         |
| Mandatory Exchangeable Bonds (mark-to-market) | -98                    | -70                                                |
| Contingent Value Rights (mark-to-market)      | 32                     | 32                                                 |
| <b>Earnings 2010 according to U.S. GAAP</b>   |                        | <b>622</b>                                         |

For further information regarding Mandatory Exchangeable Bonds and Contingent Value Rights see note 10, Other financial result.

### 4. SALES

Sales by activity were as follows:

| € in millions                             | 2011          | 2010   |
|-------------------------------------------|---------------|--------|
| Sales of services                         | <b>9,788</b>  | 9,631  |
| Sales of products and related goods       | <b>6,230</b>  | 5,850  |
| Sales from long-term production contracts | <b>498</b>    | 490    |
| Other sales                               | <b>6</b>      | 1      |
| <b>Sales</b>                              | <b>16,522</b> | 15,972 |

A sales analysis by business segment and region is shown in the segment information on pages 130 to 133.

### 5. COST OF SALES

Cost of sales comprised the following:

| € in millions                                    | 2011          | 2010   |
|--------------------------------------------------|---------------|--------|
| Cost of services                                 | <b>7,247</b>  | 7,144  |
| Manufacturing cost of products and related goods | <b>3,212</b>  | 3,098  |
| Cost of long-term production contracts           | <b>424</b>    | 404    |
| Other cost of sales                              | <b>–</b>      | –      |
| <b>Cost of sales</b>                             | <b>10,883</b> | 10,646 |

### 6. COST OF MATERIALS

Cost of materials comprised cost of raw materials, supplies and purchased components and of purchased services:

| € in millions                                            | 2011         | 2010  |
|----------------------------------------------------------|--------------|-------|
| Cost of raw materials, supplies and purchased components | <b>4,404</b> | 4,092 |
| Cost of purchased services                               | <b>663</b>   | 640   |
| <b>Cost of materials</b>                                 | <b>5,067</b> | 4,732 |

### 7. PERSONNEL EXPENSES

Cost of sales, selling, general and administrative expenses and research and development expenses included personnel expenses of €5,555 million and €5,354 million in 2011 and 2010, respectively.

Personnel expenses comprised the following:

| € in millions                                                                    | 2011         | 2010  |
|----------------------------------------------------------------------------------|--------------|-------|
| Wages and salaries                                                               | <b>4,392</b> | 4,221 |
| Social security contributions, cost of retirement pensions and social assistance | <b>1,163</b> | 1,133 |
| thereof retirement pensions                                                      | <b>144</b>   | 132   |
| <b>Personnel expenses</b>                                                        | <b>5,555</b> | 5,354 |

Fresenius Group's annual average number of employees by function is shown below:

|                                     | 2011           | 2010    |
|-------------------------------------|----------------|---------|
| Production                          | <b>26,240</b>  | 23,710  |
| Service                             | <b>89,341</b>  | 84,097  |
| Administration                      | <b>17,924</b>  | 17,095  |
| Sales and marketing                 | <b>8,170</b>   | 7,816   |
| Research and development            | <b>1,513</b>   | 1,445   |
| <b>Total employees (per capita)</b> | <b>143,188</b> | 134,163 |

## 8. SELLING, GENERAL AND ADMINISTRATIVE EXPENSES

Selling expenses were €677 million (2010: €615 million) and mainly included expenditures for sales personnel of €336 million (2010: €304 million).

General and administrative expenses amounted to €2,132 million (2010: €2,049 million) and are related to expenditures for administrative functions not attributable to research and development, production or selling.

## 9. NET INTEREST

Net interest of -€531 million included interest expenses of €587 million and interest income of €56 million. Interest expenses resulted from Fresenius Group's financial liabilities (see note 30, Financial instruments).

## 10. OTHER FINANCIAL RESULT

The item other financial result includes the following special expenses and income with regard to the acquisition of APP Pharmaceuticals, Inc. (APP) and its financing:

The Contingent Value Rights (CVR) awarded to the APP shareholders were traded on the NASDAQ Stock Exchange in the United States. Following a request to the U.S. Securities and Exchange Commission, in the first quarter of 2011, the CVR were deregistered and delisted from the NASDAQ due to the expiration of the underlying agreement and became valueless. As a result, an income of €5 million was recognized in 2011 (2010: income of €32 million resulting from the valuation of the liability).

The issued Mandatory Exchangeable Bonds matured on August 14, 2011. Due to their contractual definition, they included derivative financial instruments that were measured at fair value. This measurement resulted in an expense (before tax) of €105 million in 2011 (2010: expense before tax of €98 million).

## 11. TAXES

### INCOME TAXES

Income before income taxes was attributable to the following geographic regions:

| € in millions | 2011         | 2010         |
|---------------|--------------|--------------|
| Germany       | 404          | 338          |
| International | 1,528        | 1,448        |
| <b>Total</b>  | <b>1,932</b> | <b>1,786</b> |

Income tax expenses (benefits) for 2011 and 2010 consisted of the following:

| € in millions | Current taxes | Deferred taxes | Income taxes |
|---------------|---------------|----------------|--------------|
| <b>2010</b>   |               |                |              |
| Germany       | 97            | -10            | 87           |
| International | 472           | 22             | 494          |
| <b>Total</b>  | <b>569</b>    | <b>12</b>      | <b>581</b>   |
| <b>2011</b>   |               |                |              |
| Germany       | 96            | 9              | 105          |
| International | 427           | 72             | 499          |
| <b>Total</b>  | <b>523</b>    | <b>81</b>      | <b>604</b>   |

In 2011 and 2010, Fresenius SE & Co. KGaA was subject to German federal corporation income tax at a base rate of 15% plus a solidarity surcharge of 5.5% on federal corporation taxes payable.

A reconciliation between the expected and actual income tax expense is shown below. The expected corporate income tax expense is computed by applying the German corporation tax rate (including the solidarity surcharge) and the effective trade tax rate on income before income taxes. The respective combined tax rate was 29.0% for the fiscal years 2011 and 2010.

| € in millions                                          | 2011         | 2010         |
|--------------------------------------------------------|--------------|--------------|
| Computed "expected" income tax expense                 | 560          | 518          |
| Increase (reduction) in income taxes resulting from:   |              |              |
| Items not recognized for tax purposes                  | 12           | 12           |
| Tax rate differential                                  | 56           | 63           |
| Tax-free income                                        | -12          | -23          |
| Taxes for prior years                                  | 4            | 9            |
| Changes in valuation allowances on deferred tax assets | 5            | 24           |
| Noncontrolling partnership interests                   | -22          | -20          |
| Other                                                  | 1            | -2           |
| <b>Income tax</b>                                      | <b>604</b>   | <b>581</b>   |
| <b>Effective tax rate</b>                              | <b>31.3%</b> | <b>32.5%</b> |

## DEFERRED TAXES

The tax effects of the temporary differences that gave rise to deferred tax assets and liabilities at December 31 are presented below:

| € in millions                                          | 2011        | 2010       |
|--------------------------------------------------------|-------------|------------|
| <b>Deferred tax assets</b>                             |             |            |
| Accounts receivable                                    | 14          | 29         |
| Inventories                                            | 79          | 65         |
| Other current assets                                   | 93          | 47         |
| Other non-current assets                               | 127         | 84         |
| Accrued expenses                                       | 183         | 235        |
| Other short-term liabilities                           | 86          | 88         |
| Other liabilities                                      | 28          | 37         |
| Benefit obligations                                    | 92          | 55         |
| Losses carried forward from prior years                | 151         | 145        |
| <b>Deferred tax assets, before valuation allowance</b> | <b>853</b>  | <b>785</b> |
| less valuation allowance                               | 121         | 116        |
| <b>Deferred tax assets</b>                             | <b>732</b>  | <b>669</b> |
| <b>Deferred tax liabilities</b>                        |             |            |
| Accounts receivable                                    | 23          | 12         |
| Inventories                                            | 22          | 15         |
| Other current assets                                   | 11          | 18         |
| Other non-current assets                               | 560         | 511        |
| Accrued expenses                                       | 23          | 8          |
| Other short-term liabilities                           | 123         | 148        |
| Other liabilities                                      | 102         | 27         |
| <b>Deferred tax liabilities</b>                        | <b>864</b>  | <b>739</b> |
| <b>Net deferred taxes</b>                              | <b>-132</b> | <b>-70</b> |

In the consolidated statement of financial position, the net amounts of deferred tax assets and liabilities are included as follows:

|                           | 2011               | 2010               |
|---------------------------|--------------------|--------------------|
| € in millions             | thereof short-term | thereof short-term |
| Deferred tax assets       | 493                | 492                |
| Deferred tax liabilities  | 625                | 562                |
| <b>Net deferred taxes</b> | <b>-132</b>        | <b>-70</b>         |

As of December 31, 2011, Fresenius Medical Care has not recognized a deferred tax liability on approximately €3.3 billion of undistributed earnings of its foreign subsidiaries, because those earnings are intended to be indefinitely reinvested.

## NET OPERATING LOSSES

The expiration of net operating losses is as follows:

| for the fiscal years | € in millions |
|----------------------|---------------|
| 2012                 | 19            |
| 2013                 | 13            |
| 2014                 | 21            |
| 2015                 | 22            |
| 2016                 | 38            |
| 2017                 | 18            |
| 2018                 | 15            |
| 2019                 | 10            |
| 2020                 | 7             |
| 2021 and thereafter  | 27            |
| <b>Total</b>         | <b>190</b>    |

The total remaining operating losses of €219 million can mainly be carried forward for an unlimited period.

Based upon the level of historical taxable income and projections for future taxable income, the Management of the Fresenius Group believes it is more likely than not that the Fresenius Group will realize the benefits of these deductible differences, net of the existing valuation allowances, at December 31, 2011.

## UNRECOGNIZED TAX BENEFITS

Fresenius SE & Co. KGaA and its subsidiaries are subject to tax audits in Germany and the United States on a regular basis and ongoing tax audits in other jurisdictions.

In Germany, the tax years 2002 to 2005 are currently under audit by the tax authorities. The Fresenius Group recognized and recorded the current proposed adjustments of this audit period in the consolidated financial statements. All proposed adjustments are deemed immaterial. In the fourth quarter of 2011, the tax audit for the years 2006 through 2009 was started. Fiscal years 2010 and 2011 are open to audit. For the tax year 1997, Fresenius Medical Care recognized an impairment of one of its subsidiaries which the German tax authorities disallowed in 2003 at the conclusion of its audit for the years 1996 and 1997. Fresenius Medical Care filed a complaint with the appropriate German court to challenge the tax authority's decision. In January 2011, Fresenius Medical Care reached an agreement with the tax authorities. The additional benefit related to the agreement has been recognized in the consolidated financial statements in 2011.

In the United States, Fresenius Medical Care filed claims for refunds contesting the Internal Revenue Service's (IRS) disallowance of Fresenius Medical Care Holdings, Inc.'s (FMCH) civil settlement payment deductions taken by FMCH in prior year tax returns. As a result of a settlement agreement with the IRS, Fresenius Medical Care received a partial refund in September 2008 of US\$37 million, inclusive of interest, and preserved the right to continue to pursue claims in the United States Courts for refunds of all other disallowed deductions. On December 22, 2008, Fresenius Medical Care filed a complaint for a complete refund in the United States District Court

for the District of Massachusetts, styled as FMCH v. United States. The court has denied motions for summary judgment by both parties and the litigation is proceeding towards trial. The unrecognized tax benefit relating to these deductions is included in the total unrecognized tax benefit noted below.

The IRS tax audits of FMCH for the years 2002 through 2008 have been completed. On January 23, 2012, Fresenius Medical Care executed a closing agreement with the IRS with respect to the 2007–2008 tax audit. The agreement reflected a full allowance of interest deductions on intercompany mandatorily redeemable preferred shares for the 2007–2008 tax years. The agreement evidenced a revocation by the IRS in December of 2011 of an initial disallowance of the deductions on mandatorily redeemable shares for the 2007–2008 tax years that was reflected in an IRS examination report issued on November 21, 2011. Fresenius Medical Care also protested the IRS's disallowance of interest deductions associated with mandatorily redeemable shares for the years 2002–2006. Although Fresenius Medical Care's protests remain pending before IRS Appeals, the IRS has advised Fresenius Medical Care that it will withdraw its disallowance of, and will accordingly permit the deductions associated with, mandatorily redeemable shares for the years 2002–2006. During the IRS tax audit for 2007–2008, the IRS proposed other adjustments which have been recognized in the consolidated financial statements. In the U.S., fiscal years 2009, 2010 and 2011 are open to audit. FMCH is also subject to audit in various state jurisdictions. A number of these audits are in progress and various years are open to audit in various state jurisdictions. All expected results for both federal and state income tax audits have been recognized in the consolidated financial statements.

Subsidiaries of Fresenius SE & Co. KGaA in a number of countries outside of Germany and the United States are also subject to tax audits. The Fresenius Group estimates that the effects of such tax audits are not material to these consolidated financial statements.

The following table shows the changes to unrecognized tax benefits during the year 2011:

| € in millions                                                   | 2011       |
|-----------------------------------------------------------------|------------|
| <b>Balance at January 1, 2011</b>                               | <b>354</b> |
| Increase in unrecognized tax benefits prior periods             | 18         |
| Decrease in unrecognized tax benefits prior periods             | -19        |
| Increase in unrecognized tax benefits current periods           | 18         |
| Changes related to settlements with tax authorities             | -156       |
| Reductions as a result of a lapse of the statute of limitations | -2         |
| Foreign currency translation                                    | 11         |
| <b>Balance at December 31, 2011</b>                             | <b>224</b> |

Included in the balance at December 31, 2011 are €224 million of unrecognized tax benefits, which would affect the effective tax rate if recognized. As a result of the settlement agreement for 1997 noted above, the Fresenius Group reduced the unrecognized tax benefits at December 31, 2011 by US\$206 million and a portion of the reduction was realized as an additional tax benefit in 2011. The Fresenius Group estimates that the uncertain tax benefit at December 31, 2011 will be reduced by approximately US\$13 million due to expected settlements with tax authorities. The Fresenius Group is currently not in a position to forecast the timing and magnitude of changes in other unrecognized tax benefits.

It is Fresenius Group's policy to recognize interest and penalties related to its tax positions as income tax expense. During the fiscal year 2011, the Fresenius Group recognized €2 million in interest and penalties. The Fresenius Group had a total accrual of €47 million of tax related interest and penalties at December 31, 2011.

## 12. EARNINGS PER SHARE

The following table shows the earnings per share including and excluding the dilutive effect from stock options issued and the Mandatory Exchangeable Bonds (MEB):

|                                                                                | 2011        | 2010        |
|--------------------------------------------------------------------------------|-------------|-------------|
| <b>Numerators, € in millions</b>                                               |             |             |
| Net income attributable to Fresenius SE & Co. KGaA                             | 690         | 622         |
| less preference on preference shares                                           | n/a         | 0           |
| less effect from dilution due to Fresenius Medical Care shares and MEB         | 3           | 6           |
| Income available to all classes of shares                                      | 687         | 616         |
| <b>Denominators in number of shares</b>                                        |             |             |
| Weighted-average number of ordinary shares outstanding                         | 162,797,197 | 80,870,695  |
| Weighted-average number of preference shares outstanding                       | 0           | 80,870,695  |
| Weighted-average number of shares outstanding of all classes                   | 162,797,197 | 161,741,390 |
| Potentially dilutive ordinary shares                                           | 1,522,534   | 541,580     |
| Potentially dilutive preference shares                                         | 0           | 541,580     |
| Weighted-average number of ordinary shares outstanding assuming dilution       | 164,319,731 | 81,412,275  |
| Weighted-average number of preference shares outstanding assuming dilution     | 0           | 81,412,275  |
| Weighted-average number of shares outstanding of all classes assuming dilution | 164,319,731 | 162,824,550 |
| <b>Basic earnings per ordinary share in €</b>                                  | <b>4.24</b> | <b>3.85</b> |
| Preference per preference share in €                                           | n/a         | 0.00        |
| <b>Basic earnings per preference share in €</b>                                | <b>n/a</b>  | <b>3.85</b> |
| <b>Fully diluted earnings per ordinary share in €</b>                          | <b>4.18</b> | <b>3.79</b> |
| Preference per preference share in €                                           | n/a         | 0.00        |
| <b>Fully diluted earnings per preference share in €</b>                        | <b>n/a</b>  | <b>3.79</b> |

The owners of preference shares were entitled to a preference of €0.01 per bearer preference share per fiscal year.

Due to the conversion of the preference shares into ordinary shares in combination with the change of legal form, the dilutive effects are only calculated on ordinary shares as of fiscal year 2011.

## NOTES ON THE CONSOLIDATED STATEMENT OF FINANCIAL POSITION

### 13. CASH AND CASH EQUIVALENTS

As of December 31, cash and cash equivalents were as follows:

| € in millions                                                      | 2011       | 2010       |
|--------------------------------------------------------------------|------------|------------|
| Cash                                                               | 627        | 650        |
| Time deposits and securities<br>(with a maturity of up to 90 days) | 8          | 119        |
| <b>Total cash and cash equivalents</b>                             | <b>635</b> | <b>769</b> |

As of December 31, 2011 and December 31, 2010, earmarked funds of €40 million and €65 million, respectively, were included in cash and cash equivalents.

### 14. TRADE ACCOUNTS RECEIVABLE

As of December 31, trade accounts receivable were as follows:

| € in millions                         | 2011         | 2010         |
|---------------------------------------|--------------|--------------|
| Trade accounts receivable             | 3,617        | 3,252        |
| less allowance for doubtful accounts  | 383          | 317          |
| <b>Trade accounts receivable, net</b> | <b>3,234</b> | <b>2,935</b> |

All trade accounts receivable are due within one year.

The following table shows the development of the allowance for doubtful accounts during the fiscal year:

| € in millions                                                                      | 2011       | 2010       |
|------------------------------------------------------------------------------------|------------|------------|
| <b>Allowance for doubtful accounts at the beginning of the year</b>                | <b>317</b> | <b>285</b> |
| Change in valuation allowances as recorded in the consolidated statement of income | 216        | 175        |
| Write-offs and recoveries of amounts previously written-off                        | -154       | -158       |
| Foreign currency translation                                                       | 4          | 15         |
| <b>Allowance for doubtful accounts at the end of the year</b>                      | <b>383</b> | <b>317</b> |

The following table shows the ageing analysis of trade accounts receivable and their allowance for doubtful accounts:

| € in millions                         | not overdue  | up to 3 months overdue | 3 to 6 months overdue | 6 to 12 months overdue | more than 12 months overdue | Total        |
|---------------------------------------|--------------|------------------------|-----------------------|------------------------|-----------------------------|--------------|
| Trade accounts receivable             | 1,965        | 606                    | 295                   | 306                    | 445                         | 3,617        |
| less allowance for doubtful accounts  | 22           | 49                     | 43                    | 64                     | 205                         | 383          |
| <b>Trade accounts receivable, net</b> | <b>1,943</b> | <b>557</b>             | <b>252</b>            | <b>242</b>             | <b>240</b>                  | <b>3,234</b> |

### 15. INVENTORIES

As of December 31, inventories consisted of the following:

| € in millions                          | 2011         | 2010         |
|----------------------------------------|--------------|--------------|
| Raw materials and purchased components | 385          | 350          |
| Work in process                        | 326          | 255          |
| Finished goods                         | 1,076        | 874          |
| less reserves                          | 70           | 68           |
| <b>Inventories, net</b>                | <b>1,717</b> | <b>1,411</b> |

The companies of the Fresenius Group are obliged to purchase approximately €2,316 million of raw materials and purchased components under fixed terms, of which €700 million was committed at December 31, 2011 for 2012. The terms of these agreements run 1 to 14 years. Advance payments from customers of €236 million (2010: €170 million) have been offset against inventories.

Inventories as of December 31, 2011 and December 31, 2010 included approximately €37 million and approximately €25 million, respectively, of the product Erythropoietin (EPO),

which is supplied by a single source supplier in the United States. Effective January 1, 2012, Fresenius Medical Care entered into a new three-year sourcing and supply agreement

with its EPO supplier. Delays, stoppages, or interruptions in the supply of EPO could adversely affect the operating results of Fresenius Medical Care.

## 16. OTHER CURRENT AND NON-CURRENT ASSETS

As of December 31, other current and non-current assets comprised the following:

| € in millions                                                              | 2011         |                       | 2010         |                       |
|----------------------------------------------------------------------------|--------------|-----------------------|--------------|-----------------------|
|                                                                            |              | thereof<br>short-term |              | thereof<br>short-term |
| Investments and long-term loans                                            | 796          | 9                     | 254          | 6                     |
| Tax receivables                                                            | 311          | 287                   | 240          | 224                   |
| Discounts                                                                  | 143          | 143                   | 124          | 124                   |
| Accounts receivable resulting from German "Krankenhausfinanzierungsgesetz" | 101          | 82                    | 111          | 79                    |
| Capitalized debt financing costs                                           | 98           | 9                     | 108          | 10                    |
| Advances made                                                              | 77           | 76                    | 53           | 52                    |
| Leasing receivables                                                        | 72           | 29                    | 73           | 29                    |
| Derivative financial instruments                                           | 54           | 52                    | 25           | 18                    |
| Prepaid expenses                                                           | 45           | 18                    | 45           | 15                    |
| Re-insurance claims                                                        | 11           | 0                     | 25           | 0                     |
| Accounts receivable from management contracts in clinics                   | 8            | 8                     | 7            | 7                     |
| Other assets                                                               | 662          | 478                   | 496          | 367                   |
| <b>Other assets, gross</b>                                                 | <b>2,378</b> | <b>1,191</b>          | <b>1,561</b> | <b>931</b>            |
| less allowances                                                            | 9            | 7                     | 8            | 6                     |
| <b>Other assets, net</b>                                                   | <b>2,369</b> | <b>1,184</b>          | <b>1,553</b> | <b>925</b>            |

Investments and long-term loans comprised investments of €537 million (2010: €190 million), mainly regarding the joint venture between Fresenius Medical Care and Galenica Ltd., that were accounted for under the equity method. In 2011, income of €22 million (2010: €4 million) resulting from this valuation was included in general and administrative expenses in the consolidated statement of income. Furthermore, investments and long-term loans include €181 million (2010: €0 million) that Fresenius Medical Care loaned to Renal Advantage Partners, LLC.

The receivables resulting from the German "Krankenhausfinanzierungsgesetz" primarily contain approved but not yet received earmarked subsidies of the Fresenius Helios operations. The approval is evidenced in a letter written by the granting authorities that Fresenius Helios has already received.

In the fiscal year, the amount of depreciation recognized on other non-current assets was immaterial (2010: €2 million).



## 17. PROPERTY, PLANT AND EQUIPMENT

As of December 31, the acquisition and manufacturing costs as well as accumulated depreciation of property, plant and equipment consisted of the following:

### ACQUISITION AND MANUFACTURING COSTS

| € in millions                                                     | As of<br>Jan. 1, 2011 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions  | Reclassifi-<br>cations | Disposals  | As of<br>Dec. 31, 2011 |
|-------------------------------------------------------------------|-----------------------|------------------------------------|----------------------------------------|------------|------------------------|------------|------------------------|
| Land and land facilities                                          | 221                   | 1                                  | 5                                      | 2          | 1                      | –          | 230                    |
| Buildings and improvements                                        | 2,976                 | 31                                 | 44                                     | 84         | 175                    | 40         | 3,270                  |
| Machinery and equipment                                           | 3,796                 | 16                                 | 50                                     | 372        | 100                    | 177        | 4,157                  |
| Machinery, equipment and rental<br>equipment under capital leases | 98                    | –                                  | –                                      | 9          | 3                      | 5          | 105                    |
| Construction in progress                                          | 419                   | –                                  | -1                                     | 310        | -286                   | 12         | 430                    |
| <b>Property, plant and equipment</b>                              | <b>7,510</b>          | <b>48</b>                          | <b>98</b>                              | <b>777</b> | <b>-7</b>              | <b>234</b> | <b>8,192</b>           |

### DEPRECIATION

| € in millions                                                     | As of<br>Jan. 1, 2011 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions  | Reclassifi-<br>cations | Disposals  | As of<br>Dec. 31, 2011 |
|-------------------------------------------------------------------|-----------------------|------------------------------------|----------------------------------------|------------|------------------------|------------|------------------------|
| Land and land facilities                                          | 4                     | –                                  | 0                                      | 1          | 0                      | –          | 5                      |
| Buildings and improvements                                        | 1,246                 | 20                                 | 4                                      | 190        | 3                      | 32         | 1,431                  |
| Machinery and equipment                                           | 2,269                 | 13                                 | 1                                      | 367        | –                      | 147        | 2,503                  |
| Machinery, equipment and rental<br>equipment under capital leases | 36                    | –                                  | 0                                      | 10         | 1                      | 5          | 42                     |
| Construction in progress                                          | 1                     | –                                  | 0                                      | 0          | –                      | –          | 1                      |
| <b>Property, plant and equipment</b>                              | <b>3,556</b>          | <b>33</b>                          | <b>5</b>                               | <b>568</b> | <b>4</b>               | <b>184</b> | <b>3,982</b>           |

### ACQUISITION AND MANUFACTURING COSTS

| € in millions                                                     | As of<br>Jan. 1, 2010 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions  | Reclassifi-<br>cations | Disposals  | As of<br>Dec. 31, 2010 |
|-------------------------------------------------------------------|-----------------------|------------------------------------|----------------------------------------|------------|------------------------|------------|------------------------|
| Land and land facilities                                          | 206                   | 7                                  | 1                                      | 8          | –                      | 1          | 221                    |
| Buildings and improvements                                        | 2,628                 | 111                                | 16                                     | 86         | 193                    | 58         | 2,976                  |
| Machinery and equipment                                           | 3,355                 | 178                                | 42                                     | 326        | 110                    | 215        | 3,796                  |
| Machinery, equipment and rental<br>equipment under capital leases | 146                   | 3                                  | 7                                      | 20         | -65                    | 13         | 98                     |
| Construction in progress                                          | 340                   | 18                                 | 12                                     | 304        | -250                   | 5          | 419                    |
| <b>Property, plant and equipment</b>                              | <b>6,675</b>          | <b>317</b>                         | <b>78</b>                              | <b>744</b> | <b>-12</b>             | <b>292</b> | <b>7,510</b>           |

### DEPRECIATION

| € in millions                                                     | As of<br>Jan. 1, 2010 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions  | Reclassifi-<br>cations | Disposals  | As of<br>Dec. 31, 2010 |
|-------------------------------------------------------------------|-----------------------|------------------------------------|----------------------------------------|------------|------------------------|------------|------------------------|
| Land and land facilities                                          | 2                     | 2                                  | 0                                      | –          | –                      | –          | 4                      |
| Buildings and improvements                                        | 1,038                 | 48                                 | 1                                      | 173        | 37                     | 51         | 1,246                  |
| Machinery and equipment                                           | 2,001                 | 97                                 | 16                                     | 351        | –                      | 196        | 2,269                  |
| Machinery, equipment and rental<br>equipment under capital leases | 74                    | 1                                  | –                                      | 8          | -39                    | 8          | 36                     |
| Construction in progress                                          | 1                     | –                                  | 0                                      | –          | 0                      | –          | 1                      |
| <b>Property, plant and equipment</b>                              | <b>3,116</b>          | <b>148</b>                         | <b>17</b>                              | <b>532</b> | <b>-2</b>              | <b>255</b> | <b>3,556</b>           |

## CARRYING AMOUNTS

| € in millions                                                  | Dec. 31, 2011 | Dec. 31, 2010 |
|----------------------------------------------------------------|---------------|---------------|
| Land and land facilities                                       | 225           | 217           |
| Buildings and improvements                                     | 1,839         | 1,730         |
| Machinery and equipment                                        | 1,654         | 1,527         |
| Machinery, equipment and rental equipment under capital leases | 63            | 62            |
| Construction in progress                                       | 429           | 418           |
| <b>Property, plant and equipment</b>                           | <b>4,210</b>  | <b>3,954</b>  |

Depreciation on property, plant and equipment for the years 2011 and 2010 was €568 million and €532 million, respectively. It is allocated within cost of sales, selling, general and administrative expenses and research and development expenses, depending upon the use of the asset.

## LEASING

Machinery and equipment as of December 31, 2011 and 2010 included peritoneal dialysis cyclor machines which Fresenius Medical Care leases to customers with end-stage

renal disease on a month-to-month basis and hemodialysis machines which Fresenius Medical Care leases to physicians under operating leases in an amount of €349 million and €312 million, respectively.

To a lesser extent, property, plant and equipment are also leased for the treatment of patients by other business segments.

For details of minimum lease payments see note 21, Debt and capital lease obligations.

## 18. GOODWILL AND OTHER INTANGIBLE ASSETS

As of December 31, the acquisition cost and accumulated amortization of intangible assets consisted of the following:

### ACQUISITION COST

| € in millions                               | As of<br>Jan. 1, 2011 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions | Reclassifi-<br>cations | Disposals | As of<br>Dec. 31, 2011 |
|---------------------------------------------|-----------------------|------------------------------------|----------------------------------------|-----------|------------------------|-----------|------------------------|
| Goodwill                                    | 11,464                | 274                                | 875                                    | 56        | –                      | –         | 12,669                 |
| Patents, product and distribution rights    | 617                   | 13                                 | 2                                      | 5         | –                      | 55        | 582                    |
| Tradenames                                  | 173                   | 5                                  | 0                                      | –         | 1                      | 1         | 178                    |
| Technology                                  | 83                    | 3                                  | –                                      | 0         | 0                      | 0         | 86                     |
| Non-compete agreements                      | 184                   | 6                                  | 11                                     | 0         | 0                      | –         | 201                    |
| Management contracts                        | 4                     | –                                  | –                                      | 0         | 2                      | 0         | 6                      |
| Other                                       | 484                   | 7                                  | 72                                     | 36        | 5                      | 8         | 596                    |
| <b>Goodwill and other intangible assets</b> | <b>13,009</b>         | <b>308</b>                         | <b>960</b>                             | <b>97</b> | <b>8</b>               | <b>64</b> | <b>14,318</b>          |

## AMORTIZATION

| € in millions                               | As of<br>Jan. 1, 2011 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions  | Reclassifi-<br>cations | Disposals | As of<br>Dec. 31, 2011 |
|---------------------------------------------|-----------------------|------------------------------------|----------------------------------------|------------|------------------------|-----------|------------------------|
| Goodwill                                    | 0                     | 0                                  | 0                                      | 0          | 0                      | 0         | 0                      |
| Patents, product and distribution rights    | 139                   | 4                                  | 0                                      | 45         | 0                      | 6         | 182                    |
| Tradenames                                  | 0                     | 0                                  | 0                                      | 0          | 0                      | 0         | 0                      |
| Technology                                  | 19                    | 1                                  | 0                                      | 5          | 0                      | 0         | 25                     |
| Non-compete agreements                      | 125                   | 5                                  | –                                      | 14         | 0                      | 0         | 144                    |
| Management contracts                        | 0                     | 0                                  | 0                                      | 0          | 0                      | 0         | 0                      |
| Other                                       | 278                   | 4                                  | –                                      | 42         | –                      | 7         | 317                    |
| <b>Goodwill and other intangible assets</b> | <b>561</b>            | <b>14</b>                          | <b>–</b>                               | <b>106</b> | <b>–</b>               | <b>13</b> | <b>668</b>             |

## ACQUISITION COST

| € in millions                               | As of<br>Jan. 1, 2010 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions | Reclassifi-<br>cations | Disposals | As of<br>Dec. 31, 2010 |
|---------------------------------------------|-----------------------|------------------------------------|----------------------------------------|-----------|------------------------|-----------|------------------------|
| Goodwill                                    | 10,356                | 587                                | 355                                    | 4         | 162                    | 0         | 11,464                 |
| Patents, product and distribution rights    | 538                   | 35                                 | 4                                      | 39        | 2                      | 1         | 617                    |
| Tradenames                                  | 161                   | 12                                 | –                                      | –         | –                      | 0         | 173                    |
| Technology                                  | 69                    | 6                                  | 8                                      | 0         | 0                      | 0         | 83                     |
| Non-compete agreements                      | 157                   | 12                                 | 20                                     | –         | –                      | 5         | 184                    |
| Management contracts                        | 153                   | 13                                 | 0                                      | 0         | -162                   | 0         | 4                      |
| Other                                       | 423                   | 32                                 | 15                                     | 35        | –                      | 21        | 484                    |
| <b>Goodwill and other intangible assets</b> | <b>11,857</b>         | <b>697</b>                         | <b>402</b>                             | <b>78</b> | <b>2</b>               | <b>27</b> | <b>13,009</b>          |

## AMORTIZATION

| € in millions                               | As of<br>Jan. 1, 2010 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions  | Reclassifi-<br>cations | Disposals | As of<br>Dec. 31, 2010 |
|---------------------------------------------|-----------------------|------------------------------------|----------------------------------------|------------|------------------------|-----------|------------------------|
| Goodwill                                    | 0                     | 0                                  | 0                                      | 0          | 0                      | 0         | 0                      |
| Patents, product and distribution rights    | 93                    | 4                                  | –                                      | 43         | –                      | 1         | 139                    |
| Tradenames                                  | 0                     | 0                                  | 0                                      | 0          | 0                      | 0         | 0                      |
| Technology                                  | 12                    | 1                                  | 0                                      | 6          | 0                      | 0         | 19                     |
| Non-compete agreements                      | 109                   | 8                                  | 0                                      | 13         | –                      | 5         | 125                    |
| Management contracts                        | 0                     | 0                                  | 0                                      | 0          | 0                      | 0         | 0                      |
| Other                                       | 234                   | 22                                 | –                                      | 43         | –                      | 21        | 278                    |
| <b>Goodwill and other intangible assets</b> | <b>448</b>            | <b>35</b>                          | <b>–</b>                               | <b>105</b> | <b>–</b>               | <b>27</b> | <b>561</b>             |

## CARRYING AMOUNTS

| € in millions                               | Dec. 31, 2011 | Dec. 31, 2010 |
|---------------------------------------------|---------------|---------------|
| Goodwill                                    | 12,669        | 11,464        |
| Patents, product and distribution rights    | 400           | 478           |
| Tradenames                                  | 178           | 173           |
| Technology                                  | 61            | 64            |
| Non-compete agreements                      | 57            | 59            |
| Management contracts                        | 6             | 4             |
| Other                                       | 279           | 206           |
| <b>Goodwill and other intangible assets</b> | <b>13,650</b> | <b>12,448</b> |

The split of intangible assets into amortizable and non-amortizable intangible assets is shown in the following tables:

## AMORTIZABLE INTANGIBLE ASSETS

| € in millions                            | Dec. 31, 2011    |                          |                 | Dec. 31, 2010    |                          |                 |
|------------------------------------------|------------------|--------------------------|-----------------|------------------|--------------------------|-----------------|
|                                          | Acquisition cost | Accumulated amortization | Carrying amount | Acquisition cost | Accumulated amortization | Carrying amount |
| Patents, product and distribution rights | 582              | 182                      | 400             | 617              | 139                      | 478             |
| Technology                               | 86               | 25                       | 61              | 83               | 19                       | 64              |
| Non-compete agreements                   | 201              | 144                      | 57              | 184              | 125                      | 59              |
| Other                                    | 596              | 317                      | 279             | 484              | 278                      | 206             |
| <b>Total</b>                             | <b>1,465</b>     | <b>668</b>               | <b>797</b>      | <b>1,368</b>     | <b>561</b>               | <b>807</b>      |

## NON-AMORTIZABLE INTANGIBLE ASSETS

| € in millions        | Dec. 31, 2011    |                          |                 | Dec. 31, 2010    |                          |                 |
|----------------------|------------------|--------------------------|-----------------|------------------|--------------------------|-----------------|
|                      | Acquisition cost | Accumulated amortization | Carrying amount | Acquisition cost | Accumulated amortization | Carrying amount |
| Tradenames           | 178              | 0                        | 178             | 173              | 0                        | 173             |
| Management contracts | 6                | 0                        | 6               | 4                | 0                        | 4               |
| Goodwill             | 12,669           | 0                        | 12,669          | 11,464           | 0                        | 11,464          |
| <b>Total</b>         | <b>12,853</b>    | <b>0</b>                 | <b>12,853</b>   | <b>11,641</b>    | <b>0</b>                 | <b>11,641</b>   |

In the second quarter of 2010, administrative services agreements of Fresenius Medical Care in an amount of US\$215 million (€162 million) were reclassified from the category management contracts to goodwill due to a change in New York state regulations that allowed Fresenius Medical Care, beginning in April 2010, to directly own the managed facilities in that state.

Amortization on intangible assets amounted to €106 million and €105 million for the years 2011 and 2010, respectively. It is allocated within cost of sales, selling, general and administrative expenses and research and development expenses, depending upon the use of the asset.

Estimated regular amortization expenses of intangible assets for the next five years are shown in the following table:

| € in millions                   | 2012 | 2013 | 2014 | 2015 | 2016 |
|---------------------------------|------|------|------|------|------|
| Estimated amortization expenses | 102  | 96   | 89   | 80   | 76   |

The carrying amount of goodwill has developed as follows:

| € in millions                                  | Fresenius Medical Care | Fresenius Kabi | Fresenius Helios | Fresenius Vamed | Corporate/ Other | Fresenius Group |
|------------------------------------------------|------------------------|----------------|------------------|-----------------|------------------|-----------------|
| <b>Carrying amount as of January 1, 2010</b>   | <b>5,214</b>           | <b>3,466</b>   | <b>1,626</b>     | <b>44</b>       | <b>6</b>         | <b>10,356</b>   |
| Additions                                      | 324                    | 30             | 1                | 4               | 0                | 359             |
| Reclassifications                              | 162                    | 0              | 0                | 0               | 0                | 162             |
| Foreign currency translation                   | 392                    | 195            | 0                | 0               | 0                | 587             |
| <b>Carrying amount as of December 31, 2010</b> | <b>6,092</b>           | <b>3,691</b>   | <b>1,627</b>     | <b>48</b>       | <b>6</b>         | <b>11,464</b>   |
| Additions                                      | 822                    | 14             | 95               | 0               | 0                | 931             |
| Foreign currency translation                   | 186                    | 88             | 0                | 0               | 0                | 274             |
| <b>Carrying amount as of December 31, 2011</b> | <b>7,100</b>           | <b>3,793</b>   | <b>1,722</b>     | <b>48</b>       | <b>6</b>         | <b>12,669</b>   |

As of December 31, 2011 and December 31, 2010, the carrying amounts of the other non-amortizable intangible assets were €168 million and €161 million, respectively, for

Fresenius Medical Care as well as €16 million, respectively, for Fresenius Kabi.

## 19. OTHER ACCRUED EXPENSES

As of December 31, other accrued expenses consisted of the following:

| € in millions                          | 2011         |                    | 2010         |                    |
|----------------------------------------|--------------|--------------------|--------------|--------------------|
|                                        |              | thereof short-term |              | thereof short-term |
| Personnel expenses                     | 568          | 497                | 482          | 423                |
| Invoices outstanding                   | 215          | 215                | 188          | 188                |
| Self-insurance programs                | 126          | 126                | 123          | 123                |
| Bonuses and discounts                  | 108          | 108                | 89           | 89                 |
| Special charge for legal matters       | 89           | 89                 | 86           | 86                 |
| Legal matters, advisory and audit fees | 70           | 70                 | 66           | 66                 |
| Warranties and complaints              | 40           | 39                 | 36           | 34                 |
| Commissions                            | 27           | 27                 | 21           | 21                 |
| All other accrued expenses             | 453          | 400                | 391          | 343                |
| <b>Other accrued expenses</b>          | <b>1,696</b> | <b>1,571</b>       | <b>1,482</b> | <b>1,373</b>       |

The following table shows the development of other accrued expenses in the fiscal year:

| € in millions                             | As of<br>Jan. 1, 2011 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions    | Reclassifi-<br>cations | Utilized      | Reversed    | As of<br>Dec. 31, 2011 |
|-------------------------------------------|-----------------------|------------------------------------|----------------------------------------|--------------|------------------------|---------------|-------------|------------------------|
| Personnel expenses                        | 482                   | 5                                  | 18                                     | 436          | 2                      | -344          | -31         | 568                    |
| Invoices outstanding                      | 188                   | 3                                  | 2                                      | 157          | 1                      | -116          | -20         | 215                    |
| Self-insurance programs                   | 123                   | 4                                  | –                                      | 14           | –                      | -5            | -10         | 126                    |
| Bonuses and discounts                     | 89                    | 2                                  | –                                      | 158          | -1                     | -138          | -2          | 108                    |
| Special charge for<br>legal matters       | 86                    | 3                                  | 0                                      | 0            | 0                      | 0             | 0           | 89                     |
| Legal matters, advisory<br>and audit fees | 66                    | –                                  | 2                                      | 24           | 1                      | -20           | -3          | 70                     |
| Warranties and complaints                 | 36                    | –                                  | –                                      | 21           | –                      | -13           | -4          | 40                     |
| Commissions                               | 21                    | –                                  | –                                      | 22           | –                      | -14           | -2          | 27                     |
| All other accrued expenses                | 391                   | –                                  | 26                                     | 445          | -5                     | -362          | -42         | 453                    |
| <b>Total</b>                              | <b>1,482</b>          | <b>17</b>                          | <b>48</b>                              | <b>1,277</b> | <b>-2</b>              | <b>-1,012</b> | <b>-114</b> | <b>1,696</b>           |

Accruals for personnel expenses mainly refer to bonus, severance payments, contribution of partial retirement and holiday entitlements.

In 2001, Fresenius Medical Care recorded a US\$258 million special charge to address legal matters relating to transactions pursuant to the Agreement and Plan of Reorganization dated as of February 4, 1996 by and between W.R. Grace & Co. and Fresenius AG, estimated liabilities and legal expenses arising in connection with the W.R. Grace & Co. Chapter 11 proceedings (Grace Chapter 11 Proceedings) and the cost of resolving pending litigation and other disputes with certain

commercial insurers. During the second quarter of 2003, the court supervising the Grace Chapter 11 Proceedings approved a definitive settlement agreement entered into among Fresenius Medical Care, the committee representing the asbestos creditors and W.R. Grace & Co. Under the settlement agreement, Fresenius Medical Care will pay US\$115 million (€89 million), without interest, upon plan confirmation. In January and February 2011, the U.S. Bankruptcy Court entered orders confirming the joint plan of reorganization and the confirmation orders were affirmed by the U.S. District Court on January 31, 2012 (see note 29, Commitments and contingent liabilities). With the exception of the proposed US\$115 million settlement payment, all other matters included in the special charge have been resolved.

## 20. OTHER LIABILITIES

As of December 31, other liabilities consisted of the following:

| € in millions                                                           | 2011         |                       | 2010         |                       |
|-------------------------------------------------------------------------|--------------|-----------------------|--------------|-----------------------|
|                                                                         |              | thereof<br>short-term |              | thereof<br>short-term |
| Derivative financial instruments                                        | 269          | 200                   | 363          | 239                   |
| Tax liabilities                                                         | 155          | 152                   | 117          | 114                   |
| Accounts payable resulting from German "Krankenhausfinanzierungsgesetz" | 133          | 127                   | 183          | 177                   |
| Interest liabilities                                                    | 131          | 131                   | 126          | 126                   |
| Personnel liabilities                                                   | 116          | 112                   | 102          | 97                    |
| Accounts receivable credit balance                                      | 103          | 23                    | 104          | 22                    |
| Advance payments from customers                                         | 77           | 77                    | 79           | 72                    |
| Leasing liabilities                                                     | 59           | 59                    | 54           | 54                    |
| All other liabilities                                                   | 568          | 446                   | 579          | 457                   |
| <b>Other liabilities</b>                                                | <b>1,611</b> | <b>1,327</b>          | <b>1,707</b> | <b>1,358</b>          |

The payables resulting from the German "Krankenhausfinanzierungsgesetz" primarily contain earmarked subsidies received but not yet spent appropriately by Fresenius Helios. The amount not yet spent appropriately is classified as liability.

At December 31, 2011, the total amount of other non-current liabilities was €284 million, thereof €242 million was due between one and five years and €42 million was due after five years. The statement of financial position line item long-term accrued expenses and other long-term liabilities of €409 million also included other long-term accrued expenses of €125 million as of December 31, 2011.

## 21. DEBT AND CAPITAL LEASE OBLIGATIONS

### SHORT-TERM DEBT

The Fresenius Group had short-term debt of €171 million and €606 million at December 31, 2011 and December 31, 2010, respectively. As of December 31, 2011, this debt consisted of borrowings by certain subsidiaries of the Fresenius Group under lines of credit with commercial banks. The average interest rates on these borrowings at December 31, 2011 and 2010 were 6.62% and 5.14%, respectively.

At December 31, 2010, the accounts receivable facility of Fresenius Medical Care was classified as short-term debt. During the third quarter of 2011, the accounts receivable facility was renewed for a period of three years. As a result, it has been classified as long-term debt at December 31, 2011. At December 31, 2011, there were no outstanding short-term borrowings under the accounts receivable facility (December 31, 2010: €382 million).



## LONG-TERM DEBT AND CAPITAL LEASE OBLIGATIONS

As of December 31, long-term debt and capital lease obligations consisted of the following:

| € in millions                                                             | 2011         | 2010         |
|---------------------------------------------------------------------------|--------------|--------------|
| Fresenius Medical Care 2006 Senior Credit Agreement                       | 2,161        | 2,211        |
| 2008 Senior Credit Agreement                                              | 1,326        | 1,484        |
| Euro Notes                                                                | 800          | 800          |
| European Investment Bank Agreements                                       | 527          | 531          |
| Accounts receivable facility of Fresenius Medical Care                    | 413          | 0            |
| Capital lease obligations                                                 | 53           | 54           |
| Other                                                                     | 349          | 259          |
| Subtotal                                                                  | 5,629        | 5,339        |
| less current portion                                                      | 1,852        | 420          |
| <b>Long-term debt and capital lease obligations, less current portion</b> | <b>3,777</b> | <b>4,919</b> |

Maturities of long-term debt and capital lease obligations are shown in the following table:

| € in millions                                          | up to<br>1 year | 1 to 5<br>years | more than<br>5 years |
|--------------------------------------------------------|-----------------|-----------------|----------------------|
| Fresenius Medical Care 2006 Senior Credit Agreement    | 976             | 1,185           | 0                    |
| 2008 Senior Credit Agreement                           | 243             | 1,083           | 0                    |
| Euro Notes                                             | 461             | 339             | 0                    |
| European Investment Bank Agreements                    | 8               | 495             | 24                   |
| Accounts receivable facility of Fresenius Medical Care | 0               | 413             | 0                    |
| Capital lease obligations                              | 10              | 32              | 11                   |
| Other                                                  | 154             | 162             | 33                   |
| <b>Long-term debt and capital lease obligations</b>    | <b>1,852</b>    | <b>3,709</b>    | <b>68</b>            |

Aggregate annual repayments applicable to the above listed long-term debt and capital lease obligations for the years subsequent to December 31, 2011 are:

| for the fiscal years | € in millions |
|----------------------|---------------|
| 2012                 | 1,852         |
| 2013                 | 1,795         |
| 2014                 | 1,833         |
| 2015                 | 49            |
| 2016                 | 32            |
| Subsequent years     | 68            |
| <b>Total</b>         | <b>5,629</b>  |

### Fresenius Medical Care 2006 Senior Credit Agreement

Fresenius Medical Care AG & Co. KGaA (FMC-AG & Co. KGaA) and several of its subsidiaries entered into a US\$4.6 billion syndicated credit facility (Fresenius Medical Care 2006

Senior Credit Agreement) with several banks and institutional investors (the Lenders) on March 31, 2006, which replaced a prior credit agreement.

Since entering into the 2006 Senior Credit Agreement, Fresenius Medical Care arranged several amendments with the Lenders and effected voluntary prepayments of the Term Loans, which led to a change in the total amount available under this facility. Pursuant to an amendment together with an extension arranged on September 29, 2010, the Revolving Credit Facility was increased from US\$1,000 million to US\$1,200 million and the Term Loan A facility by US\$50 million to US\$1,365 million at the time of the amendment. The maturity for both tranches was extended from March 31, 2011 to March 31, 2013. Furthermore, the parties agreed to new limitations on dividends and other restricted payments for 2011, 2012 and 2013. In addition, this amendment and subsequent amendments have included increases in certain types of permitted borrowings outside of the Fresenius Medical Care 2006 Senior Credit Agreement, provide further flexibility for certain types of investments and acquisitions

and included changes in the definition of Fresenius Medical Care's consolidated leverage ratio, which is used to determine the applicable margin.

|                  |
|------------------|
| Revolving Credit |
| Term Loan A      |
| Term Loan B      |
| <b>Total</b>     |

|                  |
|------------------|
| Revolving Credit |
| Term Loan A      |
| Term Loan B      |
| <b>Total</b>     |

The following tables show the available and outstanding amounts under the Fresenius Medical Care 2006 Senior Credit Agreement at December 31:

| 2011                     |               |                     |               |
|--------------------------|---------------|---------------------|---------------|
| Maximum amount available |               | Balance outstanding |               |
| US\$ in millions         | € in millions | US\$ in millions    | € in millions |
| 1,200                    | 927           | 59                  | 46            |
| 1,215                    | 939           | 1,215               | 939           |
| 1,522                    | 1,176         | 1,522               | 1,176         |
| 3,937                    | 3,042         | 2,796               | 2,161         |

| 2010                     |               |                     |               |
|--------------------------|---------------|---------------------|---------------|
| Maximum amount available |               | Balance outstanding |               |
| US\$ in millions         | € in millions | US\$ in millions    | € in millions |
| 1,200                    | 898           | 81                  | 61            |
| 1,335                    | 999           | 1,335               | 999           |
| 1,538                    | 1,151         | 1,538               | 1,151         |
| 4,073                    | 3,048         | 2,954               | 2,211         |

In addition, at December 31, 2011 and December 31, 2010, Fresenius Medical Care had letters of credit outstanding in the amount of US\$181 million and US\$122 million, respectively, which were not included above as part of the balance outstanding at those dates but which reduce available borrowings under the Revolving Credit Facility.

As of December 31, 2011, after consideration of all amendments and repayments to date, the Fresenius Medical Care 2006 Senior Credit Agreement consisted of:

- ▶ A US\$1,200 million Revolving Credit Facility (with specified sub-facilities for letters of credit, borrowings in certain non-U.S. currencies, and swing line loans in U.S. dollars and certain non-U.S. currencies, with the total outstanding under those sub-facilities not exceeding US\$1,200 million) which will be due and payable on March 31, 2013.

- ▶ A Term Loan Facility (Term Loan A) of US\$1,215 million, also scheduled to mature on March 31, 2013. Quarterly repayments on Term Loan A of US\$30 million each permanently reduce the Term Loan Facility at the end of each quarter until December 31, 2012. The remaining balance outstanding is due on March 31, 2013.
- ▶ A Term Loan Facility (Term Loan B) of US\$1,522 million scheduled to mature on March 31, 2013 with the next quarterly repayment of US\$4 million followed by four quarterly repayments of US\$379.4 million each due at the end of its respective quarter.

Interest on these facilities will be, at Fresenius Medical Care's option, depending on the interest periods chosen, at a rate equal to either LIBOR plus an applicable margin or the higher of (a) Bank of America's prime rate or (b) the U.S. Federal Funds rate plus 0.5%, plus an applicable margin.

The applicable margin is variable and depends on Fresenius Medical Care's consolidated leverage ratio which is a ratio of its consolidated funded debt (less all cash and cash equivalents) to consolidated EBITDA (as these terms are defined in the Fresenius Medical Care 2006 Senior Credit Agreement).

For a portion of the floating rate borrowings under the Fresenius Medical Care 2006 Senior Credit Agreement, interest rate hedges have been arranged (see note 30, Financial instruments).

In addition to scheduled principal payments, indebtedness outstanding under the Fresenius Medical Care 2006 Senior Credit Agreement will be reduced by mandatory prepayments utilizing portions of the net cash proceeds from certain sales of assets, securitization transactions other than Fresenius Medical Care's existing accounts receivable facility, the issuance of subordinated debt other than certain intercompany transactions, certain issuances of equity and excess cash flow.

The obligations under the Fresenius Medical Care 2006 Senior Credit Agreement are secured by pledges of capital stock of certain material subsidiaries in favor of the Lenders.

The Fresenius Medical Care 2006 Senior Credit Agreement contains affirmative and negative covenants with respect to FMC-AG & Co. KGaA and its subsidiaries and other payment restrictions. Certain of the covenants limit indebtedness of Fresenius Medical Care and require Fresenius Medical Care to maintain certain financial ratios defined in the agreement. Additionally, the Fresenius Medical Care 2006 Senior Credit Agreement provides for a limitation on dividends and other restricted payments which was US\$330 million for 2011 and is US\$360 million and US\$390 million for 2012 and 2013, respectively. Fresenius Medical Care paid dividends of US\$281 million in May of 2011 which was in compliance with the restrictions set forth in the Fresenius Medical Care 2006 Senior

Credit Agreement. In default, the outstanding balance under the Fresenius Medical Care 2006 Senior Credit Agreement becomes immediately due and payable at the option of the Lenders. As of December 31, 2011, FMC-AG & Co. KGaA and its subsidiaries were in compliance with all covenants under the Fresenius Medical Care 2006 Senior Credit Agreement.

Fresenius Medical Care incurred fees of approximately US\$86 million in conjunction with the Fresenius Medical Care 2006 Senior Credit Agreement and fees of approximately US\$21 million in conjunction with the amendment and extension which will be amortized over the life of the credit agreement.

### **2008 Senior Credit Agreement**

On August 20, 2008, in connection with the acquisition of APP Pharmaceuticals, Inc. (APP), the Fresenius Group entered into a syndicated credit agreement (2008 Senior Credit Agreement) in an original amount of US\$2.45 billion.

Since entering into the 2008 Senior Credit Agreement, amendments and voluntary prepayments have been made which have resulted in a change of the total amount available under this facility. In March 2011, after negotiations with the lenders, Fresenius SE & Co. KGaA again improved the conditions of the 2008 Senior Credit Agreement. The amendments led to a reduction of the interest rate of Term Loan C (new: Term Loan D). The new interest rate is a rate equal to the money market interest rate (LIBOR and EURIBOR) with a minimum of 1.00% (previously: 1.50%) and a current margin of 2.50% (previously: 3.00%). An earlier amendment in March 2010 had already led to a replacement of Term Loan B by Term Loan C and an improvement of the applicable interest rate.

The following tables show the available and outstanding amounts under the 2008 Senior Credit Agreement at December 31:

| 2011                        |                          |       |                     |       |
|-----------------------------|--------------------------|-------|---------------------|-------|
|                             | Maximum amount available |       | Balance outstanding |       |
|                             | € in millions            |       | € in millions       |       |
| Revolving Credit Facilities | US\$550 million          | 425   | US\$0 million       | 0     |
| Term Loan A                 | US\$537 million          | 415   | US\$537 million     | 415   |
| Term Loan D (in US\$)       | US\$971 million          | 751   | US\$971 million     | 751   |
| Term Loan D (in €)          | €160 million             | 160   | €160 million        | 160   |
| <b>Total</b>                |                          | 1,751 |                     | 1,326 |

| 2010                        |                          |       |                     |       |
|-----------------------------|--------------------------|-------|---------------------|-------|
|                             | Maximum amount available |       | Balance outstanding |       |
|                             | € in millions            |       | € in millions       |       |
| Revolving Credit Facilities | US\$550 million          | 411   | US\$0 million       | 0     |
| Term Loan A                 | US\$782 million          | 586   | US\$782 million     | 586   |
| Term Loan C (in US\$)       | US\$984 million          | 736   | US\$984 million     | 736   |
| Term Loan C (in €)          | €162 million             | 162   | €162 million        | 162   |
| <b>Total</b>                |                          | 1,895 |                     | 1,484 |

As of December 31, 2011, the 2008 Senior Credit Agreement consisted of:

- ▶ Revolving Credit Facilities in the aggregate principal amount of US\$550 million (of which US\$150 million is available to APP Pharmaceuticals, LLC and US\$400 million is available as multicurrency facility to Fresenius Finance I S.A., a wholly-owned subsidiary of Fresenius SE & Co. KGaA) which will be due and payable on September 10, 2013.
- ▶ Term Loan Facilities (Term Loan A) in the aggregate principal amount of US\$537 million (of which equal shares are available to Fresenius US Finance I, Inc., a wholly-owned subsidiary of Fresenius SE & Co. KGaA, and to APP Pharmaceuticals, LLC). Term Loan A amortizes and is repayable in unequal semi-annual installments with a final maturity date on September 10, 2013.
- ▶ Term Loan Facilities (Term Loan D) in the aggregate principal amount of US\$971.4 million and €160.5 million (of which US\$572.2 million and €160.5 million are available to Fresenius US Finance I, Inc. and US\$399.2 million is available to APP Pharmaceuticals, LLC). Term Loan D amortizes and is repayable in equal semi-annual installments with a final bullet payment on September 10, 2014.

The interest rate on each borrowing under the 2008 Senior Credit Agreement is a rate equal to the aggregate of (a) the applicable margin (as described below) and (b) LIBOR or, in relation to any loan in euros, EURIBOR for the relevant interest period. The applicable margin is variable and depends on the Leverage Ratio as defined in the 2008 Senior Credit Agreement. In the case of Term Loan D, a minimum LIBOR or EURIBOR was set for 1.00%.

To hedge large parts of the interest rate risk connected with the floating rate borrowings under the 2008 Senior Credit Agreement, the Fresenius Group entered into interest rate hedges.

In addition to scheduled principal payments, indebtedness outstanding under the 2008 Senior Credit Agreement will be reduced by mandatory prepayments in the case of certain sales of assets, incurrence of additional indebtedness, equity issuances and certain intercompany loan repayments, with the amount to be prepaid depending on the proceeds which are generated by the respective transaction.

The 2008 Senior Credit Agreement is guaranteed by Fresenius SE & Co. KGaA, Fresenius ProServe GmbH and Fresenius Kabi AG. The obligations of APP Pharmaceuticals, LLC under the 2008 Senior Credit Agreement that refinanced indebtedness under the former APP credit facility

are secured by the assets of APP and its subsidiaries and guaranteed by APP's subsidiaries on the same basis as the former APP credit facility. All lenders also benefit from indirect security through pledges over the shares of certain subsidiaries of Fresenius Kabi AG and pledges over certain intercompany loans.

The 2008 Senior Credit Agreement contains a number of customary affirmative and negative covenants and other payment restrictions. These covenants include limitations on liens, sale of assets, incurrence of debt, investments and

acquisitions and restrictions on the payment of dividends, among other items. The 2008 Senior Credit Agreement also includes financial covenants – as defined in the agreement – that require Fresenius SE & Co. KGaA and its subsidiaries (other than Fresenius Medical Care and its subsidiaries) to maintain a maximum leverage ratio, a minimum fixed charge coverage ratio, a minimum interest coverage ratio and limits amounts spent on capital expenditure. As of December 31, 2011, the Fresenius Group was in compliance with all covenants under the 2008 Senior Credit Agreement.

## Euro Notes

As of December 31, Euro Notes (Schuldscheindarlehen) of the Fresenius Group consisted of the following:

|                                                | Maturity      | Interest rate | Book value/nominal value<br>€ in millions |            |
|------------------------------------------------|---------------|---------------|-------------------------------------------|------------|
|                                                |               |               | 2011                                      | 2010       |
| Fresenius Finance B.V. 2008/2012               | April 2, 2012 | 5.59%         | 62                                        | 62         |
| Fresenius Finance B.V. 2008/2012               | April 2, 2012 | variable      | 138                                       | 138        |
| Fresenius Finance B.V. 2007/2012               | July 2, 2012  | 5.51%         | 26                                        | 26         |
| Fresenius Finance B.V. 2007/2012               | July 2, 2012  | variable      | 74                                        | 74         |
| Fresenius Finance B.V. 2008/2014               | April 2, 2014 | 5.98%         | 112                                       | 112        |
| Fresenius Finance B.V. 2008/2014               | April 2, 2014 | variable      | 88                                        | 88         |
| Fresenius Finance B.V. 2007/2014               | July 2, 2014  | 5.75%         | 38                                        | 38         |
| Fresenius Finance B.V. 2007/2014               | July 2, 2014  | variable      | 62                                        | 62         |
| Fresenius Medical Care AG & Co. KGaA 2009/2012 | Oct. 27, 2012 | 7.41%         | 36                                        | 36         |
| Fresenius Medical Care AG & Co. KGaA 2009/2012 | Oct. 27, 2012 | variable      | 119                                       | 119        |
| Fresenius Medical Care AG & Co. KGaA 2009/2014 | Oct. 27, 2014 | 8.38%         | 15                                        | 15         |
| Fresenius Medical Care AG & Co. KGaA 2009/2014 | Oct. 27, 2014 | variable      | 30                                        | 30         |
| <b>Euro Notes</b>                              |               |               | <b>800</b>                                | <b>800</b> |

The Euro Notes issued by Fresenius Finance B.V. in the amounts of €200 million and €100 million, which are due on April 2, 2012 and on July 2, 2012, respectively, are shown as current portion of long-term debt and capital lease obligations in the consolidated statement of financial position. The Euro Notes issued by FMC-AG & Co. KGaA of €155 million, which are due on October 27, 2012, are also shown as current portion of long-term debt and capital lease obligations in the consolidated statement of financial position.

The Euro Notes of Fresenius Finance B.V. are guaranteed by Fresenius SE & Co. KGaA. The Euro Notes of FMC-AG & Co. KGaA are guaranteed by Fresenius Medical Care Holdings, Inc. (FMCH) and Fresenius Medical Care Deutschland GmbH (FMC D-GmbH).

Interest of the floating rate tranches of the Euro Notes is based on EURIBOR plus applicable margin. For a large portion of these tranches, interest rate swaps have been arranged (see note 30, Financial instruments). Only the floating rate tranches of the Euro Notes of FMC-AG & Co. KGaA in an amount of €149 million are exposed to the risk of interest rate increases.

As of December 31, 2011, the Fresenius Group was in compliance with all of its covenants under the Euro Notes.

## European Investment Bank Agreements

Various subsidiaries of the Fresenius Group maintain credit facilities with the European Investment Bank (EIB).

The following table shows the amounts outstanding under the EIB facilities as of December 31:

|                                      | Maturity  | Maximum amount available<br>€ in millions |                  | Book value<br>€ in millions |                  |
|--------------------------------------|-----------|-------------------------------------------|------------------|-----------------------------|------------------|
|                                      |           | 2011                                      | 2010             | 2011                        | 2010             |
| Fresenius SE & Co. KGaA              | 2013      | 196                                       | 196              | 196                         | 196              |
| Fresenius Medical Care AG & Co. KGaA | 2013/2014 | 271 <sup>1</sup>                          | 271 <sup>1</sup> | 267 <sup>1</sup>            | 263 <sup>1</sup> |
| HELIOS Kliniken GmbH                 | 2019      | 64                                        | 72               | 64                          | 72               |
| <b>Loans from EIB</b>                |           | <b>531</b>                                | <b>539</b>       | <b>527</b>                  | <b>531</b>       |

<sup>1</sup> Difference due to foreign currency translation

The majority of the loans are denominated in euros. The U.S. dollar denominated borrowings of FMC-AG & Co. KGaA amounted to US\$165 million (€127 million) at December 31, 2011.

The EIB is the not-for-profit long-term lending institution of the European Union and loans funds at favorable rates for the purpose of specific capital investment and research and development projects. The facilities were granted to finance certain research and development projects, to invest in the expansion and optimization of existing production facilities in Germany and for the construction of a hospital.

In February 2010, a loan of €50 million was disbursed from the loan agreement FMC-AG & Co. KGaA entered into with the EIB in December 2009. The loan has a four-year term and is guaranteed by FMCH and FMC D-GmbH. In addition,

FMC-AG & Co. KGaA drew down the remaining available balance of US\$81 million on a revolving credit facility with the EIB in March 2010.

Repayment of the loan of HELIOS Kliniken GmbH already started in December 2007 and will continue through December 2019 with constant half-yearly payments.

The above mentioned loans bear variable interest rates which are based on EURIBOR or LIBOR plus applicable margin. These interest rates change quarterly. The loans under the EIB Agreements entered before 2009 are secured by bank guarantees. The 2009 loan of Fresenius SE & Co. KGaA is guaranteed by Fresenius Kabi AG and Fresenius ProServe GmbH. All credit agreements with the EIB have customary covenants. As of December 31, 2011, the Fresenius Group was in compliance with the respective covenants.

## Capital lease obligations

Details of capital lease obligations are given below:

| € in millions                                                              | 2011      | 2010      |
|----------------------------------------------------------------------------|-----------|-----------|
| <b>Capital lease obligations (minimum lease payments)</b>                  | <b>65</b> | <b>68</b> |
| due within one year                                                        | 12        | 12        |
| due between one and five years                                             | 37        | 32        |
| due later than five years                                                  | 16        | 24        |
| <b>Interest component included in future minimum lease payments</b>        | <b>12</b> | <b>14</b> |
| due within one year                                                        | 2         | 2         |
| due between one and five years                                             | 5         | 6         |
| due later than five years                                                  | 5         | 6         |
| <b>Present value of capital lease obligations (minimum lease payments)</b> | <b>53</b> | <b>54</b> |
| due within one year                                                        | 10        | 10        |
| due between one and five years                                             | 32        | 26        |
| due later than five years                                                  | 11        | 18        |

## Accounts receivable facility of Fresenius Medical Care

In August 2011, the asset securitization facility (accounts receivable facility) of Fresenius Medical Care was renewed to July 31, 2014 and increased by US\$100 million to US\$800 million.

As the accounts receivable facility was renewed annually in the past, it has historically been classified as a short-term debt. Since the recent renewal extended the due date to 2014, the accounts receivable facility has been reclassified into long-term debt. At December 31, 2011, there were outstanding borrowings under the accounts receivable facility of US\$535 million (€413 million).

Under the accounts receivable facility, certain receivables are sold to NMC Funding Corp. (NMC Funding), a wholly-owned subsidiary of Fresenius Medical Care. NMC Funding then assigns percentage ownership interests in the accounts receivable to certain bank investors. Under the terms of the accounts receivable facility, NMC Funding retains the right, at any time, to recall all the then outstanding transferred interests in the accounts receivable. Consequently, the receivables remain on the consolidated statement of financial position and the proceeds from the transfer of percentage ownership interests are recorded as long-term debt.

NMC Funding pays interest to the bank investors, calculated based on the commercial paper rates for the particular tranches selected. The average interest rate during 2011 was 1.29%. Refinancing fees, which include legal costs and bank fees, are amortized over the term of the facility.

## CREDIT LINES

In addition to the financial liabilities described before, the Fresenius Group maintains additional credit facilities which have not been utilized, or have only been utilized in part, as of the reporting date. At December 31, 2011, the additional financial cushion resulting from unutilized credit facilities was approximately €2 billion.

Syndicated credit facilities accounted for €1.1 billion. This portion comprises the Fresenius Medical Care 2006 Senior Credit Agreement in the amount of US\$960 million (€742 million) and the 2008 Senior Credit Agreement in the amount of US\$550 million (€425 million). Furthermore, bilateral facilities of approximately €850 million were available. They include credit facilities which subsidiaries of the Fresenius Group have arranged with commercial banks. These credit facilities are used for general corporate purposes and are usually unsecured.

In addition, Fresenius SE & Co. KGaA has a commercial paper program under which up to €250 million in short-term notes can be issued. As of December 31, 2011, no commercial papers were outstanding.

Additional financing of up to US\$800 million can be provided using the Fresenius Medical Care accounts receivable facility which had been utilized by US\$535 million as of December 31, 2011.

## 22. SENIOR NOTES

As of December 31, Senior Notes of the Fresenius Group consisted of the following:

|                                                      | Notional amount | Maturity       | Interest rate | Book value<br>€ in millions |              |
|------------------------------------------------------|-----------------|----------------|---------------|-----------------------------|--------------|
|                                                      |                 |                |               | 2011                        | 2010         |
| Fresenius Finance B.V. 2006/2013                     | €500 million    | Jan. 31, 2013  | 5.00%         | 500                         | 500          |
| Fresenius Finance B.V. 2006/2016                     | €650 million    | Jan. 31, 2016  | 5.50%         | 637                         | 635          |
| Fresenius US Finance II, Inc. 2009/2015              | €275 million    | July 15, 2015  | 8.75%         | 264                         | 261          |
| Fresenius US Finance II, Inc. 2009/2015              | US\$500 million | July 15, 2015  | 9.00%         | 372                         | 356          |
| FMC Finance VI S.A. 2010/2016                        | €250 million    | July 15, 2016  | 5.50%         | 248                         | 247          |
| FMC Finance VII S.A. 2011/2021                       | €300 million    | Feb. 15, 2021  | 5.25%         | 294                         | 0            |
| FMC Finance VIII S.A. 2011/2016                      | €100 million    | Oct. 15, 2016  | variable      | 100                         | 0            |
| FMC Finance VIII S.A. 2011/2018                      | €400 million    | Sept. 15, 2018 | 6.50%         | 395                         | 0            |
| Fresenius Medical Care US Finance, Inc. 2007/2017    | US\$500 million | July 15, 2017  | 6.875%        | 383                         | 370          |
| Fresenius Medical Care US Finance, Inc. 2011/2021    | US\$650 million | Feb. 15, 2021  | 5.75%         | 498                         | 0            |
| Fresenius Medical Care US Finance II, Inc. 2011/2018 | US\$400 million | Sept. 15, 2018 | 6.50%         | 305                         | 0            |
| <b>Senior Notes</b>                                  |                 |                |               | <b>3,996</b>                | <b>2,369</b> |



All Senior Notes of Fresenius Finance B.V. and of Fresenius US Finance II, Inc. are guaranteed by Fresenius SE & Co. KGaA, Fresenius Kabi AG and Fresenius ProServe GmbH. The holders have the right to request that the issuers repurchase the Senior Notes at 101% of principal plus accrued interest upon the occurrence of a change of control followed by a decline in the rating of the respective Senior Notes. Since January 31, 2011, the Senior Notes of Fresenius Finance B.V. maturing in 2016 may be redeemed at the option of the issuer at prices that have already been fixed at the date of issuance in the indentures. All other Senior Notes of Fresenius Finance B.V. and of Fresenius US Finance II, Inc. may be redeemed prior to their maturity at the option of the issuers, in whole but not in part, at a price of 100% plus accrued interest and a premium calculated pursuant to the terms of the indentures under observance of certain notice periods.

Fresenius SE & Co. KGaA has agreed to a number of covenants to provide protection to the bondholders, which, under certain circumstances, partly restrict the scope of action of Fresenius SE & Co. KGaA and its subsidiaries (excluding Fresenius Medical Care AG & Co. KGaA (FMC-AG & Co. KGaA) and its subsidiaries). These covenants include restrictions on further debt that can be raised, the payment of dividends, the volume of capital expenditure, the redemption of subordinated liabilities and the mortgaging or sale of assets, among other items. Some of these restrictions are lifted automatically when the rating of the respective Notes reaches investment grade. In the event of non-compliance with certain terms of the Senior Notes, the bondholders (owning in aggregate more than 25% of the outstanding Senior Notes) are entitled to call the Senior Notes and demand immediate repayment plus interest. As of December 31, 2011, the Fresenius Group was in compliance with all of its covenants.

On October 17, 2011, FMC Finance VIII S.A. issued €100 million of unsecured, floating-rate Senior Notes at par, which are due in 2016. The Senior Notes carry interest of three-month EURIBOR plus 350 basis points. Net proceeds were used for acquisitions, to repay indebtedness and for general corporate purposes.

On September 14, 2011, Fresenius Medical Care US Finance II, Inc. and FMC Finance VIII S.A. issued unsecured Senior Notes of US\$400 million and €400 million, respectively. The Senior Notes have a coupon of 6.5% and are due in 2018. They were issued at an issue price of 98.62% and had a yield to maturity of 6.75%. Net proceeds were used for acquisitions, to refinance indebtedness and for general corporate purposes.

On June 20, 2011, Fresenius Medical Care US Finance, Inc. acquired substantially all of the assets of FMC Finance III S.A. and assumed the obligations of FMC Finance III S.A. under its US\$500 million 6.875% Senior Notes due in 2017 and the related indenture. The guarantees of FMC-AG & Co. KGaA, Fresenius Medical Care Holdings, Inc. (FMCH) and Fresenius Medical Care Deutschland GmbH (FMC D-GmbH) for these Senior Notes have not been amended and remain in full force and effect.

On February 3, 2011, Fresenius Medical Care US Finance, Inc. and FMC Finance VII S.A. issued unsecured Senior Notes of US\$650 million and €300 million, respectively, which are due in 2021. The Senior Notes issued by Fresenius Medical Care US Finance, Inc. with a coupon of 5.75% at an issue price of 99.06% had a yield to maturity of 5.875%. The Senior Notes issued by FMC Finance VII S.A. have a coupon of 5.25% and were issued at par. Net proceeds were used to repay indebtedness, for acquisitions and for general corporate purposes.

On January 20, 2010, FMC Finance VI S.A. issued €250 million of unsecured Senior Notes with a coupon of 5.50% at an issue price of 98.66%. The Senior Notes had a yield to maturity of 5.75% and are due in 2016. Net proceeds were used to repay short-term indebtedness and for general corporate purposes.

The Senior Notes of Fresenius Medical Care US Finance, Inc., Fresenius Medical Care US Finance II, Inc., FMC Finance VI S.A., FMC Finance VII S.A. and FMC Finance VIII S.A. (wholly-owned subsidiaries of FMC-AG & Co. KGaA) are guaranteed on a senior basis jointly and severally by FMC-AG & Co. KGaA, FMCH and FMC D-GmbH. The holders have the right to request that the respective issuers repurchase the respective Senior Notes at 101% of principal plus accrued interest upon the occurrence of a change of control followed by a

decline in the rating of the respective Senior Notes. The issuers may redeem the Senior Notes (except for the floating-rate Senior Notes of FMC Finance VIII S.A.) at any time at 100% of principal plus accrued interest and a premium calculated pursuant to the terms of the indentures.

FMC-AG & Co. KGaA has agreed to a number of covenants to provide protection to the holders which, under certain circumstances, limit the ability of FMC-AG & Co. KGaA and its subsidiaries to, among other things, incur debt, incur liens, engage in sale and leaseback transactions and merge or consolidate with other companies or sell assets. As of December 31, 2011, FMC-AG & Co. KGaA and its subsidiaries were in compliance with all of their covenants under the Senior Notes existing at this point in time.

### 23. MANDATORY EXCHANGEABLE BONDS

To finance the acquisition of APP Pharmaceuticals, Inc., Mandatory Exchangeable Bonds (MEB) in an aggregate nominal amount of €554.4 million were issued by Fresenius Finance (Jersey) Ltd. in July 2008. Fresenius Finance B.V. subscribed for these MEB at 100% of their principal amount. Afterwards, the MEB were on-lent to Fresenius SE (since January 28, 2011: Fresenius SE & Co. KGaA), who placed the MEB in the market. The bonds carried a coupon of 5 $\frac{5}{8}$ % per annum and matured on August 14, 2011. Upon maturity, the bonds were mandatorily exchangeable into ordinary shares of Fresenius Medical Care AG & Co. KGaA (FMC-AG & Co. KGaA). Each holder of an MEB received 1,418 ordinary shares of FMC-AG & Co. KGaA per MEB, corresponding to a final conversion price of €35.26. The ordinary shares of FMC-AG & Co. KGaA were owned by Fresenius SE & Co. KGaA and there was no issuance of new shares. Fresenius SE & Co. KGaA's shareholding in FMC-AG & Co. KGaA was thus reduced by 15,722,644 ordinary shares to 30.4% of the ordinary share capital.

The MEB were shown under short-term liabilities in an amount of €554 million until their maturity on August 14, 2011.

The derivative financial instruments embedded in the MEB were measured at fair value and were shown separately in the consolidated statement of financial position within short-term accrued expenses and other short-term liabilities until the maturity of the MEB.

### 24. TRUST PREFERRED SECURITIES

Fresenius Medical Care issued trust preferred securities through Fresenius Medical Care Capital Trusts, statutory trusts organized under the laws of the State of Delaware, United States. Fresenius Medical Care AG & Co. KGaA (FMC-AG & Co. KGaA) owned all of the common securities of these trusts. The sole asset of each trust was a senior subordinated note of FMC-AG & Co. KGaA or a wholly-owned subsidiary of FMC-AG & Co. KGaA. FMC-AG & Co. KGaA, Fresenius Medical Care Deutschland GmbH (FMC D-GmbH) and Fresenius Medical Care Holdings, Inc. (FMCH) have guaranteed payment and performance of the senior subordinated notes to the respective Fresenius Medical Care Capital Trusts. The trust preferred securities were guaranteed through a series of undertakings by FMC-AG & Co. KGaA, FMC D-GmbH and FMCH.

The trust preferred securities entitled the holders to distributions at a fixed annual rate of the stated amount and were mandatorily redeemable after 10 years.

On June 15, 2011, Fresenius Medical Care redeemed the trust preferred securities that became due on that date and that were issued in 2001 by Fresenius Medical Care Capital Trust IV and V in the amount of US\$225 million and €300 million, respectively, primarily with funds obtained under existing credit facilities.

The trust preferred securities as of December 31 were as follows:

|                                         | Year issued | Stated amount   | Interest rate     | Mandatory redemption date | 2011<br>€ in millions | 2010<br>€ in millions |
|-----------------------------------------|-------------|-----------------|-------------------|---------------------------|-----------------------|-----------------------|
| Fresenius Medical Care Capital Trust IV | 2001        | US\$225 million | 7 $\frac{7}{8}$ % | June 15, 2011             | 0                     | 168                   |
| Fresenius Medical Care Capital Trust V  | 2001        | €300 million    | 7 $\frac{3}{8}$ % | June 15, 2011             | 0                     | 300                   |
| <b>Trust preferred securities</b>       |             |                 |                   |                           | <b>0</b>              | <b>468</b>            |

## 25. PENSIONS AND SIMILAR OBLIGATIONS

### GENERAL

The Fresenius Group recognizes pension costs and related pension liabilities for current and future benefits to qualified current and former employees of the Fresenius Group. Fresenius Group's pension plans are structured differently according to the legal, economic and fiscal circumstances in each country. The Fresenius Group currently has two types of plans, defined benefit and defined contribution plans. In general, plan benefits in defined benefit plans are based on all or a portion of the employees' years of services and final salary. Plan benefits in defined contribution plans are determined by the amount of contribution by the employee and the employer, both of which may be limited by legislation, and the returns earned on the investment of those contributions.

Upon retirement under defined benefit plans, the Fresenius Group is required to pay defined benefits to former employees when the defined benefits become due. Defined benefit plans may be funded or unfunded. The Fresenius Group has funded defined benefit plans in particular in the United States, Norway, the United Kingdom, the Netherlands and Austria. Unfunded defined benefit plans are located in Germany and France.

Actuarial assumptions generally determine benefit obligations under defined benefit plans. The actuarial calculations require the use of estimates. The main factors used in the actuarial calculations affecting the level of the benefit obligations are: assumptions on life expectancy, the discount rate and future salary and benefit levels. Under Fresenius Group's funded plans, assets are set aside to meet future payment obligations. An estimated return on the plan assets is recognized as income in the respective period. Actuarial gains and losses are generated when there are variations in the actuarial assumptions and by differences between the actual and the

estimated projected benefits obligations and the return on plan assets for that year. A company's pension liability is impacted by these actuarial gains or losses.

In the case of Fresenius Group's funded plans, the defined benefit obligation is offset against the fair value of plan assets. A pension liability is recognized in the consolidated statement of financial position if the defined benefit obligation exceeds the fair value of plan assets. An asset is recognized and reported under other assets in the consolidated statement of financial position if the fair value of plan assets exceeds the defined benefit obligation and if the Fresenius Group has a right of reimbursement against the fund or a right to reduce future payments to the fund.

Under defined contribution plans, the Fresenius Group pays defined contributions to an independent third party as directed by the employee during the employee's service life which satisfies all obligations of the Fresenius Group to the employee. The employee retains all rights to the contributions made by the employee and to the vested portion of the Fresenius Group paid contributions upon leaving the Fresenius Group. The Fresenius Group has a main defined contribution plan in North America.

### DEFINED BENEFIT PENSION PLANS

At December 31, 2011, the projected benefit obligation (PBO) of the Fresenius Group of €753 million (2010: €655 million) included €260 million (2010: €261 million) funded by plan assets and €496 million (2010: €394 million) covered by pension provisions. The current portion of the pension liability in an amount of €12 million is recognized in the consolidated statement of financial position within short-term accrued expenses and other short-term liabilities. The non-current portion of €484 million is recorded as pension liability.

58% of the pension liabilities in an amount of €496 million relate to the "Versorgungsordnung der Fresenius-Unternehmen" established in 1988 (Pension plan 1988), which applies for most of the German entities of the Fresenius Group except Fresenius Helios. The rest of the pension liabilities relates to individual plans from Fresenius Helios entities in Germany and non-German Group entities.

Plan benefits are generally based on an employee's years of service and final salary. Consistent with predominant practice in Germany, the benefit obligations of the German entities of the Fresenius Group are unfunded. The German Pension Plan 1988 does not have a separate pension fund.

Fresenius Medical Care Holdings, Inc. (FMCH), a subsidiary of Fresenius Medical Care AG & Co. KGaA, has a defined benefit pension plan for its employees in the United States and supplemental executive retirement plans. During the first quarter of 2002, FMCH curtailed these pension plans. Under the curtailment amendment for substantially all employees eligible to participate in the plan, benefits have been frozen as of the curtailment date and no additional defined benefits for future services will be earned. FMCH has retained all employee benefit obligations as of the curtailment date. Each year, FMCH contributes at least the minimum amount required by the Employee Retirement Income Security Act of 1974, as amended. There was no minimum funding requirement for FMCH for the defined benefit plan in the year 2011. FMCH voluntarily contributed US\$0.6 million (€0.4 million) during the year 2011. Expected funding for 2012 is US\$10.8 million (€8.3 million).

Fresenius Group's benefit obligations relating to fully or partly funded pension plans were €373 million. Benefit obligations relating to unfunded pension plans were €380 million.

The following table shows the changes in benefit obligations, the changes in plan assets and the funded status of the pension plans. Benefits paid as shown in the changes in benefit obligations represent payments made from both the funded and unfunded plans while the benefits paid as shown in the changes in plan assets include only benefit payments from Fresenius Group's funded benefit plans.

The funded status has developed as follows:

| € in millions                                                 | 2011       | 2010       |
|---------------------------------------------------------------|------------|------------|
| <b>Benefit obligations at the beginning of the year</b>       | <b>655</b> | <b>556</b> |
| Changes in entities consolidated                              | 4          | 0          |
| Foreign currency translation                                  | 12         | 16         |
| Service cost                                                  | 19         | 16         |
| Prior service cost                                            | 0          | 2          |
| Interest cost                                                 | 35         | 33         |
| Contributions by plan participants                            | 1          | 1          |
| Transfer of plan participants                                 | –          | –          |
| Curtailments/settlements                                      | 0          | -2         |
| Actuarial losses                                              | 47         | 50         |
| Benefits paid                                                 | -20        | -18        |
| Amendments                                                    | –          | 1          |
| <b>Benefit obligations at the end of the year</b>             | <b>753</b> | <b>655</b> |
| thereof vested                                                | <b>638</b> | <b>558</b> |
| <b>Fair value of plan assets at the beginning of the year</b> | <b>261</b> | <b>237</b> |
| Changes in entities consolidated                              | –          | 0          |
| Foreign currency translation                                  | 6          | 14         |
| Actual return on plan assets                                  | -4         | 13         |
| Contributions by the employer                                 | 6          | 4          |
| Contributions by plan participants                            | 1          | 1          |
| Settlements                                                   | –          | –          |
| Transfer of plan participants                                 | –          | 0          |
| Benefits paid                                                 | -10        | -8         |
| <b>Fair value of plan assets at the end of the year</b>       | <b>260</b> | <b>261</b> |
| <b>Funded status as of December 31</b>                        | <b>493</b> | <b>394</b> |

As of December 31, 2011, the fair value of plan assets relating to one single pension plan exceeded the corresponding benefit obligations. The resulting amount of €3 million (2010: €0 million) was recognized as an asset. For all the remaining pension plans of the Fresenius Group, the benefit obligations exceeded the fair value of plan assets and resulted in a total amount of €496 million (2010: €394 million) recognized as a pension liability.

The discount rates for all plans are based upon yields of portfolios of equity and highly rated debt instruments with maturities that mirror the plan's benefit obligation. Fresenius Group's discount rate is the weighted average of these plans based upon their benefit obligations.

The following weighted-average assumptions were utilized in determining benefit obligations as of December 31:

| in %                          | 2011 | 2010 |
|-------------------------------|------|------|
| Discount rate                 | 5.15 | 5.43 |
| Rate of compensation increase | 3.12 | 3.32 |
| Rate of pension increase      | 1.71 | 1.73 |

At December 31, 2011, the accumulated benefit obligations for all defined benefit pension plans were €703 million (2010: €601 million).

The following table relates to pension plans with projected benefit obligations and accumulated benefit obligations in excess of plan assets:

| € in millions                        | 2011 | 2010 |
|--------------------------------------|------|------|
| Projected benefit obligation (PBO)   | 711  | 655  |
| Accumulated benefit obligation (ABO) | 667  | 601  |
| Fair value of plan assets            | 215  | 261  |

The pre-tax changes of other comprehensive income (loss) relating to pension liabilities during the years 2011 and 2010 are shown in the following tables:

| € in millions                                     | As of<br>Jan. 1, 2011 | Reclassifications <sup>1</sup> | Additions  | Foreign currency<br>translation | As of<br>Dec. 31, 2011 |
|---------------------------------------------------|-----------------------|--------------------------------|------------|---------------------------------|------------------------|
| Actuarial gains and losses                        | -107                  | 8                              | -68        | -6                              | -173                   |
| Prior service cost                                | 3                     | –                              | –          | –                               | 3                      |
| Transition obligation                             | -1                    | –                              | –          | –                               | -1                     |
| <b>Adjustments related to pension liabilities</b> | <b>-105</b>           | <b>8</b>                       | <b>-68</b> | <b>-6</b>                       | <b>-171</b>            |

<sup>1</sup> Effects recognized in the consolidated statement of income

| € in millions                                     | As of<br>Jan. 1, 2010 | Reclassifications <sup>1</sup> | Additions  | Foreign currency<br>translation | As of<br>Dec. 31, 2010 |
|---------------------------------------------------|-----------------------|--------------------------------|------------|---------------------------------|------------------------|
| Actuarial gains and losses                        | -54                   | 5                              | -54        | -4                              | -107                   |
| Prior service cost                                | 4                     | 1                              | -2         | –                               | 3                      |
| Transition obligation                             | -1                    | –                              | –          | –                               | -1                     |
| <b>Adjustments related to pension liabilities</b> | <b>-51</b>            | <b>6</b>                       | <b>-56</b> | <b>-4</b>                       | <b>-105</b>            |

<sup>1</sup> Effects recognized in the consolidated statement of income

For the tax effects on other comprehensive income at December 31, 2011 see note 28, Other comprehensive income (loss).

The Fresenius Group expects the following amounts to be amortized from other comprehensive income into net periodic pension cost in the year 2012:

| € in millions              | 2012 |
|----------------------------|------|
| Actuarial gains and losses | 15   |
| Prior service cost         | –    |
| Transition obligation      | –    |

Defined benefit pension plans' net periodic benefit costs of €45 million (2010: €36 million) were comprised of the following components:

| € in millions                                    | 2011      | 2010      |
|--------------------------------------------------|-----------|-----------|
| Service cost                                     | 19        | 16        |
| Interest cost                                    | 35        | 33        |
| Expected return on plan assets                   | -17       | -17       |
| Amortization of unrealized actuarial losses, net | 8         | 5         |
| Amortization of prior service costs              | –         | 1         |
| Amortization of transition obligations           | –         | –         |
| Settlement loss                                  | 0         | -2        |
| <b>Net periodic benefit cost</b>                 | <b>45</b> | <b>36</b> |

Net periodic benefit cost is allocated as personnel expense within cost of sales or selling, general and administrative expenses as well as research and development expenses. The allocation depends upon the area in which the beneficiary is employed.

The following weighted-average assumptions were used in determining net periodic benefit cost for the year ended December 31:

| in %                           | 2011 | 2010 |
|--------------------------------|------|------|
| Discount rate                  | 5.40 | 5.86 |
| Expected return of plan assets | 5.50 | 5.58 |
| Rate of compensation increase  | 3.30 | 3.30 |

Changes in the discount factor, inflation and mortality assumptions used for the actuarial computation resulted in actuarial losses in 2011 which increased the fair value of the defined benefit obligation. Unrecognized actuarial losses were €173 million (2010: €107 million).

The following table shows the expected benefit payments for the next 10 years:

| for the fiscal years                   | € in millions |
|----------------------------------------|---------------|
| 2012                                   | 23            |
| 2013                                   | 24            |
| 2014                                   | 26            |
| 2015                                   | 28            |
| 2016                                   | 32            |
| 2017 to 2021                           | 187           |
| <b>Total expected benefit payments</b> | <b>320</b>    |

The Fresenius Group uses December 31, 2011 as the measurement date in determining the funded status of all plans.

The major part of pension liabilities relates to Germany. At December 31, 2011, 70% of the pension liabilities were recognized in Germany, 30% in the rest of Europe and North America.

60% of the beneficiaries were located in North America, 30% in Germany and the remainder throughout the rest of Europe and other continents.

The fair values of plan assets by categories were as follows:

| € in millions                               | December 31, 2011                                            |                                       |            | December 31, 2010                                            |                                       |            |
|---------------------------------------------|--------------------------------------------------------------|---------------------------------------|------------|--------------------------------------------------------------|---------------------------------------|------------|
|                                             | Quoted prices in active markets for identical assets Level 1 | Significant observable inputs Level 2 | Total      | Quoted prices in active markets for identical assets Level 1 | Significant observable inputs Level 2 | Total      |
| <b>Categories of plan assets</b>            |                                                              |                                       |            |                                                              |                                       |            |
| Equity investments                          | 31                                                           | 43                                    | 74         | 32                                                           | 49                                    | 81         |
| Index funds <sup>1</sup>                    | 27                                                           | 43                                    | 70         | 23                                                           | 49                                    | 72         |
| Other equity investments                    | 4                                                            | 0                                     | 4          | 9                                                            | 0                                     | 9          |
| Fixed income investments                    | 50                                                           | 113                                   | 163        | 41                                                           | 118                                   | 159        |
| Government securities <sup>2</sup>          | 25                                                           | 2                                     | 27         | 20                                                           | 2                                     | 22         |
| Corporate bonds <sup>3</sup>                | 13                                                           | 111                                   | 124        | 13                                                           | 114                                   | 127        |
| Other fixed income investments <sup>4</sup> | 12                                                           | –                                     | 12         | 8                                                            | 2                                     | 10         |
| Other <sup>5</sup>                          | 21                                                           | 2                                     | 23         | 18                                                           | 3                                     | 21         |
| <b>Total</b>                                | <b>102</b>                                                   | <b>158</b>                            | <b>260</b> | <b>91</b>                                                    | <b>170</b>                            | <b>261</b> |

<sup>1</sup> This category mainly comprises low-cost equity index funds not actively managed that track the S & P 500, S & P 400, Russell 2000, the MSCI Emerging Markets Index and the Morgan Stanley International EAFE Index.

<sup>2</sup> This category primarily comprises fixed income investments by the U.S. government and government sponsored entities.

<sup>3</sup> This category primarily represents investment grade bonds of U.S. issuers from diverse industries.

<sup>4</sup> This category mainly comprises private placement bonds as well as collateralized mortgage obligations and funds that invest in treasury obligations directly or in treasury backed obligations.

<sup>5</sup> This category mainly represents cash, money market funds as well as mutual funds comprised of high grade corporate bonds.

The methods and inputs used to measure the fair value of plan assets are as follows:

Index funds are valued based on market quotes.

Other equity investments are valued at their market prices as of the date of the statement of financial position.

Government bonds are valued based on both market prices and market quotes.

Corporate bonds and other bonds are valued based on market quotes as of the date of the statement of financial position.

Cash is stated at nominal value which equals the fair value.

U.S. Treasury money market funds as well as other money market and mutual funds are valued at their market prices.

### Plan investment policy and strategy

For the North American funded plan, the Fresenius Group periodically reviews the assumptions for long-term expected return on pension plan assets. As part of the assumptions review, a range of reasonable expected investment returns for the pension plan as a whole was determined based on an analysis of expected future returns for each asset class weighted by the allocation of the assets. The range of returns developed relies both on forecasts, which include the actuarial firm's expected long-term rates of return for each significant asset class or economic indicator, and on broad-market historical benchmarks for expected return, correlation, and volatility for each asset class. As a result, the expected rate of return on pension plan assets of the North American pension plan was 7.5% for the year 2011.

The overall investment strategy for the North American pension plan is to achieve a mix of approximately 96% of investments for long-term growth and 4% for near-term benefit payments with a wide diversification of asset types, fund strategies and fund managers.

The target allocations for plan assets in North America are 35% equity securities and 65% long-term U.S. bonds. The investment policy considers that there will be a time horizon for invested funds of more than five years. The total portfolio will be measured against a policy index that reflects the asset class benchmarks and the target asset allocation. The plan policy does not allow investments in securities of Fresenius Medical Care AG & Co. KGaA or other related party securities. The performance benchmarks for the separate asset classes include: S & P 500 Index, S & P 400 Index, Russell 2000 Growth Index, MSCI EAFE Index, MSCI Emerging Markets Index, Barclays Capital Long Term Government Index and Barclays Capital 20 Year U.S. Treasury Strip Index.

The following schedule describes Fresenius Group's allocation for its funded plans.

| in %                     | Allocation<br>2011 | Allocation<br>2010 | Target<br>allocation |
|--------------------------|--------------------|--------------------|----------------------|
| Equity investments       | 28.47              | 31.12              | 36.08                |
| Fixed income investments | 62.58              | 60.73              | 59.64                |
| Other incl. real estate  | 8.95               | 8.15               | 4.28                 |
| <b>Total</b>             | <b>100.00</b>      | <b>100.00</b>      | <b>100.00</b>        |

The overall expected long-term rate of return on assets of the Fresenius Group amounts to 6.62% compounded annually. Contributions to plan assets for the fiscal year 2012 are expected to amount to €13 million.

### DEFINED CONTRIBUTION PLANS

Fresenius Group's total expense under defined contribution plans for 2011 was €63 million (2010: €63 million). Of this amount, €31 million related to contributions by the Fresenius Group to the Rheinische Zusatzversorgungskasse (a supplementary pension fund) and to other public supplementary pension funds for employees of Fresenius Helios. Further €24 million related to contributions to the North American savings plan, which employees of FMCH can join.



Following applicable collective bargaining agreements, the Group pays contributions for a given number of employees of Fresenius Helios to the Rheinische Zusatzversorgungskasse (a supplementary pension fund) and to other public supplementary pension funds (together referred to as ZVK ÖD) to complement statutory retirement pensions. Given that employees from multiple participating entities are insured by these ZVK ÖDs, these plans are Multi-Employer plans. Employees are entitled to the benefits defined in the statutes regardless of the contributed amounts.

The plan operates on a pay-as-you-earn system based on applying a collection rate to given parts of gross remuneration.

Paid contributions are accounted for as personnel expenses within cost of sales and selling, general and administrative expenses and amounted to €31 million in 2011 (2010: €32 million). Thereof €15 million were payments to the Rheinische Zusatzversorgungskasse (2010: €15 million).

Further disclosures are either irrelevant or immaterial for plans in supplementary pension funds or the necessary information cannot be obtained from the ZVK ÖDs without undue cost and effort.

Under the North American savings plan, employees can deposit up to 75% of their pay up to an annual maximum of US\$16,500 if under 50 years old (US\$22,000 if 50 or over). Fresenius Medical Care will match 50% of the employee deposit up to a maximum Company contribution of 3% of the employee's pay. Fresenius Medical Care's total expense under this defined contribution plan for the years ended December 31, 2011 and 2010 was €24 million and €24 million, respectively.

## 26. NONCONTROLLING INTEREST

### NONCONTROLLING INTEREST SUBJECT TO PUT PROVISIONS

The Fresenius Group has potential obligations to purchase the noncontrolling interests held by third parties in certain of its consolidated subsidiaries. These obligations are in the form of put provisions and are exercisable at the third-party owners' discretion within specified periods as outlined in each specific put provision. If these put provisions were exercised, the Fresenius Group would be required to purchase all or part of third-party owners' noncontrolling interests at the appraised fair value at the time of exercise.

As of December 31, 2011 and 2010 the Fresenius Group's potential obligations under these put options were €317 million and €209 million, respectively, of which, at December 31, 2011, €88 million were exercisable.

### NONCONTROLLING INTEREST NOT SUBJECT TO PUT PROVISIONS

As of December 31, noncontrolling interest not subject to put provisions in the Group was as follows:

| € in millions                                                                                 | 2011         | 2010         |
|-----------------------------------------------------------------------------------------------|--------------|--------------|
| Noncontrolling interest not subject to put provisions in Fresenius Medical Care AG & Co. KGaA | 4,254        | 3,574        |
| Noncontrolling interest not subject to put provisions in HELIOS Kliniken GmbH                 | 0            | 4            |
| Noncontrolling interest not subject to put provisions in VAMED AG                             | 28           | 23           |
| Noncontrolling interest not subject to put provisions in the business segments                |              |              |
| Fresenius Medical Care                                                                        | 123          | 110          |
| Fresenius Kabi                                                                                | 63           | 46           |
| Fresenius Helios                                                                              | 136          | 119          |
| Fresenius Vamed                                                                               | 2            | 3            |
| <b>Total noncontrolling interest not subject to put provisions</b>                            | <b>4,606</b> | <b>3,879</b> |

Due to the maturity of the Mandatory Exchangeable Bonds on August 14, 2011, Fresenius SE & Co. KGaA's shareholding in Fresenius Medical Care AG & Co. KGaA (FMC-AG & Co. KGaA) was reduced by 15,722,644 ordinary shares to 30.4% of the ordinary share capital. In November and December 2011, Fresenius SE & Co. KGaA purchased 1,399,996 ordinary shares of FMC-AG & Co. KGaA. Therewith, Fresenius SE & Co. KGaA's shareholding in FMC-AG & Co. KGaA amounted to 30.74% of the ordinary share capital at December 31, 2011.

Noncontrolling interest not subject to put provisions changed as follows:

| € in millions                                                                     | 2011         |
|-----------------------------------------------------------------------------------|--------------|
| Noncontrolling interest not subject to put provisions at December 31, 2010        | 3,879        |
| Noncontrolling interest not subject to put provisions in profit                   | 605          |
| Maturity of the Mandatory Exchangeable Bonds                                      | 298          |
| Dividend payments                                                                 | -192         |
| Purchase of ordinary shares of FMC-AG & Co. KGaA                                  | -28          |
| Stock options, currency effects and first-time consolidations                     | 44           |
| <b>Noncontrolling interest not subject to put provisions at December 31, 2011</b> | <b>4,606</b> |

## 27. FRESENIUS SE & CO. KGAA SHAREHOLDERS' EQUITY

### SUBSCRIBED CAPITAL

#### Development of subscribed capital

As a result of Fresenius SE's change of legal form to Fresenius SE & Co. KGaA and its registration with the commercial register on January 28, 2011, all bearer preference shares were converted into bearer ordinary shares.

During the fiscal year 2011, 787,246 stock options were exercised. Consequently, at December 31, 2011, the subscribed capital of Fresenius SE & Co. KGaA consisted of 163,237,336 bearer ordinary shares. The shares are issued as non-par value shares. The proportionate amount of the subscribed capital is €1.00 per share.

#### Notification by shareholders

The following table shows the notifications disclosed in 2011 in accordance with Section 26 (1) of the German Securities Trading Act (WpHG). They reflect the corresponding level of investments held in Fresenius SE & Co. KGaA:

| Notifying party                                                         | Date of reaching, exceeding or falling below | Reporting threshold       | Attribution pursuant to Section 22 WpHG                           | Percentage of voting rights | Number of voting rights |
|-------------------------------------------------------------------------|----------------------------------------------|---------------------------|-------------------------------------------------------------------|-----------------------------|-------------------------|
| Allianz SE, Munich, Germany <sup>1</sup>                                | January 28, 2011                             | Falling below 5%          | Section 22 (1) sentence 1 No. 1                                   | 4.26                        | 6,919,271               |
|                                                                         |                                              |                           | as well as (1) sentence 1 No. 6                                   | 0.0008                      | 1,281                   |
| Artio Global Investors, Inc., New York, USA <sup>2</sup>                | January 28, 2011                             | Falling below 3%          | Section 22 (1) sentence 1 No. 6 in connection with (1) sentence 2 | 2.36                        | 3,840,708               |
| BlackRock, Inc., New York, USA <sup>3</sup>                             | September 2, 2011                            | Exceeding 3% and 5%       | Section 22 (1) sentence 1 No. 6 in connection with (1) sentence 2 | 5.04                        | 8,218,197               |
| Else Kröner-Fresenius-Stiftung, Bad Homburg v. d. H., Germany           | January 28, 2011                             | Falling below 50% and 30% | –                                                                 | 28.85                       | 46,871,154              |
| FMR, LLC, Boston, USA <sup>4</sup>                                      | January 28, 2011                             | Falling below 3%          | Section 22 (1) sentence 1 No. 6 in connection with (1) sentence 2 | 1.69                        | 2,740,382               |
| Skandinaviska Enskilda Banken AB (publ), Stockholm, Sweden <sup>5</sup> | May 13, 2011                                 | Exceeding 3% and 5%       | Section 22 (1) sentence 1 No. 1                                   | 5.58                        | 9,068,446               |
|                                                                         | May 16, 2011                                 | Falling below 5% and 3%   | Section 22 (1) sentence 1 No. 1                                   | 1.77                        | 2,868,446               |

<sup>1</sup> Attribution of voting rights via: Allianz Deutschland AG, Jota Vermögensverwaltungsgesellschaft mbH, Allianz Lebensversicherungs-AG

<sup>2</sup> Attribution of voting rights via: Artio Global Holdings, LLC, Artio Global Management, LLC

<sup>3</sup> Attribution of voting rights via: BlackRock Holdco 2, Inc., BlackRock Financial Management, Inc., BlackRock Advisors Holdings, Inc., BlackRock International Holdings, Inc., BR Jersey International Holdings LP, BlackRock Group Limited

<sup>4</sup> Attribution of voting rights via: Fidelity Management & Research Company

<sup>5</sup> Attribution of voting rights via: SEB Bank AG

The Else Kröner-Fresenius-Stiftung informed on December 30, 2011, that it still holds 46,871,154 ordinary shares of Fresenius SE & Co. KGaA representing 28.71% of the voting rights on December 31, 2011.

All WpHG-notifications by shareholders are published on the website of the Company [www.fresenius.com](http://www.fresenius.com) under Investor Relations/The Fresenius Shares/Shareholder Structure.

#### **AUTHORIZED CAPITAL**

By resolution of the Annual General Meeting on May 13, 2011, the previous Authorized Capitals I to V were revoked and a new Authorized Capital I was created.

In accordance with the new provision in the articles of association of Fresenius SE & Co. KGaA, the general partner, Fresenius Management SE, is authorized, with the approval of the Supervisory Board, until May 12, 2016, to increase Fresenius SE & Co. KGaA's subscribed capital by a total amount of up to €40,320,000 through a single issue or multiple issues of new bearer ordinary shares against cash contributions and/or contributions in kind (Authorized Capital I). A subscription right must be granted to the shareholders in principle. In defined cases, the general partner is authorized, with the consent of the Supervisory Board, to decide on the exclusion of the shareholders' subscription right (e. g. to eliminate fractional amounts). For cash contributions, the authorization can only be exercised if the issue price is not significantly below the stock exchange price of the already listed shares at the time the issue price is fixed with final effect by the general partner. Furthermore, the proportionate amount of the shares issued with exclusion of subscription rights may not exceed 10% of the subscribed capital neither at the time of the resolution on the authorization nor at the time of the utilization of the authorization. In the case of a contribution in kind, the subscription right can be excluded only in order to

acquire a company, parts of a company or a participation in a company. The authorizations granted concerning the exclusion of subscription rights can be used by the general partner only to such extent that the proportional amount of the total number of shares issued with exclusion of the subscription rights does not exceed 20% of the subscribed capital, neither at the time of the resolution on the authorization nor at the time of the utilization of the authorization.

The changes to the Authorized Capital became effective upon registration of the amendments to the articles of association with the commercial register on July 11, 2011.

#### **CONDITIONAL CAPITAL**

Corresponding to the stock option plans, the Conditional Capital of Fresenius SE & Co. KGaA is divided into Conditional Capital I, Conditional Capital II and Conditional Capital III. These are used to satisfy the subscription rights in connection with previously issued stock options or convertible bonds, as the case may be, for bearer ordinary shares under the stock option plans of 1998, 2003 and 2008 (see note 34, Stock options).

After the registration of the change of legal form with the commercial register on January 28, 2011, the Conditional Capitals in the articles of association of Fresenius SE & Co. KGaA correspond in their scope to the Conditional Capitals of the former Fresenius SE, adjusted for stock options that have been exercised in the interim.

Due to the conversion of all preference shares into ordinary shares, the Conditional Capital was amended to the effect that only subscription rights for bearer ordinary shares are granted.

The following table shows the development of the Conditional Capital:

| in €                                                                                                  | Ordinary shares  | Preference shares | Total             |
|-------------------------------------------------------------------------------------------------------|------------------|-------------------|-------------------|
| Conditional Capital I Fresenius AG Stock Option Plan 1998                                             | 495,255          | 495,255           | 990,510           |
| Conditional Capital II Fresenius AG Stock Option Plan 2003                                            | 1,743,159        | 1,743,159         | 3,486,318         |
| Conditional Capital III Fresenius SE Stock Option Plan 2008                                           | 3,100,000        | 3,100,000         | 6,200,000         |
| <b>Total Conditional Capital as of January 1, 2011</b>                                                | <b>5,338,414</b> | <b>5,338,414</b>  | <b>10,676,828</b> |
| Conversion of the preference shares into ordinary shares in combination with the change of legal form | 5,337,526        | -5,337,526        | 0                 |
| Fresenius AG Stock Option Plan 1998 – options exercised                                               | -102,082         | 0                 | -102,082          |
| Fresenius AG Stock Option Plan 2003 – options exercised                                               | -508,800         | -888              | -509,688          |
| Fresenius SE Stock Option Plan 2008 – options exercised                                               | -175,476         | 0                 | -175,476          |
| <b>Total Conditional Capital as of December 31, 2011</b>                                              | <b>9,889,582</b> | <b>0</b>          | <b>9,889,582</b>  |

## CAPITAL RESERVES

Capital reserves comprise the premium paid on the issue of shares and the exercise of stock options (additional paid-in capital).

## OTHER RESERVES

Other reserves comprise earnings generated by Group entities in prior years to the extent that they have not been distributed.

## DIVIDENDS

Under the German Stock Corporation Act (AktG), the amount of dividends available for distribution to shareholders is based upon the unconsolidated retained earnings of Fresenius SE & Co. KGaA as reported in its statement of financial position determined in accordance with the German Commercial Code (HGB).

In May 2011, a dividend of €0.86 per bearer ordinary share was approved by Fresenius SE & Co. KGaA's shareholders at the Annual General Meeting and paid. The total dividend payment was €140 million.

## 28. OTHER COMPREHENSIVE INCOME (LOSS)

Other comprehensive income (loss) comprises all amounts recognized directly in equity (net of tax) resulting from the currency translation of foreign subsidiaries' financial statements and the effects of measuring financial instruments at their fair value as well as the change in benefit obligation.

Changes in the components of other comprehensive income (loss) in 2011 and 2010 were as follows:

| € in millions                                                          | 2011                |            |                    | 2010                |            |                    |
|------------------------------------------------------------------------|---------------------|------------|--------------------|---------------------|------------|--------------------|
|                                                                        | Amount before taxes | Tax effect | Amount after taxes | Amount before taxes | Tax effect | Amount after taxes |
| Changes in unrealized gains/losses on derivative financial instruments | -81                 | 27         | -54                | -15                 | 3          | -12                |
| Change in unrealized gains/losses                                      | -91                 | 31         | -60                | -32                 | 7          | -25                |
| Realized gains/losses due to reclassifications                         | 10                  | -4         | 6                  | 17                  | -4         | 13                 |
| Benefit obligation adjustment                                          | -66                 | 25         | -41                | -54                 | 16         | -38                |
| Foreign currency translation adjustment                                | 99                  | -4         | 95                 | 238                 | -8         | 230                |
| <b>Other comprehensive income (loss)</b>                               | <b>-48</b>          | <b>48</b>  | <b>0</b>           | <b>169</b>          | <b>11</b>  | <b>180</b>         |

## OTHER NOTES

### 29. COMMITMENTS AND CONTINGENT LIABILITIES

#### OPERATING LEASES AND RENTAL PAYMENTS

Fresenius Group's subsidiaries lease office and manufacturing buildings as well as machinery and equipment under various lease agreements expiring on dates through 2101. Rental expense recorded for operating leases for the years ended December 31, 2011 and 2010 was €497 million and €480 million, respectively.

Future minimum rental payments under non-cancellable operating leases for the years subsequent to December 31, 2011 are:

| for the fiscal years | € in millions |
|----------------------|---------------|
| 2012                 | 436           |
| 2013                 | 376           |
| 2014                 | 320           |
| 2015                 | 270           |
| 2016                 | 221           |
| Thereafter           | 677           |
| <b>Total</b>         | <b>2,300</b>  |

As of December 31, 2011, future investment commitments existed up to the year 2016 from the acquisition contracts for hospitals at projected costs of up to €350 million. Thereof €75 million relates to the year 2012.

Besides the above mentioned contingent liabilities, the amount of other commitments is immaterial.

#### LEGAL PROCEEDINGS

The Fresenius Group is routinely involved in numerous claims, lawsuits, regulatory and tax audits, investigations and other legal matters arising, for the most part, in the ordinary course of its business of providing healthcare services and products. Legal matters that the Fresenius Group currently deems to be

material are described below. For the matters described below in which the Fresenius Group believes a loss is both reasonably possible and estimable, an estimate of the loss or range of loss exposure is provided. For the other matters described below, the Fresenius Group believes that the loss probability is remote and/or the loss or range of possible losses cannot be reasonably estimated at this time. The outcome of litigation and other legal matters is always difficult to predict accurately and outcomes that are not consistent with Fresenius Group's view of the merits can occur. The Fresenius Group believes that it has valid defenses to the legal matters pending against it and is defending itself vigorously. Nevertheless, it is possible that the resolution of one or more of the legal matters currently pending or threatened could have a material adverse effect on its business, results of operations and financial condition.

#### Commercial litigation

##### W.R. Grace & Co. lawsuit

Fresenius Medical Care was originally formed as a result of a series of transactions it completed pursuant to the Agreement and Plan of Reorganization dated as of February 4, 1996, by and between W.R. Grace & Co. and Fresenius SE (the Merger). At the time of the Merger, a W.R. Grace & Co. subsidiary known as W.R. Grace & Co.-Conn. had, and continues to have, significant liabilities arising out of product-liability related litigation (including asbestos-related actions), pre-Merger tax claims and other claims unrelated to National Medical Care, Inc. (NMC), which was W.R. Grace & Co.'s dialysis business prior to the Merger. In connection with the Merger, W.R. Grace & Co.-Conn. agreed to indemnify Fresenius Medical Care, Fresenius Medical Care Holdings, Inc. (FMCH), and NMC against all liabilities of W.R. Grace & Co., whether relating to events occurring before

or after the Merger, other than liabilities arising from or relating to NMC's operations. W.R. Grace & Co. and certain of its subsidiaries filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code (the Grace Chapter 11 Proceedings) on April 2, 2001.

Prior to and after the commencement of the Grace Chapter 11 Proceedings, class action complaints were filed against W.R. Grace & Co. and FMCH by plaintiffs claiming to be creditors of W.R. Grace & Co.-Conn., and by the asbestos creditors' committees on behalf of the W.R. Grace & Co. bankruptcy estate in the Grace Chapter 11 Proceedings, alleging among other things that the Merger was a fraudulent conveyance, violated the uniform fraudulent transfer act and constituted a conspiracy. All such cases have been stayed and transferred to or are pending before the U.S. District Court as part of the Grace Chapter 11 Proceedings.

In 2003, Fresenius Medical Care reached agreement with the asbestos creditors' committees on behalf of the W.R. Grace & Co. bankruptcy estate and W.R. Grace & Co. in the matters pending in the Grace Chapter 11 Proceedings for the settlement of all fraudulent conveyance and tax claims against it and other claims related to Fresenius Medical Care that arise out of the bankruptcy of W.R. Grace & Co. Under the terms of the settlement agreement as amended (Settlement Agreement), fraudulent conveyance and other claims raised on behalf of asbestos claimants will be dismissed with prejudice and Fresenius Medical Care will receive protection against existing and potential future W.R. Grace & Co. related claims, including fraudulent conveyance and asbestos claims, and indemnification against income tax claims related to the non-NMC members of the W.R. Grace & Co. consolidated tax group upon confirmation of a W.R. Grace & Co. bankruptcy reorganization plan that contains such provisions. Under the Settlement Agreement, Fresenius Medical Care will pay a total of US\$115 million without interest to the W.R. Grace & Co. bankruptcy estate, or as otherwise directed by the Court, upon plan confirmation. No admission of liability has been or will be made.

The Settlement Agreement has been approved by the U.S. District Court. In January and February 2011, the U.S. Bankruptcy Court entered orders confirming the joint plan of reorganization and the confirmation orders were affirmed by the U.S. District Court on January 31, 2012.

Subsequent to the Merger, W.R. Grace & Co. was involved in a multi-step transaction involving Sealed Air Corporation (Sealed Air, formerly known as Grace Holding, Inc.). Fresenius Medical Care is engaged in litigation with Sealed Air to confirm its entitlement to indemnification from Sealed Air for all losses and expenses incurred by Fresenius Medical Care relating to pre-Merger tax liabilities and Merger-related claims. Under the Settlement Agreement, upon final confirmation of a plan of reorganization that satisfies the conditions of Fresenius Medical Care's payment obligation, this litigation will be dismissed with prejudice.

#### **Baxter patent dispute "touchscreen interfaces" (1)**

On April 4, 2003, FMCH filed a suit in the U.S. District Court for the Northern District of California, styled Fresenius USA, Inc., et al., v. Baxter International, Inc., et al., Case No. C 03-1431, seeking a declaratory judgment that FMCH does not infringe patents held by Baxter International, Inc. and its subsidiaries and affiliates (Baxter), that the patents are invalid, and that Baxter is without right or authority to threaten or maintain suit against FMCH for alleged infringement of Baxter's patents. In general, the asserted patents concern the use of touch screen interfaces for hemodialysis machines. Baxter filed counterclaims against FMCH seeking more than US\$140 million in monetary damages and injunctive relief, and alleging that FMCH willfully infringed on Baxter's patents. On July 17, 2006, the court entered judgment on a jury verdict in favor of FMCH finding that all the asserted claims of the Baxter patents are invalid as obvious and/or anticipated in light of prior art.

On February 13, 2007, the court granted Baxter's motion to set aside the jury's verdict in favor of FMCH and reinstated the patents and entered judgment of infringement. Following a trial on damages, the court entered judgment on November 6, 2007 in favor of Baxter on a jury award of US\$14.3 million. On April 4, 2008, the court denied Baxter's motion for a new trial, established a royalty payable to Baxter of 10% of the sales price for continuing sales of FMCH's 2008K hemodialysis machines and 7% of the sales price of related disposables, parts and service beginning November 7, 2007, and enjoined sales of the touchscreen-equipped 2008K machine effective January 1, 2009. Fresenius Medical Care appealed the court's rulings to the United States Court of Appeals for the Federal Circuit (Federal Circuit). In October 2008, Fresenius Medical Care completed design modifications to the 2008K machine that eliminate any incremental hemodialysis machine royalty payment exposure under the original District Court order. On September 10, 2009, the Federal Circuit reversed the district court's decision and determined that the asserted claims in two of the three patents at issue are invalid. As to the third patent, the Federal Circuit affirmed the district court's decision; however, the Court also vacated the injunction and award of damages. These issues were remanded to the District Court for reconsideration in light of the invalidity ruling on most of the claims. As a result, FMCH is no longer required to fund the court-approved escrow account set up to hold the royalty payments ordered by the district court. Funds of US\$70 million were contributed to the escrow fund. In the parallel reexamination of the last surviving patent, the U.S. Patent and Trademark Office (USPTO) and the Board of Patent Appeals and Interferences ruled that the remaining Baxter patent is invalid. Baxter appealed the Board's ruling to the Federal Circuit.

#### **Baxter patent dispute "Liberty cyclor"**

On October 17, 2006, Baxter and DEKA Products Limited Partnership (DEKA) filed suit in the U.S. District Court for the Eastern District of Texas which was subsequently transferred to the Northern District of California, styled Baxter Healthcare Corporation and DEKA Products Limited Partnership v. Fresenius Medical Care Holdings, Inc. d/b/a Fresenius Medical Care North America and Fresenius USA, Inc., Case No. CV 438 TJW. The complaint alleged that FMCH's Liberty™ cyclor infringes nine patents owned by or licensed to Baxter. During and after discovery, seven of the asserted patents were dropped from the suit. On July 28, 2010, at the conclusion of the trial, the jury returned a verdict in favor of FMCH finding that the Liberty™ cyclor does not infringe any of the asserted claims of the Baxter patents. The District Court denied Baxter's request to overturn the jury verdict and Baxter appealed the verdict and resulting judgment to the United States Court of Appeals for the Federal Circuit. On February 13, 2012, the Federal Circuit affirmed the District Court's non-infringement verdict.

#### **Other litigation and potential exposures**

##### **Renal Care Group – Class action "acquisition"**

Renal Care Group, Inc. (RCG), which Fresenius Medical Care acquired in 2006, is named as a nominal defendant in a complaint originally filed September 13, 2006 in the Chancery Court for the State of Tennessee Twentieth Judicial District at Nashville styled Indiana State District Council of Laborers and Hod Carriers Pension Fund v. Gary Brukardt et al. Following the trial court's dismissal of the complaint, plaintiff's appeal in part, and reversal in part by the appellate court, the cause of action purports to be a class action on behalf of former shareholders of RCG and seeks monetary damages only against the individual former directors of RCG. The individual defendants, however, may have claims for indemnification and reimbursement of expenses against Fresenius Medical Care. Fresenius Medical Care expects to continue as a defendant in the litigation, which is proceeding toward trial in the Chancery Court, and believes that defendants will prevail.



**Renal Care Group – Complaint “Method II”**

On July 17, 2007, resulting from an investigation begun in 2005, the United States Attorney filed a civil complaint in the United States District Court for the Eastern District of Missouri (St. Louis) against RCG, its subsidiary RCG Supply Company, and FMCH in its capacity as RCG’s current corporate parent. The complaint seeks monetary damages and penalties with respect to issues arising out of the operation of RCG’s Method II supply company through 2005, prior to FMCH’s acquisition of RCG in 2006. The complaint is styled United States of America ex rel. Julie Williams et al. vs. Renal Care Group, Renal Care Group Supply Company and FMCH. On August 11, 2009, the Missouri District Court granted RCG’s motion to transfer venue to the United States District Court for the Middle District of Tennessee (Nashville). On March 22, 2010, the Tennessee District Court entered judgment against defendants for approximately US\$23 million in damages and interest under the unjust enrichment count of the complaint but denied all relief under the six False Claims Act counts of the complaint. On June 17, 2011, the District Court entered summary judgment against RCG for US\$83 million on one of the False Claims Act counts of the complaint. On June 23, 2011, Fresenius Medical Care appealed to the United States Court of Appeals for the Sixth Circuit. Although Fresenius Medical Care cannot provide any assurance of the outcome, Fresenius Medical Care believes that RCG’s operation of its Method II supply company was in compliance with applicable law, that no relief is due to the United States, that the decisions made by the District Court on March 22, 2010 and June 17, 2011 will be reversed, and that its position in the litigation will ultimately be sustained.

**Fresenius Medical Care Holdings – Qui tam complaint (Western District of Texas)**

On November 27, 2007, the United States District Court for the Western District of Texas (El Paso) unsealed and permitted service of two complaints previously filed under seal by a qui tam relator, a former FMCH local clinic employee. The first complaint alleged that a nephrologist unlawfully employed in his practice an assistant to perform patient care tasks that the assistant was not licensed to perform and that Medicare billings by the nephrologist and FMCH therefore violated the False Claims Act. The second complaint alleged that FMCH unlawfully retaliated against the relator by constructively discharging her from employment. The United States Attorney for the Western District of Texas declined to intervene and to prosecute on behalf of the United States. On March 30, 2010, the District Court issued final judgment in favor of the defendants on all counts based on a jury verdict rendered on February 25, 2010 and on rulings of law made by the Court during the trial. The plaintiff has appealed from the District Court judgment.

**Fresenius Medical Care Holdings – Qui tam complaint (Massachusetts)**

On February 15, 2011, a qui tam relator’s complaint under the False Claims Act against FMCH was unsealed by order of the United States District Court for the District of Massachusetts and served by the relator. The United States has not intervened in the case United States ex rel. Chris Drennen v. Fresenius Medical Care Holdings, Inc., 2009 Civ. 10179 (D. Mass.). The relator’s complaint, which was first filed under seal in February 2009, alleges that FMCH seeks and receives reimbursement from government payors for serum ferritin and hepatitis B laboratory tests that are medically unnecessary

or not properly ordered by a physician. FMCH has filed a motion to dismiss the complaint. On March 6, 2011, the United States Attorney for the District of Massachusetts issued a Civil Investigative Demand seeking the production of documents related to the same laboratory tests that are the subject of the relator's complaint. FMCH is cooperating fully in responding to the additional Civil Investigative Demand, and will vigorously contest the relator's complaint.

#### **Subpoena "New York"**

On June 29, 2011, FMCH received a subpoena from the United States Attorney for the Eastern District of New York (E.D.N.Y.). On December 6, 2011, a single Company facility in New York received a subpoena from the OIG that was substantially similar to the one issued by the U.S. Attorney for the E.D.N.Y. These subpoenas are part of a criminal and civil investigation into relationships between retail pharmacies and outpatient dialysis facilities in the State of New York and into the reimbursement under government payor programs in New York for medications provided to patients with end-stage renal disease. Among the issues encompassed by the investigation is whether retail pharmacies may have provided or received compensation from the New York Medicaid program for pharmaceutical products that should be provided by the dialysis facilities in exchange for the New York Medicaid payment to the dialysis facilities. FMCH is cooperating in the investigation.

In the ordinary course of Fresenius Group's operations, the Fresenius Group is subject to litigation, arbitration and investigations relating to various aspects of its business. The Fresenius Group regularly analyzes current information about such claims for probable losses and provides accruals for such matters, including estimated expenses for legal services, as appropriate.

#### **Accrued special charge of Fresenius Medical Care for legal matters**

At December 31, 2001, Fresenius Medical Care recorded a pre-tax special charge of US\$258 million to reflect anticipated expenses associated with the defense and resolution of pre-Merger tax claims, Merger-related claims, and commercial insurer claims. The costs associated with the Settlement Agreement and settlements with insurers have been charged against this accrual. With the exception of the proposed US\$115 million (€89 million) payment under the Settlement Agreement in the Grace Chapter 11 Proceedings, all other matters included in the special charge have been resolved. While Fresenius Medical Care believes that its remaining accrual reasonably estimates its currently anticipated costs related to the continued defense and resolution of this matter, no assurances can be given that its actual costs incurred will not exceed the amount of this accrual.

### 30. FINANCIAL INSTRUMENTS

The relationship between classes and categories as well as the reconciliation to the statement of financial position line items is shown in the following table:

|                                                                            | Categories                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                               |                                                                                                                                                                                             |
|----------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                            | Loans and receivables                                                                                                                                                                                                  | Financial liabilities measured at amortized cost                                                                                                                                                                                                                                                                                                                                                                                                                 | Financial liabilities/assets measured at fair value                                                                                                                                                                           | Relating to no category                                                                                                                                                                     |
|                                                                            |                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                               |                                                                                                                                                                                             |
| Cash and cash equivalents                                                  |                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                               | ► Cash and cash equivalents                                                                                                                                                                 |
| Assets recognized at carrying amount                                       | <ul style="list-style-type: none"> <li>► Trade accounts receivable (incl. receivables from and loans to related parties)</li> <li>► Other non-current assets (solely loan to Renal Advantage Partners, LLC)</li> </ul> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                               |                                                                                                                                                                                             |
| Liabilities recognized at carrying amount                                  |                                                                                                                                                                                                                        | <ul style="list-style-type: none"> <li>► Trade accounts payable</li> <li>► Short-term accounts payable to related parties</li> <li>► Short-term debt (incl. short-term loans from related parties)</li> <li>► Long-term debt excluding capital lease obligations</li> <li>► Senior Notes</li> <li>► Trust preferred securities (until June 15, 2011)</li> <li>► Mandatory exchangeable bonds (excluding embedded derivatives) (until August 14, 2011)</li> </ul> |                                                                                                                                                                                                                               | <ul style="list-style-type: none"> <li>► Long-term capital lease obligations</li> </ul>                                                                                                     |
| Liabilities recognized at fair value                                       |                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <ul style="list-style-type: none"> <li>► Other short-term liabilities (solely Contingent Value Rights (until March 31, 2011) and derivatives embedded in the Mandatory Exchangeable Bonds (until August 14, 2011))</li> </ul> |                                                                                                                                                                                             |
| Noncontrolling interest subject to put provisions recognized at fair value |                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                               | <ul style="list-style-type: none"> <li>► Noncontrolling interest subject to put provisions</li> </ul>                                                                                       |
| Derivatives for hedging purposes                                           |                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <ul style="list-style-type: none"> <li>► Other current assets</li> <li>► Other non-current assets</li> <li>► Other short-term liabilities</li> <li>► Other long-term liabilities</li> </ul>                                   | <ul style="list-style-type: none"> <li>► Other current assets</li> <li>► Other non-current assets</li> <li>► Other short-term liabilities</li> <li>► Other long-term liabilities</li> </ul> |

The derivative financial instruments embedded in the Mandatory Exchangeable Bonds (MEB) were included in the statement of financial position item short-term accrued expenses and other short-term liabilities until the maturity of the MEB (for details relating to the MEB, please see note 23, Mandatory Exchangeable Bonds). Due to their special character and the

difference in valuation, the embedded derivatives were classified separately. Also because of their special character and different valuation, the Contingent Value Rights (CVR) were classified separately from their statement of financial position item.

## VALUATION OF FINANCIAL INSTRUMENTS

The carrying amounts of financial instruments at December 31, classified into categories, were as follows:

| € in millions                                    | 2011   | 2010  |
|--------------------------------------------------|--------|-------|
| Loans and receivables                            | 3,428  | 2,950 |
| Financial liabilities measured at amortized cost | 10,574 | 9,977 |
| Assets measured at fair value <sup>1</sup>       | 44     | 11    |
| Liabilities measured at fair value <sup>1</sup>  | 77     | 174   |
| Relating to no category                          | 68     | 311   |

<sup>1</sup> There are no financial instruments designated as at fair value through profit or loss upon initial recognition.

### Estimation of fair values of financial instruments

The significant methods and assumptions used to estimate the fair values of financial instruments are as follows:

Cash and cash equivalents are stated at nominal value, which equals the fair value.

The nominal value of short-term financial instruments such as accounts receivables and payables and short-term debt represents its carrying amount, which is a reasonable estimate of the fair value due to the relatively short period to maturity of these instruments.

The fair values of the major long-term financial instruments are calculated on the basis of market information. Financial instruments for which market quotes are available are measured with the market quotes at the reporting date. The fair values of the other long-term financial liabilities are calculated at the present value of respective future cash flows. To determine these present values, the prevailing interest rates and credit spreads for the Fresenius Group as of the date of the statement of financial position are used. The fair value of Fresenius Medical Care's loan to Renal Advantage Partners, LLC is based on significant unobservable inputs of comparable instruments. The fair values of the noncontrolling interest subject to put provisions are determined using significant unobservable inputs.

Currently, there is no indication that a decrease in the value of Fresenius Group's financing receivables is probable. Therefore, the allowances on credit losses of financing receivables are immaterial.

The carrying amounts of derivatives embedded in the MEB and the CVR corresponded with their fair values. The MEB matured on August 14, 2011. The embedded derivatives were measured at fair value, which was estimated based on a Black-Scholes model. The CVR were traded on the stock exchange in the United States and were therefore valued with the current stock exchange price until December 31, 2010. In the first quarter of 2011, the CVR were deregistered and delisted from the NASDAQ due to the expiration of the underlying agreement and became valueless.

Derivatives, mainly consisting of interest rate swaps and foreign exchange forward contracts, are valued as follows: The fair value of interest rate swaps is calculated by discounting the future cash flows on the basis of the market interest rates applicable for the remaining term of the contract as of the date of the statement of financial position. To determine the fair value of foreign exchange forward contracts, the contracted forward rate is compared to the current forward rate for the remaining term of the contract as of the date of the statement of financial position. The result is then discounted on the basis of the market interest rates prevailing at the date of the statement of financial position for the respective currency.

Fresenius Group's own credit risk is incorporated in the fair value estimation of derivatives that are liabilities. Counterparty credit-risk adjustments are factored into the valuation of derivatives that are assets.

## Fair value of financial instruments

The following table presents the carrying amounts and fair values of Fresenius Group's financial instruments as of December 31:

| € in millions                                                              | 2011            |            | 2010            |            |
|----------------------------------------------------------------------------|-----------------|------------|-----------------|------------|
|                                                                            | Carrying amount | Fair value | Carrying amount | Fair value |
| Cash and cash equivalents                                                  | 635             | 635        | 769             | 769        |
| Assets recognized at carrying amount                                       | 3,428           | 3,427      | 2,950           | 2,950      |
| Liabilities recognized at carrying amount                                  | 10,627          | 10,874     | 10,031          | 10,259     |
| Liabilities recognized at fair value                                       | 18              | 18         | 133             | 133        |
| Noncontrolling interest subject to put provisions recognized at fair value | 317             | 317        | 209             | 209        |
| Derivatives for hedging purposes                                           | -212            | -212       | -225            | -225       |

Derivative and non-derivative financial instruments recognized at fair value are classified according to the three-tier fair value hierarchy. For the fair value measurement of derivatives for hedging purposes, significant other observable inputs are used. Therefore, they are classified as Level 2 in accordance with the defined fair value hierarchy levels. The derivatives embedded in the MEB were also classified as Level 2. Until December 31, 2010, the valuation of the CVR was based on the current stock exchange price, they were therefore classified as

Level 1. The class liabilities recognized at fair value consisted of embedded derivatives and the CVR and was consequently classified in its entirety as the lower hierarchy Level 2. As of December 31, 2011, this class no longer existed due to the expiration of the CVR and the maturity of the MEB. The valuation of the noncontrolling interests subject to put provisions is determined using significant unobservable inputs, they are therefore classified as Level 3.

### FAIR VALUES OF DERIVATIVE FINANCIAL INSTRUMENTS

| € in millions                                                    | Dec. 31, 2011 |             | Dec. 31, 2010 |             |
|------------------------------------------------------------------|---------------|-------------|---------------|-------------|
|                                                                  | Assets        | Liabilities | Assets        | Liabilities |
| Interest rate contracts (current)                                | 0             | 103         | –             | 43          |
| Interest rate contracts (non-current)                            | 0             | 60          | 1             | 115         |
| Foreign exchange contracts (current)                             | 9             | 39          | 8             | 49          |
| Foreign exchange contracts (non-current)                         | 1             | 5           | 5             | 2           |
| <b>Derivatives designated as hedging instruments<sup>1</sup></b> | <b>10</b>     | <b>207</b>  | <b>14</b>     | <b>209</b>  |
| Interest rate contracts (current)                                | 0             | 0           | 0             | 2           |
| Interest rate contracts (non-current)                            | 0             | 3           | 0             | 0           |
| Foreign exchange contracts (current) <sup>1</sup>                | 43            | 58          | 10            | 34          |
| Foreign exchange contracts (non-current) <sup>1</sup>            | 1             | 1           | 1             | 7           |
| Derivatives embedded in the MEB (current)                        | 0             | 0           | 0             | 111         |
| <b>Derivatives not designated as hedging instruments</b>         | <b>44</b>     | <b>62</b>   | <b>11</b>     | <b>154</b>  |

<sup>1</sup> Derivatives designated as hedging instruments and foreign exchange contracts not designated as hedging instruments are classified as derivatives for hedging purposes.

Derivative financial instruments are marked to market each reporting period, resulting in carrying amounts equal to fair values at the reporting date.

Derivatives not designated as hedging instruments, which are derivatives that do not qualify for hedge accounting, are also solely entered into to hedge economic business transactions and not for speculative purposes.

Derivatives for hedging purposes were recognized at gross value within other assets in an amount of €54 million and other liabilities in an amount of €266 million.

The current portion of interest rate contracts and foreign exchange contracts indicated as assets in the previous table is recognized within other current assets in the consolidated statement of financial position, while the current portion of those indicated as liabilities is included in short-term accrued expenses and other short-term liabilities. The non-current portions indicated as assets or liabilities are recognized in other non-current assets or in long-term accrued expenses and other long-term liabilities, respectively. The derivatives embedded in the MEB were recognized within other short-term liabilities until the maturity of the MEB.

## Effects of financial instruments recorded in the consolidated statement of income

The net gains and losses from financial instruments consisted of allowances for doubtful accounts in an amount of €216 million and foreign currency transactions of -€6 million. In addition, income of €5 million resulted from the fair value measurement of the CVR and expenses of €100 million resulted from the fair value measurement of the derivatives embedded in the MEB. Interest income of €56 million resulted mainly from trade accounts receivable and loans to related parties. Interest expense of €587 million resulted mainly from financial liabilities.

### EFFECT OF DERIVATIVES DESIGNATED AS HEDGING INSTRUMENTS ON THE CONSOLIDATED STATEMENT OF COMPREHENSIVE INCOME

| € in millions                                                     | 2011                                                                             |                                                                                                  |                                                                 |
|-------------------------------------------------------------------|----------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|
|                                                                   | Gain or loss recognized in other comprehensive income (loss) (effective portion) | Gain or loss reclassified from accumulated other comprehensive income (loss) (effective portion) | Gain or loss recognized in the consolidated statement of income |
| Interest rate contracts                                           | -60                                                                              | -14                                                                                              | -7                                                              |
| Foreign exchange contracts                                        | -31                                                                              | 4                                                                                                | -                                                               |
| <b>Derivatives in cash flow hedging relationships<sup>1</sup></b> | <b>-91</b>                                                                       | <b>-10</b>                                                                                       | <b>-7</b>                                                       |
| Foreign exchange contracts                                        |                                                                                  |                                                                                                  | -7                                                              |
| <b>Derivatives in fair value hedging relationships</b>            |                                                                                  |                                                                                                  | <b>-7</b>                                                       |
| <b>Derivatives designated as hedging instruments</b>              | <b>-91</b>                                                                       | <b>-10</b>                                                                                       | <b>-14</b>                                                      |

<sup>1</sup> The amount of gain or loss recognized in the consolidated statement of income solely relates to the ineffective portion.

| € in millions                                                     | 2010                                                                             |                                                                                                  |                                                                 |
|-------------------------------------------------------------------|----------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|
|                                                                   | Gain or loss recognized in other comprehensive income (loss) (effective portion) | Gain or loss reclassified from accumulated other comprehensive income (loss) (effective portion) | Gain or loss recognized in the consolidated statement of income |
| Interest rate contracts                                           | -25                                                                              | -8                                                                                               | 1                                                               |
| Foreign exchange contracts                                        | -7                                                                               | -9                                                                                               | -1                                                              |
| <b>Derivatives in cash flow hedging relationships<sup>1</sup></b> | <b>-32</b>                                                                       | <b>-17</b>                                                                                       | <b>0</b>                                                        |
| Foreign exchange contracts                                        |                                                                                  |                                                                                                  | -24                                                             |
| <b>Derivatives in fair value hedging relationships</b>            |                                                                                  |                                                                                                  | <b>-24</b>                                                      |
| <b>Derivatives designated as hedging instruments</b>              | <b>-32</b>                                                                       | <b>-17</b>                                                                                       | <b>-24</b>                                                      |

<sup>1</sup> The amount of gain or loss recognized in the consolidated statement of income solely relates to the ineffective portion.

EFFECT OF DERIVATIVES NOT DESIGNATED AS HEDGING INSTRUMENTS  
ON THE CONSOLIDATED STATEMENT OF COMPREHENSIVE INCOME

| € in millions                                            | Gain or loss recognized in<br>the consolidated statement of income |             |
|----------------------------------------------------------|--------------------------------------------------------------------|-------------|
|                                                          | 2011                                                               | 2010        |
| Interest rate contracts                                  | 3                                                                  | –           |
| Foreign exchange contracts                               | 43                                                                 | -97         |
| Derivatives embedded in the MEB                          | -100                                                               | -90         |
| <b>Derivatives not designated as hedging instruments</b> | <b>-54</b>                                                         | <b>-187</b> |

Gains from derivatives in fair value hedging relationships and from foreign exchange contracts not designated as hedging instruments recognized in the consolidated statement of income are faced by losses from the underlying transactions in the corresponding amount.

The Fresenius Group expects to recognize a net amount of €9 million of the existing losses for foreign exchange contracts deferred in accumulated other comprehensive income (loss) in the consolidated statement of income within the next 12 months. For interest rate contracts, the Fresenius Group expects to recognize €55 million of losses in the course of normal business during the next 12 months in interest expense.

Gains and losses from foreign exchange contracts and the corresponding underlying transactions are accounted for as cost of sales, selling, general and administrative expenses and net interest. Gains and losses resulting from interest rate contracts are recognized as net interest in the consolidated statement of income. The position other financial result in the consolidated statement of income includes gains and losses from the valuation of the derivatives embedded in the MEB, which was made until August 14, 2011 (see note 10, Other financial result).

## MARKET RISK

### General

The Fresenius Group is exposed to effects related to foreign exchange fluctuations in connection with its international business activities that are denominated in various currencies. In order to finance its business operations, the Fresenius Group issues senior notes and commercial papers and enters into mainly long-term credit agreements and euro notes (Schuldscheindarlehen) with banks. Due to these financing activities,

the Fresenius Group is exposed to interest risk caused by changes in variable interest rates and the risk of changes in the fair value of statement of financial position items bearing fixed interest rates.

In order to manage the risk of interest rate and foreign exchange rate fluctuations, the Fresenius Group enters into certain hedging transactions with highly rated financial institutions as authorized by the Management Board. Derivative financial instruments are not entered into for trading purposes.

In general, the Fresenius Group conducts its derivative financial instrument activities under the control of a single centralized department. The Fresenius Group has established guidelines derived from best practice standards in the banking industry for risk assessment procedures and supervision concerning the use of financial derivatives. These guidelines require amongst other things a clear segregation of duties in the areas of execution, administration, accounting and controlling. Risk limits are continuously monitored and, where appropriate, the use of hedging instruments is adjusted to that extent.

The Fresenius Group defines benchmarks for individual exposures in order to quantify interest and foreign exchange risks. The benchmarks are derived from achievable and sustainable market rates. Depending on the individual benchmarks, hedging strategies are determined and generally implemented by means of micro hedges.

Earnings of the Fresenius Group were not materially affected by hedge ineffectiveness in the reporting period since the critical terms of the interest and foreign exchange derivatives mainly matched the critical terms of the underlying exposures.



## Derivative financial instruments

### Foreign exchange risk management

The Fresenius Group has determined the euro as its financial reporting currency. Therefore, foreign exchange translation risks resulting from the fluctuation of exchange rates between the euro and the local currencies, in which the financial statements of the foreign subsidiaries are prepared, have an impact on results of operations and financial positions reported in the consolidated financial statements.

Besides translation risks, foreign exchange transaction risks exist, which mainly relate to transactions such as purchases and sales as well as engineering and services provided by the Fresenius Group which are denominated in foreign currencies. A major part of transaction risks arise from products manufactured in Fresenius Group's worldwide production sites which are usually denominated in the local currency of the respective manufacturer and are delivered worldwide to various Fresenius Group entities. These intragroup sales are mainly denominated in euros, U.S. dollars and yens. Therefore, Group companies are exposed to changes of the foreign exchange rates between the invoicing currencies and the local currencies in which they conduct their businesses. Solely for the purpose of hedging existing and foreseeable foreign exchange transaction exposures, the Fresenius Group enters into foreign exchange forward contracts and, on a small scale, foreign exchange options. To ensure that no foreign exchange risks result from loans in foreign currencies, the Fresenius Group enters into foreign exchange swap contracts.

As of December 31, 2011, the notional amounts of foreign exchange contracts totaled €3,955 million. These foreign exchange contracts have been entered into to hedge risks from operational business and in connection with loans in foreign currency. The predominant part of the foreign exchange forward contracts to hedge risks from operational business was recognized as cash flow hedge, while foreign exchange contracts in connection with loans in foreign currencies are partly recognized as fair value hedges. The fair values of cash flow hedges and fair value hedges were -€35 million and €1 million, respectively.

The hedge-effective portion of changes in the fair value of foreign exchange forward contracts that are designated and qualified as cash flow hedges of forecasted product purchases and sales is reported in accumulated other comprehensive income (loss). These amounts are subsequently reclassified into earnings as a component of cost of sales or as selling, general and administrative expenses in the same period in which the hedged transaction affects earnings.

As of December 31, 2011, the Fresenius Group was party to foreign exchange contracts with a maximum maturity of 47 months.

In order to estimate and quantify the transaction risks from foreign currencies, the Fresenius Group considers the cash flows reasonably expected for the following three months as the relevant assessment basis for a sensitivity analysis. For this analysis, the Fresenius Group assumes that all foreign exchange rates in which the Group had unhedged positions as of reporting date would be negatively impacted by 10%. By multiplying the calculated unhedged risk positions with this factor, the maximum possible negative impact of the foreign exchange transaction risks on the Group's results of operations would be €9 million.

### Interest rate risk management

Fresenius Group's interest rate risks mainly arise from money market and capital market transactions of the Group for financing its business activities.

The Fresenius Group enters into interest rate swaps and, on a small scale, into interest rate options in order to protect against the risk of rising interest rates. These interest rate derivatives are mainly designated as cash flow hedges and have been entered into in order to convert payments based on variable interest rates into payments at a fixed interest rate and in anticipation of future debt issuances. The U.S. dollar interest rate swaps with a notional volume of US\$3,850 million (€2,976 million) and a fair value of -US\$174 million (-€134 million) expire at various dates in the years 2012 to 2014. The euro interest rate swaps with a notional volume of €966 million and a fair value of -€32 million expire in the years 2012 to 2016. The U.S. dollar interest rate swaps bear an average interest rate of 3.45% and the euro interest rate swaps bear an average interest rate of 3.19%.

Interest payables and interest receivables in connection with the swap agreements are accrued and recorded as an adjustment to the interest expense at each reporting date. Concerning interest rate contracts, unscheduled repayments or the renegotiation of hedged items may in some cases lead to the de-designation of the hedging instrument, which existed up to that point. From that date, the respective hedging transactions are recognized in the consolidated statement of income.

For purposes of analyzing the impact of changes in the relevant reference interest rates on Fresenius Group's results of operations, the Group calculates the portion of financial debt which bears variable interest rates and which has not been hedged by means of interest rate swaps or options against rising interest rates. For this particular part of its liabilities, the Fresenius Group assumes an increase in the reference rates of 0.5% compared to the actual rates as of the date of the statement of financial position. The corresponding additional annual interest expense is then compared to the net income attributable to Fresenius SE & Co. KGaA. This analysis shows that an increase of 0.5% in the relevant reference rates would have an effect of less than 1% on the consolidated net income attributable to Fresenius SE & Co. KGaA and Fresenius SE & Co. KGaA shareholders' equity.

## CREDIT RISK

The Fresenius Group is exposed to potential losses regarding financial instruments in the event of non-performance by counterparties. With respect to derivative financial instruments, it is not expected that any counterparty fails to meet

its obligations as the counterparties are highly rated financial institutions. The maximum credit exposure of derivatives is represented by the fair value of those contracts with a positive fair value amounting to €54 million for foreign exchange derivatives at December 31, 2011. No credit exposure existed from interest rate derivatives. The maximum credit risk resulting from the use of non-derivative financial instruments is defined as the total amount of all receivables. In order to control this credit risk, the Management of the Fresenius Group performs an ageing analysis of trade accounts receivable. For details on the ageing analysis and on the allowance for doubtful accounts, please see note 14, Trade accounts receivable.

## LIQUIDITY RISK

The liquidity risk is defined as the risk that a company is potentially unable to meet its financial obligations. The Management of the Fresenius Group manages the liquidity of the Group by means of effective working capital and cash management as well as an anticipatory evaluation of refinancing alternatives. The Management of the Fresenius Group believes that existing credit facilities as well as the cash generated by operating activities and additional short-term borrowings are sufficient to meet the Company's foreseeable demand for liquidity (see note 21, Debt and capital lease obligations).

The following table shows the future undiscounted contractual cash flows (including interests) resulting from recognized financial liabilities as well as the fair value of noncontrolling interest subject to put provisions and the fair value of derivative financial instruments:

| € in millions                                                                                                       | up to 1 year | 1 to 5 years | more than 5 years |
|---------------------------------------------------------------------------------------------------------------------|--------------|--------------|-------------------|
| Long-term debt and capital lease obligations<br>(including accounts receivable securitization program) <sup>1</sup> | 1,979        | 3,833        | 78                |
| Short-term debt                                                                                                     | 182          | 0            | 0                 |
| Senior Notes                                                                                                        | 256          | 3,020        | 2,218             |
| Trade accounts payable                                                                                              | 807          | 0            | 0                 |
| Noncontrolling interest subject to put provisions                                                                   | 83           | 113          | 121               |
| Derivative financial instruments                                                                                    | 200          | 69           | 0                 |
| <b>Total</b>                                                                                                        | <b>3,507</b> | <b>7,035</b> | <b>2,417</b>      |

<sup>1</sup> Future interest payments for financial liabilities with variable interest rates were calculated using the latest interest rates fixed prior to December 31, 2011.

### 31. SUPPLEMENTARY INFORMATION ON CAPITAL MANAGEMENT

The Fresenius Group has a solid financial profile. Capital management includes both equity and debt. A principal objective of Fresenius Group's capital management is to optimize the weighted-average cost of capital. Further, it is sought to achieve a balanced mix of equity and debt. To secure growth on a long-term basis, a capital increase may also be considered in exceptional cases, for instance to finance a major acquisition.

Due to the Company's diversification within the health care sector and the strong market positions of the business segments in global, growing and non-cyclical markets, predictable and sustainable cash flows are generated. They allow a reasonable proportion of debt, i. e. the employment of an extensive mix of financial instruments. Moreover, Fresenius Group's customers are generally of high credit quality.

Equity and debt have developed as follows:

#### SHAREHOLDERS' EQUITY

| € in millions        | Dec. 31, 2011 | Dec. 31, 2010 |
|----------------------|---------------|---------------|
| Shareholders' equity | 10,577        | 8,844         |
| Total assets         | 26,321        | 23,577        |
| Equity ratio         | 40.2%         | 37.5%         |

Fresenius SE & Co. KGaA is not subject to any capital requirements provided for in its articles of association. Fresenius SE & Co. KGaA has obligations to issue shares out of the Conditional Capital relating to the exercise of stock options and convertible bonds on the basis of the existing 1998, 2003 and 2008 stock option plans (see note 34, Stock options).

#### DEBT

| € in millions | Dec. 31, 2011 | Dec. 31, 2010 |
|---------------|---------------|---------------|
| Debt          | 9,799         | 8,784         |
| Total assets  | 26,321        | 23,577        |
| Debt ratio    | 37.2%         | 37.3%         |

According to the definitions in the underlying agreements, the Mandatory Exchangeable Bonds and the Contingent Value Rights were not categorized as debt until their maturity.

Assuring financial flexibility is the top priority in the Group's financing strategy. This flexibility is achieved through a wide range of financing instruments and a high degree of diversification of the investors. Fresenius Group's maturity profile displays a broad spread of maturities with a high proportion of medium- and long-term financing. In the choice of financing instruments, market capacity, investor diversification, flexibility, credit conditions and the existing maturity profile are taken into account.

The net debt/EBITDA ratio is a key financial figure for the Fresenius Group. As of December 31, 2011, the net debt/EBITDA ratio was 2.8 and was therefore within Fresenius Group's target corridor of 2.5 to 3.0. At the end of 2012, the Fresenius Group expects the net debt/EBITDA ratio to be  $\leq 3.0$ , due to the recently announced acquisitions.

Fresenius Group's financing strategy is reflected in its credit ratings. Fresenius is covered by the rating agencies Moody's, Standard & Poor's and Fitch.

The following table shows the company rating of Fresenius SE & Co. KGaA:

|                | Standard & Poor's | Moody's | Fitch  |
|----------------|-------------------|---------|--------|
| Company rating | BB                | Ba1     | BB+    |
| Outlook        | positive          | stable  | stable |

On August 2, 2011, Fitch has upgraded the company rating to BB+ from BB, the outlook is stable.

### 32. SUPPLEMENTARY INFORMATION ON THE CONSOLIDATED STATEMENT OF CASH FLOWS

The consolidated statements of cash flows of the Fresenius Group for the fiscal years 2011 and 2010 are shown on pages 126 to 127.

Cash funds reported in the consolidated statement of cash flows and in the consolidated statement of financial position comprise cash on hand, checks, securities and cash at bank which are readily convertible within three months and are subject to insignificant risk of changes in value.

The following table provides additional information with regard to the consolidated statement of cash flows:

| € in millions     | 2011 | 2010 |
|-------------------|------|------|
| Interest paid     | 474  | 526  |
| Income taxes paid | 516  | 504  |

Cash paid for acquisitions (without investments in licenses) consisted of the following:

| € in millions                                 | 2011         | 2010       |
|-----------------------------------------------|--------------|------------|
| Assets acquired                               | 1,412        | 562        |
| Liabilities assumed                           | -168         | -85        |
| Noncontrolling interest                       | -34          | -29        |
| Notes assumed in connection with acquisitions | -56          | -32        |
| Cash paid                                     | 1,154        | 416        |
| Cash acquired                                 | -46          | -14        |
| <b>Cash paid for acquisitions, net</b>        | <b>1,108</b> | <b>402</b> |

### 33. NOTES ON THE CONSOLIDATED SEGMENT REPORTING

#### GENERAL

The consolidated segment reporting tables shown on pages 130 to 133 of this annual report are an integral part of the notes.

The Fresenius Group has identified the business segments Fresenius Medical Care, Fresenius Kabi, Fresenius Helios and Fresenius Vamed, which corresponds to the internal organizational and reporting structures (Management Approach) at December 31, 2011.

The key data disclosed in conjunction with the consolidated segment reporting correspond to the key data of the internal reporting system of the Fresenius Group. Internal and external reporting and accounting correspond to each other; the same key data and definitions are used.

Sales and proceeds between the segments are indicative of the actual sales and proceeds agreed with third parties. Administrative services are billed in accordance with service level agreements.

The business segments were identified in accordance with FASB ASC Topic 280, Segment Reporting, which defines the segment reporting requirements in the annual financial statements and interim reports with regard to the operating business, product and service businesses and regions. The business segments of the Fresenius Group are as follows:

- ▶ Fresenius Medical Care
- ▶ Fresenius Kabi
- ▶ Fresenius Helios
- ▶ Fresenius Vamed
- ▶ Corporate/Other

The segment Corporate/Other mainly comprises the holding functions of Fresenius SE & Co. KGaA as well as Fresenius Netcare GmbH, which provides services in the field of information technology and Fresenius Biotech, which does not fulfill the characteristics of a reportable segment. In addition, the segment Corporate/Other includes intersegment consolidation adjustments as well as special items in connection with the fair value measurement of the Mandatory Exchangeable Bonds and the Contingent Value Rights.

Details on the business segments are shown on page 135 of the notes.

Segment reporting by region takes account of geographical factors and the similarity of markets in terms of opportunities and risks. The allocation to a particular region is based on the domicile of the customers.

## NOTES ON THE BUSINESS SEGMENTS

The key figures used by the Management Board to assess segment performance, have been selected in such a way that they include all items of income and expenses which fall under the area of responsibility of the business segments. The Management Board is convinced that the most suitable performance indicator is the operating income (EBIT). The Management Board believes that, in addition to the operating income, the figure for earnings before interest, taxes and depreciation/amortization (EBITDA) can also help investors to assess the ability of the Fresenius Group to generate cash flows and to meet its financial obligations. The EBITDA figure is also the basis for assessing Fresenius Group's compliance with the terms of its credit agreements (e. g. the Fresenius Medical Care 2006 Senior Credit Agreement or the 2008 Senior Credit Agreement).

Depreciation and amortization is presented for property, plant and equipment, intangible assets with definite useful lives of the respective business segment.

Net interest comprises interest expenses and interest income.

Net income attributable to Fresenius SE & Co. KGaA is defined as earnings after income taxes and noncontrolling interest.

The operating cash flow is the cash provided by/used in operating activities.

The cash flow before acquisitions and dividends is the operating cash flow less net capital expenditure.

Debt comprises bank loans, senior notes, capital lease obligations, liabilities relating to outstanding acquisitions as well as intercompany liabilities. Until their maturity in 2011, trust preferred securities were also included in debt. The Mandatory Exchangeable Bonds and the Contingent Value Rights were not categorized as debt (see note 31, Supplementary information on capital management).

Capital expenditure mainly includes additions to property, plant and equipment.

Acquisitions refer to the purchase of shares in legally-independent companies and the acquisition of business divisions and intangible assets (e. g. licenses). The key figures shown with regard to acquisitions present the contractual purchase prices comprising amounts paid in cash (less cash acquired), debts assumed and the issuance of shares, whereas for the purposes of the statement of cash flows, only cash purchase price components less acquired cash and cash equivalents are reported.

The EBITDA margin is calculated as a ratio of EBITDA to sales.

The EBIT margin is calculated as a ratio of EBIT to sales.

The return on operating assets (ROOA) is defined as the ratio of EBIT to average operating assets. Operating assets are defined as total assets less deferred tax assets, trade accounts payable and advance payments from customers as well as guaranteed subsidies.

In addition, the key indicators "Depreciation and amortization in % of sales" and "Operating cash flow in % of sales" are also disclosed.

## RECONCILIATION OF KEY FIGURES TO CONSOLIDATED EARNINGS

| € in millions                     | 2011         | 2010         |
|-----------------------------------|--------------|--------------|
| Total EBIT of reporting segments  | 2,608        | 2,464        |
| General corporate expenses        |              |              |
| Corporate/Other (EBIT)            | -45          | -46          |
| <b>Group EBIT</b>                 | <b>2,563</b> | <b>2,418</b> |
| Interest expenses                 | -587         | -596         |
| Interest income                   | 56           | 30           |
| Other financial result            | -100         | -66          |
| <b>Income before income taxes</b> | <b>1,932</b> | <b>1,786</b> |

#### RECONCILIATION OF NET DEBT WITH THE CONSOLIDATED STATEMENT OF FINANCIAL POSITION

| € in millions                                                                 | Dec. 31, 2011 | Dec. 31, 2010 |
|-------------------------------------------------------------------------------|---------------|---------------|
| Short-term debt                                                               | 171           | 606           |
| Short-term loans from related parties                                         | 3             | 2             |
| Current portion of long-term debt and capital lease obligations               | 1,852         | 420           |
| Trust preferred securities of Fresenius Medical Care Capital Trusts (current) | 0             | 468           |
| Long-term debt and capital lease obligations, less current portion            | 3,777         | 4,919         |
| Senior Notes                                                                  | 3,996         | 2,369         |
| <b>Debt</b>                                                                   | <b>9,799</b>  | <b>8,784</b>  |
| less cash and cash equivalents                                                | 635           | 769           |
| <b>Net debt</b>                                                               | <b>9,164</b>  | <b>8,015</b>  |

The following table shows the non-current assets by geographical region:

| € in millions                               | Dec. 31, 2011 | Dec. 31, 2010 |
|---------------------------------------------|---------------|---------------|
| Germany                                     | 3,715         | 3,574         |
| Europe (excluding Germany)                  | 2,588         | 1,984         |
| North America                               | 11,294        | 10,182        |
| Asia-Pacific                                | 1,008         | 882           |
| Latin America                               | 390           | 354           |
| Africa                                      | 47            | 47            |
| <b>Total non-current assets<sup>1</sup></b> | <b>19,042</b> | <b>17,023</b> |

<sup>1</sup> The aggregate amount of net non-current assets is the sum of non-current assets less deferred tax assets and derivative financial instruments.

In 2011, the Fresenius Group generated sales of €3,573 million (2010: €3,355 million) in Germany. Sales in the United States were €6,588 million at actual rates and €6,916 million in constant currency in 2011 (2010: €6,849 million).

## 34. STOCK OPTIONS

### COMPENSATION COST IN CONNECTION WITH THE STOCK OPTION PLANS OF THE FRESENIUS GROUP

In 2011, the Fresenius Group recognized compensation cost in an amount of €35 million for convertible bonds and stock options granted since 2007. For stock incentive plans which are performance based, the Fresenius Group recognizes compensation cost over the vesting periods, based on the market values of the underlying stock at the grant date.

### FAIR VALUE OF STOCK OPTIONS

The Fresenius Group elected to adopt FAS 123(R), Share-Based Payment, prospectively.

The Fresenius Group uses a binomial option pricing model in determining the fair value of stock options granted under the stock option plans of Fresenius SE & Co. KGaA and Fresenius Medical Care AG & Co. KGaA. Option valuation models require the input of highly subjective assumptions including expected stock price volatility. Fresenius Group's assumptions are based upon its past experiences, market trends and the experiences of other entities of the same size and in similar industries. To incorporate the effects of expected early exercise in the model, an early exercise of vested options was assumed as soon as the share price exceeds 150% of the exercise price. Fresenius Group's stock options have characteristics that vary significantly from traded options and changes in subjective assumptions can materially affect the fair value of the option.

The weighted-average assumptions for the calculation of the fair value of grants of the Fresenius SE Stock Option Plan 2008 made during the years 2011 and 2010 are as follows:

| € in millions                  | 2011           |            | 2010           |            |
|--------------------------------|----------------|------------|----------------|------------|
|                                | December Grant | July Grant | December Grant | July Grant |
| Expected dividend yield        | 1.60%          | 1.58%      | 1.58%          | 1.92%      |
| Risk-free interest rate        | 1.70%          | 2.68%      | 2.38%          | 2.12%      |
| Expected volatility            | 29.18%         | 29.15%     | 28.44%         | 28.94%     |
| Life of options                | 7 years        | 7 years    | 7 years        | 7 years    |
| Exercise price per option in € | 71.37          | 71.28      | 63.94          | 53.49      |

The expected volatility results from the historical volatility calculated over the expected life of options. The volatility was determined when the fair value of stock options was calculated for the first time and since then has been controlled every year upon issuance of a new tranche.

#### **FRESENIUS SE & CO. KGAA STOCK OPTION PLANS** **Description of the Fresenius SE & Co. KGaA stock option plans in place**

On December 31, 2011, Fresenius SE & Co. KGaA had three stock option plans in place: the Fresenius AG stock option based plan of 1998 (1998 Plan), the Fresenius AG Stock Option Plan 2003 (2003 Plan) which is based on convertible bonds and the stock option based Fresenius SE Stock Option Plan 2008 (2008 Plan). Currently, stock options can only be granted under the 2008 Plan.

The following descriptions reflect the stock option plans at December 31, 2010 whereas the changes resulting from the conversion of the subscribed capital into bearer ordinary shares in combination with the change of legal form are shown in a separate chapter thereafter.

#### **Stock Option Plan 2008**

During 2008, Fresenius SE adopted the 2008 Plan to grant subscription rights to members of the Management Board and managerial employees of the Company and affiliated companies.

Under the 2008 Plan, up to 6.2 million options can be issued, which carry entitlement to obtain 3.1 million ordinary shares and 3.1 million preference shares. Up to 1.2 million options are designated for members of the Management Board of Fresenius SE, up to 3.2 million options are designated for members of the management of directly or indirectly affiliated companies (except for Fresenius Medical Care) and up to 1.8 million options are designated for managerial staff members of Fresenius SE and its affiliated companies (except for Fresenius Medical Care). With respect to the members of Fresenius SE's Management Board, the Supervisory Board has sole authority to grant stock options and administer the 2008 Plan. The Management Board of Fresenius SE has such authority with respect to all other participants in the 2008 Plan. The options can be granted in five tranches with effect as of the first bank working day in July and/or the first bank working day in December. The exercise price of options shall be the average closing price of Fresenius SE's ordinary shares and preference shares, respectively, on the Frankfurt Stock Exchange during the 30 trading days immediately prior to each grant date. For participants in the United States, the exercise price may be the average closing price of both share classes during the 30 calendar days immediately prior to the grant date, if these are higher. Options granted have a seven-year term but can be exercised only after a three-year vesting period. The vesting of options granted is mandatorily subject to the condition, in each case, that the annual success target within the three-year vesting period is achieved. For each such year, the success target is achieved if the consolidated net income attributable to Fresenius SE, adjusted for extraordinary effects, has increased by at least 8% compared to the respective adjusted net income attributable to Fresenius SE of the previous fiscal year. For each year in which the success target has not been met, one-third of the options granted shall forfeit. The adjusted net income attributable to Fresenius SE shall



be calculated on the basis of the calculation method of the accounting principles according to U.S. GAAP. For the purposes of the 2008 Plan, the adjusted net income attributable to Fresenius SE is determined and will be verified bindingly by Fresenius SE's auditor during the audit of the consolidated financial statements. The performance targets for 2009, 2010 and 2011 were met. Upon exercise of vested options, Fresenius SE has the right to grant treasury shares or a cash payment in lieu of increasing capital by the issuance of new shares. If all conditions are fulfilled, stock options may be exercised throughout the year with the exception of certain pre-determined black-out periods.

### **Stock Option Plan 2003**

During 2003, Fresenius AG adopted the 2003 Plan for members of the Management Board and executive employees. This incentive plan which is based on convertible bonds was replaced by the 2008 Plan and no options have been granted since 2008. Under the 2003 Plan, eligible employees have the right to acquire ordinary and preference shares of Fresenius SE. The bonds expire in 10 years and one third of them can be exercised beginning after two, three and four years after the grant date, respectively. Upon issuance of the option, the employees have the right to choose options with or without a stock price target. The conversion price of options subject to a stock price target corresponds to the stock exchange quoted price of the ordinary or preference shares upon the first time the stock exchange quoted price exceeds the initial value (after the share split in 2007:  $\frac{1}{3}$  of the initial value) by at least 25%. If converted after the share split, the conversion price which entitles to three ordinary shares or preference shares, respectively, is equal to the triple of one third of the initial value. The initial value is the joint average stock exchange price of bearer

ordinary shares and non-voting bearer preference shares during the last 30 trading days prior to the date of grant. The conversion price of options without a stock price target is the initial value. In the case of options not subject to a stock price target, the number of convertible bonds awarded to the eligible employee would be 15% less than if the employee elected options subject to the stock price target. Each convertible bond granted after the share split entitles to subscribe one ordinary or preference share, subject to payment of the conversion price. Bonds granted and converted prior to the share split were entitled to subscribe one ordinary or preference share, conversion after the share split entitles to three ordinary or preference shares.

### **Stock Option Plan 1998**

During 1998, Fresenius AG adopted the 1998 Plan for members of the Management Board and executive employees. This stock incentive plan was replaced by the 2003 Plan and no options have been granted since 2003. Under the 1998 Plan, eligible employees have the right to acquire ordinary and preference shares of Fresenius SE. Options granted under this plan have a 10-year term. At December 31, 2011, all options were exercisable. Prior to the share split, one ordinary or one preference share could be acquired for each option. After the share split in 2007, each option entitles to acquire three ordinary or preference shares. The maximum number of ordinary or preference shares to be issued to the members of the Management Board or executive employees has been adjusted accordingly.

### **Adaptations of the stock option plans due to the change of legal form**

Upon registration of Fresenius SE's change of legal form to Fresenius SE & Co. KGaA with the commercial register on January 28, 2011, adaptations of the three stock option plans were required. Due to the conversion of all preference shares into ordinary shares in combination with the change of legal form, all previously issued subscription rights under the respective stock option plan are to be satisfied, in case of exercise,

with ordinary shares. Furthermore, the beneficiaries under the 2008 Plan are exclusively granted subscription rights for ordinary shares. With regard to the eligible beneficiaries, the members of Fresenius Management SE's Management Board replace the previous members of the Fresenius SE Management Board for future stock option grants. With regard to the 2008 Plan, the Supervisory Board of Fresenius Management SE determines the grants for the Management Board members of that company. All other plan participants will be determined by the Management Board of Fresenius Management SE. In addition, due to the discontinuation of the preference shares, the success target of the 2003 Plan was adjusted to the effect, that it is deemed to be achieved if and when the sum of the following price increases amounts to at least 25%:

- ▶ increase of the joint average stock exchange price of ordinary and preference shares from the day of the issuance until the day when the change of legal form took effect
- ▶ increase of the stock exchange price of ordinary shares since the change of legal form took effect

Whereas the number of stock options remained unchanged, in future, the exercise price of the stock options corresponds to the stock exchange price of the ordinary share without considering the stock exchange price of the preference share.

### Transactions during 2011

In 2011, Fresenius SE & Co. KGaA awarded 1,143,440 stock options under the 2008 Plan, including 198,660 options to members of the Management Board of Fresenius Management SE, at a weighted-average exercise price of €71.28, a weighted-average fair value of €19.09 each and a total fair value of €22 million, which will be amortized over the three-year vesting period.

During the fiscal year 2011, Fresenius SE & Co. KGaA received cash of €31 million from the exercise of 787,246 stock options. The average stock price at the exercise date

was €71.16 for ordinary shares and €61.64 for preference shares. The intrinsic value of options exercised in 2011 was €25 million.

Under the 1998 Plan, 29,942 stock options were outstanding and exercisable at December 31, 2011. No options were held by the members of the Fresenius Management SE Management Board. 1,412,135 convertible bonds were outstanding and exercisable under the 2003 Plan at December 31, 2011. The members of the Fresenius Management SE Management Board held 291,530 convertible bonds. At December 31, 2011, out of 4,052,050 outstanding stock options issued under the 2008 Plan, 806,006 were exercisable and 758,520 were held by the members of the Fresenius Management SE Management Board.

Stock option transactions are summarized as follows:

| Ordinary shares<br>Dec. 31          | Number of<br>options | Weighted-<br>average<br>exercise price<br>in € | Number of<br>options<br>exercisable |
|-------------------------------------|----------------------|------------------------------------------------|-------------------------------------|
| <b>Balance 2009</b>                 | <b>2,696,726</b>     | <b>39.49</b>                                   | <b>1,205,185</b>                    |
| Granted                             | 554,869              | 53.61                                          |                                     |
| Exercised                           | 567,357              | 32.90                                          |                                     |
| Forfeited                           | 39,577               | 47.82                                          |                                     |
| <b>Balance 2010</b>                 | <b>2,644,661</b>     | <b>43.87</b>                                   | <b>906,895</b>                      |
| Granted                             | 1,143,440            | 71.28                                          |                                     |
| Exercised                           | 786,358              | 38.85                                          |                                     |
| Forfeited                           | 151,389              | 48.38                                          |                                     |
| Converted from<br>preference shares | 2,643,773            | 43.87                                          |                                     |
| <b>Balance 2011</b>                 | <b>5,494,127</b>     | <b>50.25</b>                                   | <b>2,248,083</b>                    |

| Preference shares<br>Dec. 31      | Number of<br>options | Weighted-<br>average<br>exercise price<br>in € | Number of<br>options<br>exercisable |
|-----------------------------------|----------------------|------------------------------------------------|-------------------------------------|
| <b>Balance 2009</b>               | <b>2,696,726</b>     | <b>40.73</b>                                   | <b>1,205,185</b>                    |
| Granted                           | 554,869              | 53.54                                          |                                     |
| Exercised                         | 567,357              | 34.63                                          |                                     |
| Forfeited                         | 39,577               | 48.95                                          |                                     |
| <b>Balance 2010</b>               | <b>2,644,661</b>     | <b>44.74</b>                                   | <b>906,895</b>                      |
| Exercised                         | 888                  | 48.71                                          |                                     |
| Converted into<br>ordinary shares | 2,643,773            | 44.74                                          |                                     |
| <b>Balance 2011</b>               | <b>0</b>             |                                                |                                     |

The following table provides a summary of fully vested options outstanding and exercisable for ordinary shares at December 31, 2011:

#### OPTIONS FOR ORDINARY SHARES

| Range of exercise price in € | Options outstanding |                                                      |                                      | Options exercisable |                                                      |                                      |
|------------------------------|---------------------|------------------------------------------------------|--------------------------------------|---------------------|------------------------------------------------------|--------------------------------------|
|                              | Number of options   | Weighted-average remaining contractual life in years | Weighted-average exercise price in € | Number of options   | Weighted-average remaining contractual life in years | Weighted-average exercise price in € |
| 10.01 – 15.00                | 87,033              | 1.50                                                 | 13.65                                | 87,033              | 1.50                                                 | 13.65                                |
| 15.01 – 20.00                | 42,338              | 0.79                                                 | 19.32                                | 42,338              | 0.79                                                 | 19.32                                |
| 20.01 – 25.00                | 100,235             | 2.50                                                 | 21.96                                | 100,235             | 2.50                                                 | 21.96                                |
| 25.01 – 30.00                | 262,811             | 3.46                                                 | 28.58                                | 262,811             | 3.46                                                 | 28.58                                |
| 30.01 – 35.00                | 1,008,816           | 4.50                                                 | 33.81                                | 0                   |                                                      |                                      |
| 35.01 – 40.00                | 396,164             | 4.40                                                 | 39.23                                | 392,664             | 4.39                                                 | 39.26                                |
| 40.01 – 45.00                | 67,310              | 3.92                                                 | 41.62                                | 67,310              | 3.92                                                 | 41.62                                |
| 45.01 – 50.00                | 14,496              | 4.50                                                 | 48.81                                | 14,496              | 4.50                                                 | 48.81                                |
| 50.01 – 55.00                | 1,819,984           | 4.72                                                 | 54.00                                | 738,696             | 3.58                                                 | 54.69                                |
| 55.01 – 60.00                | 525,646             | 5.50                                                 | 56.43                                | 525,646             | 5.50                                                 | 56.43                                |
| 60.01 – 65.00                | 9,000               | 5.92                                                 | 63.53                                | 0                   |                                                      |                                      |
| 70.01 – 75.00                | 1,160,294           | 6.49                                                 | 71.27                                | 16,854              | 5.50                                                 | 70.79                                |
|                              | <b>5,494,127</b>    | <b>4.91</b>                                          | <b>50.25</b>                         | <b>2,248,083</b>    | <b>4.01</b>                                          | <b>45.33</b>                         |

At December 31, 2011, the aggregate intrinsic value of exercisable options for ordinary shares was €59 million.

At December 31, 2011, total unrecognized compensation cost related to non-vested options granted under the 2003 Plan and the 2008 Plan was €24 million. This cost is expected to be recognized over a weighted-average period of 2.1 years.

#### FRESENIUS MEDICAL CARE AG & CO. KGAA STOCK OPTION PLANS

##### Fresenius Medical Care AG & Co. KGaA Long Term Incentive Program 2011

On May 12, 2011, the Fresenius Medical Care AG & Co. KGaA Stock Option Plan 2011 (2011 SOP) was established by resolution of Fresenius Medical Care AG & Co. KGaA's (FMC-AG & Co. KGaA) Annual General Meeting (AGM). The 2011 SOP, together with the Phantom Stock Plan 2011, which was established by resolution of Fresenius Medical Care Management AG's (FMC Management AG) Management and Supervisory Boards, forms FMC-AG & Co. KGaA's Long Term Incentive Program 2011 (2011 Incentive Program). Under the 2011 Incentive Program, participants may be granted awards, which will consist of a combination of stock options and phantom stock. Awards

under the 2011 Incentive Program will be granted over a five-year period and can be granted on the last Monday in July and/or the first Monday in December each year. Prior to the respective grant, the participants will be able to choose how much of the granted value is granted in the form of stock options and phantom stock in a predefined range of 75:25 to 50:50, stock options vs. phantom stock. The number of phantom shares that plan participants may choose to receive instead of stock options within the aforementioned predefined range is determined on the basis of a fair value assessment pursuant to a binomial model. With respect to grants made in July, this fair value assessment will be conducted on the day following FMC-AG & Co. KGaA's AGM and with respect to the grants made in December, on the first Monday in October.

Members of the Management Board of FMC Management AG, members of the management boards of FMC-AG & Co. KGaA's affiliated companies and the managerial staff members of FMC-AG & Co. KGaA and of certain affiliated companies are entitled to participate in the 2011 Incentive Program. With respect to participants who are members of FMC Management AG's Management Board, FMC Management AG's Supervisory Board has sole authority to grant awards and exercise other decision making powers under the 2011 Incentive Program (including decisions regarding certain adjustments and forfeitures). FMC Management AG has such authority with respect to all other participants in the 2011 Incentive Program.

The awards under the 2011 Incentive Program are subject to a four-year vesting period. The vesting of the awards granted is subject to achievement of performance targets measured over a four-year period beginning with the first day of the year of the grant. For each such year, the performance target is achieved if FMC-AG & Co. KGaA's adjusted basic income per ordinary share (Adjusted EPS), as calculated in accordance with the 2011 Incentive Program, increases by at least 8% year over year during the vesting period or, if this is not the case, the compounded annual growth rate of the Adjusted EPS reflects an increase of at least 8% per year of the Adjusted EPS during the four-year vesting period. At the end of the vesting period, one-fourth of the awards granted is forfeited for each year in which the performance target is not achieved. All awards are considered vested if the compounded annual growth rate of the Adjusted EPS reflects an increase of at least 8% per year during the four-year vesting period. Vesting of the portion or portions of a grant for a year or years in which the performance target is met does not occur until completion of the four-year vesting period.

The 2011 Incentive Program was established with a conditional capital increase up to €12 million subject to the issue of up to 12 million non-par value bearer ordinary shares with a nominal value of €1.00, each of which can be exercised to obtain one ordinary share. Of these 12 million shares, up to 2 million stock options are designated for members of the Management Board of FMC Management AG, up to 2.5 million stock options are designated for members of management boards of direct or indirect subsidiaries of FMC-AG & Co. KGaA and up to 7.5 million stock options are designated for managerial staff members of FMC-AG & Co. KGaA and such subsidiaries. FMC-AG & Co. KGaA may issue new shares to fulfill the stock option obligations or FMC-AG & Co. KGaA may issue shares that it has acquired or which FMC-AG & Co. KGaA itself has in its own possession.

The exercise price of stock options granted under the 2011 Incentive Program shall be the average stock exchange price on the Frankfurt Stock Exchange of FMC-AG & Co. KGaA's ordinary shares during the 30 calendar days immediately prior to

each grant date. Stock options granted under the 2011 Incentive Program have an eight-year term and can be exercised only after a four-year vesting period. Stock options granted under the 2011 Incentive Program to U.S. participants are non-qualified stock options under the United States Internal Revenue Code of 1986, as amended. Options under the 2011 Incentive Program are not transferable by a participant or a participant's heirs, and may not be pledged, assigned, or disposed of otherwise.

Phantom stock under the 2011 Incentive Program entitles the holders to receive payment in euro from FMC-AG & Co. KGaA upon exercise of the phantom stock. The payment per phantom share in lieu of the issuance of such stock shall be based upon the closing stock exchange price on the Frankfurt Stock Exchange of one of FMC-AG & Co. KGaA's ordinary shares on the exercise date. Phantom stock will have a five-year term and can be exercised only after a four-year vesting period, beginning with the grant date. For participants who are U.S. tax payers, the phantom stock is deemed to be exercised in any event in the month of March following the end of the vesting period.

### **Stock Option Plan 2006**

On May 9, 2006, as amended on May 15, 2007, the Fresenius Medical Care AG & Co. KGaA Stock Option Plan 2006 (Amended 2006 Plan) was established by resolution of FMC-AG & Co. KGaA's Annual General Meeting with a conditional capital increase up to €15 million subject to the issue of up to 15 million non-par value bearer ordinary shares with a nominal value of €1.00 each, which can be exercised to obtain one ordinary share. Of the 15 million ordinary shares, up to 3 million options were designated for members of the Management Board of FMC Management AG, up to 3 million options were designated for members of management boards of direct or indirect subsidiaries of FMC-AG & Co. KGaA and up to 9 million options

were designated for managerial staff members of FMC-AG & Co. KGaA and such subsidiaries. With respect to participants who are members of the Management Board of FMC Management AG, its Supervisory Board has sole authority to grant stock options and exercise other decision making powers under the Amended 2006 Plan (including decisions regarding certain adjustments and forfeitures). The Management Board of FMC Management AG has such authority with respect to all other participants in the Amended 2006 Plan.

The exercise price of options granted under the Amended 2006 Plan was the average closing price on the Frankfurt Stock Exchange of FMC-AG & Co. KGaA's ordinary shares during the 30 calendar days immediately prior to each grant date. Options granted under the Amended 2006 Plan have a seven-year term but can be exercised only after a three-year vesting period. The vesting of options granted is subject to achievement of performance targets measured over a three-year period from the grant date. For each such year, the performance target is achieved if FMC-AG & Co. KGaA's adjusted basic income per ordinary share (Adjusted EPS), as calculated in accordance with the Amended 2006 Plan, increases by at least 8% year over year during the vesting period, beginning with Adjusted EPS for the year of grant as compared to Adjusted EPS for the year preceding such grant. Calculation of Adjusted EPS under the Amended 2006 Plan excluded, among other items, the costs of the transformation of Fresenius Medical Care's legal form and the conversion of preference shares into ordinary shares. For each grant, one-third of the options granted are forfeited for each year in which EPS does not meet or exceed the 8% target. The performance targets for 2011, 2010 and 2009 were met. Vesting of the portion or portions of a grant for a year or years in which the performance target is met does not occur until completion of the entire three-year vesting period.

Options granted under the Amended 2006 Plan to U.S. participants are non-qualified stock options under the United States Internal Revenue Code of 1986, as amended. Options under the Amended 2006 Plan are not transferable by a participant or a participant's heirs, and may not be pledged, assigned, or otherwise disposed of.

After December 2010, no further grants were issued under the Amended 2006 Plan.

## **2001 International Stock Option Plan**

Under the Fresenius Medical Care 2001 International Stock Incentive Plan (2001 Plan), options in the form of convertible bonds with a principal of up to €10.24 million were issued to the members of the Management Board and other employees of FMC-AG & Co. KGaA representing grants for up to 4 million non-voting preference shares. The convertible bonds originally had a par value of €2.56 and bear interest at a rate of 5.5%. In connection with the share split effected in 2007, the principal amount was adjusted in the same proportion as the share capital out of the capital increase and the par value of the convertible bonds was adjusted to €0.85 without affecting the interest rate. Except for the members of the Management Board, eligible employees may purchase the bonds by issuing a non-recourse note with terms corresponding to the terms of and secured by the bond. FMC-AG & Co. KGaA has the right to offset its obligation on a bond against the employee's obligation on the related note; therefore, the convertible bond obligations and employee note receivables represent stock options issued by FMC-AG & Co. KGaA and are not reflected in the consolidated financial statements. The options expire 10 years from issuance and can be exercised beginning two, three or four years after issuance. Compensation costs related to awards granted under this plan are amortized on a straight-line basis over the vesting period for each separately vesting portion of the awards. Bonds issued to Management Board members who did not issue a note to FMC-AG & Co. KGaA are recognized as a liability on the Group's statement of financial position. All awards granted under this plan are fully vested.

Upon issuance of the option, the employees had the right to choose options with or without a stock price target. The exercise price of options subject to a stock price target corresponds to the stock exchange quoted price of the preference shares upon the first time the stock exchange quoted price exceeds the initial value by at least 25%. The initial value is the average price of the preference shares during the last 30 trading days prior to the date of grant. In the case of options

not subject to a stock price target, the number of convertible bonds awarded to the eligible employee would be 15% less than if the employee elected options subject to the stock price target. The exercise price of the options without a stock price target is the initial value. Each option entitles the holder thereof, upon payment of the respective conversion price, to acquire one preference share. Effective May 2006, no further grants can be issued under the 2001 Plan and no options were granted under the 2001 Plan after 2005.

### Transactions during 2011

During 2011, FMC-AG & Co. KGaA awarded 1,947,231 options under the 2011 Incentive Program, including 307,515 stock options granted to members of the Management Board of FMC Management AG, at a weighted-average exercise price of €52.45, a weighted-average fair value of €13.41 each and a total fair value of €26 million, which will be amortized over the four-year vesting period. FMC-AG & Co. KGaA awarded 215,638 phantom shares, including 29,313 phantom shares

granted to members of the Management Board of FMC Management AG, at a measurement date average fair value of €49.24 each and a total fair value of €11 million as of December 31, 2011, which will be amortized over the four-year vesting period.

During 2011, FMC-AG & Co. KGaA received cash of €58 million from the exercise of stock options. The intrinsic value of options exercised in 2011 was €36 million. FMC-AG & Co. KGaA recorded a related tax benefit of €9 million for 2011.

At December 31, 2011, the Management Board members of FMC Management AG held 2,354,875 stock options for ordinary shares and employees of FMC-AG & Co. KGaA held 9,669,942 stock options for ordinary shares and 49,090 stock options for preference shares under the various stock-based compensation plans of Fresenius Medical Care.

At December 31, 2011, the Management Board members of FMC Management AG held 29,313 phantom shares and employees of FMC-AG & Co. KGaA held 186,149 phantom shares under the 2011 Incentive Plan.

The table below provides reconciliations for options outstanding at December 31, 2011 as compared to December 31, 2010:

|                                                                     | Number of options<br>in thousand | Weighted-average<br>exercise price<br>in € |
|---------------------------------------------------------------------|----------------------------------|--------------------------------------------|
| <b>Balance at December 31, 2010 (options for ordinary shares)</b>   | <b>12,152</b>                    | <b>33.78</b>                               |
| Granted                                                             | 1,947                            | 52.45                                      |
| Exercised                                                           | 1,886                            | 30.87                                      |
| Forfeited                                                           | 188                              | 34.93                                      |
| <b>Balance at December 31, 2011 (options for ordinary shares)</b>   | <b>12,025</b>                    | <b>37.24</b>                               |
| <b>Balance at December 31, 2010 (options for preference shares)</b> | <b>59</b>                        | <b>19.19</b>                               |
| Exercised                                                           | 9                                | 22.52                                      |
| Forfeited                                                           | 1                                | 18.21                                      |
| <b>Balance at December 31, 2011 (options for preference shares)</b> | <b>49</b>                        | <b>18.64</b>                               |

The following table provides a summary of fully vested options outstanding and exercisable for both preference and ordinary shares at December 31, 2011:

|                               | Number of options in thousand | Weighted-average remaining contractual life in years | Weighted-average exercise price in € | Aggregate intrinsic value € in millions |
|-------------------------------|-------------------------------|------------------------------------------------------|--------------------------------------|-----------------------------------------|
| Options for ordinary shares   | 4,767                         | 2.79                                                 | 30.57                                | 105                                     |
| Options for preference shares | 49                            | 2.80                                                 | 18.64                                | 1                                       |

At December 31, 2011, total unrecognized compensation cost related to non-vested options granted under all plans was €37 million. This cost is expected to be recognized over a weighted-average period of 1.9 years.

### 35. RELATED PARTY TRANSACTIONS

Prof. Dr. med. D. Michael Albrecht, a member of the Supervisory Board of Fresenius SE & Co. KGaA, is medical director and spokesman of the management board of the Universitätsklinikum Carl Gustav Carus Dresden and a member of the supervisory boards of the Universitätsklinik Aachen, Rostock and Magdeburg. The Fresenius Group maintains business relations with these clinics in the ordinary course and under customary conditions.

Prof. Dr. h. c. Roland Berger, a member of the Supervisory Board of Fresenius SE & Co. KGaA, is a partner and was the chairman of the supervisory board of Roland Berger Strategy Consultants Holding GmbH until August 1, 2010. In 2011, the Fresenius Group paid one or more affiliated companies of the Roland Berger group €1 million for consulting services rendered (2010: €0.2 million).

Klaus-Peter Müller, a member of the Supervisory Board of Fresenius SE & Co. KGaA, is the chairman of the supervisory board of Commerzbank AG. The Fresenius Group maintains business relations with Commerzbank under customary conditions. In 2011, the Fresenius Group paid €0.6 million to Commerzbank AG for services provided in connection with the Senior Notes issuances of Fresenius Medical Care.

Dr. Gerhard Rupprecht, a member of the Supervisory Board of Fresenius SE & Co. KGaA, was a member of the management board of Allianz SE until December 31, 2010 and the chairman of the management board of Allianz Deutschland AG until June 30, 2010. Dr. Francesco De Meo, a member of the Management Board of the general partner of Fresenius SE & Co. KGaA, was a member of the supervisory board of Allianz Private Krankenversicherungs-AG until July 6, 2011. In 2011, the Fresenius Group paid €4 million for insurance premiums to Allianz (2010: €3 million).

Dr. Dieter Schenk, deputy chairman of the Supervisory Board of Fresenius SE until January 28, 2011, member of the Supervisory Board of Fresenius Management SE since March 11, 2010 and deputy chairman of the Supervisory Board of Fresenius Management SE since May 12, 2010, is a partner in the law firm Noerr LLP, which provides legal services to the Fresenius Group. In 2011, the Fresenius Group paid this law firm €1 million for services rendered (2010: €1 million).

### 36. SUBSEQUENT EVENTS

On August 2, 2011, Fresenius Medical Care announced its plans to acquire 100% of Liberty Dialysis Holdings, Inc., the owner of all of the business of Liberty Dialysis and owner of a 51% stake in Renal Advantage Partners, LLC. Fresenius



Medical Care owns a 49% stake in Renal Advantage Partners, LLC. Fresenius Medical Care's total investment, including the assumption of incremental debt, will be approximately US\$1.7 billion. The transaction remains subject to clearance under the Hart-Scott-Rodino Antitrust Improvements Act and is expected to close in the first quarter of 2012. Upon completion, the acquired operations would add approximately 260 out-patient dialysis clinics to Fresenius Medical Care's network in the U.S. and approximately US\$1 billion in annual revenue before the anticipated divestiture of some centers as a condition of government approval of the transaction. The transaction will be financed from cash flow from operations and debt.

On October 12, 2011, Fresenius Helios announced the conclusion of a contract to acquire 94.7% of the share capital in the Damp Holding AG, Germany. The Damp Group (Damp) operates seven acute care hospitals and four post acute care hospitals with a total of 4,112 beds (thereof 2,649 in acute care). In addition, Damp operates eight outpatient medical care centers, two nursing care facilities with a total of 606 beds and a wellness resort. In 2010, Damp achieved sales of €487 million and an operating profit (EBIT) of €21 million. The acquisition is still subject to the approval of local and antitrust authorities. Due to the geographic proximity of the HELIOS hospital Schwerin, the Damp hospital Wismar (505 beds, sales

of approximately €60 million) was divested to secure regulatory clearance of the transaction. Fresenius Helios anticipates to close the transaction at the end of the first or at the beginning of the second quarter of 2012, respectively.

On January 26, 2012, Fresenius Medical Care US Finance II, Inc. issued unsecured Senior Notes of US\$800 million with a coupon of 5.625% at par and unsecured Senior Notes of US\$700 million with a coupon of 5.875% at par. In addition, FMC Finance VIII S.A. issued unsecured Senior Notes of €250 million with a coupon of 5.25% at par. The Senior Notes issued by Fresenius Medical Care US Finance II, Inc. in the amount of US\$800 million are due on July 31, 2019 and the US\$700 million Senior Notes are due on January 31, 2022. The Senior Notes issued by FMC Finance VIII S.A. are due on July 31, 2019. Net proceeds are used for acquisitions, to refinance indebtedness and for general corporate purposes.

There have been no significant changes in the Fresenius Group's operating environment following the end of the fiscal year 2011. No other events of material importance on the assets and liabilities, financial position, and results of operations of the Group have occurred following the end of the fiscal year.

## NOTES IN ACCORDANCE WITH THE GERMAN COMMERCIAL CODE (HGB)

### 37. COMPENSATION OF THE MANAGEMENT BOARD AND THE SUPERVISORY BOARD

Individualized information regarding the compensation of the members of the Management Board and of the Supervisory Board is disclosed in the audited Compensation Report (see page 26 ff.), which is part of the Management Report.

The Management Board's compensation is, as a whole, performance-oriented and was composed of three elements in 2011: non-performance-related compensation (basic salary), performance-related compensation (variable bonus), components with long-term incentive effects (stock options, postponed bonus payments and a share-based compensation with cash settlement (performance shares)).

The cash compensation paid to the Management Board for the performance of its responsibilities was €10,135 thousand (2010: €9,398 thousand). Thereof, €4,062 thousand (2010: €4,105 thousand) is not performance-related and €5,539 thousand (2010: €4,685 thousand) is performance-related. The amount of the performance-related compensation depends on the achievement of targets relating to the net income of the Fresenius Group and business segments. As a long-term incentive component, the members of the Management Board

received 198,660 stock options under the Fresenius SE Stock Option Plan 2008 and 74,700 stock options under the Fresenius Medical Care AG & Co. KGaA Stock Option Plan 2011 and a share-based payment with cash settlement in an amount of €1.284 thousand.

The payment of a part of the performance-related compensation in an amount of €230 thousand was postponed by two years as a long-term incentive component. The payment depends on the achievement of targets relating to the net income attributable to Fresenius SE & Co. KGaA of the years 2012 and 2013.

The total compensation paid to the Supervisory Boards of Fresenius SE & Co. KGaA and Fresenius Management SE and their committees was €2,227 thousand in 2011 (2010: €1,782 thousand). Of this amount, €210 thousand was fixed compensation (2010: €183 thousand), €89 thousand was compensation for committees services (2010: €100 thousand), and €1,928 thousand was variable compensation (2010: €1,499 thousand).

In 2011, to former members of the Management Board, €776 thousand (2010: €776 thousand) was paid. The pension obligation for these persons amounted to €10,513 thousand in 2011 (2010: €11,039 thousand).

In the fiscal years 2011 and 2010, no loans or advance payments of future compensation components were made to members of the Management Board of Fresenius Management SE.

### 38. AUDITOR'S FEES

In 2011 and 2010, fees for the auditor KPMG AG Wirtschaftsprüfungsgesellschaft were expensed as follows:

| € in millions               | 2011      |          | 2010      |          |
|-----------------------------|-----------|----------|-----------|----------|
|                             | Total     | Germany  | Total     | Germany  |
| Audit fees                  | 14        | 5        | 15        | 5        |
| Audit-related fees          | 1         | –        | 1         | –        |
| Tax consulting fees         | 1         | 0        | 1         | –        |
| Other fees                  | –         | –        | –         | –        |
| <b>Total auditor's fees</b> | <b>16</b> | <b>5</b> | <b>17</b> | <b>5</b> |

### 39. CORPORATE GOVERNANCE

For each consolidated stock exchange listed entity, the declaration pursuant to Section 161 of the German Stock Corporation Act (Aktiengesetz) has been issued and made available to shareholders on the website of Fresenius SE & Co. KGaA [www.fresenius.com](http://www.fresenius.com) under Who we are/Corporate Governance/Declaration of Conformity and of Fresenius Medical Care AG & Co. KGaA [www.fmc-ag.com](http://www.fmc-ag.com) under Investor Relations/Corporate Governance/Declaration of Compliance, respectively.

### 40. PROPOSAL FOR THE DISTRIBUTION OF EARNINGS

The general partner and the Supervisory Board of Fresenius SE & Co. KGaA propose to the Annual General Meeting that the earnings for 2011 of Fresenius SE & Co. KGaA are distributed as follows:

| in €                                                                                                             |                       |
|------------------------------------------------------------------------------------------------------------------|-----------------------|
| Payment of a dividend of €0.95 per bearer ordinary share on the 163,237,336 ordinary shares entitled to dividend | 155,075,469.20        |
| Additions to other reserves                                                                                      | 299,700,000.00        |
| Balance to be carried forward                                                                                    | 40,788.92             |
| <b>Retained earnings</b>                                                                                         | <b>454,816,258.12</b> |

#### 41. RESPONSIBILITY STATEMENT

"To the best of our knowledge, and in accordance with the applicable reporting principles, the consolidated financial statements give a true and fair view of the assets, liabilities, financial position and profit or loss of the Group, and the

Group management report includes a fair review of the development and performance of the business and the position of the Group, together with a description of the principal opportunities and risks associated with the expected development of the Group."

Bad Homburg v. d. H., February 22, 2012

Fresenius SE & Co. KGaA,  
represented by:  
Fresenius Management SE, its general partner

The Management Board



Dr. U. M. Schneider



R. Baule



Dr. F. De Meo



Dr. J. Götz



Dr. B. Lipps



S. Sturm



Dr. E. Wastler

## AUDITOR'S REPORT

To the Fresenius SE & Co. KGaA

We have audited the consolidated financial statements prepared by the Fresenius SE & Co. KGaA (until January 28, 2011: Fresenius SE), Bad Homburg v. d. Höhe, comprising the consolidated statement of income, the consolidated statement of comprehensive income, the consolidated statement of financial position, the consolidated statement of cash flows, the consolidated statement of changes in equity and the notes to the consolidated financial statements for the business year from January 1 to December 31, 2011. The preparation of the consolidated financial statements in accordance with Accounting Principles Generally Accepted in the United States of America (U.S. GAAP) is the responsibility of the legal representative of the Company. Our responsibility is to express an opinion on the consolidated financial statements based on our audit. In addition, we have been engaged to express an opinion as to whether the voluntarily prepared group management report is in agreement with the group management report of Fresenius SE & Co. KGaA, Bad Homburg v. d. Höhe, prepared in accordance with § 290 and § 315 HGB [Handelsgesetzbuch "German Commercial Code"] apart from appropriate incorporation of U.S. GAAP financial data.

We conducted our audit of the consolidated financial statements in accordance with § 317 HGB and German generally accepted standards for the audit of financial statements promulgated by the Institut der Wirtschaftsprüfer (IDW). Those standards require that we plan and perform the audit such that misstatements materially affecting the presentation of the net assets, financial position and results of operations in the consolidated financial statements in accordance with the

applicable financial reporting framework and in the group management report are detected with reasonable assurance. Knowledge of the business activities and the economic and legal environment of the Group and expectations as to possible misstatements are taken into account in the determination of audit procedures. The effectiveness of the accounting-related internal control system and the evidence supporting the disclosures in the consolidated financial statements and the group management report are examined primarily on a test basis within the framework of the audit. The audit includes assessing the annual financial statements of those entities included in consolidation, the determination of entities to be included in consolidation, the accounting and consolidation principles used and significant estimates made by the legal representative, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audit provides a reasonable basis for our opinion.

Our audit has not led to any reservations.

In our opinion, based on the findings of our audit, the consolidated financial statements comply with U.S. GAAP and give a true and fair view of the net assets, financial position and results of operations of the Group in accordance with these requirements. The voluntarily prepared group management report is consistent with the consolidated financial statements prepared in accordance with U.S. GAAP and is, apart from appropriate incorporation of U.S. GAAP financial data, in agreement with the group management report of Fresenius SE & Co. KGaA prepared in accordance with § 290 and § 315 HGB, on which we issued an unqualified statutory audit opinion. Based on this, the group management report as a whole provides a suitable view of the Group's position and suitably presents the opportunities and risks of future development.

Frankfurt am Main, February 22, 2012

KPMG AG

Wirtschaftsprüfungsgesellschaft



Hölzl  
German Public Auditor



Hommel  
German Public Auditor

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**Consolidated Financial Statements of Fresenius SE & Co. KGaA for 2010  
(until January 28, 2011: Fresenius SE) (US-GAAP)**

**FRESENIUS SE & CO. KGAA (UNTIL JANUARY 28, 2011: FRESENIUS SE)**  
**CONSOLIDATED STATEMENT OF INCOME**

| € in millions                                                 | Note | 2010         | 2009         |
|---------------------------------------------------------------|------|--------------|--------------|
| Sales                                                         | 4    | 15,972       | 14,164       |
| Cost of sales                                                 | 5    | -10,646      | -9,528       |
| <b>Gross profit</b>                                           |      | <b>5,326</b> | <b>4,636</b> |
| Selling, general and administrative expenses                  | 8    | -2,664       | -2,342       |
| Research and development expenses                             |      | -244         | -240         |
| <b>Operating income (EBIT)</b>                                |      | <b>2,418</b> | <b>2,054</b> |
| Interest income                                               | 9    | 30           | 22           |
| Interest expenses                                             | 9    | -596         | -602         |
| Other financial result                                        | 10   | -66          | -31          |
| <b>Financial result</b>                                       |      | <b>-632</b>  | <b>-611</b>  |
| <b>Income before income taxes</b>                             |      | <b>1,786</b> | <b>1,443</b> |
| Income taxes                                                  | 11   | -581         | -452         |
| <b>Net income</b>                                             |      | <b>1,205</b> | <b>991</b>   |
| Less noncontrolling interest                                  | 26   | 583          | 497          |
| <b>Net income attributable to Fresenius SE &amp; Co. KGaA</b> |      | <b>622</b>   | <b>494</b>   |
| <b>Earnings per ordinary share in €</b>                       | 12   | <b>3.85</b>  | <b>3.06</b>  |
| Fully diluted earnings per ordinary share in €                | 12   | 3.79         | 3.04         |
| <b>Earnings per preference share in €</b>                     | 12   | <b>3.85</b>  | <b>3.07</b>  |
| Fully diluted earnings per preference share in €              | 12   | 3.79         | 3.05         |

The following notes are an integral part of the consolidated financial statements.



**FRESENIUS SE & CO. KGAA (UNTIL JANUARY 28, 2011: FRESENIUS SE)**  
**CONSOLIDATED STATEMENT OF COMPREHENSIVE INCOME**

| € in millions                                                                                     | Note   | 2010         | 2009        |
|---------------------------------------------------------------------------------------------------|--------|--------------|-------------|
| <b>Net income</b>                                                                                 |        | <b>1,205</b> | <b>991</b>  |
| <b>Other comprehensive income (loss)</b>                                                          |        |              |             |
| Foreign currency translation                                                                      | 28, 30 | 377          | -125        |
| Cash flow hedges                                                                                  | 28, 30 | -15          | 2           |
| Actuarial losses on defined benefit pension plans                                                 | 25, 28 | -54          | -5          |
| Income taxes related to components of other comprehensive income (loss)                           | 28     | 11           | -5          |
| <b>Other comprehensive income (loss)</b>                                                          |        | <b>319</b>   | <b>-133</b> |
| <b>Total comprehensive income</b>                                                                 |        | <b>1,524</b> | <b>858</b>  |
| <b>Comprehensive income attributable to noncontrolling interest subject to put provisions</b>     |        | <b>33</b>    | <b>16</b>   |
| <b>Comprehensive income attributable to noncontrolling interest not subject to put provisions</b> |        | <b>689</b>   | <b>391</b>  |
| <b>Comprehensive income attributable to Fresenius SE &amp; Co. KGaA</b>                           |        | <b>802</b>   | <b>451</b>  |

The following notes are an integral part of the consolidated financial statements.

**FRESENIUS SE & CO. KGAA (UNTIL JANUARY 28, 2011: FRESENIUS SE)**  
**CONSOLIDATED STATEMENT OF FINANCIAL POSITION**  
**ASSETS**

| as of December 31, € in millions                                | Note | 2010          | 2009          |
|-----------------------------------------------------------------|------|---------------|---------------|
| Cash and cash equivalents                                       | 13   | 769           | 420           |
| Trade accounts receivable, less allowance for doubtful accounts | 14   | 2,935         | 2,509         |
| Accounts receivable from and loans to related parties           |      | 15            | 26            |
| Inventories                                                     | 15   | 1,411         | 1,235         |
| Other current assets                                            | 16   | 925           | 893           |
| Deferred taxes                                                  | 11   | 380           | 280           |
| <b>I. Total current assets</b>                                  |      | <b>6,435</b>  | <b>5,363</b>  |
| Property, plant and equipment                                   | 17   | 3,954         | 3,559         |
| Goodwill                                                        | 18   | 11,464        | 10,356        |
| Other intangible assets                                         | 18   | 984           | 1,053         |
| Other non-current assets                                        | 16   | 628           | 436           |
| Deferred taxes                                                  | 11   | 112           | 115           |
| <b>II. Total non-current assets</b>                             |      | <b>17,142</b> | <b>15,519</b> |
| <b>Total assets</b>                                             |      | <b>23,577</b> | <b>20,882</b> |

## LIABILITIES AND SHAREHOLDERS' EQUITY

as of December 31, € in millions

|                                                                     | Note   | 2010          | 2009          |
|---------------------------------------------------------------------|--------|---------------|---------------|
| Trade accounts payable                                              |        | 691           | 601           |
| Short-term accounts payable to related parties                      |        | 2             | 7             |
| Short-term accrued expenses and other short-term liabilities        | 19, 20 | 2,731         | 2,197         |
| Short-term debt                                                     | 21     | 606           | 287           |
| Short-term loans from related parties                               |        | 2             | 2             |
| Current portion of long-term debt and capital lease obligations     | 21     | 420           | 261           |
| Mandatory Exchangeable Bonds                                        | 23     | 554           | 0             |
| Trust preferred securities of Fresenius Medical Care Capital Trusts | 24     | 468           | 0             |
| Short-term accruals for income taxes                                |        | 163           | 122           |
| Deferred taxes                                                      | 11     | 74            | 51            |
| <b>A. Total short-term liabilities</b>                              |        | <b>5,711</b>  | <b>3,528</b>  |
| Long-term debt and capital lease obligations, less current portion  | 21     | 4,919         | 5,228         |
| Senior Notes                                                        | 22     | 2,369         | 2,066         |
| Mandatory Exchangeable Bonds                                        | 23     | 0             | 554           |
| Long-term accrued expenses and other long-term liabilities          | 19, 20 | 458           | 481           |
| Trust preferred securities of Fresenius Medical Care Capital Trusts | 24     | 0             | 455           |
| Pension liabilities                                                 | 25     | 383           | 309           |
| Long-term accruals for income taxes                                 |        | 196           | 194           |
| Deferred taxes                                                      | 11     | 488           | 415           |
| <b>B. Total long-term liabilities</b>                               |        | <b>8,813</b>  | <b>9,702</b>  |
| <b>I. Total liabilities</b>                                         |        | <b>14,524</b> | <b>13,230</b> |
| <b>II. Noncontrolling interest subject to put provisions</b>        | 26     | <b>209</b>    | <b>161</b>    |
| <b>A. Noncontrolling interest not subject to put provisions</b>     | 26     | <b>3,879</b>  | <b>3,257</b>  |
| Subscribed capital                                                  | 27     | 162           | 161           |
| Capital reserve                                                     | 27     | 2,085         | 2,035         |
| Other reserves                                                      | 27     | 2,683         | 2,183         |
| Accumulated other comprehensive income (loss)                       | 28     | 35            | -145          |
| <b>B. Total Fresenius SE &amp; Co. KGaA shareholders' equity</b>    |        | <b>4,965</b>  | <b>4,234</b>  |
| <b>III. Total shareholders' equity</b>                              |        | <b>8,844</b>  | <b>7,491</b>  |
| <b>Total liabilities and shareholders' equity</b>                   |        | <b>23,577</b> | <b>20,882</b> |

The following notes are an integral part of the consolidated financial statements.

**FRESENIUS SE & CO. KGAA (UNTIL JANUARY 28, 2011: FRESENIUS SE)**  
**CONSOLIDATED STATEMENT OF CASH FLOWS**

January 1 to December 31, € in millions

|                                                                                                          | Note       | 2010          | 2009         |
|----------------------------------------------------------------------------------------------------------|------------|---------------|--------------|
| <b>Operating activities</b>                                                                              |            |               |              |
| Net income                                                                                               |            | 1,205         | 991          |
| <b>Adjustments to reconcile net income to cash and cash equivalents provided by operating activities</b> |            |               |              |
| Depreciation and amortization                                                                            | 16, 17, 18 | 639           | 562          |
| Change in deferred taxes                                                                                 | 11         | 11            | 11           |
| Gain/loss on sale of fixed assets                                                                        |            | 1             | –            |
| <b>Changes in assets and liabilities, net of amounts from businesses acquired or disposed of</b>         |            |               |              |
| Trade accounts receivable, net                                                                           | 14         | -275          | -7           |
| Inventories                                                                                              | 15         | -81           | -92          |
| Other current and non-current assets                                                                     | 16         | 57            | -96          |
| Accounts receivable from/payable to related parties                                                      |            | 6             | -4           |
| Trade accounts payable, accrued expenses and other short-term and long-term liabilities                  |            | 346           | 122          |
| Accruals for income taxes                                                                                |            | 2             | 66           |
| <b>Net cash provided by operating activities</b>                                                         |            | <b>1,911</b>  | <b>1,553</b> |
| <b>Investing activities</b>                                                                              |            |               |              |
| Purchase of property, plant and equipment                                                                |            | -754          | -677         |
| Proceeds from sales of property, plant and equipment                                                     |            | 21            | 15           |
| Acquisitions and investments, net of cash acquired and net purchases of intangible assets                | 2, 32      | -615          | -236         |
| Proceeds from investments and divestitures                                                               |            | 111           | 9            |
| <b>Net cash used in investing activities</b>                                                             |            | <b>-1,237</b> | <b>-889</b>  |

January 1 to December 31, € in millions

|                                                                           | Note | 2010        | 2009        |
|---------------------------------------------------------------------------|------|-------------|-------------|
| <b>Financing activities</b>                                               |      |             |             |
| Proceeds from short-term loans                                            | 21   | 233         | 73          |
| Repayments of short-term loans                                            | 21   | -196        | -296        |
| Proceeds from short-term loans from related parties                       |      | –           | –           |
| Repayments of short-term loans from related parties                       |      | –           | –           |
| Proceeds from long-term debt and capital lease obligations                | 21   | 541         | 700         |
| Repayments of long-term debt and capital lease obligations                | 21   | -1,185      | -1,288      |
| Proceeds from the issuance of Senior Notes                                | 22   | 242         | 753         |
| Repayments of liabilities from Senior Notes                               | 22   | 0           | -100        |
| Changes of accounts receivable securitization program                     | 21   | 223         | -233        |
| Proceeds from the exercise of stock options                               | 34   | 121         | 56          |
| Dividends paid                                                            |      | -329        | -275        |
| Change in noncontrolling interest                                         | 26   | -3          | -2          |
| Exchange rate effect due to corporate financing                           |      | 1           | 1           |
| <b>Net cash used in financing activities</b>                              |      | <b>-352</b> | <b>-611</b> |
| <b>Effect of exchange rate changes on cash and cash equivalents</b>       |      | <b>27</b>   | <b>-3</b>   |
| <b>Net increase in cash and cash equivalents</b>                          |      | <b>349</b>  | <b>50</b>   |
| <b>Cash and cash equivalents at the beginning of the reporting period</b> | 13   | <b>420</b>  | <b>370</b>  |
| <b>Cash and cash equivalents at the end of the reporting period</b>       | 13   | <b>769</b>  | <b>420</b>  |

The following notes are an integral part of the consolidated financial statements.

**FRESENIUS SE & CO. KGAA (UNTIL JANUARY 28, 2011: FRESENIUS SE)**  
**CONSOLIDATED STATEMENT OF CHANGES IN EQUITY**

|                                                                           |        | Ordinary shares              |                       | Preference shares            |                       | Subscribed Capital    |                      |
|---------------------------------------------------------------------------|--------|------------------------------|-----------------------|------------------------------|-----------------------|-----------------------|----------------------|
|                                                                           | Note   | Number of shares in thousand | Amount € in thousands | Number of shares in thousand | Amount € in thousands | Amount € in thousands | Amount € in millions |
| <b>As of December 31, 2008</b>                                            |        | <b>80,572</b>                | <b>80,572</b>         | <b>80,572</b>                | <b>80,572</b>         | <b>161,144</b>        | <b>161</b>           |
| Proceeds from the exercise of stock options                               | 34     | 86                           | 86                    | 86                           | 86                    | 172                   | –                    |
| Compensation expense related to stock options                             | 34     |                              |                       |                              |                       |                       |                      |
| Dividends paid                                                            | 27     |                              |                       |                              |                       |                       |                      |
| Purchase of noncontrolling interest not subject to put provisions         | 26     |                              |                       |                              |                       |                       |                      |
| Change in fair value of noncontrolling interest subject to put provisions | 26     |                              |                       |                              |                       |                       |                      |
| Comprehensive income (loss)                                               |        |                              |                       |                              |                       |                       |                      |
| Net income                                                                |        |                              |                       |                              |                       |                       |                      |
| Other comprehensive income (loss)                                         |        |                              |                       |                              |                       |                       |                      |
| Cash flow hedges                                                          | 28, 30 |                              |                       |                              |                       |                       |                      |
| Foreign currency translation                                              | 28, 30 |                              |                       |                              |                       |                       |                      |
| Adjustments relating to pension obligations                               | 25, 28 |                              |                       |                              |                       |                       |                      |
| Comprehensive income (loss)                                               |        |                              |                       |                              |                       |                       |                      |
| <b>As of December 31, 2009</b>                                            |        | <b>80,658</b>                | <b>80,658</b>         | <b>80,658</b>                | <b>80,658</b>         | <b>161,316</b>        | <b>161</b>           |
| Proceeds from the exercise of stock options                               | 34     | 567                          | 567                   | 567                          | 567                   | 1,134                 | 1                    |
| Compensation expense related to stock options                             | 34     |                              |                       |                              |                       |                       |                      |
| Dividends paid                                                            | 27     |                              |                       |                              |                       |                       |                      |
| Purchase of noncontrolling interest not subject to put provisions         | 26     |                              |                       |                              |                       |                       |                      |
| Change in fair value of noncontrolling interest subject to put provisions | 26     |                              |                       |                              |                       |                       |                      |
| Comprehensive income (loss)                                               |        |                              |                       |                              |                       |                       |                      |
| Net income                                                                |        |                              |                       |                              |                       |                       |                      |
| Other comprehensive income (loss)                                         |        |                              |                       |                              |                       |                       |                      |
| Cash flow hedges                                                          | 28, 30 |                              |                       |                              |                       |                       |                      |
| Foreign currency translation                                              | 28, 30 |                              |                       |                              |                       |                       |                      |
| Adjustments relating to pension obligations                               | 25, 28 |                              |                       |                              |                       |                       |                      |
| Comprehensive income                                                      |        |                              |                       |                              |                       |                       |                      |
| <b>As of December 31, 2010</b>                                            |        | <b>81,225</b>                | <b>81,225</b>         | <b>81,225</b>                | <b>81,225</b>         | <b>162,450</b>        | <b>162</b>           |

|                                                                           | Note   | Reserves                            |                                    | Accumulated<br>other com-<br>prehensive<br>income (loss)<br>€ in millions | Total Fresenius<br>SE & Co. KGaA<br>shareholders'<br>equity<br>€ in millions | Noncontrolling<br>interest not<br>subject to put<br>provisions<br>€ in millions | Total<br>shareholders'<br>equity<br>€ in millions |
|---------------------------------------------------------------------------|--------|-------------------------------------|------------------------------------|---------------------------------------------------------------------------|------------------------------------------------------------------------------|---------------------------------------------------------------------------------|---------------------------------------------------|
|                                                                           |        | Capital<br>reserve<br>€ in millions | Other<br>reserves<br>€ in millions |                                                                           |                                                                              |                                                                                 |                                                   |
| <b>As of December 31, 2008</b>                                            |        | <b>2,020</b>                        | <b>1,803</b>                       | <b>-102</b>                                                               | <b>3,882</b>                                                                 | <b>2,944</b>                                                                    | <b>6,826</b>                                      |
| Proceeds from the exercise of stock options                               | 34     | 4                                   |                                    |                                                                           | 4                                                                            | 52                                                                              | 56                                                |
| Compensation expense related to stock options                             | 34     | 21                                  |                                    |                                                                           | 21                                                                           | 15                                                                              | 36                                                |
| Dividends paid                                                            | 27     |                                     | -114                               |                                                                           | -114                                                                         | -154                                                                            | -268                                              |
| Purchase of noncontrolling interest not subject to put provisions         | 26     |                                     |                                    |                                                                           | 0                                                                            | 27                                                                              | 27                                                |
| Change in fair value of noncontrolling interest subject to put provisions | 26     | -10                                 |                                    |                                                                           | -10                                                                          | -18                                                                             | -28                                               |
| Comprehensive income (loss)                                               |        |                                     |                                    |                                                                           |                                                                              |                                                                                 |                                                   |
| Net income                                                                |        |                                     | 494                                |                                                                           | 494                                                                          | 477                                                                             | 971                                               |
| Other comprehensive income (loss)                                         |        |                                     |                                    |                                                                           |                                                                              |                                                                                 |                                                   |
| Cash flow hedges                                                          | 28, 30 |                                     |                                    | -8                                                                        | -8                                                                           | 0                                                                               | -8                                                |
| Foreign currency translation                                              | 28, 30 |                                     |                                    | -29                                                                       | -29                                                                          | -86                                                                             | -115                                              |
| Adjustments relating to pension obligations                               | 25, 28 |                                     |                                    | -6                                                                        | -6                                                                           | 0                                                                               | -6                                                |
| Comprehensive income (loss)                                               |        |                                     | 494                                | -43                                                                       | 451                                                                          | 391                                                                             | 842                                               |
| <b>As of December 31, 2009</b>                                            |        | <b>2,035</b>                        | <b>2,183</b>                       | <b>-145</b>                                                               | <b>4,234</b>                                                                 | <b>3,257</b>                                                                    | <b>7,491</b>                                      |
| Proceeds from the exercise of stock options                               | 34     | 37                                  |                                    |                                                                           | 38                                                                           | 83                                                                              | 121                                               |
| Compensation expense related to stock options                             | 34     | 19                                  |                                    |                                                                           | 19                                                                           | 14                                                                              | 33                                                |
| Dividends paid                                                            | 27     |                                     | -122                               |                                                                           | -122                                                                         | -172                                                                            | -294                                              |
| Purchase of noncontrolling interest not subject to put provisions         | 26     |                                     |                                    |                                                                           | 0                                                                            | 35                                                                              | 35                                                |
| Change in fair value of noncontrolling interest subject to put provisions | 26     | -6                                  |                                    |                                                                           | -6                                                                           | -27                                                                             | -33                                               |
| Comprehensive income (loss)                                               |        |                                     |                                    |                                                                           |                                                                              |                                                                                 |                                                   |
| Net income                                                                |        |                                     | 622                                |                                                                           | 622                                                                          | 561                                                                             | 1,183                                             |
| Other comprehensive income (loss)                                         |        |                                     |                                    |                                                                           |                                                                              |                                                                                 |                                                   |
| Cash flow hedges                                                          | 28, 30 |                                     |                                    | -12                                                                       | -12                                                                          | 0                                                                               | -12                                               |
| Foreign currency translation                                              | 28, 30 |                                     |                                    | 230                                                                       | 230                                                                          | 128                                                                             | 358                                               |
| Adjustments relating to pension obligations                               | 25, 28 |                                     |                                    | -38                                                                       | -38                                                                          | 0                                                                               | -38                                               |
| Comprehensive income                                                      |        |                                     | 622                                | 180                                                                       | 802                                                                          | 689                                                                             | 1,491                                             |
| <b>As of December 31, 2010</b>                                            |        | <b>2,085</b>                        | <b>2,683</b>                       | <b>35</b>                                                                 | <b>4,965</b>                                                                 | <b>3,879</b>                                                                    | <b>8,844</b>                                      |

The following notes are an integral part of the consolidated financial statements.



## FRESENIUS SE & CO. KGAA (UNTIL JANUARY 28, 2011: FRESENIUS SE) CONSOLIDATED SEGMENT REPORTING

by business segment

| € in millions                                      | Fresenius Medical Care |        |        | Fresenius Kabi |        |        |
|----------------------------------------------------|------------------------|--------|--------|----------------|--------|--------|
|                                                    | 2010                   | 2009   | Change | 2010           | 2009   | Change |
| Sales                                              | 9,091                  | 8,064  | 13%    | 3,672          | 3,086  | 19%    |
| thereof contribution to consolidated sales         | 9,088                  | 8,061  | 13%    | 3,629          | 3,046  | 19%    |
| thereof intercompany sales                         | 3                      | 3      | 0%     | 43             | 40     | 8%     |
| contribution to consolidated sales                 | 57%                    | 57%    |        | 23%            | 22%    |        |
| EBITDA                                             | 1,830                  | 1,586  | 15%    | 893            | 742    | 20%    |
| Depreciation and amortization                      | 379                    | 327    | 16%    | 156            | 135    | 16%    |
| EBIT                                               | 1,451                  | 1,259  | 15%    | 737            | 607    | 21%    |
| Net interest                                       | -211                   | -215   | 2%     | -279           | -302   | 8%     |
| Income taxes                                       | -436                   | -352   | -24%   | -142           | -89    | -60%   |
| Net income attributable to Fresenius SE & Co. KGaA | 738                    | 639    | 15%    | 294            | 200    | 47%    |
| Operating cash flow                                | 1,032                  | 960    | 8%     | 567            | 397    | 43%    |
| Cash flow before acquisitions and dividends        | 649                    | 557    | 17%    | 401            | 272    | 47%    |
| Total assets                                       | 12,793                 | 10,982 | 16%    | 6,860          | 6,335  | 8%     |
| Debt                                               | 4,400                  | 3,865  | 14%    | 4,298          | 4,184  | 3%     |
| Capital expenditure, gross                         | 395                    | 411    | -4%    | 174            | 125    | 39%    |
| Acquisitions, gross                                | 596                    | 138    | --     | 31             | 32     | -3%    |
| Research and development expenses                  | 73                     | 67     | 9%     | 143            | 129    | 11%    |
| Employees (per capita on balance sheet date)       | 77,442                 | 71,617 | 8%     | 22,851         | 21,872 | 4%     |
| Key figures                                        |                        |        |        |                |        |        |
| EBITDA margin                                      | 20.1%                  | 19.7%  |        | 24.3%          | 24.0%  |        |
| EBIT margin                                        | 16.0%                  | 15.6%  |        | 20.1%          | 19.7%  |        |
| Depreciation and amortization in % of sales        | 4.2%                   | 4.1%   |        | 4.2%           | 4.4%   |        |
| Operating cash flow in % of sales                  | 11.4%                  | 11.9%  |        | 15.4%          | 12.9%  |        |
| ROOA                                               | 12.5%                  | 12.2%  |        | 11.9%          | 10.2%  |        |

<sup>1</sup> Including special items from the acquisition of APP Pharmaceuticals, Inc.

|  | Fresenius Helios |        |        | Fresenius Vamed |       |        | Corporate/Other <sup>1</sup> |      |        | Fresenius Group |         |        |
|--|------------------|--------|--------|-----------------|-------|--------|------------------------------|------|--------|-----------------|---------|--------|
|  | 2010             | 2009   | Change | 2010            | 2009  | Change | 2010                         | 2009 | Change | 2010            | 2009    | Change |
|  | 2,520            | 2,416  | 4%     | 713             | 618   | 15%    | -24                          | -20  | -20%   | 15,972          | 14,164  | 13%    |
|  | 2,520            | 2,416  | 4%     | 713             | 618   | 15%    | 22                           | 23   | -4%    | 15,972          | 14,164  | 13%    |
|  | 0                | 0      |        | –               | –     | --     | -46                          | -43  | -7%    | 0               | 0       |        |
|  | 16%              | 17%    |        | 4%              | 4%    |        | 0%                           | 0%   |        | 100%            | 100%    |        |
|  | 318              | 286    | 11%    | 49              | 42    | 17%    | -33                          | -40  | 18%    | 3,057           | 2,616   | 17%    |
|  | 83               | 81     | 2%     | 8               | 6     | 33%    | 13                           | 13   | 0%     | 639             | 562     | 14%    |
|  | 235              | 205    | 15%    | 41              | 36    | 14%    | -46                          | -53  | 13%    | 2,418           | 2,054   | 18%    |
|  | -55              | -55    | 0%     | 2               | 3     | -33%   | -23                          | -11  | -109%  | -566            | -580    | 2%     |
|  | -37              | -32    | -16%   | -12             | -12   | 0%     | 46                           | 33   | 39%    | -581            | -452    | -29%   |
|  | 131              | 107    | 22%    | 30              | 27    | 11%    | -571                         | -479 | -19%   | 622             | 494     | 26%    |
|  |                  |        |        |                 |       |        |                              |      |        |                 |         |        |
|  | 311              | 219    | 42%    | 47              | 29    | 62%    | -46                          | -52  | 12%    | 1,911           | 1,553   | 23%    |
|  | 150              | 95     | 58%    | 38              | 24    | 58%    | -60                          | -57  | -5%    | 1,178           | 891     | 32%    |
|  |                  |        |        |                 |       |        |                              |      |        |                 |         |        |
|  | 3,270            | 3,199  | 2%     | 549             | 456   | 20%    | 105                          | -90  | --     | 23,577          | 20,882  | 13%    |
|  | 1,096            | 1,099  | 0%     | 16              | 2     | --     | -1,026                       | -851 | -21%   | 8,784           | 8,299   | 6%     |
|  | 166              | 124    | 34%    | 9               | 5     | 80%    | 14                           | 6    | 133%   | 758             | 671     | 13%    |
|  | 13               | 79     | -84%   | 5               | 2     | 150%   | -1                           | 9    | -111%  | 644             | 260     | 148%   |
|  |                  |        |        |                 |       |        |                              |      |        |                 |         |        |
|  | –                | –      | --     | 0               | 0     |        | 28                           | 44   | -36%   | 244             | 240     | 2%     |
|  | 33,321           | 33,364 | 0%     | 3,110           | 2,849 | 9%     | 828                          | 808  | 2%     | 137,552         | 130,510 | 5%     |
|  |                  |        |        |                 |       |        |                              |      |        |                 |         |        |
|  |                  |        |        |                 |       |        |                              |      |        |                 |         |        |
|  | 12.6%            | 11.8%  |        | 6.9%            | 6.8%  |        |                              |      |        | 19.1%           | 18.5%   |        |
|  | 9.3%             | 8.5%   |        | 5.8%            | 5.8%  |        |                              |      |        | 15.1%           | 14.5%   |        |
|  | 3.3%             | 3.4%   |        | 1.1%            | 1.0%  |        |                              |      |        | 4.0%            | 4.0%    |        |
|  | 12.3%            | 9.1%   |        | 6.6%            | 4.7%  |        |                              |      |        | 12.0%           | 11.0%   |        |
|  | 7.8%             | 7.1%   |        | 22.2%           | 22.8% |        |                              |      |        | 11.6%           | 10.5%   |        |

The consolidated segment reporting by business segment is an integral part of the notes.  
The following notes are an integral part of the consolidated financial statements.

## FRESENIUS SE & CO. KGAA (UNTIL JANUARY 28, 2011: FRESENIUS SE)

### CONSOLIDATED SEGMENT REPORTING

by region

| € in millions                                | Europe        |        |        | North America |        |        |
|----------------------------------------------|---------------|--------|--------|---------------|--------|--------|
|                                              | 2010          | 2009   | Change | 2010          | 2009   | Change |
| Sales                                        | <b>6,515</b>  | 6,045  | 8%     | <b>7,020</b>  | 6,113  | 15%    |
| contribution to consolidated sales           | <b>41%</b>    | 42%    |        | <b>44%</b>    | 43%    |        |
| EBIT                                         | <b>723</b>    | 673    | 7%     | <b>1,347</b>  | 1,092  | 23%    |
| Depreciation and amortization                | <b>294</b>    | 271    | 8%     | <b>265</b>    | 232    | 14%    |
| Total assets                                 | <b>8,935</b>  | 7,763  | 15%    | <b>12,152</b> | 11,176 | 9%     |
| Capital expenditure, gross                   | <b>400</b>    | 350    | 14%    | <b>223</b>    | 229    | -3%    |
| Acquisitions, gross                          | <b>267</b>    | 136    | 96%    | <b>277</b>    | 98     | 183%   |
| Employees (per capita on balance sheet date) | <b>66,179</b> | 63,602 | 4%     | <b>46,082</b> | 44,590 | 3%     |

|  | Asia-Pacific |        |        | Latin America |        |        | Africa |       |        | Fresenius Group |         |        |
|--|--------------|--------|--------|---------------|--------|--------|--------|-------|--------|-----------------|---------|--------|
|  | 2010         | 2009   | Change | 2010          | 2009   | Change | 2010   | 2009  | Change | 2010            | 2009    | Change |
|  | 1,307        | 1,088  | 20%    | 814           | 641    | 27%    | 316    | 277   | 14%    | 15,972          | 14,164  | 13%    |
|  | 8%           | 8%     |        | 5%            | 5%     |        | 2%     | 2%    |        | 100%            | 100%    |        |
|  | 205          | 173    | 18%    | 107           | 87     | 23%    | 36     | 29    | 24%    | 2,418           | 2,054   | 18%    |
|  | 47           | 36     | 31%    | 27            | 19     | 42%    | 6      | 4     | 50%    | 639             | 562     | 14%    |
|  |              |        |        |               |        |        |        |       |        |                 |         |        |
|  | 1,610        | 1,233  | 31%    | 755           | 616    | 23%    | 125    | 94    | 33%    | 23,577          | 20,882  | 13%    |
|  | 73           | 50     | 46%    | 52            | 37     | 41%    | 10     | 5     | 100%   | 758             | 671     | 13%    |
|  | 89           | 12     | --     | 11            | 13     | -15%   | –      | 1     | -100%  | 644             | 260     | 148%   |
|  |              |        |        |               |        |        |        |       |        |                 |         |        |
|  | 12,258       | 10,356 | 18%    | 11,726        | 10,804 | 9%     | 1,307  | 1,158 | 13%    | 137,552         | 130,510 | 5%     |

The consolidated segment reporting by region is an integral part of the notes.  
The following notes are an integral part of the consolidated financial statements.

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## GENERAL NOTES

### 1. PRINCIPLES

#### I. GROUP STRUCTURE

Fresenius is a worldwide operating health care group with products and services for dialysis, the hospital and the medical care of patients at home. Further areas of activity are hospital operations as well as engineering and services for hospitals and other health care facilities. In addition to the activities of the parent company Fresenius SE & Co. KGaA, Bad Homburg v.d. Höhe, the operating activities were split into the following legally-independent business segments (subgroups) in the fiscal year 2010:

- ▶ Fresenius Medical Care
- ▶ Fresenius Kabi
- ▶ Fresenius Helios
- ▶ Fresenius Vamed

Fresenius Medical Care is the world's leading provider of dialysis products and dialysis care for the life-saving treatment of patients with chronic kidney failure. Fresenius Medical Care treats 214,648 patients in its 2,757 own dialysis clinics.

Fresenius Kabi is a globally active company, providing infusion therapies, intravenously administered generic drugs, clinical nutrition and the related medical devices. The products are used for the therapy and care of critically and chronically ill patients in and outside the hospital. In Europe, Fresenius Kabi is the market leader in infusion therapies and clinical nutrition, in the U.S., the company is a leading provider of intravenously administered generic drugs.

Fresenius Helios is one of the largest private hospital operators in Germany.

Fresenius Vamed offers engineering and services for hospitals and other health care facilities.

Fresenius SE & Co. KGaA owned 35.74% of the ordinary voting shares of Fresenius Medical Care AG & Co. KGaA (FMC-AG & Co. KGaA) and 35.27% of the total subscribed capital of FMC-AG & Co. KGaA at the end of the fiscal year 2010. Fresenius Medical Care Management AG, the general partner

of FMC-AG & Co. KGaA, is a wholly-owned subsidiary of Fresenius SE & Co. KGaA. Therefore, FMC-AG & Co. KGaA is fully consolidated in the consolidated financial statements of the Fresenius Group. Fresenius SE & Co. KGaA continued to hold 100% of the management companies of the business segments Fresenius Kabi (Fresenius Kabi AG) as well as Fresenius Helios and Fresenius Vamed (both held through Fresenius ProServe GmbH) on December 31, 2010. Through Fresenius ProServe GmbH, Fresenius SE & Co. KGaA holds a 99% stake in HELIOS Kliniken GmbH and a 77% stake in VAMED AG. In addition, Fresenius SE & Co. KGaA holds interests in companies with holding functions regarding real estate, financing and insurance, as well as in Fresenius Netcare GmbH which offers services in the field of information technology and in Fresenius Biotech Beteiligungs GmbH.

The reporting currency in the Fresenius Group is the euro. In order to make the presentation clearer, amounts are mostly shown in million euros. Amounts under €1 million after rounding are marked with "–".

#### II. CHANGE OF FRESENIUS SE'S LEGAL FORM INTO A PARTNERSHIP LIMITED BY SHARES (KOMMANDITGESELLSCHAFT AUF AKTIEN) AND CONVERSION OF THE PREFERENCE SHARES INTO ORDINARY SHARES

On May 12, 2010, Fresenius SE's Annual General Meeting approved the change of Fresenius SE's legal form into a partnership limited by shares (Kommanditgesellschaft auf Aktien, KGaA) with the name Fresenius SE & Co. KGaA in combination with the conversion of all non-voting preference shares into voting ordinary shares. The change of legal form as well as the conversion of shares was also approved by the preference shareholders through a special resolution.

Upon registration with the commercial register of the local court in Bad Homburg v.d. Höhe, the change of legal form into Fresenius SE & Co. KGaA became effective on January 28, 2011. According to the resolution passed, the holders of preference shares received one ordinary share of Fresenius SE & Co. KGaA for each preference share held in Fresenius SE; the ordinary shareholders received one ordinary share of Fresenius SE & Co. KGaA for each ordinary share held in Fresenius SE. The notional proportion of each non-par value

share in the subscribed capital as well as the subscribed capital itself remained unchanged. The change of Fresenius SE's legal form into a KGaA neither led to the liquidation of the Company nor to the formation of a new legal entity. The legal and commercial identity of the Company was preserved.

The legal form of the KGaA enables Fresenius to achieve the benefits of a single share class while maintaining the control position of the Else Kröner-Fresenius-Stiftung which held approximately 58% of the ordinary shares in Fresenius SE prior to the change. The European company Fresenius Management SE, a wholly-owned subsidiary of the Else Kröner-Fresenius-Stiftung, is the general partner (Komplementärin) of Fresenius SE & Co. KGaA. Concerning the personnel composition, the Management Board of Fresenius Management SE is identical to the previous Fresenius SE Management Board and has taken over the management of Fresenius SE & Co. KGaA. The Else Kröner-Fresenius-Stiftung's right to provide the general partner is tied to the holding of more than 10% of the subscribed capital in Fresenius SE & Co. KGaA.

In addition to the existing Conditional Capitals, three Authorized Capitals were created with the articles of association that were determined by the Annual General Meeting. These can be used as an alternative source of shares for Fresenius SE & Co. KGaA's three stock option plans.

The effects of the change of legal form are described in the respective notes.

The registration of the change of legal form with the commercial register was finally cleared following a court settlement of pending disputes initiated by minority shareholders.

In order to improve readability, the new legal form Fresenius SE & Co. KGaA, effective since January 28, 2011, is used in this report, if expedient.

### III. BASIS OF PRESENTATION

The accompanying consolidated financial statements have been prepared in accordance with the United States Generally Accepted Accounting Principles (U.S. GAAP).

Fresenius SE & Co. KGaA as a stock exchange listed company with a domicile in a member state of the European Union fulfills its obligation to prepare and publish the consolidated financial statements in accordance with the International Financial Reporting Standards (IFRS) applying Section 315a of the German Commercial Code (HGB). Simultaneously, the Fresenius Group voluntarily prepares and publishes the consolidated financial statements in accordance with U.S. GAAP.

In order to improve readability, various items are aggregated in the consolidated statement of financial position and in the consolidated statement of income. These items are shown separately in the notes to provide useful information to the readers of the consolidated financial statements.

The consolidated statement of financial position is classified on the basis of the liquidity of assets and liabilities; the consolidated statement of income is classified using the cost-of-sales accounting format.

### IV. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### a) Principles of consolidation

The financial statements of consolidated entities have been prepared using uniform accounting methods.

Capital consolidation is performed by offsetting investments in subsidiaries against the underlying revaluated equity at the date of acquisition. The identifiable assets and liabilities of subsidiaries as well as the noncontrolling interest are recognized at their fair values. Any remaining debit balance is recognized as goodwill and is tested at least once a year for impairment.

Associated companies (usually 20% to 50% of voting rights) are consolidated using the equity method. Investments that are not classified as in associated companies are recorded at acquisition costs.

All significant intercompany sales, expenses, income, receivables and payables are eliminated. Profits and losses on items of property, plant and equipment and inventory



acquired from other Group entities are also eliminated. Deferred tax assets and liabilities are recognized on temporary differences resulting from consolidation procedures.

Noncontrolling interest subject to put provisions is recognized between liabilities and equity in the consolidated statement of financial position. Noncontrolling interest not subject to put provisions comprises the interest of noncontrolling shareholders in the consolidated equity of Group entities. Profits and losses attributable to the noncontrolling shareholders are separately disclosed in the consolidated statement of income.

## b) Composition of the Group

The consolidated financial statements include all material companies in which Fresenius SE & Co. KGaA has legal or effective control. In addition, the Fresenius Group consolidates variable interest entities (VIEs) for which it is deemed the primary beneficiary.

Fresenius Medical Care entered into various arrangements with certain dialysis clinics and a dialysis product distributor to provide management services, financing and product supply. The dialysis clinics and the dialysis product distributor have either negative equity or are unable to provide their own funding and operations. Therefore, Fresenius Medical Care has agreed to fund their operations through loans.

The compensation for the funding can carry interest, exclusive product supply agreements or Fresenius Medical Care is entitled to a prorata share of profits, if any, and has a right of first refusal in the event the owners sell the business or assets. These clinics and the dialysis product distributor are VIEs in which Fresenius Medical Care has been determined to be the primary beneficiary and which therefore have been fully consolidated. They generated approximately €100 million (US\$133 million) and €81 million (US\$113 million) in sales in 2010 and 2009, respectively. Fresenius Medical Care provided funding to these VIEs through loans and accounts receivable of €83 million (US\$111 million) and €29 million (US\$42 million) in 2010 and 2009, respectively. Relating to the VIEs, in 2010, Fresenius Medical Care consolidated assets

in an amount of €130 million (US\$174 million), liabilities in an amount of €89 million (US\$119 million) and €41 million (US\$55 million) in equity. In 2009, €74 million (US\$106 million) assets, €42 million (US\$60 million) liabilities and €32 million (US\$46 million) equity were consolidated. The interest held by the other shareholders in the consolidated VIEs is reported as noncontrolling interest in the consolidated statement of financial position at December 31, 2010.

Fresenius Vamed participates in long-term project entities which are set up for long-term defined periods of time and for the specific purpose of constructing and operating thermal centers. Some of these project entities qualify as VIEs, in which Fresenius Vamed is not the primary beneficiary based on the cash flow analysis of the involved parties. The project entities generated approximately €54 million in sales in 2010 (2009: €32 million). The VIEs finance themselves mainly through debt, profit participation rights and investment grants. Assets and liabilities relating to the VIEs are not material. Fresenius Vamed made no payments to the VIEs other than contractually stipulated. From today's perspective and due to the contractual situation, Fresenius Vamed is not exposed to any material risk of loss from these VIEs.

The consolidated financial statements of 2010 included, in addition to Fresenius SE & Co. KGaA, 144 (2009: 136) German and 972 (2009: 912) foreign companies.

The composition of the Group changed as follows:

|                                 | Germany    | Abroad     | Total        |
|---------------------------------|------------|------------|--------------|
| <b>December 31, 2009</b>        | <b>136</b> | <b>912</b> | <b>1,048</b> |
| Additions                       | 12         | 122        | 134          |
| of which newly founded          | 2          | 48         | 50           |
| of which acquired               | 9          | 65         | 74           |
| Disposals                       | 4          | 62         | 66           |
| of which no longer consolidated | 2          | 36         | 38           |
| of which merged                 | 2          | 26         | 28           |
| <b>December 31, 2010</b>        | <b>144</b> | <b>972</b> | <b>1,116</b> |

17 companies (2009: 10) were accounted for under the equity method.

The complete list of the investments of Fresenius SE & Co. KGaA, registered office in Bad Homburg v. d. H., will be submitted to the electronic Federal Gazette and the electronic companies register.

In 2010, the following fully consolidated German subsidiaries of the Fresenius Group applied the exemption provided in Sections 264 (3) and 264b, respectively, of the German Commercial Code (HGB):

| Name of the company                                               | Registered office    |
|-------------------------------------------------------------------|----------------------|
| <b>Corporate/Other</b>                                            |                      |
| Fresenius Biotech GmbH                                            | Gräfelfing           |
| Fresenius Biotech Beteiligungs GmbH                               | Bad Homburg v. d. H. |
| Fresenius Immobilien-Verwaltungs-GmbH & Co. Objekt Friedberg KG   | Bad Homburg v. d. H. |
| Fresenius Immobilien-Verwaltungs-GmbH & Co. Objekt St. Wendel KG  | Bad Homburg v. d. H. |
| Fresenius Immobilien-Verwaltungs-GmbH & Co. Objekt Schweinfurt KG | Bad Homburg v. d. H. |
| Fresenius Netcare GmbH                                            | Bad Homburg v. d. H. |
| Fresenius ProServe GmbH                                           | Bad Homburg v. d. H. |
| FPS Immobilien Verwaltungs GmbH & Co. Reichenbach KG              | Bad Homburg v. d. H. |
| ProServe Krankenhaus Beteiligungs-gesellschaft mbH & Co. KG       | München              |
| <b>Fresenius Kabi</b>                                             |                      |
| Fresenius HemoCare GmbH                                           | Bad Homburg v. d. H. |
| Fresenius HemoCare Beteiligungs GmbH                              | Bad Homburg v. d. H. |
| Fresenius Kabi AG                                                 | Bad Homburg v. d. H. |
| Fresenius Kabi Deutschland GmbH                                   | Bad Homburg v. d. H. |
| Hosped GmbH                                                       | Friedberg            |
| MC Medizintechnik GmbH                                            | Alzenau              |
| V. Krütten Medizinische Einmalgeräte GmbH                         | Idstein              |

| Name of the company                           | Registered office    |
|-----------------------------------------------|----------------------|
| <b>Fresenius Helios</b>                       |                      |
| HELIOS Agnes Karll Krankenhaus GmbH           | Bochum               |
| HELIOS Care GmbH                              | Berlin               |
| HELIOS Catering GmbH                          | Berlin               |
| HELIOS Kids in Pflege GmbH                    | Geesthacht           |
| HELIOS Klinik Dresden-Wachwitz GmbH           | Dresden              |
| HELIOS Klinik Geesthacht GmbH                 | Geesthacht           |
| HELIOS Klinik Lengerich GmbH                  | Lengerich            |
| HELIOS Kliniken GmbH                          | Berlin               |
| HELIOS Kliniken Breisgau-Hochschwarzwald GmbH | Müllheim             |
| HELIOS Kliniken Leipziger Land GmbH           | Borna                |
| HELIOS Klinikum Bad Saarow GmbH               | Bad Saarow           |
| HELIOS Klinikum Erfurt GmbH                   | Erfurt               |
| HELIOS Klinikum Wuppertal GmbH                | Wuppertal            |
| HELIOS Privatkliniken GmbH                    | Bad Homburg v. d. H. |
| HELIOS Schlossbergklinik Oberstaufen GmbH     | Oberstaufen          |
| HELIOS Service GmbH                           | Berlin               |
| HELIOS Versorgungszentren GmbH                | Berlin               |
| HELIOS Versorgungszentrum Bad Saarow GmbH     | Bad Saarow           |
| HELIOS Vogtland-Klinikum Plauen GmbH          | Plauen               |
| HUMAINE Kliniken GmbH                         | Berlin               |
| Poliklinik am HELIOS Klinikum Buch GmbH       | Berlin               |
| Senioren- und Pflegeheim Erfurt GmbH          | Erfurt               |
| St. Josefs-Hospital GmbH                      | Bochum               |

### c) Classifications

The Fresenius Group has reclassified and revalued noncontrolling interest subject to put provisions in the consolidated statement of financial position. As a result, at December 31, 2009, the Fresenius Group reclassified €125 million from noncontrolling interest, €38 million from capital reserve and -€2 million from accumulated other comprehensive loss to noncontrolling interest subject to put provisions. The Fresenius Group has also renamed the remaining balance of noncontrolling interest as noncontrolling interest not subject to put provisions. The consolidated statement of changes in equity has been adjusted accordingly. There is no impact on the consolidated statement of income.

Certain other items in the consolidated financial statements of 2009 have been reclassified to conform with the presentation in 2010.

#### **d) Hyperinflationary accounting**

Due to the inflationary development in Venezuela, Fresenius Medical Care's subsidiaries operating in Venezuela apply Financial Accounting Standards Board Accounting Standards Codification (FASB ASC) Topic 830, Foreign Currency Matters, as of January 1, 2010. All gains and losses resulting from the remeasurement of assets and liabilities were recognized in the consolidated statement of income.

#### **e) Sales recognition policy**

Sales from services are recognized at amounts estimated to be received under reimbursement arrangements with third party payors. Sales are recognized on the date services and related products are provided and the customer is obligated to pay.

Product sales are recognized when title to the product passes to the customers, either at the time of shipment, upon receipt by the customer or upon any other terms that clearly define passage of title. As product returns are not typical, no return allowances are established. In the event a return is required, the appropriate reductions to sales, cost of sales and accounts receivable are made. Sales are stated net of discounts, allowances and rebates.

In the business segment Fresenius Vamed, sales for long-term production contracts are recognized using the percentage of completion (PoC) method when the accounting conditions are met. The sales to be recognized are calculated as a percentage of the costs already incurred based on the estimated total cost of the contract, milestones laid down in the contract or the percentage of completion. Profits are only recognized when the outcome of a production contract accounted for using the PoC method can be measured reliably.

Any tax assessed by a governmental authority that is incurred as a result of a sales transaction (e. g. sales tax) is excluded from sales and the related sale is reported on a net basis.

#### **f) Government grants**

Public sector grants are not recognized until there is reasonable assurance that the respective conditions are met and the grants will be received. At first, the grant is recorded as a liability and as soon as the asset is acquired it is offset against the acquisition costs. Expense-related grants are recognized as income in the periods in which related costs occur.

#### **g) Research and development expenses**

Research is the original and planned investigation undertaken with the prospect of gaining new scientific or technical knowledge and understanding. Development is the technical and commercial implementation of research findings. Research and development expenses are expensed as incurred.

#### **h) Impairment**

The Fresenius Group reviews the carrying amounts of its property, plant and equipment, its intangible assets as well as other non-current assets for impairment whenever events or changes in circumstances indicate that the carrying amount of these assets may not be recoverable. Recoverability of these assets is measured by a comparison of the carrying amount of an asset to the future net cash flow directly associated with the asset. If assets are considered to be impaired, the impairment recognized is the amount by which the carrying amount exceeds the fair value of the asset. The Fresenius Group uses a discounted cash flow approach or other methods, if appropriate, to assess fair value. Long-lived assets to be disposed of by sale are reported at the lower of carrying amount or fair value less cost to sell and depreciation is ceased.

#### **i) Capitalized interest**

The Fresenius Group includes capitalized interest as part of the cost of the asset if they are directly attributable to the acquisition, construction or manufacture of qualifying assets. For the fiscal years 2010 and 2009, interest of €4 million and

€8 million, based on an average interest rate of 4.90% and 5.56%, respectively, was recognized as a component of the cost of assets.

#### **j) Deferred taxes**

Deferred tax assets and liabilities are recognized for the future consequences attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. Furthermore, deferred taxes are recognized on consolidation procedures affecting net income attributable to Fresenius SE & Co. KGaA. Deferred tax assets also include claims to future tax reductions which arise from the more likely than not expected usage of existing tax losses available for carryforward. The recognition of deferred tax assets from net operating losses and their utilization is based on the budget planning of the Fresenius Group and implemented tax strategies.

Deferred taxes are computed using enacted or adopted tax rates in the relevant national jurisdictions when the amounts are recovered. Tax rates, which will be valid in the future, but are not adopted till the date of the statement of financial position, are not considered.

The realizability of the carrying amount of a deferred tax asset is reviewed at each date of the statement of financial position. In assessing the realizability of deferred taxes, the Management considers whether it is more likely than not that some portion or all of a deferred tax asset will be realized or whether deferred tax liabilities will be reversed. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. The Management considers the scheduled reversal of deferred tax liabilities and projected future taxable income in making this assessment.

If it is no longer more likely than not that sufficient taxable income will be available to allow the benefit of part or of the entire deferred tax asset to be utilized, the carrying amount of the deferred tax asset is reduced to that certain extent. The reduction is reversed to the date and extent that it becomes probable that sufficient taxable profit will be available.

#### **k) Unrecognized tax benefits**

The recognition and measurement of all tax positions taken or expected to be taken in a tax return requires a two step approach. The Fresenius Group must determine whether it is more likely than not that a tax position will be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. If the threshold is met, the tax position is measured at the largest amount of benefit that is greater than 50% likely of being realized upon ultimate settlement and is recognized in the consolidated financial statements.

#### **l) Earnings per ordinary share and preference share**

Basic earnings per ordinary share are computed by dividing net income attributable to Fresenius SE & Co. KGaA less preference amounts by the weighted-average number of ordinary shares and preference shares outstanding during the year. Basic earnings per preference share are derived by adding the preference per preference share to the basic earnings per ordinary share. Diluted earnings per share include the effect of all potentially dilutive instruments on ordinary shares and preference shares that would have been outstanding during the fiscal year. The awards granted under Fresenius' and Fresenius Medical Care's stock option plans can result in a dilutive effect.

#### **m) Cash and cash equivalents**

Cash and cash equivalents comprise cash funds and all short-term liquid investments with original maturities of up to three months (time deposits and securities).

#### **n) Trade accounts receivable**

Trade accounts receivable are stated at their nominal value less allowance for doubtful accounts. Allowances are estimated mainly on the basis of payment history to date, the age structure of balances and the contractual partner involved. In order to assess the appropriateness of allowances, the Fresenius Group checks regularly whether there have been any divergences to previous payment history.

#### **o) Inventories**

Inventories comprise all assets which are held for sale in the normal course of business (finished goods), in the process of production for such sale (work in process) or consumed in the production process or in the rendering of services (raw materials and purchased components).

Inventories are stated at the lower of acquisition and manufacturing cost (determined by using the average or first-in, first-out method) or market value. Manufacturing costs comprise direct costs, production and material overhead, including depreciation charges.

#### **p) Property, plant and equipment**

Property, plant and equipment are stated at acquisition and manufacturing cost less accumulated depreciation. Significant improvements are capitalized; repairs and maintenance costs that do not extend the useful lives of the assets are charged to expense as incurred. Depreciation on property, plant and equipment is calculated using the straight-line method over the estimated useful lives of the assets ranging from 4 to 50 years for buildings and improvements (with a weighted-average life of 16 years) and 3 to 15 years for machinery and equipment (with a weighted-average life of 10 years).

#### **q) Intangible assets with finite useful lives**

Intangible assets with finite useful lives, for example patents, product and distribution rights, non-compete agreements, technology as well as licenses to manufacture, distribute and sell pharmaceutical drugs, are amortized using the straight-line method over their respective useful lives to their residual values and reviewed for impairment (see note 1.IV h, Impairment). The useful life of patents, product and distribution rights ranges from 5 to 20 years. Non-compete agreements with finite useful lives have useful lives ranging from 2 to 25 years with an average useful life of 8 years. The useful

life of management contracts with finite useful lives ranges from 5 to 40 years. Technology has a finite useful life of 15 years. Licenses to manufacture, distribute and sell pharmaceutical drugs are amortized over the contractual license period based upon the annual estimated units of sale of the licensed product. All other intangible assets are amortized over their individual estimated useful lives between 3 and 15 years.

Losses in value of a lasting nature are impaired.

#### **r) Goodwill and other intangible assets with indefinite useful lives**

The Fresenius Group identified intangible assets with indefinite useful lives because, based on an analysis of all of the relevant factors, there is no foreseeable limit to the period over which those assets are expected to generate net cash inflows for the Group. The identified intangible assets with indefinite useful lives such as trade names and certain qualified management contracts acquired in a purchase method business combination are recognized and reported apart from goodwill. They are recorded at acquisition costs. Goodwill and intangible assets with indefinite useful lives are not amortized but tested for impairment annually or when an event becomes known that could trigger an impairment (impairment test).

To perform the annual impairment test of goodwill, the Fresenius Group identified several reporting units and determined their carrying amount by assigning the assets and liabilities, including the existing goodwill and intangible assets, to those reporting units. A reporting unit is usually defined one level below the segment level according to regions or legal entities. Five reporting units were identified in the segment Fresenius Medical Care (Europe, Latin America, Asia-Pacific, North American Renal Therapy Group, North American Fresenius Medical Services). In the segment Fresenius Kabi

exists one reporting unit for the region North America and one reporting unit for the business outside of North America. According to the regional organizational structure, the segment Fresenius Helios consists of seven reporting units, which are managed by a central division. The segment Fresenius Vamed consists of two reporting units (Project business and Service business). At least once a year, the Fresenius Group compares the fair value of each reporting unit to the reporting unit's carrying amount. The fair value of a reporting unit is determined using a discounted cash flow approach based upon the cash flow expected to be generated by the reporting unit. In case that the fair value of the reporting unit is less than its carrying amount, the difference is at first recorded as an impairment of the fair value of the goodwill.

To evaluate the recoverability of separable intangible assets with indefinite useful lives, the Fresenius Group compares the fair values of these intangible assets with their carrying amounts. An intangible asset's fair value is determined using a discounted cash flow approach and other methods, if appropriate.

The recoverability of goodwill and other separable intangible assets with indefinite useful lives recorded in the Group's consolidated statement of financial position was verified. As a result, the Fresenius Group did not record any impairment losses in 2010 and 2009.

## **s) Leases**

Leased assets assigned to the Fresenius Group based on the risk and rewards approach (finance leases) are recognized as property, plant and equipment and measured on receipt date at the present values of lease payments as long as their fair values are not lower. Leased assets are depreciated in straight-line over their useful lives. If there is doubt as to whether title to the asset passes at a later stage and there is no opportunity purchase option the asset is depreciated over the lease term, if this is shorter. An impairment loss is recognized if the recoverable amount is lower than the amortized cost of the leased asset.

Finance lease liabilities are measured at the present value of the future lease payments and are recognized as financial liability.

Property, plant and equipment, rented by the Fresenius Group, is accounted for at its purchase costs. Its depreciation is calculated using the straight-line method over the leasing time and its expected residual value.

## **t) Financial instruments**

A financial instrument is any contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another entity. The following categories (according to International Accounting Standard 39, Financial Instruments: Recognition and Measurement) are relevant for the Fresenius Group: loans and receivables, financial liabilities measured at amortized cost as well as financial liabilities/assets measured at fair value. Other categories are immaterial or not existing in the Fresenius Group. According to their character, the Fresenius Group classifies its financial instruments into the following classes: cash and cash equivalents, assets recognized at carrying amount, liabilities recognized at carrying amount, derivatives for hedging purposes as well as liabilities recognized at fair value and noncontrolling interest subject to put provisions recognized at fair value.

The relationship between classes and categories as well as the reconciliation to the consolidated statement of financial position is shown in tabular form in note 30, Financial instruments.

The Fresenius Group has potential obligations to purchase the noncontrolling interests held by third parties in certain of its consolidated subsidiaries. These obligations are in the form of put provisions and are exercisable at the third-party owners' discretion within specified periods as outlined in each specific put provision. If these put provisions were exercised, the Fresenius Group would be required to purchase all or part of third-party owners' noncontrolling interests at the appraised fair value. The methodology the Fresenius Group uses to estimate the fair values of the noncontrolling interest subject to put provisions assumes the greater of net book value or a

multiple of earnings, based on historical earnings, development stage of the underlying business and other factors. The estimated fair values of the noncontrolling interests subject to these put provisions can also fluctuate and the implicit multiple of earnings at which these noncontrolling interest obligations may ultimately be settled could vary significantly from Fresenius Group's current estimates depending upon market conditions.

Derivative financial instruments which primarily include foreign currency forward contracts and interest rate swaps are recognized at fair value as assets or liabilities in the consolidated statement of financial position. Changes in the fair value of derivative financial instruments classified as fair value hedges and in the corresponding underlyings are recognized periodically in earnings. The effective portion of changes in fair value of cash flow hedges is recognized in accumulated other comprehensive income (loss) in shareholders' equity until the secured underlying transaction is realized (see note 30, Financial instruments). The ineffective portion of cash flow hedges is recognized in current earnings. Changes in the fair value of derivatives that are not designated as hedging instruments are recognized periodically in earnings.

#### **u) Liabilities**

Liabilities are generally stated at present value which normally corresponds to the value of products or services which are delivered. As a general policy, short-term liabilities are measured at their repayment amount.

#### **v) Legal contingencies**

In the ordinary course of Fresenius Group's operations, the Fresenius Group is involved in litigation, arbitration, administrative procedure and investigations relating to various aspects of its business. The Fresenius Group regularly analyzes current information about such claims for probable losses and provides accruals for such matters, including estimated expenses for legal services, as appropriate. The

Fresenius Group utilizes its internal legal department as well as external resources for these assessments. In making the decision regarding the need for a loss accrual, the Fresenius Group considers the degree of probability of an unfavorable outcome and its ability to make a reasonable estimate of the amount of loss.

The filing of a suit or formal assertion of a claim, or the disclosure of any such suit or assertion, does not necessarily indicate that an accrual of a loss is appropriate.

#### **w) Other accrued expenses**

Accruals for taxes and other obligations are recognized when there is a present obligation to a third party arising from past events, it is probable that the obligation will be settled in the future and the amount can be reliably estimated.

Tax accruals include obligations for the current year and for prior years.

#### **x) Pension liabilities and similar obligations**

The Fresenius Group recognizes the underfunded status of its defined benefit plans, measured as the difference between the benefit obligation and plan assets at fair value, as a liability. Changes in the funded status of a plan, net of tax, resulting from actuarial gains or losses, prior service costs or costs that are not recognized as components of the net periodic benefit cost, will be recognized through accumulated other comprehensive income (loss) in the year in which they occur. Actuarial gains or losses and prior service costs are subsequently recognized as components of net periodic benefit cost when realized.

#### **y) Debt issuance costs**

Debt issuance costs are capitalized separate from the underlying debt and are amortized over the term of the related obligation.



### z) Stock option plans

In line with the standard for share-based payment, the Fresenius Group uses the modified prospective transition method. Under this transition method, compensation cost recognized in 2009 and in 2010 include applicable amounts of: (a) compensation cost of all stock-based payments granted prior to, but not yet vested as of, January 1, 2006; (b) compensation cost for all stock-based payments subsequent to January 1, 2006 (based on the grant-date fair value estimated).

### aa) Self-insurance programs

Under the insurance programs for professional, product and general liability, auto liability and worker's compensation claims, the largest subsidiary of Fresenius Medical Care AG & Co. KGaA, located in North America, is partially self-insured for professional liability claims. For all other coverages, Fresenius Medical Care AG & Co. KGaA assumes responsibility for incurred claims up to predetermined amounts above which third party insurance applies. Reported liabilities for the year represent estimated future payments of the anticipated expense for claims incurred (both reported and incurred but not reported) based on historical experience and existing claim activity. This experience includes both the rate of

claims incidence (number) and claim severity (cost) and is combined with individual claim expectations to estimate the reported amounts.

### bb) Foreign currency translation

The reporting currency is the euro. Substantially all assets and liabilities of the foreign subsidiaries are translated at mid-closing rate on the date of the statement of financial position, while income and expenses are translated at average exchange rates. Adjustments due to foreign currency translation fluctuations are excluded from net earnings and are reported in accumulated other comprehensive income (loss). In addition, the translation adjustments of certain intercompany borrowings, which are considered foreign equity investments, are also reported in accumulated other comprehensive income (loss).

Gains and losses arising from the translation of foreign currency positions as well as those arising from the elimination of foreign currency intercompany loans are recorded as general and administrative expenses, as far as they are not considered foreign equity instruments. In the fiscal year 2010, only immaterial losses resulted out of this transaction.

The exchange rates of the main currencies affecting foreign currency translation developed as follows:

|                        | Year-end exchange rate <sup>1</sup> |               | Average exchange rate |         |
|------------------------|-------------------------------------|---------------|-----------------------|---------|
|                        | Dec. 31, 2010                       | Dec. 31, 2009 | 2010                  | 2009    |
| U.S. dollar per €      | 1.3362                              | 1.4406        | 1.3259                | 1.3948  |
| Pound sterling per €   | 0.86075                             | 0.8881        | 0.85805               | 0.8909  |
| Swedish krona per €    | 8.9655                              | 10.2520       | 9.5387                | 10.6191 |
| Chinese renminbi per € | 8.8220                              | 9.8350        | 8.9729                | 9.5277  |
| Japanese yen per €     | 108.65                              | 133.16        | 116.32                | 130.34  |

<sup>1</sup> Mid-closing rate on the date of the statement of financial position

### cc) Fair value hierarchy

The three-tier fair value hierarchy defined in Financial Accounting Standard Boards Accounting Standards Codification (FASB ASC) Topic 820, Fair Value Measurements and Disclosures, classifies assets and liabilities recognized at fair value

based on the inputs used in estimating the fair value. Level 1 is defined as observable inputs, such as quoted prices in active markets. Level 2 is defined as inputs other than quoted prices in active markets that are directly or indirectly observable. Level 3 is defined as unobservable inputs for which little

or no market data exists, therefore requiring (the company) to develop its own assumptions. The three-tier fair value hierarchy is used in note 25, Pensions and similar obligations and in note 30, Financial instruments.

#### dd) Use of estimates

The preparation of consolidated financial statements in conformity with U.S. GAAP requires the management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of income and expenses during the reporting period. Actual results could differ from those estimates.

#### ee) Receivables management

The entities of the Fresenius Group perform ongoing evaluations of the financial situation of their customers and generally do not require a collateral from the customers for the supply of products and provision of services. Approximately 18% and 19% of Fresenius Group's sales were earned and subject to the regulations under governmental health care programs, Medicare and Medicaid, administered by the United States government in 2010 and 2009, respectively.

#### ff) Recent pronouncements, applied

The Fresenius Group has prepared its consolidated financial statements at December 31, 2010 in conformity with U.S. GAAP that have to be applied for fiscal years beginning on January 1, 2010 or U.S. GAAP that can be applied earlier on a voluntary basis.

The Fresenius Group applied the following standards, as far as they are relevant for Fresenius Group's business, for the first time in 2010:

In July 2010, the Financial Accounting Standards Board (FASB) issued **Accounting Standards Update 2010-20** (ASU 2010-20), Disclosures about the Credit Quality of Financing Receivables and the Allowance for Credit Losses.

ASU 2010-20 is an update of FASB ASC Topic 310, Receivables. This update requires enhanced disclosures on a disaggregated basis about:

- ▶ the nature of the credit risk inherent in the portfolio of financing receivables
- ▶ how that risk is analyzed and assessed in arriving at the allowance for credit losses
- ▶ the changes and reasons for those changes in the allowance for credit losses

The disclosures required under ASU 2010-20 as of the end of a reporting period are effective for interim and annual reporting periods ending on or after December 15, 2010. Disclosures about activity that occurs during a reporting period are effective for interim and annual reporting periods beginning on or after December 15, 2010. Earlier adoption is permitted. The Fresenius Group implemented the amendments prescribed by ASU 2010-20 as of January 1, 2010.

In June 2009, the FASB issued **Accounting Standards Update 2009-17** (ASU 2009-17), FASB ASC Topic 810, Consolidations – Improvements to Financial Reporting by Enterprises Involved with Variable Interest Entities. ASU 2009-17 requires reporting entities to evaluate former Qualifying Special Purpose Entities (QSPE) for consolidation and changes the approach to determining a Variable Interest Entity's (VIE) primary beneficiary from a quantitative assessment to a qualitative assessment designed to identify a controlling financial interest. In addition, ASU 2009-17 increases the frequency of required reassessments to determine whether a company is the primary beneficiary of a VIE. It also clarifies, but does not significantly change, the characteristics that identify a VIE.

In June 2009, the FASB issued **Accounting Standards Update 2009-16** (ASU 2009-16), FASB ASC Topic 860, Transfers and Servicing – Accounting for Transfers of Financial Assets. ASU 2009-16 eliminates the QSPE concept, creates more stringent conditions for reporting a transfer of a portion of a financial asset as a sale, clarifies the derecognition criteria, revises how retained interests are initially measured, and

removes the guaranteed mortgage securitization recharacterization provisions. ASU 2009-16 also requires additional year-end and interim disclosures about risks related to VIEs.

The Fresenius Group implemented the amendments prescribed by ASU 2009-16 and ASU 2009-17 as of January 1, 2010, which did not have a material impact on the results of the Fresenius Group in the fiscal year 2010.

#### **gg) Recent pronouncements, not yet applied**

The FASB did not issue any for the Fresenius Group relevant new standard, which is mandatory for fiscal years commencing on or after January 1, 2011.

The Fresenius Group does not generally adopt new accounting standards before compulsory adoption date.

### **V. CRITICAL ACCOUNTING POLICIES**

In the opinion of the Management of the Fresenius Group, the following accounting policies and topics are critical for the consolidated financial statements in the present economic environment. The influences and judgments as well as the uncertainties which affect them are also important factors to be considered when looking at present and future operating earnings of the Fresenius Group.

#### **a) Recoverability of goodwill and intangible assets with indefinite useful lives**

The amount of intangible assets, including goodwill, product rights, tradenames and management contracts, represents a considerable part of the total assets of the Fresenius Group. At December 31, 2010 and December 31, 2009, the carrying amount of goodwill and non-amortizable intangible assets with indefinite useful lives was €11,641 million and €10,670 million, respectively. This represented 49% and 51%, respectively, of total assets.

An impairment test of goodwill and non-amortizable intangible assets with indefinite useful lives is performed at least once a year, or if events occur or circumstances change that would indicate the carrying amount might be impaired (Impairment test).

To determine possible impairments of these assets, the fair value of the reporting units is compared to their carrying amount. The fair value of each reporting unit is determined using estimated future cash flows for the unit discounted by a weighted-average cost of capital (WACC) specific to that reporting unit. Estimating the discounted future cash flows involves significant assumptions, especially regarding future reimbursement rates and sales prices, number of treatments, sales volumes and costs. In determining discounted cash flows, the Fresenius Group utilizes for every reporting unit its three-year budget, projections for years 4 to 10 and a corresponding growth rate for all remaining years. These growth rates are 0% to 4% for Fresenius Medical Care, 3% for Fresenius Kabi and 1% for Fresenius Helios and Fresenius Vamed. Projections for up to 10 years are possible due to the stability of Fresenius Group's business, which is largely independent from the economic cycle. The discount factor is determined by the WACC of the respective reporting unit. Fresenius Medical Care's WACC consisted of a basic rate of 6.38% for 2010. This basic rate is then adjusted by a country-specific risk rate within each reporting unit. In 2010, WACCs (after tax) for the reporting units of Fresenius Medical Care ranged from 6.38% to 13.56%. In the business segments Fresenius Kabi, Fresenius Helios and Fresenius Vamed, the WACC (after tax) was 5.88%, country-specific adjustments did not occur. If the fair value of the reporting unit is less than its carrying amount, the difference is recorded as an impairment of the fair value of the goodwill at first. An increase of the WACC (after tax) by 0.5% would not have resulted in the recognition of an impairment loss in 2010.

A prolonged downturn in the health care industry with lower than expected increases in reimbursement rates and/or higher than expected costs for providing health care services could adversely affect the estimated future cash flows of certain countries or segments. Future adverse changes in a reporting unit's economic environment could affect the discount rate. A decrease in the estimated future cash flows and/or a decline in the reporting unit's economic environment could result in impairment charges to goodwill and other intangible assets with indefinite useful lives which could materially and adversely affect Fresenius Group's future operating results.

#### **b) Legal contingencies**

The Fresenius Group is involved in several legal matters arising from the ordinary course of its business. The outcome of these matters may have a material effect on the financial position, results of operations or cash flows of the Fresenius Group. For details, please see note 29, Commitments and contingent liabilities.

The Fresenius Group regularly analyzes current information about such claims for probable losses and provides accruals for such matters, including estimated expenses for legal services, as appropriate. The Fresenius Group utilizes its internal legal department as well as external resources for these assessments. In making the decision regarding the need for a loss accrual, the Fresenius Group considers the degree of probability of an unfavorable outcome and its ability to make a reasonable estimate of the amount of loss.

The filing of a suit or formal assertion of a claim, or the disclosure of any such suit or assertion, does not necessarily indicate that an accrual of a loss is appropriate.

#### **c) Allowance for doubtful accounts**

Trade accounts receivable are a significant asset and the allowance for doubtful accounts is a significant estimate made by the Management. Trade accounts receivable were €2,935 million and €2,509 million in 2010 and 2009, respectively, net of allowance. Approximately two thirds of receivables derive from the business segment Fresenius Medical Care and mainly relate to the dialysis care business in North America.

The major debtors or debtor groups of trade accounts receivable were U.S. Medicare and Medicaid health care programs as well as private insurers in the U.S. with 14%, respectively, at December 31, 2010. Other than that, the Fresenius Group has no significant risk concentration, due to its international and heterogeneous customer structure.

The allowance for doubtful accounts was €317 million and €285 million as of December 31, 2010 and December 31, 2009, respectively.

Sales are invoiced at amounts estimated to be receivable under reimbursement arrangements with third party payors. Estimates for the allowance for doubtful accounts are mainly based on historic collection experience, taking into account the aging of accounts receivable and the contract partners. The Fresenius Group believes that these analyses result in a well-founded estimate of allowances for doubtful accounts. From time to time, the Fresenius Group reviews changes in collection experience to ensure the appropriateness of the allowances.

Deterioration in the ageing of receivables and collection difficulties could require that the Fresenius Group increases the estimates of allowances for doubtful accounts. Additional expenses for uncollectible receivables could have a significant negative impact on future operating results.

#### d) Self-insurance programs

Under the insurance programs for professional, product and general liability, auto liability and worker's compensation claims, the largest subsidiary of Fresenius Medical Care AG & Co. KGaA, located in North America, is partially self-insured for professional liability claims. For further details regarding the accounting policies for self-insurance programs, please see note 1. IV aa, Self-insurance programs.

## 2. ACQUISITIONS AND DIVESTITURES

### ACQUISITIONS AND DIVESTITURES

The Fresenius Group made acquisitions of €644 million and €260 million in 2010 and 2009, respectively. Of this amount, €516 million was paid in cash and €128 million was assumed obligations in 2010.

#### Fresenius Medical Care

In the year 2010, Fresenius Medical Care spent €596 million, primarily for acquisitions of dialysis clinics, the formation of a new renal pharmaceutical company with Galenica Ltd., the acquisition of licenses and the acquisition of Gambro's peritoneal dialysis business outside the United States.

In the year 2009, acquisition spending of Fresenius Medical Care in an amount of €138 million related mainly to the purchase of dialysis clinics.

#### Fresenius Kabi

In the year 2010, Fresenius Kabi spent €31 million on acquisitions, mainly for the purchase of the cas central compound-ing baden-württemberg GmbH, Germany and the Fortuna Herstellung GmbH, Germany.

In the year 2009, Fresenius Kabi spent €32 million on acquisitions. The acquisition of a Lactulose business division in Italy was the biggest individual project.

#### Fresenius Helios

In 2010, Fresenius Helios spent €13 million on acquisitions, mainly for the purchase of the Kreiskrankenhaus St. Marienberg in Helmstedt, Germany and medical centres.

In 2009, Fresenius Helios spent €79 million which mainly referred to the acquisitions of five acute care hospitals. Fresenius Helios entered into agreements to acquire these hospitals in December 2008 and closed the transactions in February 2009.

#### Fresenius Vamed

In the years 2010 and 2009, Fresenius Vamed did not make any material acquisition.

#### Corporate/Other

In 2009, in the segment Corporate/Other, €9 million milestone payments were paid in conjunction with the acquisition of additional shares of Trion Pharma GmbH, Germany, in 2007.

### IMPACTS ON FRESENIUS GROUP'S CONSOLIDATED FINANCIAL STATEMENTS RESULTING FROM ACQUISITIONS

In the fiscal year 2010, all acquisitions have been accounted for applying the purchase method and accordingly have been consolidated starting with the date of acquisition. Each single acquisition is not material. The excess of the total acquisition costs over the fair value of the net assets acquired was €480 million and €310 million in 2010 and 2009, respectively.

The purchase price allocations are not yet finalized for all acquisitions. Based on preliminary purchase price allocations, the recognized goodwill was €359 million and the other intangible assets were €121 million. Of this goodwill, €324 million is attributable to the acquisitions of Fresenius Medical Care, €30 million to Fresenius Kabi's acquisitions, €1 million to the acquisitions of Fresenius Helios and €4 million to the acquisitions of Fresenius Vamed.

The acquisitions completed in 2010 or included in the consolidated statements for the first time for a full year, contributed the following amounts to the development of sales and earnings:

| € in millions                                      | 2010 |
|----------------------------------------------------|------|
| Sales                                              | 159  |
| EBITDA                                             | 21   |
| EBIT                                               | 13   |
| Net interest                                       | -5   |
| Net income attributable to Fresenius SE & Co. KGaA | 3    |

The acquisitions increased the total assets of the Fresenius Group by €496 million.

## NOTES ON THE CONSOLIDATED STATEMENT OF INCOME

### 3. SPECIAL ITEMS

The consolidated statements of income for the years 2010 and 2009 include several special items relating to the acquisition of APP Pharmaceuticals, Inc. in 2008. The tables below reconcile adjusted earnings to earnings according to U.S. GAAP.

| € in millions                                 | Other financial result | Net income attributable to Fresenius SE & Co. KGaA |
|-----------------------------------------------|------------------------|----------------------------------------------------|
| <b>Earnings 2010, adjusted</b>                |                        | <b>660</b>                                         |
| Mandatory Exchangeable Bonds (mark-to-market) | -98                    | -70                                                |
| Contingent Value Rights (mark-to-market)      | 32                     | 32                                                 |
| <b>Earnings 2010 according to U.S. GAAP</b>   |                        | <b>622</b>                                         |

| € in millions                                 | Other financial result | Net income attributable to Fresenius SE & Co. KGaA |
|-----------------------------------------------|------------------------|----------------------------------------------------|
| <b>Earnings 2009, adjusted</b>                |                        | <b>514</b>                                         |
| Mandatory Exchangeable Bonds (mark-to-market) | -37                    | -26                                                |
| Contingent Value Rights (mark-to-market)      | 6                      | 6                                                  |
| <b>Earnings 2009 according to U.S. GAAP</b>   |                        | <b>494</b>                                         |

For further information regarding Mandatory Exchangeable Bonds and Contingent Value Rights see note 10, Other financial result.

### 4. SALES

Sales by activity were as follows:

| € in millions                             | 2010          | 2009   |
|-------------------------------------------|---------------|--------|
| Sales of services                         | <b>9,631</b>  | 8,643  |
| Sales of products and related goods       | <b>5,850</b>  | 5,097  |
| Sales from long-term production contracts | <b>490</b>    | 423    |
| Other sales                               | <b>1</b>      | 1      |
| <b>Sales</b>                              | <b>15,972</b> | 14,164 |

A sales analysis by business segment and region is shown in the segment information on pages 126 to 129.

### 5. COST OF SALES

Cost of sales comprised the following:

| € in millions                                    | 2010          | 2009  |
|--------------------------------------------------|---------------|-------|
| Costs of services                                | <b>7,144</b>  | 6,519 |
| Manufacturing cost of products and related goods | <b>3,098</b>  | 2,655 |
| Cost of long-term production contracts           | <b>404</b>    | 354   |
| Other cost of sales                              | <b>–</b>      | –     |
| <b>Cost of sales</b>                             | <b>10,646</b> | 9,528 |

### 6. COST OF MATERIALS

Cost of materials comprised cost of raw materials, supplies and purchased components and of purchased services:

| € in millions                                             | 2010         | 2009  |
|-----------------------------------------------------------|--------------|-------|
| Costs of raw materials, supplies and purchased components | <b>4,092</b> | 3,715 |
| Cost of purchased services                                | <b>640</b>   | 571   |
| <b>Cost of materials</b>                                  | <b>4,732</b> | 4,286 |

### 7. PERSONNEL EXPENSES

Cost of sales, selling, general and administrative expenses and research and development expenses included personnel expenses of €5,354 million and €4,880 million in 2010 and 2009, respectively.

Personnel expenses comprised the following:

| € in millions                                                                    | 2010         | 2009  |
|----------------------------------------------------------------------------------|--------------|-------|
| Wages and salaries                                                               | <b>4,221</b> | 3,882 |
| Social security contributions, cost of retirement pensions and social assistance | <b>1,133</b> | 998   |
| thereof retirement pensions                                                      | <b>132</b>   | 120   |
| <b>Personnel expenses</b>                                                        | <b>5,354</b> | 4,880 |

Fresenius Group's annual average number of employees by function is shown below:

|                                     | 2010           | 2009    |
|-------------------------------------|----------------|---------|
| Production and service              | <b>106,803</b> | 102,003 |
| Administration                      | <b>17,594</b>  | 16,131  |
| Sales and marketing                 | <b>8,321</b>   | 8,397   |
| Research and development            | <b>1,445</b>   | 1,372   |
| <b>Total employees (per capita)</b> | <b>134,163</b> | 127,903 |

## 8. SELLING, GENERAL AND ADMINISTRATIVE EXPENSES

Selling expenses were €615 million (2009: €561 million) and mainly included expenditures for sales personnel of €304 million (2009: €270 million).

General and administrative expenses amounted to €2,049 million (2009: €1,781 million) and are related to expenditures for administrative functions not attributable to research and development, production or selling.

## 9. NET INTEREST

Net interest of -€566 million included interest expenses of €596 million and interest income of €30 million. Interest expenses resulted from Fresenius Group's financial liabilities (see note 30, Financial instruments).

## 10. OTHER FINANCIAL RESULT

The item other financial result includes the following special expenses and income with regard to the acquisition of APP Pharmaceuticals, Inc. (APP) and its financing:

The Contingent Value Rights awarded to the APP shareholders are traded at the NASDAQ Stock Exchange in the United States. The corresponding liability is therefore valued with the current stock exchange price at the reporting date. This valuation resulted in an income of €32 million in 2010 (2009: income of €6 million).

Due to their contractual definition, the issued Mandatory Exchangeable Bonds (MEB) include derivative financial instruments that have to be measured at fair value. This measurement resulted in an expense (before tax) of €98 million in 2010 (2009: expense before tax of €37 million). However, this measurement does not cause a change of the MEB's nominal amount of €554.4 million that has to be settled in ordinary shares of Fresenius Medical Care AG & Co. KGaA upon maturity, but mainly reflects the share price development of these shares (see note 23, Mandatory Exchangeable Bonds).

## 11. TAXES

### INCOME TAXES

Income before income taxes was attributable to the following geographic regions:

| € in millions | 2010         | 2009         |
|---------------|--------------|--------------|
| Germany       | 338          | 342          |
| International | 1,448        | 1,101        |
| <b>Total</b>  | <b>1,786</b> | <b>1,443</b> |

Income tax expenses (benefits) for 2010 and 2009 consisted of the following:

| € in millions | Current taxes | Deferred taxes | Income taxes |
|---------------|---------------|----------------|--------------|
| <b>2009</b>   |               |                |              |
| Germany       | 83            | –              | 83           |
| International | 358           | 11             | 369          |
| <b>Total</b>  | <b>441</b>    | <b>11</b>      | <b>452</b>   |
| <b>2010</b>   |               |                |              |
| Germany       | 97            | -10            | 87           |
| International | 472           | 22             | 494          |
| <b>Total</b>  | <b>569</b>    | <b>12</b>      | <b>581</b>   |

In 2010 and 2009, Fresenius SE (since January 28, 2011: Fresenius SE & Co. KGaA) was subject to German federal corporation income tax at a base rate of 15% plus a solidarity surcharge of 5.5% on federal corporation taxes payable.

A reconciliation between the expected and actual income tax expense is shown below. The expected corporate income tax expense is computed by applying the German corporation tax rate (including the solidarity surcharge) and the effective trade tax rate on income before income taxes. The respective combined tax rate was 29.0% for the fiscal years 2010 and 2009.



| € in millions                                          | 2010         | 2009         |
|--------------------------------------------------------|--------------|--------------|
| Computed "expected" income tax expense                 | 518          | 418          |
| Increase (reduction) in income taxes resulting from:   |              |              |
| Items not recognized for tax purposes                  | 12           | 11           |
| Tax rate differential                                  | 63           | 54           |
| Tax-free income                                        | -23          | -32          |
| Taxes for prior years                                  | 9            | 19           |
| Changes in valuation allowances on deferred tax assets | 24           | 5            |
| Noncontrolling partnership interests                   | -20          | -19          |
| Other                                                  | -2           | -4           |
| <b>Income tax</b>                                      | <b>581</b>   | <b>452</b>   |
| <b>Effective tax rate</b>                              | <b>32.5%</b> | <b>31.3%</b> |

## DEFERRED TAXES

The tax effects of the temporary differences that gave rise to deferred tax assets and liabilities at December 31 are presented below:

| € in millions                                          | 2010       | 2009       |
|--------------------------------------------------------|------------|------------|
| <b>Deferred tax assets</b>                             |            |            |
| Accounts receivable                                    | 29         | 33         |
| Inventories                                            | 65         | 54         |
| Other current assets                                   | 47         | 38         |
| Other non-current assets                               | 84         | 54         |
| Accrued expenses                                       | 235        | 208        |
| Other short-term liabilities                           | 88         | 61         |
| Other liabilities                                      | 37         | 39         |
| Benefit obligations                                    | 55         | 37         |
| Losses carried forward from prior years                | 145        | 124        |
| <b>Deferred tax assets, before valuation allowance</b> | <b>785</b> | <b>648</b> |
| less valuation allowance                               | 116        | 92         |
| <b>Deferred tax assets</b>                             | <b>669</b> | <b>556</b> |
| <b>Deferred tax liabilities</b>                        |            |            |
| Accounts receivable                                    | 12         | 10         |
| Inventories                                            | 15         | 13         |
| Other current assets                                   | 113        | 54         |
| Other non-current assets                               | 511        | 486        |
| Accrued expenses                                       | 8          | 43         |
| Other short-term liabilities                           | 53         | 7          |
| Other liabilities                                      | 27         | 14         |
| <b>Deferred tax liabilities</b>                        | <b>739</b> | <b>627</b> |
| <b>Net deferred taxes</b>                              | <b>-70</b> | <b>-71</b> |

In the consolidated statement of financial position, the net amounts of deferred tax assets and liabilities are included as follows:

|                           | 2010       |                    | 2009       |                    |
|---------------------------|------------|--------------------|------------|--------------------|
| € in millions             |            | thereof short-term |            | thereof short-term |
| Deferred tax assets       | 492        | 380                | 395        | 280                |
| Deferred tax liabilities  | 562        | 74                 | 466        | 51                 |
| <b>Net deferred taxes</b> | <b>-70</b> | <b>306</b>         | <b>-71</b> | <b>229</b>         |

As of December 31, 2010, Fresenius Medical Care has not recognized a deferred tax liability on approximately €2.6 billion of undistributed earnings of its foreign subsidiaries, because those earnings are intended to be indefinitely reinvested.

## NET OPERATING LOSSES

The expiration of net operating losses is as follows:

| for the fiscal years | € in millions |
|----------------------|---------------|
| 2011                 | 6             |
| 2012                 | 14            |
| 2013                 | 13            |
| 2014                 | 20            |
| 2015                 | 22            |
| 2016                 | 29            |
| 2017                 | 11            |
| 2018                 | 10            |
| 2019                 | 6             |
| 2020 and thereafter  | 31            |
| <b>Total</b>         | <b>162</b>    |

The total remaining operating losses of €263 million can mainly be carried forward for an unlimited period.

Based upon the level of historical taxable income and projections for future taxable income, the Management of the Fresenius Group believes it is more likely than not that the Fresenius Group will realize the benefits of these deductible differences, net of the existing valuation allowances, at December 31, 2010.

## UNRECOGNIZED TAX BENEFITS

Fresenius SE & Co. KGaA and its subsidiaries are subject to tax audits on a regular basis.

In Germany, the tax audit for the years 1998 until 2001 has been finalized. All results of the completed tax audits are already sufficiently recognized in the consolidated financial statements as of December 31, 2008. The fiscal years 2002 to 2005 are currently under audit. As of December 31, 2010, all proposed adjustments have been recognized in the consolidated financial statements. All further fiscal years are open to tax audits. For the tax year 1997, Fresenius Medical Care recognized an impairment of one of its subsidiaries which the German tax authorities disallowed in 2003 at the conclusion of its audit for the years 1996 and 1997. Fresenius Medical Care has filed a complaint with the appropriate German court to challenge the tax authority's decision. In January 2011, Fresenius Medical Care reached an agreement with the tax authorities, estimated to be slightly more favorable than the tax benefit recognized previously. The additional benefit will be recognized in 2011.

In the United States, Fresenius Medical Care filed claims for refunds contesting the Internal Revenue Service's (IRS) disallowance of Fresenius Medical Care Holdings, Inc.'s (FMCH) civil settlement payment deductions taken by FMCH in prior year tax returns. As a result of a settlement agreement with the IRS, Fresenius Medical Care received a partial refund in September 2008 of US\$37 million, inclusive of interest,

and preserved the right to pursue claims in the United States Courts for refunds of all other disallowed deductions. On December 22, 2008, Fresenius Medical Care filed a complaint for complete refund in the United States District Court for the District of Massachusetts, styled as Fresenius Medical Care Holdings, Inc. v. United States. On June 24, 2010, the court denied FMCH's motion for summary judgment and the litigation is proceeding towards trial. The unrecognized tax benefit relating to these deductions is included in the total unrecognized tax benefit noted below. The IRS tax audits of FMCH in the United States for the years 2002 through 2006 have been completed. The IRS has disallowed all deductions taken during these audit periods related to intercompany mandatorily redeemable preference shares. In addition, the IRS proposed other adjustments which have been recognized in the consolidated financial statements. Fresenius Medical Care has protested the disallowed deductions and will avail itself of all remedies. An adverse determination with respect to the disallowed deductions related to the intercompany mandatorily redeemable preference shares could have a material adverse effect on Fresenius Medical Care's results of operations and liquidity. Fiscal years 2007 and 2008 are currently under audit, 2009 and 2010 are open to audit. There are a number of state audits in progress and various years are open to audit in other states. All expected results have been recognized in the consolidated financial statements.

Subsidiaries of Fresenius SE & Co. KGaA in a number of countries outside of Germany and the United States are also subject to tax audits. The Fresenius Group estimates that the tax effects of such audits are not material to the consolidated financial statements.

The following table shows the changes to unrecognized tax benefits during the year 2010:

| € in millions                                         | 2010       |
|-------------------------------------------------------|------------|
| <b>Balance at January 1, 2010</b>                     | <b>355</b> |
| Increase in unrecognized tax benefits prior periods   | 10         |
| Decrease in unrecognized tax benefits prior periods   | -15        |
| Increase in unrecognized tax benefits current periods | 18         |
| Changes related to settlements with tax authorities   | -26        |
| Foreign currency translation                          | 12         |
| <b>Balance at December 31, 2010</b>                   | <b>354</b> |

Included in the balance at December 31, 2010 are €354 million of unrecognized tax benefits, which would affect the effective tax rate if recognized. As a result of the settlement agreement for 1997 noted above, the Fresenius Group estimates that the unrecognized tax benefits at December 31, 2010 could be reduced by approximately US\$196 million in 2011 with a small portion of the reduction being realized as an additional tax benefit in 2011. The Fresenius Group is currently not in a position to forecast the timing and magnitude of changes in other unrecognized tax benefits.

It is Fresenius Group's policy to recognize interest and penalties related to its tax positions as income tax expense. During the fiscal year 2010, the Fresenius Group recognized €8 million in interest and penalties. The Fresenius Group had a total accrual of €43 million of tax related interest and penalties at December 31, 2010.

## 12. EARNINGS PER SHARE

The following table shows the earnings per ordinary and preference share including and excluding the dilutive effect from stock options issued and the Mandatory Exchangeable Bonds (MEB):

|                                                                                | 2010        | 2009        |
|--------------------------------------------------------------------------------|-------------|-------------|
| <b>Numerators, € in millions</b>                                               |             |             |
| Net income attributable to Fresenius SE & Co. KGaA                             | 622         | 494         |
| less preference on preference shares                                           | 0           | 1           |
| less effect from dilution due to Fresenius Medical Care shares and MEB         | 6           | 1           |
| Income available to all classes of shares                                      | 616         | 492         |
| <b>Denominators in number of shares</b>                                        |             |             |
| Weighted-average number of ordinary shares outstanding                         | 80,870,695  | 80,595,319  |
| Weighted-average number of preference shares outstanding                       | 80,870,695  | 80,595,319  |
| Weighted-average number of shares outstanding of all classes                   | 161,741,390 | 161,190,638 |
| Potentially dilutive ordinary shares                                           | 541,580     | 268,447     |
| Potentially dilutive preference shares                                         | 541,580     | 268,447     |
| Weighted-average number of ordinary shares outstanding assuming dilution       | 81,412,275  | 80,863,766  |
| Weighted-average number of preference shares outstanding assuming dilution     | 81,412,275  | 80,863,766  |
| Weighted-average number of shares outstanding of all classes assuming dilution | 162,824,550 | 161,727,532 |
| <b>Basic earnings per ordinary share in €</b>                                  | <b>3.85</b> | <b>3.06</b> |
| Preference per preference share in €                                           | 0.00        | 0.01        |
| <b>Basic earnings per preference share in €</b>                                | <b>3.85</b> | <b>3.07</b> |
| <b>Fully diluted earnings per ordinary share in €</b>                          | <b>3.79</b> | <b>3.04</b> |
| Preference per preference share in €                                           | 0.00        | 0.01        |
| <b>Fully diluted earnings per preference share in €</b>                        | <b>3.79</b> | <b>3.05</b> |

The owners of preference shares were entitled to a preference of €0.01 per bearer preference share per fiscal year.

Due to the conversion of the preference shares into ordinary shares in combination with the change of legal form, the dilutive effects are only calculated on ordinary shares as of the fiscal year 2011.

## NOTES ON THE CONSOLIDATED STATEMENT OF FINANCIAL POSITION

### 13. CASH AND CASH EQUIVALENTS

As of December 31, cash and cash equivalents were as follows:

| € in millions                                                      | 2010       | 2009       |
|--------------------------------------------------------------------|------------|------------|
| Cash                                                               | 650        | 411        |
| Time deposits and securities<br>(with a maturity of up to 90 days) | 119        | 9          |
| <b>Total cash and cash equivalents</b>                             | <b>769</b> | <b>420</b> |

As of December 31, 2010 and December 31, 2009, earmarked funds of €65 million and €17 million, respectively, were included in cash and cash equivalents.

### 14. TRADE ACCOUNTS RECEIVABLE

As of December 31, trade accounts receivable were as follows:

| € in millions                         | 2010         | 2009         |
|---------------------------------------|--------------|--------------|
| Trade accounts receivable             | 3,252        | 2,794        |
| less allowance for doubtful accounts  | 317          | 285          |
| <b>Trade accounts receivable, net</b> | <b>2,935</b> | <b>2,509</b> |

All trade accounts receivable are due within one year.

The following table shows the development of the allowance for doubtful accounts during the fiscal year:

| € in millions                                                                      | 2010       | 2009       |
|------------------------------------------------------------------------------------|------------|------------|
| <b>Allowance for doubtful accounts at the beginning of the year</b>                | <b>285</b> | <b>257</b> |
| Change in valuation allowances as recorded in the consolidated statement of income | 175        | 174        |
| Write-offs and recoveries of amounts previously written-off                        | -158       | -141       |
| Foreign currency translation                                                       | 15         | -5         |
| <b>Allowance for doubtful accounts at the end of the year</b>                      | <b>317</b> | <b>285</b> |

The following table shows the ageing analysis of trade accounts receivable and their allowance for doubtful accounts:

| € in millions                         | not overdue  | up to 3 months overdue | 3 to 6 months overdue | 6 to 12 months overdue | more than 12 months overdue | Total        |
|---------------------------------------|--------------|------------------------|-----------------------|------------------------|-----------------------------|--------------|
| Trade accounts receivable             | 1,894        | 527                    | 254                   | 237                    | 340                         | 3,252        |
| less allowance for doubtful accounts  | 16           | 43                     | 33                    | 53                     | 172                         | 317          |
| <b>Trade accounts receivable, net</b> | <b>1,878</b> | <b>484</b>             | <b>221</b>            | <b>184</b>             | <b>168</b>                  | <b>2,935</b> |

### 15. INVENTORIES

As of December 31, inventories consisted of the following:

| € in millions                          | 2010         | 2009         |
|----------------------------------------|--------------|--------------|
| Raw materials and purchased components | 350          | 311          |
| Work in process                        | 255          | 188          |
| Finished goods                         | 874          | 794          |
| less reserves                          | 68           | 58           |
| <b>Inventories, net</b>                | <b>1,411</b> | <b>1,235</b> |

The companies of the Fresenius Group are obliged to purchase approximately €1,720 million of raw materials and purchased components under fixed terms, of which €363 million was committed at December 31, 2010 for 2011. The terms of these agreements run one to eight years. Advance payments from customers of €170 million (2009: €186 million) have been offset against inventories.

Inventories as of December 31, 2010 and December 31, 2009 included approximately €25 million and approximately €24 million, respectively, of the product Erythropoietin (EPO),

which is supplied by a single source supplier in the United States. Delays, stoppages, or interruptions in the supply of EPO could adversely affect the operating results of Fresenius Medical Care. In October 2006, Fresenius Medical Care

entered into a five-year exclusive sourcing and supply agreement with its EPO supplier. Sales from EPO accounted for approximately 7% of total sales of the Fresenius Group in 2010 and 2009, respectively.

## 16. OTHER CURRENT AND NON-CURRENT ASSETS

As of December 31, other current and non-current assets comprised the following:

| € in millions                                                              | 2010         |                       | 2009         |                       |
|----------------------------------------------------------------------------|--------------|-----------------------|--------------|-----------------------|
|                                                                            |              | thereof<br>short-term |              | thereof<br>short-term |
| Investments and long-term loans                                            | 254          | 6                     | 74           | 5                     |
| Tax receivables                                                            | 240          | 224                   | 253          | 242                   |
| Discounts                                                                  | 124          | 124                   | 129          | 129                   |
| Accounts receivable resulting from German "Krankenhausfinanzierungsgesetz" | 111          | 79                    | 145          | 89                    |
| Capitalized debt financing costs                                           | 108          | 10                    | 107          | 10                    |
| Leasing receivables                                                        | 73           | 29                    | 55           | 22                    |
| Advances made                                                              | 53           | 52                    | 41           | 39                    |
| Prepaid expenses                                                           | 45           | 15                    | 32           | 16                    |
| Derivative financial instruments                                           | 25           | 18                    | 49           | 29                    |
| Re-insurance claims                                                        | 25           | 0                     | 23           | 0                     |
| Accounts receivable from management contracts in clinics                   | 7            | 7                     | 6            | 6                     |
| Other assets                                                               | 496          | 367                   | 428          | 318                   |
| <b>Other assets, gross</b>                                                 | <b>1,561</b> | <b>931</b>            | <b>1,342</b> | <b>905</b>            |
| less allowances                                                            | 8            | 6                     | 13           | 12                    |
| <b>Other assets, net</b>                                                   | <b>1,553</b> | <b>925</b>            | <b>1,329</b> | <b>893</b>            |

The investments and long-term loans comprise investments in an amount of €190 million (2009: €9 million), that were accounted for under the equity method.

The receivables resulting from the German "Krankenhausfinanzierungsgesetz" primarily contain approved but not yet received earmarked subsidies of the Fresenius Helios

operations. The approval is evidenced in a letter written by the granting authorities that Fresenius Helios has already received.

Depreciation on other non-current assets in an amount of €2 million was recognized in the fiscal years 2010 and 2009, respectively.

## 17. PROPERTY, PLANT AND EQUIPMENT

As of December 31, the acquisition and manufacturing costs as well as accumulated depreciation of property, plant and equipment consisted of the following:

### ACQUISITION AND MANUFACTURING COSTS

| € in millions                                                     | As of<br>Jan. 1, 2010 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions  | Reclassifi-<br>cations | Disposals  | As of<br>Dec. 31, 2010 |
|-------------------------------------------------------------------|-----------------------|------------------------------------|----------------------------------------|------------|------------------------|------------|------------------------|
| Land and land facilities                                          | 206                   | 7                                  | 1                                      | 8          | –                      | 1          | 221                    |
| Buildings and improvements                                        | 2,628                 | 111                                | 16                                     | 86         | 193                    | 58         | 2,976                  |
| Machinery and equipment                                           | 3,355                 | 178                                | 42                                     | 326        | 110                    | 215        | 3,796                  |
| Machinery, equipment and rental<br>equipment under capital leases | 146                   | 3                                  | 7                                      | 20         | -65                    | 13         | 98                     |
| Construction in progress                                          | 340                   | 18                                 | 12                                     | 304        | -250                   | 5          | 419                    |
| <b>Property, plant and equipment</b>                              | <b>6,675</b>          | <b>317</b>                         | <b>78</b>                              | <b>744</b> | <b>-12</b>             | <b>292</b> | <b>7,510</b>           |

## DEPRECIATION

| € in millions                                                     | As of<br>Jan. 1, 2010 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions  | Reclassifi-<br>cations | Disposals  | As of<br>Dec. 31, 2010 |
|-------------------------------------------------------------------|-----------------------|------------------------------------|----------------------------------------|------------|------------------------|------------|------------------------|
| Land and land facilities                                          | 2                     | 2                                  | 0                                      | –          | –                      | –          | 4                      |
| Buildings and improvements                                        | 1,038                 | 48                                 | 1                                      | 173        | 37                     | 51         | 1,246                  |
| Machinery and equipment                                           | 2,001                 | 97                                 | 16                                     | 351        | –                      | 196        | 2,269                  |
| Machinery, equipment and rental<br>equipment under capital leases | 74                    | 1                                  | –                                      | 8          | -39                    | 8          | 36                     |
| Construction in progress                                          | 1                     | –                                  | 0                                      | –          | 0                      | –          | 1                      |
| <b>Property, plant and equipment</b>                              | <b>3,116</b>          | <b>148</b>                         | <b>17</b>                              | <b>532</b> | <b>-2</b>              | <b>255</b> | <b>3,556</b>           |

## ACQUISITION AND MANUFACTURING COSTS

| € in millions                                                     | As of<br>Jan. 1, 2009 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions  | Reclassifi-<br>cations | Disposals  | As of<br>Dec. 31, 2009 |
|-------------------------------------------------------------------|-----------------------|------------------------------------|----------------------------------------|------------|------------------------|------------|------------------------|
| Land and land facilities                                          | 199                   | 1                                  | 4                                      | 3          | 1                      | 2          | 206                    |
| Buildings and improvements                                        | 2,424                 | -20                                | 11                                     | 85         | 144                    | 16         | 2,628                  |
| Machinery and equipment                                           | 3,023                 | 8                                  | 29                                     | 283        | 96                     | 84         | 3,355                  |
| Machinery, equipment and rental<br>equipment under capital leases | 138                   | –                                  | 1                                      | 9          | -1                     | 1          | 146                    |
| Construction in progress                                          | 346                   | –                                  | 3                                      | 252        | -254                   | 7          | 340                    |
| <b>Property, plant and equipment</b>                              | <b>6,130</b>          | <b>-11</b>                         | <b>48</b>                              | <b>632</b> | <b>-14</b>             | <b>110</b> | <b>6,675</b>           |

## DEPRECIATION

| € in millions                                                     | As of<br>Jan. 1, 2009 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions  | Reclassifi-<br>cations | Disposals | As of<br>Dec. 31, 2009 |
|-------------------------------------------------------------------|-----------------------|------------------------------------|----------------------------------------|------------|------------------------|-----------|------------------------|
| Land and land facilities                                          | 2                     | –                                  | –                                      | –          | –                      | –         | 2                      |
| Buildings and improvements                                        | 898                   | -10                                | 2                                      | 158        | 1                      | 11        | 1,038                  |
| Machinery and equipment                                           | 1,744                 | 5                                  | 12                                     | 305        | -1                     | 64        | 2,001                  |
| Machinery, equipment and rental<br>equipment under capital leases | 65                    | –                                  | –                                      | 10         | –                      | 1         | 74                     |
| Construction in progress                                          | 1                     | 0                                  | 0                                      | –          | 0                      | 0         | 1                      |
| <b>Property, plant and equipment</b>                              | <b>2,710</b>          | <b>-5</b>                          | <b>14</b>                              | <b>473</b> | <b>–</b>               | <b>76</b> | <b>3,116</b>           |

## CARRYING AMOUNTS

| € in millions                                                  | Dec. 31, 2010 | Dec. 31, 2009 |
|----------------------------------------------------------------|---------------|---------------|
| Land and land facilities                                       | 217           | 204           |
| Buildings and improvements                                     | 1,730         | 1,590         |
| Machinery and equipment                                        | 1,527         | 1,354         |
| Machinery, equipment and rental equipment under capital leases | 62            | 72            |
| Construction in progress                                       | 418           | 339           |
| <b>Property, plant and equipment</b>                           | <b>3,954</b>  | <b>3,559</b>  |

Depreciation on property, plant and equipment for the years 2010 and 2009 was €532 million and €473 million, respectively. It is allocated within cost of sales, selling, general and

administrative expenses and research and development expenses, depending upon the use of the asset.

## LEASING

Machinery and equipment as of December 31, 2010 and 2009 included peritoneal dialysis cyclers machines which Fresenius Medical Care leases to customers with end-stage renal disease on a month-to-month basis and hemodialysis machines which Fresenius Medical Care leases to physicians under operating leases in an amount of €312 million and €253 million, respectively.

To a lesser extent, property, plant and equipment are also leased for the treatment of patients by other business segments.

For details of minimum lease payments see note 21, Debt and capital lease obligations.

## 18. GOODWILL AND OTHER INTANGIBLE ASSETS

As of December 31, the acquisition cost and accumulated amortization of intangible assets consisted of the following:

### ACQUISITION COST

| € in millions                               | As of<br>Jan. 1, 2010 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions | Reclassifi-<br>cations | Disposals | As of<br>Dec. 31, 2010 |
|---------------------------------------------|-----------------------|------------------------------------|----------------------------------------|-----------|------------------------|-----------|------------------------|
| Goodwill                                    | 10,356                | 587                                | 355                                    | 4         | 162                    | 0         | 11,464                 |
| Patents, product and distribution rights    | 538                   | 35                                 | 4                                      | 39        | 2                      | 1         | 617                    |
| Tradenames                                  | 161                   | 12                                 | –                                      | –         | –                      | 0         | 173                    |
| Technology                                  | 69                    | 6                                  | 8                                      | 0         | 0                      | 0         | 83                     |
| Non-compete agreements                      | 157                   | 12                                 | 20                                     | –         | –                      | 5         | 184                    |
| Management contracts                        | 153                   | 13                                 | 0                                      | 0         | -162                   | 0         | 4                      |
| Other                                       | 423                   | 32                                 | 15                                     | 35        | –                      | 21        | 484                    |
| <b>Goodwill and other intangible assets</b> | <b>11,857</b>         | <b>697</b>                         | <b>402</b>                             | <b>78</b> | <b>2</b>               | <b>27</b> | <b>13,009</b>          |

### AMORTIZATION

| € in millions                               | As of<br>Jan. 1, 2010 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions  | Reclassifi-<br>cations | Disposals | As of<br>Dec. 31, 2010 |
|---------------------------------------------|-----------------------|------------------------------------|----------------------------------------|------------|------------------------|-----------|------------------------|
| Goodwill                                    | 0                     | 0                                  | 0                                      | 0          | 0                      | 0         | 0                      |
| Patents, product and distribution rights    | 93                    | 4                                  | –                                      | 43         | –                      | 1         | 139                    |
| Tradenames                                  | 0                     | 0                                  | 0                                      | 0          | 0                      | 0         | 0                      |
| Technology                                  | 12                    | 1                                  | 0                                      | 6          | 0                      | 0         | 19                     |
| Non-compete agreements                      | 109                   | 8                                  | 0                                      | 13         | –                      | 5         | 125                    |
| Management contracts                        | 0                     | 0                                  | 0                                      | 0          | 0                      | 0         | 0                      |
| Other                                       | 234                   | 22                                 | –                                      | 43         | –                      | 21        | 278                    |
| <b>Goodwill and other intangible assets</b> | <b>448</b>            | <b>35</b>                          | <b>–</b>                               | <b>105</b> | <b>–</b>               | <b>27</b> | <b>561</b>             |



## ACQUISITION COST

| € in millions                               | As of<br>Jan. 1, 2009 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions | Reclassifi-<br>cations | Disposals | As of<br>Dec. 31, 2009 |
|---------------------------------------------|-----------------------|------------------------------------|----------------------------------------|-----------|------------------------|-----------|------------------------|
| Goodwill                                    | 10,383                | -252                               | 220                                    | 5         | –                      | 0         | 10,356                 |
| Patents, product and distribution rights    | 540                   | -14                                | –                                      | 12        | 1                      | 1         | 538                    |
| Tradenames                                  | 166                   | -5                                 | 0                                      | –         | –                      | –         | 161                    |
| Technology                                  | 71                    | -2                                 | 0                                      | 0         | 0                      | 0         | 69                     |
| Non-compete agreements                      | 158                   | -5                                 | 3                                      | 1         | 0                      | 0         | 157                    |
| Management contracts                        | 158                   | -5                                 | 0                                      | 0         | –                      | 0         | 153                    |
| Other                                       | 361                   | -4                                 | 11                                     | 54        | 6                      | 5         | 423                    |
| <b>Goodwill and other intangible assets</b> | <b>11,837</b>         | <b>-287</b>                        | <b>234</b>                             | <b>72</b> | <b>7</b>               | <b>6</b>  | <b>11,857</b>          |

## AMORTIZATION

| € in millions                               | As of<br>Jan. 1, 2009 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions | Reclassifi-<br>cations | Disposals | As of<br>Dec. 31, 2009 |
|---------------------------------------------|-----------------------|------------------------------------|----------------------------------------|-----------|------------------------|-----------|------------------------|
| Goodwill                                    | 4                     | 0                                  | -4                                     | 0         | 0                      | 0         | 0                      |
| Patents, product and distribution rights    | 54                    | -1                                 | –                                      | 41        | –                      | 1         | 93                     |
| Tradenames                                  | 0                     | 0                                  | 0                                      | 0         | 0                      | 0         | 0                      |
| Technology                                  | 8                     | 0                                  | 0                                      | 4         | 0                      | 0         | 12                     |
| Non-compete agreements                      | 102                   | -4                                 | 0                                      | 11        | –                      | 0         | 109                    |
| Management contracts                        | 0                     | 0                                  | 0                                      | 0         | 0                      | 0         | 0                      |
| Other                                       | 212                   | -2                                 | –                                      | 31        | –                      | 7         | 234                    |
| <b>Goodwill and other intangible assets</b> | <b>380</b>            | <b>-7</b>                          | <b>-4</b>                              | <b>87</b> | <b>–</b>               | <b>8</b>  | <b>448</b>             |

## CARRYING AMOUNTS

| € in millions                               | Dec. 31, 2010 | Dec. 31, 2009 |
|---------------------------------------------|---------------|---------------|
| Goodwill                                    | 11,464        | 10,356        |
| Patents, product and distribution rights    | 478           | 445           |
| Tradenames                                  | 173           | 161           |
| Technology                                  | 64            | 57            |
| Non-compete agreements                      | 59            | 48            |
| Management contracts                        | 4             | 153           |
| Other                                       | 206           | 189           |
| <b>Goodwill and other intangible assets</b> | <b>12,448</b> | <b>11,409</b> |

The split of intangible assets into amortizable and non-amortizable intangible assets is shown in the following tables:

#### AMORTIZABLE INTANGIBLE ASSETS

| € in millions                            | Dec. 31, 2010    |                          |                 | Dec. 31, 2009    |                          |                 |
|------------------------------------------|------------------|--------------------------|-----------------|------------------|--------------------------|-----------------|
|                                          | Acquisition cost | Accumulated amortization | Carrying amount | Acquisition cost | Accumulated amortization | Carrying amount |
| Patents, product and distribution rights | 617              | 139                      | 478             | 538              | 93                       | 445             |
| Technology                               | 83               | 19                       | 64              | 69               | 12                       | 57              |
| Non-compete agreements                   | 184              | 125                      | 59              | 157              | 109                      | 48              |
| Other                                    | 484              | 278                      | 206             | 423              | 234                      | 189             |
| <b>Total</b>                             | <b>1,368</b>     | <b>561</b>               | <b>807</b>      | <b>1,187</b>     | <b>448</b>               | <b>739</b>      |

#### NON-AMORTIZABLE INTANGIBLE ASSETS

| € in millions        | Dec. 31, 2010    |                          |                 | Dec. 31, 2009    |                          |                 |
|----------------------|------------------|--------------------------|-----------------|------------------|--------------------------|-----------------|
|                      | Acquisition cost | Accumulated amortization | Carrying amount | Acquisition cost | Accumulated amortization | Carrying amount |
| Tradenames           | 173              | 0                        | 173             | 161              | 0                        | 161             |
| Management contracts | 4                | 0                        | 4               | 153              | 0                        | 153             |
| Goodwill             | 11,464           | 0                        | 11,464          | 10,356           | 0                        | 10,356          |
| <b>Total</b>         | <b>11,641</b>    | <b>0</b>                 | <b>11,641</b>   | <b>10,670</b>    | <b>0</b>                 | <b>10,670</b>   |

In the second quarter of 2010, administrative services agreements of Fresenius Medical Care in an amount of US\$215 million (€162 million) were reclassified from the category management contracts to goodwill due to a change in New York state regulations that allowed Fresenius Medical Care, beginning in April 2010, to directly own the managed facilities in that state.

Amortization on intangible assets amounted to €105 million and €87 million for the years 2010 and 2009, respectively. It is allocated within cost of sales, selling, general and administrative expenses and research and development expenses, depending upon the use of the asset.

Estimated regular amortization expenses of intangible assets for the next five years are shown in the following table:

| € in millions                   | 2011 | 2012 | 2013 | 2014 | 2015 |
|---------------------------------|------|------|------|------|------|
| Estimated amortization expenses | 97   | 90   | 85   | 80   | 71   |

The carrying amount of goodwill has developed as follows:

| € in millions                                  | Fresenius Medical Care | Fresenius Kabi | Fresenius Helios | Fresenius Vamed | Corporate/ Other | Fresenius Group |
|------------------------------------------------|------------------------|----------------|------------------|-----------------|------------------|-----------------|
| <b>Carrying amount as of January 1, 2009</b>   | <b>5,253</b>           | <b>3,511</b>   | <b>1,565</b>     | <b>44</b>       | <b>6</b>         | <b>10,379</b>   |
| Additions                                      | 125                    | 43             | 61               | 0               | 0                | 229             |
| Foreign currency translation                   | -164                   | -88            | 0                | 0               | 0                | -252            |
| <b>Carrying amount as of December 31, 2009</b> | <b>5,214</b>           | <b>3,466</b>   | <b>1,626</b>     | <b>44</b>       | <b>6</b>         | <b>10,356</b>   |
| Additions                                      | 324                    | 30             | 1                | 4               | 0                | 359             |
| Reclassifications                              | 162                    | 0              | 0                | 0               | 0                | 162             |
| Foreign currency translation                   | 392                    | 195            | 0                | 0               | 0                | 587             |
| <b>Carrying amount as of December 31, 2010</b> | <b>6,092</b>           | <b>3,691</b>   | <b>1,627</b>     | <b>48</b>       | <b>6</b>         | <b>11,464</b>   |

As of December 31, 2010 and December 31, 2009, the carrying amounts of the other non-amortizable intangible assets were €161 million and €299 million, respectively, for

Fresenius Medical Care as well as €16 million and €15 million, respectively, for Fresenius Kabi.

## 19. OTHER ACCRUED EXPENSES

As of December 31, other accrued expenses consisted of the following:

| € in millions                          | 2010         |                       | 2009         |                       |
|----------------------------------------|--------------|-----------------------|--------------|-----------------------|
|                                        |              | thereof<br>short-term |              | thereof<br>short-term |
| Personnel expenses                     | 482          | 423                   | 379          | 331                   |
| Invoices outstanding                   | 188          | 188                   | 147          | 147                   |
| Self-insurance programs                | 123          | 123                   | 119          | 119                   |
| Bonuses and discounts                  | 89           | 89                    | 78           | 78                    |
| Special charge for legal matters       | 86           | 86                    | 80           | 80                    |
| Legal matters, advisory and audit fees | 66           | 66                    | 42           | 42                    |
| Warranties and complaints              | 36           | 34                    | 28           | 24                    |
| Commissions                            | 21           | 21                    | 18           | 18                    |
| Physician compensation                 | 4            | 4                     | 5            | 5                     |
| All other accrued expenses             | 387          | 339                   | 316          | 278                   |
| <b>Other accrued expenses</b>          | <b>1,482</b> | <b>1,373</b>          | <b>1,212</b> | <b>1,122</b>          |

The following table shows the development of other accrued expenses in the fiscal year:

| € in millions                             | As of<br>Jan. 1, 2010 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions    | Reclassifi-<br>cations | Utilized      | Reversed   | As of<br>Dec. 31, 2010 |
|-------------------------------------------|-----------------------|------------------------------------|----------------------------------------|--------------|------------------------|---------------|------------|------------------------|
| Personnel expenses                        | 379                   | 16                                 | 3                                      | 342          | 13                     | -251          | -20        | 482                    |
| Invoices outstanding                      | 147                   | 3                                  | 1                                      | 245          | -7                     | -186          | -15        | 188                    |
| Self-insurance programs                   | 119                   | 9                                  | –                                      | 7            | –                      | -12           | –          | 123                    |
| Bonuses and discounts                     | 78                    | 4                                  | 1                                      | 149          | -6                     | -133          | -4         | 89                     |
| Special charge for<br>legal matters       | 80                    | 6                                  | 0                                      | 0            | 0                      | 0             | 0          | 86                     |
| Legal matters, advisory<br>and audit fees | 42                    | 2                                  | –                                      | 50           | -2                     | -25           | -1         | 66                     |
| Warranties and complaints                 | 28                    | –                                  | 0                                      | 18           | 1                      | -6            | -5         | 36                     |
| Commissions                               | 18                    | –                                  | –                                      | 20           | –                      | -15           | -2         | 21                     |
| Physician compensation                    | 5                     | 1                                  | 0                                      | 0            | 0                      | -2            | 0          | 4                      |
| All other accrued expenses                | 316                   | 9                                  | 5                                      | 484          | 15                     | -405          | -37        | 387                    |
| <b>Total</b>                              | <b>1,212</b>          | <b>50</b>                          | <b>10</b>                              | <b>1,315</b> | <b>14</b>              | <b>-1,035</b> | <b>-84</b> | <b>1,482</b>           |

Accruals for personnel expenses mainly refer to bonus, severance payments, contribution of partial retirement and holiday entitlements.

In 2001, Fresenius Medical Care recorded a US\$258 million special charge to address legal matters relating to transactions pursuant to the Agreement and Plan of Reorganization dated as of February 4, 1996 by and between W.R. Grace & Co. and Fresenius AG, estimated liabilities and legal expenses arising in connection with the W.R. Grace & Co. Chapter 11 proceedings (Grace Chapter 11 Proceedings) and the cost of resolving pending litigation and other disputes with certain

commercial insurers. During the second quarter of 2003, the court supervising the Grace Chapter 11 Proceedings approved a definitive settlement agreement entered into among Fresenius Medical Care, the committee representing the asbestos creditors and W.R. Grace & Co. Under the settlement agreement, Fresenius Medical Care will pay US\$115 million (€86 million), without interest, upon plan confirmation (see note 29, Commitments and contingent liabilities). With the exception of the proposed US\$115 million settlement payment, all other matters included in the special charge have been resolved.

## 20. OTHER LIABILITIES

As of December 31, other liabilities consisted of the following:

| € in millions                                                           | 2010         |                       | 2009         |                       |
|-------------------------------------------------------------------------|--------------|-----------------------|--------------|-----------------------|
|                                                                         |              | thereof<br>short-term |              | thereof<br>short-term |
| Derivative financial instruments                                        | 363          | 239                   | 185          | 28                    |
| Accounts payable resulting from German "Krankenhausfinanzierungsgesetz" | 183          | 177                   | 215          | 203                   |
| Interest liabilities                                                    | 126          | 126                   | 117          | 117                   |
| Tax liabilities                                                         | 117          | 114                   | 117          | 114                   |
| Accounts receivable credit balance                                      | 104          | 22                    | 97           | 22                    |
| Personnel liabilities                                                   | 102          | 97                    | 90           | 86                    |
| Advance payments from customers                                         | 79           | 72                    | 55           | 49                    |
| Leasing liabilities                                                     | 54           | 54                    | 46           | 46                    |
| All other liabilities                                                   | 579          | 457                   | 544          | 410                   |
| <b>Other liabilities</b>                                                | <b>1,707</b> | <b>1,358</b>          | <b>1,466</b> | <b>1,075</b>          |

The payables resulting from the German "Krankenhausfinanzierungsgesetz" primarily contain earmarked subsidies received but not yet spent appropriately by Fresenius Helios. The amount not yet spent appropriately is classified as liability.

At December 31, 2010, the total amount of other non-current liabilities was €349 million, thereof €290 million was due between one and five years and €59 million was due after five years. The statement of financial position line item long-term accrued expenses and other long-term liabilities of €458 million also included long-term accrued expenses of €109 million as of December 31, 2010.

## 21. DEBT AND CAPITAL LEASE OBLIGATIONS

### SHORT-TERM DEBT

The Fresenius Group had short-term debt of €606 million and €287 million at December 31, 2010 and December 31, 2009, respectively. As of December 31, 2010, these consisted of €224 million borrowed by certain subsidiaries of the Fresenius Group under lines of credit with commercial banks and €382 million outstanding short-term borrowings under the accounts receivable facility described in the following. The average interest rates on these borrowings (excluding the accounts receivable facility) at December 31, 2010 and 2009 were 5.14% and 5.03%, respectively.

In September 2010, the asset securitization facility (accounts receivable facility) of Fresenius Medical Care was extended to September 27, 2011 and increased by US\$50 million to US\$700 million. Under the accounts receivable facility, certain receivables are sold to NMC Funding Corp. (NMC

Funding), a wholly-owned subsidiary of Fresenius Medical Care. NMC Funding then assigns percentage ownership interests in the accounts receivable to certain bank investors. Under the terms of the accounts receivable facility, NMC Funding retains the right, at any time, to recall all the then outstanding transferred interests in the accounts receivable. Consequently, the receivables remain on the consolidated statement of financial position and the proceeds from the transfer of percentage ownership interests are recorded within short-term debt.

At December 31, 2010, there were outstanding short-term borrowings under the accounts receivable facility of US\$510 million (€382 million). NMC Funding pays interest to the bank investors, calculated based on the commercial paper rates for the particular tranches selected. The average interest rate during 2010 was 1.86%. Annual refinancing fees, which include legal costs and bank fees, are amortized over the term of the facility.

### LONG-TERM DEBT AND CAPITAL LEASE OBLIGATIONS

As of December 31, long-term debt and capital lease obligations consisted of the following:

| € in millions                                                             | 2010         | 2009         |
|---------------------------------------------------------------------------|--------------|--------------|
| Fresenius Medical Care 2006 Senior Credit Agreement                       | 2,211        | 2,445        |
| 2008 Senior Credit Agreement                                              | 1,484        | 1,602        |
| Euro Notes                                                                | 800          | 800          |
| European Investment Bank Agreements                                       | 531          | 424          |
| Capital lease obligations                                                 | 54           | 45           |
| Other                                                                     | 259          | 173          |
| Subtotal                                                                  | 5,339        | 5,489        |
| less current portion                                                      | 420          | 261          |
| <b>Long-term debt and capital lease obligations, less current portion</b> | <b>4,919</b> | <b>5,228</b> |

Maturities of long-term debt and capital lease obligations are shown in the following table:

| € in millions                                       | up to<br>1 year | 1 to 5<br>years | more than<br>5 years |
|-----------------------------------------------------|-----------------|-----------------|----------------------|
| Fresenius Medical Care 2006 Senior Credit Agreement | 102             | 2,109           | 0                    |
| 2008 Senior Credit Agreement                        | 194             | 1,290           | 0                    |
| Euro Notes                                          | 0               | 800             | 0                    |
| European Investment Bank Agreements                 | 8               | 491             | 32                   |
| Capital lease obligations                           | 10              | 26              | 18                   |
| Other                                               | 106             | 91              | 62                   |
| <b>Long-term debt and capital lease obligations</b> | <b>420</b>      | <b>4,807</b>    | <b>112</b>           |

Aggregate annual repayments applicable to the above listed long-term debt and capital lease obligations for the years subsequent to December 31, 2010 are:

| for the fiscal years | € in millions |
|----------------------|---------------|
| 2011                 | 420           |
| 2012                 | 1,708         |
| 2013                 | 1,709         |
| 2014                 | 1,366         |
| 2015                 | 24            |
| Subsequent years     | 112           |
| <b>Total</b>         | <b>5,339</b>  |

### Fresenius Medical Care 2006 Senior Credit Agreement

Fresenius Medical Care AG & Co. KGaA (FMC-AG & Co. KGaA), Fresenius Medical Care Holdings, Inc. (FMCH), and certain other subsidiaries of FMC-AG & Co. KGaA that are borrowers and/or guarantors thereunder, including Fresenius Medical Care Deutschland GmbH (FMC D-GmbH), entered into a US\$4.6 billion syndicated credit facility (Fresenius Medical Care 2006 Senior Credit Agreement) with several banks and institutional investors (the Lenders) on March 31, 2006 which replaced a prior credit agreement.

Since entering into the 2006 Senior Credit Agreement, Fresenius Medical Care arranged several amendments and

effected voluntary prepayments of the Term Loans, which led to a change in the total amount available under this facility. Pursuant to an amendment together with an extension arranged on September 29, 2010, the Revolving Credit Facility was increased from US\$1,000 million to US\$1,200 million and the Term Loan A facility by US\$50 million to US\$1,365 million. The maturity for both tranches was extended from March 31, 2011 to March 31, 2013. Additionally, the early repayment requirement for Term Loan B, which stipulated that Term Loan B was subject to early retirement if the Trust Preferred Securities due June 15, 2011 were not paid, refinanced or extended prior to March 1, 2011, has been removed. The definition of Fresenius Medical Care's consolidated leverage ratio was amended to allow for the reduction of up to US\$250 million (increased from US\$30 million) of cash and cash equivalents from consolidated funded debt. In addition, the amendment includes increases in certain types of permitted borrowings outside of the amended Fresenius Medical Care 2006 Senior Credit Agreement and provides further flexibility for certain types of investments. Furthermore, the parties agreed to change the limitation on dividends and other restricted payments from US\$300 million for dividends in 2010 for up to US\$330 million in 2011. Thereafter, these limitations increase by US\$30 million each year through 2013.

The following tables show the available and outstanding amounts under the Fresenius Medical Care 2006 Senior Credit Agreement at December 31:

| 2010             |                          |               |                     |               |
|------------------|--------------------------|---------------|---------------------|---------------|
|                  | Maximum amount available |               | Balance outstanding |               |
|                  | US\$ in millions         | € in millions | US\$ in millions    | € in millions |
| Revolving Credit | 1,200                    | 898           | 81                  | 61            |
| Term Loan A      | 1,335                    | 999           | 1,335               | 999           |
| Term Loan B      | 1,538                    | 1,151         | 1,538               | 1,151         |
| <b>Total</b>     | <b>4,073</b>             | <b>3,048</b>  | <b>2,954</b>        | <b>2,211</b>  |

| 2009             |                          |               |                     |               |
|------------------|--------------------------|---------------|---------------------|---------------|
|                  | Maximum amount available |               | Balance outstanding |               |
|                  | US\$ in millions         | € in millions | US\$ in millions    | € in millions |
| Revolving Credit | 1,000                    | 694           | 595                 | 413           |
| Term Loan A      | 1,373                    | 953           | 1,373               | 953           |
| Term Loan B      | 1,554                    | 1,079         | 1,554               | 1,079         |
| <b>Total</b>     | <b>3,927</b>             | <b>2,726</b>  | <b>3,522</b>        | <b>2,445</b>  |

In addition, at December 31, 2010 and December 31, 2009, US\$122 million and US\$97 million, respectively, were utilized as letters of credit which were not included as part of the balances outstanding at those dates.

As of December 31, 2010, the amended and extended Fresenius Medical Care 2006 Senior Credit Agreement consisted of:

- ▶ A US\$1,200 million Revolving Credit Facility (of which up to US\$400 million is available for letters of credit, up to US\$400 million is available for borrowings in certain non-U.S. currencies, up to US\$150 million is available as swingline loans in U.S. dollars, up to US\$250 million is available as a competitive loan facility, and up to US\$50 million is available as swingline loans in certain non-U.S. currencies, the total of which cannot exceed US\$1,200 million) which will be due and payable on March 31, 2013.
- ▶ A Term Loan Facility (Term Loan A) of US\$1,335 million, also scheduled to mature on March 31, 2013. Quarterly repayments on Term Loan A of US\$30 million each permanently reduce the Term Loan Facility at the end of each quarter until December 31, 2012. The remaining balance outstanding is due on March 31, 2013.
- ▶ A Term Loan Facility (Term Loan B) of US\$1,538 million scheduled to mature on March 31, 2013 with five quarterly repayments of US\$4 million followed by four quarterly repayments of US\$379.4 million each due at the end of its respective quarter.

Interest on these facilities will be, at Fresenius Medical Care's option, depending on the interest periods chosen, at a rate equal to either LIBOR plus an applicable margin or the higher of (a) BofA's prime rate or (b) the Federal Funds rate plus 0.5%, plus an applicable margin.

The applicable margin is variable and depends on Fresenius Medical Care's consolidated leverage ratio which is a ratio of its consolidated funded debt (less up to US\$250 million cash and cash equivalents) to consolidated EBITDA (as these terms are defined in the Fresenius Medical Care 2006 Senior Credit Agreement).

For a large portion of the floating rate borrowings under the Fresenius Medical Care 2006 Senior Credit Agreement, interest rate hedges have been arranged (see note 30, Financial instruments).

In addition to scheduled principal payments, indebtedness outstanding under the Fresenius Medical Care 2006 Senior Credit Agreement will be reduced by mandatory prepayments utilizing portions of the net cash proceeds from certain sales of assets, securitization transactions other than Fresenius Medical Care's existing accounts receivable facility, the issuance of subordinated debt other than certain intercompany transactions, certain issuances of equity and excess cash flow.

The obligations under the Fresenius Medical Care 2006 Senior Credit Agreement are secured by pledges of capital stock of certain material subsidiaries in favor of the Lenders.

The Fresenius Medical Care 2006 Senior Credit Agreement contains affirmative and negative covenants with respect to FMC-AG & Co. KGaA and its subsidiaries and other payment restrictions. Certain of the covenants limit indebtedness of Fresenius Medical Care and require Fresenius Medical Care to maintain certain financial ratios defined in the agreement. Additionally, the Fresenius Medical Care 2006 Senior Credit Agreement provides for a limitation on dividends and other restricted payments which is US\$330 million for dividends paid in 2011, and increases by US\$30 million each year through 2013. Fresenius Medical Care paid dividends of US\$232 million in May of 2010 which was in compliance with the restrictions set forth in the Fresenius Medical Care 2006 Senior Credit Agreement. In default, the outstanding balance



under the Fresenius Medical Care 2006 Senior Credit Agreement becomes immediately due and payable at the option of the Lenders. As of December 31, 2010, FMC-AG & Co. KGaA and its subsidiaries were in compliance with all covenants under the Fresenius Medical Care 2006 Senior Credit Agreement.

Fresenius Medical Care incurred fees of approximately US\$86 million in conjunction with the Fresenius Medical Care 2006 Senior Credit Agreement and fees of approximately US\$21 million in conjunction with the amendment and extension which will be amortized over the life of the credit agreement.

At December 31, 2010, the Revolving Credit and Term Loan A were shown in the position long-term debt and capital lease obligations due to the extension of the Fresenius Medical Care 2006 Senior Credit Agreement after being shown under short-term liabilities in the first half of 2010.

## 2008 Senior Credit Agreement

On August 20, 2008, in connection with the acquisition of APP Pharmaceuticals, Inc. (APP), the Fresenius Group entered into a syndicated credit agreement (2008 Senior Credit Agreement) in an original amount of US\$2.45 billion.

Since that date, amendments and voluntary prepayments were made which resulted in a change of the total amount available under this facility. In December 2009 and February 2010, voluntary prepayments of Term Loan B were made which amounted to US\$199.7 million and €33 million. Amendments of the 2008 Senior Credit Agreement related to the financial covenants as defined in the agreement, among other things. In addition, the amendment in March 2010 led to a replacement of Term Loan B by Term Loan C. Both Term Loan facilities merely differ in terms of the applicable interest rate. The minimum LIBOR or EURIBOR was set for 1.50% (previously Term Loan B: 3.25%).

The following tables show the available and outstanding amounts under the 2008 Senior Credit Agreement at December 31:

| 2010                        |                          |              |                     |              |
|-----------------------------|--------------------------|--------------|---------------------|--------------|
|                             | Maximum amount available |              | Balance outstanding |              |
|                             | € in millions            |              | € in millions       |              |
| Revolving Credit Facilities | US\$550 million          | 411          | US\$0 million       | 0            |
| Term Loan A                 | US\$782 million          | 586          | US\$782 million     | 586          |
| Term Loan C (in US\$)       | US\$984 million          | 736          | US\$984 million     | 736          |
| Term Loan C (in €)          | €162 million             | 162          | €162 million        | 162          |
| <b>Total</b>                |                          | <b>1,895</b> |                     | <b>1,484</b> |

| 2009                        |                          |              |                     |              |
|-----------------------------|--------------------------|--------------|---------------------|--------------|
|                             | Maximum amount available |              | Balance outstanding |              |
|                             | € in millions            |              | € in millions       |              |
| Revolving Credit Facilities | US\$550 million          | 382          | US\$0 million       | 0            |
| Term Loan A                 | US\$925 million          | 642          | US\$925 million     | 642          |
| Term Loan B (in US\$)       | US\$1,117 million        | 775          | US\$1,117 million   | 775          |
| Term Loan B (in €)          | €185 million             | 185          | €185 million        | 185          |
| <b>Total</b>                |                          | <b>1,984</b> |                     | <b>1,602</b> |

As of December 31, 2010, the 2008 Senior Credit Agreement consisted of:

- ▶ Revolving Credit Facilities in the aggregate principal amount of US\$550 million (of which US\$150 million is available to APP Pharmaceuticals, LLC and US\$400 million is available as multicurrency facility to Fresenius Finance I S.A., a wholly-owned subsidiary of Fresenius SE & Co. KGaA) which will be due and payable on September 10, 2013.
- ▶ Term Loan Facilities (Term Loan A) in the aggregate principal amount of US\$782 million (of which equal shares are available to Fresenius US Finance I, Inc., a wholly-owned subsidiary of Fresenius SE & Co. KGaA, and to APP Pharmaceuticals, LLC). Term Loan A amortizes and is repayable in unequal semi-annual installments with a final maturity date on September 10, 2013.
- ▶ Term Loan Facilities (Term Loan C) in the aggregate principal amount of US\$983.5 million and €162.5 million (of which US\$579.3 million and €162.5 million are available to Fresenius US Finance I, Inc. and US\$404.2 million is available to APP Pharmaceuticals, LLC). Term Loan C amortizes and is repayable in equal semi-annual installments with a final bullet payment on September 10, 2014.

The interest rate on each borrowing under the 2008 Senior Credit Agreement is a rate equal to the aggregate of (a) the applicable margin (as described below) and (b) LIBOR or, in relation to any loan in euros, EURIBOR for the relevant interest period. The applicable margin is variable and depends on the Leverage Ratio as defined in the 2008 Senior Credit Agreement. In the case of Term Loan C, a minimum LIBOR or EURIBOR was set for 1.50%.

To hedge large parts of the interest rate risk connected with the floating rate borrowings under the 2008 Senior Credit Agreement, the Fresenius Group entered into interest rate hedges.

In addition to scheduled principal payments, indebtedness outstanding under the 2008 Senior Credit Agreement will be reduced by mandatory prepayments in the case of certain sales of assets, incurrence of additional indebtedness, equity issuances and certain intercompany loan repayments, with the amount to be prepaid depending on the proceeds which are generated by the respective transaction.

The 2008 Senior Credit Agreement is guaranteed by Fresenius SE & Co. KGaA, Fresenius ProServe GmbH and Fresenius Kabi AG. The obligations of APP Pharmaceuticals, LLC under the 2008 Senior Credit Agreement that refinanced indebtedness under the former APP credit facility are secured by the assets of APP and its subsidiaries and guaranteed by APP's subsidiaries on the same basis as the former APP credit facility. All lenders also benefit from indirect security through pledges over the shares of certain subsidiaries of Fresenius Kabi AG and pledges over certain intercompany loans.

The 2008 Senior Credit Agreement contains a number of customary affirmative and negative covenants and other payment restrictions. These covenants include limitations on liens, sale of assets, incurrence of debt, investments and acquisitions and restrictions on the payment of dividends, among other items. The 2008 Senior Credit Agreement also includes financial covenants – as defined in the agreement – that require Fresenius SE & Co. KGaA and its subsidiaries (other than Fresenius Medical Care and its subsidiaries) to maintain a maximum leverage ratio, a minimum fixed charge coverage ratio, a minimum interest coverage ratio and limits amounts spent on capital expenditure. As of December 31, 2010, the Fresenius Group was in compliance with all covenants under the 2008 Senior Credit Agreement.

## Euro Notes

As of December 31, Euro Notes (Schuldscheindarlehen) of the Fresenius Group consisted of the following:

|                                                | Maturity      | Interest rate | Book value/nominal value<br>€ in millions |            |
|------------------------------------------------|---------------|---------------|-------------------------------------------|------------|
|                                                |               |               | 2010                                      | 2009       |
| Fresenius Finance B.V. 2008/2012               | April 2, 2012 | 5.59%         | 62                                        | 62         |
| Fresenius Finance B.V. 2008/2012               | April 2, 2012 | variable      | 138                                       | 138        |
| Fresenius Finance B.V. 2007/2012               | July 2, 2012  | 5.51%         | 26                                        | 26         |
| Fresenius Finance B.V. 2007/2012               | July 2, 2012  | variable      | 74                                        | 74         |
| Fresenius Finance B.V. 2008/2014               | April 2, 2014 | 5.98%         | 112                                       | 112        |
| Fresenius Finance B.V. 2008/2014               | April 2, 2014 | variable      | 88                                        | 88         |
| Fresenius Finance B.V. 2007/2014               | July 2, 2014  | 5.75%         | 38                                        | 38         |
| Fresenius Finance B.V. 2007/2014               | July 2, 2014  | variable      | 62                                        | 62         |
| Fresenius Medical Care AG & Co. KGaA 2009/2012 | Oct. 27, 2012 | 7.41%         | 36                                        | 36         |
| Fresenius Medical Care AG & Co. KGaA 2009/2012 | Oct. 27, 2012 | variable      | 119                                       | 119        |
| Fresenius Medical Care AG & Co. KGaA 2009/2014 | Oct. 27, 2014 | 8.38%         | 15                                        | 15         |
| Fresenius Medical Care AG & Co. KGaA 2009/2014 | Oct. 27, 2014 | variable      | 30                                        | 30         |
| <b>Euro Notes</b>                              |               |               | <b>800</b>                                | <b>800</b> |

On April 27, 2009, Fresenius Medical Care issued senior and unsecured Euro Notes in a total amount of €200 million. They consist of four tranches having terms of 3.5 and 5.5 years with fixed and floating interest rate tranches. Proceeds were used to liquidate the Euro Notes from 2005 which were due in July 2009.

The Euro Notes of Fresenius Finance B.V. are guaranteed by Fresenius SE & Co. KGaA. The Euro Notes of FMC-AG & Co. KGaA are guaranteed by FMCH and FMC D-GmbH.

Interest of the floating rate tranches of the Euro Notes is based on EURIBOR plus applicable margin. For a large portion of these tranches, interest rate swaps have been arranged (see note 30, Financial instruments). Only the floating rate tranches of the Euro Notes of FMC-AG & Co. KGaA in an amount of €149 million are exposed to the risk of interest rate increases.

## European Investment Bank Agreements

Various subsidiaries of the Fresenius Group maintain credit facilities with the European Investment Bank (EIB). The following table shows the outstanding amounts under the EIB facilities as of December 31:

|                                      | Maturity  | Maximum amount available<br>€ in millions |            | Book value<br>€ in millions |            |
|--------------------------------------|-----------|-------------------------------------------|------------|-----------------------------|------------|
|                                      |           | 2010                                      | 2009       | 2010                        | 2009       |
| Fresenius SE & Co. KGaA              | 2013      | 196                                       | 196        | 196                         | 196        |
| Fresenius Medical Care AG & Co. KGaA | 2013/2014 | 271 <sup>1</sup>                          | 271        | 263 <sup>1</sup>            | 148        |
| HELIOS Kliniken GmbH                 | 2019      | 72                                        | 80         | 72                          | 80         |
| <b>Loans from EIB</b>                |           | <b>539</b>                                | <b>547</b> | <b>531</b>                  | <b>424</b> |

<sup>1</sup> Difference due to foreign currency translation

The majority of the loans are denominated in euros. The U.S. dollar denominated borrowings of FMC-AG & Co. KGaA amount to US\$165 million (€123 million).

The EIB is the not-for-profit long-term lending institution of the European Union and loans funds at favorable rates for

the purpose of specific capital investment and research and development projects. The facilities were granted to finance certain research and development projects, to invest in the expansion and optimization of existing production facilities in Germany and for the construction of a hospital.

In February 2010, a loan of €50 million was disbursed from the loan agreement FMC-AG & Co. KGaA entered into with the EIB in December 2009. The loan has a four-year term and is guaranteed by FMCH and FMC D-GmbH. In addition, FMC-AG & Co. KGaA drew down the remaining available balance of US\$81 million on a revolving credit facility with the EIB in March 2010.

In September 2009, Fresenius SE (since January 28, 2011: Fresenius SE & Co. KGaA) drew down a loan with the EIB of €100 million having a four-year term. The loan is guaranteed by Fresenius Kabi AG and Fresenius ProServe GmbH.

Repayment of the loan of HELIOS Kliniken GmbH already started in December 2007 and will continue through December 2019 with constant half-yearly payments.

The above mentioned loans bear variable interest rates which are based on EURIBOR or LIBOR plus applicable margin. These interest rates change quarterly. The loans under the EIB Agreements entered before 2009 are secured by bank guarantees. All credit agreements with the EIB have customary covenants.

### Capital lease obligations

Details of capital lease obligations are given below:

| € in millions                                                              | 2010      | 2009      |
|----------------------------------------------------------------------------|-----------|-----------|
| <b>Capital lease obligations (minimum lease payments)</b>                  | <b>68</b> | <b>50</b> |
| due within one year                                                        | 12        | 13        |
| due between one and five years                                             | 32        | 25        |
| due later than five years                                                  | 24        | 12        |
| <b>Interest component included in future minimum lease payments</b>        | <b>14</b> | <b>5</b>  |
| due within one year                                                        | 2         | 1         |
| due between one and five years                                             | 6         | 3         |
| due later than five years                                                  | 6         | 1         |
| <b>Present value of capital lease obligations (minimum lease payments)</b> | <b>54</b> | <b>45</b> |
| due within one year                                                        | 10        | 12        |
| due between one and five years                                             | 26        | 22        |
| due later than five years                                                  | 18        | 11        |

### CREDIT LINES

In addition to the financial liabilities described before, the Fresenius Group maintains additional credit facilities which have not been utilized, or have only been utilized in part as of the reporting date. As of December 31, 2010, the additional financial cushion resulting from unutilized credit facilities was approximately €2.0 billion.

Syndicated credit facilities accounted for €1.1 billion. This portion comprises the Fresenius Medical Care 2006 Senior Credit Agreement in the amount of US\$997 million (€746 million) and the 2008 Senior Credit Agreement in the amount of US\$550 million (€411 million). Furthermore, bilateral facilities of approximately €835 million were available. They

include credit facilities which subsidiaries of the Fresenius Group have arranged with commercial banks. These credit facilities are used for general corporate purposes and are usually unsecured.

In addition, Fresenius SE & Co. KGaA has a commercial paper program under which up to €250 million in short-term notes can be issued. As of December 31, 2010, no commercial papers were outstanding.

Additional financing of up to US\$700 million can be provided using the Fresenius Medical Care accounts receivable facility which had been utilized by US\$510 million as of December 31, 2010.

## 22. SENIOR NOTES

As of December 31, Senior Notes of the Fresenius Group consisted of the following:

|                                         | Notional amount | Maturity      | Interest rate | Book value<br>€ in millions |              |
|-----------------------------------------|-----------------|---------------|---------------|-----------------------------|--------------|
|                                         |                 |               |               | 2010                        | 2009         |
| Fresenius Finance B.V. 2006/2013        | €500 million    | Jan. 31, 2013 | 5.00%         | 500                         | 500          |
| Fresenius Finance B.V. 2006/2016        | €650 million    | Jan. 31, 2016 | 5.50%         | 635                         | 639          |
| Fresenius US Finance II, Inc. 2009/2015 | €275 million    | July 15, 2015 | 8¾%           | 261                         | 259          |
| Fresenius US Finance II, Inc. 2009/2015 | US\$500 million | July 15, 2015 | 9.00%         | 356                         | 326          |
| FMC Finance III S.A. 2007/2017          | US\$500 million | July 15, 2017 | 6⅞%           | 370                         | 342          |
| FMC Finance VI S.A. 2010/2016           | €250 million    | July 15, 2016 | 5.50%         | 247                         | 0            |
| <b>Senior Notes</b>                     |                 |               |               | <b>2,369</b>                | <b>2,066</b> |

In June 2009, Fresenius Finance B.V. has placed a tap in an amount of €150 million to the Senior Notes which are due in 2016. The proceeds were used to repay short-term debt.

The Senior Notes issued by Fresenius Finance B.V. in an amount of €100 million which matured on April 30, 2009 were repaid on schedule.

Fresenius US Finance II, Inc., a wholly-owned subsidiary of Fresenius SE & Co. KGaA, has issued unsecured Senior Notes in January 2009. The Notes comprise a U.S. dollar tranche with a notional amount of US\$500 million and a euro tranche with a notional amount of €275 million. Both tranches will mature in 2015. Proceeds of the Senior Notes offering in an amount of approximately US\$800 million were used to repay the Bridge Credit Agreement entered into in connection with the acquisition of APP Pharmaceuticals, Inc., to repay other debt and for general corporate purposes.

All Senior Notes of Fresenius Finance B.V. and of Fresenius US Finance II, Inc. are guaranteed by Fresenius SE & Co. KGaA, Fresenius Kabi AG and Fresenius ProServe GmbH. The holders have the right to request that the issuers repurchase the Senior Notes at 101% of principal plus accrued interest upon the occurrence of a change of control followed by a decline in the rating of the respective Senior Notes. Since January 31, 2011 the Senior Notes of Fresenius Finance B.V. maturing in 2016 may be redeemed at the option of the issuer at prices that have already been fixed at the date of issuance in the indentures. All other Senior Notes of Fresenius Finance B.V. and of Fresenius US Finance II, Inc. may be redeemed prior to their

maturity at the option of the issuers, in whole but not in part, at a price of 100% plus accrued interest and a premium calculated pursuant to the terms of the indentures under observance of certain notice periods.

Fresenius SE & Co. KGaA has agreed to a number of covenants to provide protection to the bondholders, which, under certain circumstances, partly restrict the scope of action of Fresenius SE & Co. KGaA and its subsidiaries (excluding Fresenius Medical Care AG & Co. KGaA (FMC-AG & Co. KGaA) and its subsidiaries). These covenants include restrictions on further debt that can be raised, the payment of dividends, the volume of capital expenditure, the redemption of subordinated liabilities and the mortgaging or sale of assets, among other items. Some of these restrictions are lifted automatically when the rating of the respective Notes reaches investment grade. In the event of non-compliance with the terms of the Senior Notes, the bondholders (owning in aggregate more than 25% of the outstanding Senior Notes) are entitled to call the Senior Notes and demand immediate repayments plus interest. As of December 31, 2010, the Fresenius Group was in compliance with all of its covenants.

On January 20, 2010, FMC Finance VI S.A. issued €250 million of unsecured Senior Notes with a coupon of 5.50% at an issue price of 98.66%. The Senior Notes had a yield to maturity of 5.75% and are due July 15, 2016. Net proceeds were used to repay short-term indebtedness and for general corporate purposes.

On February 3, 2011, Fresenius Medical Care US Finance, Inc. and FMC Finance VII S.A. issued unsecured Senior Notes of US\$650 million and €300 million, respectively, which are due on February 15, 2021. The Senior Notes issued by Fresenius Medical Care US Finance, Inc. with a coupon of 5.75% at an issue price of 99.06% have a yield to maturity of 5.875%. The Senior Notes issued by FMC Finance VII S.A. have a coupon of 5.25% and were issued at par. Net proceeds were or will be used to repay indebtedness, for acquisitions and for general corporate purposes.

The Senior Notes of FMC Finance III S.A., FMC Finance VI S.A., Fresenius Medical Care US Finance, Inc. and FMC Finance VII S.A. (wholly-owned subsidiaries of FMC-AG & Co. KGaA) are guaranteed on a senior basis jointly and severally by FMC-AG & Co. KGaA, Fresenius Medical Care Holdings, Inc. and Fresenius Medical Care Deutschland GmbH. The holders have the right to request that the issuers repurchase the Senior Notes at 101% of principal plus accrued interest upon the occurrence of a change of control followed by a decline in the rating of the respective Senior Notes. The issuers may redeem the Senior Notes at any time at 100% of principal plus accrued interest and a premium calculated pursuant to the terms of the indentures.

FMC-AG & Co. KGaA has agreed to a number of covenants to provide protection to the holders which, under certain circumstances, limit the ability of FMC-AG & Co. KGaA and its subsidiaries to, among other things, incur debt, incur liens, engage in sale and leaseback transactions and merge or consolidate with other companies or sell assets. As of December 31, 2010, FMC-AG & Co. KGaA and its subsidiaries were in compliance with all of their covenants under the Senior Notes existing at this point in time.

### **23. MANDATORY EXCHANGEABLE BONDS**

To finance the acquisition of APP Pharmaceuticals, Inc., Mandatory Exchangeable Bonds (MEB) in an aggregate nominal amount of €554.4 million were launched in July 2008. Fresenius Finance B.V. subscribed for these MEB issued by Fresenius Finance (Jersey) Ltd. at 100% of their principal

amount. Afterwards, the MEB were on-lent to Fresenius SE (since January 28, 2011: Fresenius SE & Co. KGaA) who placed the MEB in the market. The bonds carry a coupon of 5½% per annum and will mature on August 14, 2011. Upon maturity, the bonds will be mandatorily exchangeable into ordinary shares of Fresenius Medical Care AG & Co. KGaA (FMC-AG & Co. KGaA) with a maximum of 17.42 million and a minimum of 14.76 million shares (based on the current exchange price) being deliverable, subject to anti-dilution adjustments with respect to FMC-AG & Co. KGaA (e. g. in case of corporate actions). The MEB are not redeemable in cash.

The initial minimum exchange price was set to €33.00 and the initial maximum exchange price was set to €38.94 (i. e. 118% of the initial minimum exchange price). Due to the dividend payments in May 2010 and 2009, the minimum exchange price and the maximum exchange price decreased to €31.83 and €37.56, respectively. Pursuant to the terms and conditions of the MEB, both the holder and the issuer may procure for the exchange of the bonds before maturity. In principal, the issuer, Fresenius Finance (Jersey) Ltd., may procure the exchange of all of the outstanding MEB for shares of FMC-AG & Co. KGaA at the maximum exchange ratio calculated on the relevant exchange date plus payment of any accrued and unpaid interest and a make-whole amount. Furthermore, the MEB shall be mandatorily exchangeable at the maximum exchange ratio plus such payments if the corporate rating of Fresenius SE & Co. KGaA falls below certain benchmarks and such benchmarks are subsequently not reinstated. Moreover, in the event of a change of control of Fresenius SE & Co. KGaA or FMC-AG & Co. KGaA, each holder of the MEB may elect to exchange its MEB at the maximum exchange ratio plus such payments. Each holder of the MEB may also exchange his MEB at the minimum exchange ratio calculated on the relevant exchange date without payment of accrued interest or any make-whole amount.

Fresenius SE & Co. KGaA guarantees in favor of Fresenius Finance (Jersey) Ltd. the payment of certain interest payments by Fresenius Finance B.V. Furthermore, it secures the delivery of the underlying shares of FMC-AG & Co. KGaA for

exchange via a pledge agreement. In addition, Fresenius SE & Co. KGaA has undertaken to the holders of the bonds that neither it nor any of its material subsidiaries provides any security of its assets for certain capital market indebtedness, without at the same time having the holders share equally and ratably in such security.

Due to their maturity on August 14, 2011, the MEB are shown under short-term liabilities in an amount of €554 million as of December 31, 2010.

The derivative financial instruments embedded in the MEB are measured at fair value and are shown separately in the consolidated statement of financial position within short-term accrued expenses and other short-term liabilities (2009 within: long-term accrued expenses and other long-term liabilities).

## 24. TRUST PREFERRED SECURITIES

Fresenius Medical Care issued trust preferred securities through Fresenius Medical Care Capital Trusts, statutory trusts organized under the laws of the State of Delaware, United States. Fresenius Medical Care AG & Co. KGaA (FMC-AG & Co. KGaA) owns all of the common securities of these trusts. The sole asset of each trust is a senior subordinated note of FMC-AG & Co. KGaA or a wholly-owned subsidiary of FMC-AG & Co. KGaA. FMC-AG & Co. KGaA, Fresenius Medical Care Deutschland GmbH (FMC D-GmbH) and Fresenius Medical

Care Holdings, Inc. (FMCH) have guaranteed payment and performance of the senior subordinated notes to the respective Fresenius Medical Care Capital Trusts. The trust preferred securities are guaranteed through a series of undertakings by FMC-AG & Co. KGaA, FMCH and FMC D-GmbH.

The trust preferred securities entitle the holders to distributions at a fixed annual rate of the stated amount and are mandatorily redeemable after 10 years. Earlier redemption at the option of the holders may also occur upon a change of control followed by a rating decline or defined events of default including a failure to pay interest. Upon liquidation of the trusts, the holders of trust preferred securities are entitled to a distribution equal to the stated amount. The trust preferred securities do not hold voting rights in the trust except under limited circumstances.

The indentures governing the notes held by the Fresenius Medical Care Capital Trusts contain affirmative and negative covenants with respect to FMC-AG & Co. KGaA and its subsidiaries and other payment restrictions. Some of the covenants limit the indebtedness and the investments of FMC-AG & Co. KGaA and its subsidiaries, and require the maintenance of certain ratios defined in the agreement. As of December 31, 2010, FMC-AG & Co. KGaA and its subsidiaries were in compliance with all financial covenants under all trust preferred securities agreements.

The trust preferred securities outstanding as of December 31, 2010 and 2009 were as follows:

|                                         | Year issued | Stated amount   | Interest rate                   | Mandatory redemption date | 2010<br>€ in millions | 2009<br>€ in millions |
|-----------------------------------------|-------------|-----------------|---------------------------------|---------------------------|-----------------------|-----------------------|
| Fresenius Medical Care Capital Trust IV | 2001        | US\$225 million | 7 <sup>7</sup> / <sub>8</sub> % | June 15, 2011             | 168                   | 156                   |
| Fresenius Medical Care Capital Trust V  | 2001        | €300 million    | 7 <sup>3</sup> / <sub>8</sub> % | June 15, 2011             | 300                   | 299                   |
| <b>Trust preferred securities</b>       |             |                 |                                 |                           | <b>468</b>            | <b>455</b>            |

The trust preferred securities of the Fresenius Medical Care Capital Trust IV and V are due on June 15, 2011 and are therefore shown under short-term liabilities in an amount of €468 million at December 31, 2010 (2009 under: long-term liabilities).



## 25. PENSIONS AND SIMILAR OBLIGATIONS

### GENERAL

The Fresenius Group recognizes pension costs and related pension liabilities for current and future benefits to qualified current and former employees of the Fresenius Group. Fresenius Group's pension plans are structured differently according to the legal, economic and fiscal circumstances in each country. The Fresenius Group currently has two types of plans, defined benefit and defined contribution plans. In general, plan benefits in defined benefit plans are based on all or a portion of the employees' years of services and final salary. Plan benefits in defined contribution plans are determined by the amount of contribution by the employee and the employer, both of which may be limited by legislation, and the returns earned on the investment of those contributions.

Upon retirement under defined benefit plans, the Fresenius Group is required to pay defined benefits to former employees when the defined benefits become due. Defined benefit plans may be funded or unfunded. The Fresenius Group has funded defined benefit plans in particular in the United States, Norway, the United Kingdom, the Netherlands and Austria. Unfunded defined benefit plans are located in Germany and France.

Actuarial assumptions generally determine benefit obligations under defined benefit plans. The actuarial calculations require the use of estimates. The main factors used in the actuarial calculations affecting the level of the benefit obligations are: assumptions on life expectancy, the discount rate and future salary and benefit levels. Under Fresenius Group's funded plans, assets are set aside to meet future payment obligations. An estimated return on the plan assets is recognized as income in the respective period. Actuarial gains and losses are generated when there are variations in the actuarial

assumptions and differences between the actual and the estimated return on plan assets for that year. A company's pension liability is impacted by these actuarial gains or losses.

In the case of Fresenius Group's funded plans, the defined benefit obligation is offset against the fair value of plan assets. A pension liability is recognized in the consolidated statement of financial position if the defined benefit obligation exceeds the fair value of plan assets. An asset is recognized and reported under other assets in the consolidated statement of financial position if the fair value of plan assets exceeds the defined benefit obligation and if the Fresenius Group has a right of reimbursement against the fund or a right to reduce future payments to the fund.

Under defined contribution plans, the Fresenius Group pays defined contributions during the employee's service life which satisfies all obligations of the Fresenius Group to the employee. The Fresenius Group has a main defined contribution plan in North America.

### DEFINED BENEFIT PENSION PLANS

At December 31, 2010, the projected benefit obligation (PBO) of the Fresenius Group of €655 million (2009: €556 million) included €261 million (2009: €237 million) funded by plan assets and €394 million (2009: €319 million) covered by pension provisions. The current portion of the pension liability in an amount of €11 million is recognized in the consolidated statement of financial position within short-term accrued expenses and other short-term liabilities. The non-current portion of €383 million is recorded as pension liability.

70% of the pension liabilities in an amount of €394 million relate to the "Versorgungsordnung der Fresenius-Unternehmen" established in 1988 (Pension plan 1988), which applies for most of the German entities of the Fresenius Group except Fresenius Helios. The rest of the pension liabilities relates to individual plans from Fresenius Helios entities in Germany and non-German Group entities.

Plan benefits are generally based on an employee's years of service and final salary. Consistent with predominant practice in Germany, the benefit obligations of the German entities of the Fresenius Group are unfunded. The German Pension Plan 1988 does not have a separate pension fund.

Fresenius Medical Care Holdings, Inc. (FMCH), a subsidiary of Fresenius Medical Care AG & Co. KGaA, has a defined benefit pension plan for its employees in the United States and supplemental executive retirement plans. During the first quarter of 2002, FMCH curtailed these pension plans. Under the curtailment amendment for substantially all employees eligible to participate in the plan, benefits have been frozen as of the curtailment date and no additional defined benefits for future services will be earned. FMCH has retained all employee benefit obligations as of the curtailment date. Each year, FMCH contributes at least the minimum amount required by the Employee Retirement Income Security Act of 1974, as amended. There was no minimum funding requirement for FMCH for the defined benefit plan in the year 2010. FMCH voluntarily contributed US\$0.6 million (€0.5 million) during the year 2010. Expected funding for 2011 is US\$0.7 million (€0.5 million).

Fresenius Group's benefit obligations relating to fully or partly funded pension plans were €310 million. Benefit obligations relating to unfunded pension plans were €345 million.

The following table shows the changes in benefit obligations, the changes in plan assets and the funded status of the pension plans. Benefits paid as shown in the changes in benefit obligations represent payments made from both the funded and unfunded plans while the benefits paid as shown in the changes in plan assets include only benefit payments from Fresenius Group's funded benefit plans.

The funded status has developed as follows:

| € in millions                                                 | 2010       | 2009       |
|---------------------------------------------------------------|------------|------------|
| <b>Benefit obligations at the beginning of the year</b>       | <b>556</b> | <b>505</b> |
| Changes in entities consolidated                              | 0          | 6          |
| Foreign currency translation                                  | 16         | -4         |
| Service cost                                                  | 16         | 14         |
| Prior service cost                                            | 2          | 1          |
| Interest cost                                                 | 33         | 31         |
| Contributions by plan participants                            | 1          | 1          |
| Transfer of plan participants                                 | -          | -          |
| Curtailments/settlements                                      | -2         | -5         |
| Actuarial losses                                              | 50         | 23         |
| Benefits paid                                                 | -18        | -16        |
| Amendments                                                    | 1          | -          |
| <b>Benefit obligations at the end of the year</b>             | <b>655</b> | <b>556</b> |
| thereof vested                                                | 558        | 463        |
| <b>Fair value of plan assets at the beginning of the year</b> | <b>237</b> | <b>213</b> |
| Changes in entities consolidated                              | 0          | 4          |
| Foreign currency translation                                  | 14         | -4         |
| Actual return on plan assets                                  | 13         | 27         |
| Contributions by the employer                                 | 4          | 4          |
| Contributions by plan participants                            | 1          | 1          |
| Settlements                                                   | -          | -2         |
| Benefits paid                                                 | -8         | -6         |
| <b>Fair value of plan assets at the end of the year</b>       | <b>261</b> | <b>237</b> |
| <b>Funded status as of December 31</b>                        | <b>394</b> | <b>319</b> |

The discount rates for all plans are based upon yields of portfolios of equity and highly rated debt instruments with maturities that mirror the plan's benefit obligation. Fresenius Group's discount rate is the weighted average of these plans based upon their benefit obligations.

The following weighted-average assumptions were utilized in determining benefit obligations as of December 31:

| in %                          | 2010 | 2009 |
|-------------------------------|------|------|
| Discount rate                 | 5.43 | 5.86 |
| Rate of compensation increase | 3.32 | 3.30 |
| Rate of pension increase      | 1.73 | 1.81 |

At December 31, 2010, the accumulated benefit obligations for all defined benefit pension plans were €567 million (2009: €515 million).

The following table relates to pension plans with projected benefit obligations and accumulated benefit obligations in excess of plan assets:

| € in millions                        | 2010 | 2009 |
|--------------------------------------|------|------|
| Projected benefit obligation (PBO)   | 655  | 556  |
| Accumulated benefit obligation (ABO) | 567  | 515  |
| Fair value of plan assets            | 261  | 237  |

The pre-tax changes of other comprehensive income (loss) relating to pension liabilities during the years 2010 and 2009 are shown in the following tables:

| € in millions                                     | As of<br>Jan. 1, 2010 | Reclassifications <sup>1</sup> | Additions  | Foreign currency<br>translation | As of<br>Dec. 31, 2010 |
|---------------------------------------------------|-----------------------|--------------------------------|------------|---------------------------------|------------------------|
| Actuarial gains and losses                        | -54                   | 5                              | -54        | -4                              | -107                   |
| Prior service cost                                | 4                     | 1                              | -2         | —                               | 3                      |
| Transition obligation                             | -1                    | —                              | —          | —                               | -1                     |
| <b>Adjustments related to pension liabilities</b> | <b>-51</b>            | <b>6</b>                       | <b>-56</b> | <b>-4</b>                       | <b>-105</b>            |

<sup>1</sup> Effects recognized in the consolidated statement of income

| € in millions                                     | As of<br>Jan. 1, 2009 | Reclassifications <sup>1</sup> | Additions  | Foreign currency<br>translation | As of<br>Dec. 31, 2009 |
|---------------------------------------------------|-----------------------|--------------------------------|------------|---------------------------------|------------------------|
| Actuarial gains and losses                        | -49                   | 4                              | -10        | 1                               | -54                    |
| Prior service cost                                | 4                     | —                              | —          | —                               | 4                      |
| Transition obligation                             | -1                    | 1                              | -1         | —                               | -1                     |
| <b>Adjustments related to pension liabilities</b> | <b>-46</b>            | <b>5</b>                       | <b>-11</b> | <b>1</b>                        | <b>-51</b>             |

<sup>1</sup> Effects recognized in the consolidated statement of income

For the tax effects on other comprehensive income at December 31, 2010 see note 28, Other comprehensive income (loss).

The Fresenius Group expects the following amounts to be amortized from other comprehensive income into net periodic pension cost in the year 2011:

| € in millions              | 2011 |
|----------------------------|------|
| Actuarial gains and losses | 8    |
| Prior service cost         | 1    |
| Transition obligation      | —    |

Defined benefit pension plans' net periodic benefit costs of €36 million (2009: €35 million) were comprised of the following components:

| € in millions                                    | 2010      | 2009      |
|--------------------------------------------------|-----------|-----------|
| Service cost                                     | 16        | 14        |
| Interest cost                                    | 33        | 31        |
| Expected return on plan assets                   | -17       | -15       |
| Amortization of unrealized actuarial losses, net | 5         | 3         |
| Amortization of prior service costs              | 1         | —         |
| Amortization of transition obligations           | —         | 1         |
| Settlement loss                                  | -2        | 1         |
| <b>Net periodic benefit cost</b>                 | <b>36</b> | <b>35</b> |

Net periodic benefit cost is allocated as personnel expense within cost of sales or selling, general and administrative expenses as well as research and development expenses. The allocation depends upon the area in which the beneficiary is employed.

The following weighted-average assumptions were used in determining net periodic benefit cost for the year ended December 31:

| in %                           | 2010 | 2009 |
|--------------------------------|------|------|
| Discount rate                  | 5.86 | 6.21 |
| Expected return of plan assets | 5.58 | 5.74 |
| Rate of compensation increase  | 3.30 | 3.56 |

Changes in the discount factor, inflation and mortality assumptions used for the actuarial computation resulted in actuarial losses in 2010 which increased the fair value of the defined benefit obligation. Unrecognized actuarial losses were €107 million (2009: €54 million).

The fair values of plan assets by categories were as follows:

| € in millions                               | December 31, 2010                                            |                                       |            | December 31, 2009                                            |                                       |            |
|---------------------------------------------|--------------------------------------------------------------|---------------------------------------|------------|--------------------------------------------------------------|---------------------------------------|------------|
|                                             | Quoted prices in active markets for identical assets Level 1 | Significant observable inputs Level 2 | Total      | Quoted prices in active markets for identical assets Level 1 | Significant observable inputs Level 2 | Total      |
| <b>Categories of plan assets</b>            |                                                              |                                       |            |                                                              |                                       |            |
| Equity investments                          | 32                                                           | 49                                    | 81         | 78                                                           | 0                                     | 78         |
| Index funds <sup>1</sup>                    | 23                                                           | 49                                    | 72         | 72                                                           | 0                                     | 72         |
| Other equity investments                    | 9                                                            | 0                                     | 9          | 6                                                            | 0                                     | 6          |
| Fixed income investments                    | 41                                                           | 118                                   | 159        | 37                                                           | 106                                   | 143        |
| Government securities <sup>2</sup>          | 20                                                           | 2                                     | 22         | 18                                                           | 2                                     | 20         |
| Corporate bonds <sup>3</sup>                | 13                                                           | 114                                   | 127        | 13                                                           | 104                                   | 117        |
| Other fixed income investments <sup>4</sup> | 8                                                            | 2                                     | 10         | 6                                                            | –                                     | 6          |
| Other <sup>5</sup>                          | 18                                                           | 3                                     | 21         | 13                                                           | 3                                     | 16         |
| <b>Total</b>                                | <b>91</b>                                                    | <b>170</b>                            | <b>261</b> | <b>128</b>                                                   | <b>109</b>                            | <b>237</b> |

<sup>1</sup> This category mainly comprises low-cost equity index funds not actively managed that track the S & P 500, S & P 400, Russell 2000, the MSCI EAFE Index and the MSCI Emerging Markets Index for both 2010 and 2009 as well as the Barclays Capital Long Corporate Index in 2009.

<sup>2</sup> This category primarily comprises fixed income investments by the U.S. government and government sponsored entities.

<sup>3</sup> This category primarily represents investment grade bonds of U.S. issuers from diverse industries.

<sup>4</sup> This category mainly comprises private placement bonds as well as collateralized mortgage obligations and funds that invest in treasury obligations directly or in treasury backed obligations.

<sup>5</sup> This category mainly represents cash, money market funds as well as mutual funds comprised of high grade corporate bonds.

The following table shows the expected benefit payments for the next 10 years:

| for the fiscal years                   | € in millions |
|----------------------------------------|---------------|
| 2011                                   | 20            |
| 2012                                   | 22            |
| 2013                                   | 23            |
| 2014                                   | 24            |
| 2015                                   | 26            |
| 2016 to 2020                           | 167           |
| <b>Total expected benefit payments</b> | <b>282</b>    |

The Fresenius Group uses December 31, 2010 as the measurement date in determining the funded status of all plans.

The major part of pension liabilities relates to Germany. At December 31, 2010, 79% of the pension liabilities were recognized in Germany, 21% in the rest of Europe and North America.

Approximately two thirds of the beneficiaries were located in North America, approximately one quarter in Germany and the remainder throughout the rest of Europe and other continents.

The methods and inputs used to measure the fair value of plan assets are as follows:

Index funds are valued based on market quotes.

Other equity investments are valued at their market prices as of the date of the statement of financial position.

The majority of the fair values of the government bonds are measured based on market quotes. The remaining government bonds are valued at their market prices.

Corporate bonds and other bonds are valued based on market quotes as of the date of the statement of financial position.

Cash is stated at nominal value which equals the fair value.

U.S. Treasury money market funds as well as other money market and mutual funds are valued at their market prices.

### Plan investment policy and strategy

For the North American funded plan, the Fresenius Group periodically reviews the assumptions for long-term expected return on pension plan assets. As part of the assumptions review, a range of reasonable expected investment returns for the pension plan as a whole was determined based on an analysis of expected future returns for each asset class weighted by the allocation of the assets. The range of returns developed relies both on forecasts, which include the actuarial firm's expected long-term rates of return for each significant asset class or economic indicator, and on broad-market historical benchmarks for expected return, correlation, and volatility for each asset class. As a result, the expected rate of return on pension plan assets of the North American pension plan was 7.5% for the year 2010.

The overall investment strategy for the North American pension plan is to achieve a mix of approximately 98% of investments for long-term growth and 2% for near-term benefit payments with a wide diversification of asset types, fund strategies and fund managers.

The target allocations for plan assets in North America are 35% equity securities and 65% long-term U.S. bonds. The investment policy considers that there will be a time horizon for invested funds of more than five years. The total portfolio will be measured against a policy index that reflects the asset class benchmarks and the target asset allocation. The plan

policy does not allow investments in securities of Fresenius Medical Care AG & Co. KGaA or other related party securities. The performance benchmarks for the separate asset classes include: S & P 500 Index, S & P 400 Index, Russell 2000 Growth Index, MSCI EAFE Index, MSCI Emerging Markets Index, Barclays Capital Long Term Government Index and Barclays Capital 20 Year U.S. Treasury Strip Index.

The following schedule describes Fresenius Group's allocation for its funded plans.

| in %                     | Allocation<br>2010 | Allocation<br>2009 | Target<br>allocation |
|--------------------------|--------------------|--------------------|----------------------|
| Equity investments       | 31.12              | 33.15              | 35.74                |
| Fixed income investments | 60.73              | 60.35              | 59.57                |
| Other incl. real estate  | 8.15               | 6.50               | 4.69                 |
| <b>Total</b>             | <b>100.00</b>      | 100.00             | 100.00               |

The overall expected long-term rate of return on assets of the Fresenius Group amounts to 6.77% compounded annually. Contributions to plan assets for the fiscal year 2011 are expected to amount to €5 million.

### DEFINED CONTRIBUTION PLANS

Fresenius Group's total expense under defined contribution plans for 2010 was €31 million (2009: €27 million). The main part relates to the North American savings plan, which employees of FMCH can join. Employees can deposit up to 75% of their pay up to an annual maximum of US\$16,500 if under 50 years old (US\$22,000 if 50 or over) under this savings plan. Fresenius Medical Care will match 50% of the employee deposit up to a maximum Company contribution of 3% of the employee's pay. Fresenius Medical Care's total expense under this defined contribution plan for the years ended December 31, 2010 and 2009 was €24 million and €20 million, respectively.

## 26. NONCONTROLLING INTEREST

### NONCONTROLLING INTEREST SUBJECT TO PUT PROVISIONS

The Fresenius Group has potential obligations to purchase the noncontrolling interests held by third parties in certain of its consolidated subsidiaries. These obligations are in the form of put provisions and are exercisable at the third-party owners' discretion within specified periods as outlined in each specific put provision. If these put provisions were exercised, the Fresenius Group would be required to purchase all or part of third-party owners' noncontrolling interests at the appraised fair value.

As of December 31, 2010 and 2009 the Fresenius Group's potential obligations under these put options were €209 million and €161 million, respectively, of which, at December 31, 2010, €71 million were exercisable.

### NONCONTROLLING INTEREST NOT SUBJECT TO PUT PROVISIONS

As of December 31, noncontrolling interest not subject to put provisions in the Group was as follows:

| € in millions                                                                                 | 2010         | 2009         |
|-----------------------------------------------------------------------------------------------|--------------|--------------|
| Noncontrolling interest not subject to put provisions in Fresenius Medical Care AG & Co. KGaA | 3,574        | 2,985        |
| Noncontrolling interest not subject to put provisions in HELIOS Kliniken GmbH                 | 4            | 4            |
| Noncontrolling interest not subject to put provisions in VAMED AG                             | 23           | 33           |
| Noncontrolling interest not subject to put provisions in the business segments                |              |              |
| Fresenius Medical Care                                                                        | 110          | 85           |
| Fresenius Kabi                                                                                | 46           | 37           |
| Fresenius Helios                                                                              | 119          | 110          |
| Fresenius Vamed                                                                               | 3            | 3            |
| <b>Total noncontrolling interest not subject to put provisions</b>                            | <b>3,879</b> | <b>3,257</b> |

In 2010, noncontrolling interest not subject to put provisions increased by €622 million to €3,879 million. The change resulted from the noncontrolling interest not subject to put provisions in profit of €561 million, less dividend payments of €172 million as well as noncontrolling interest not subject to put provisions in stock options, currency effects and first-time consolidations in a total amount of €233 million.

## 27. FRESENIUS SE & CO. KGAA (UNTIL JANUARY 28, 2011: FRESENIUS SE) SHAREHOLDERS' EQUITY

### SUBSCRIBED CAPITAL

#### Development of subscribed capital

During the fiscal year 2010, 1,134,714 stock options were exercised. Accordingly, at December 31, 2010, the subscribed capital of Fresenius SE was divided into 81,225,045 bearer ordinary shares and 81,225,045 non-voting bearer preference shares. The shares are issued as non-par value shares. The proportionate amount of the subscribed capital is €1.00 per share.

As a result of Fresenius SE's change of legal form into Fresenius SE & Co. KGaA and its registration with the commercial register on January 28, 2011, all bearer preference shares were converted into bearer ordinary shares. Consequently, the subscribed capital of Fresenius SE & Co. KGaA now solely consists of bearer ordinary shares.

#### Notification by shareholders

After the change of legal form on January 28, 2011, Fresenius SE & Co. KGaA (formerly Fresenius SE) disclosed notifications in accordance with Section 26 (1) of the German Securities Trading Act (WpHG). The notifications relate to the subscribed capital of €162,450,090, divided into 162,450,090 voting bearer shares, as of January 28, 2011, and reflect the level of investments held:

Else Kröner-Fresenius-Stiftung, with its registered office in Bad Homburg, Germany, has notified Fresenius SE & Co. KGaA pursuant to Section 21 (1) WpHG that on January 28, 2011, their percentage holding of the voting rights in Fresenius SE & Co. KGaA, Else-Kröner-Str. 1, 61352 Bad Homburg v. d. H., Germany, crossed below the thresholds of 50% and 30% and amounted to 28.85% (46,871,154 voting rights) on that day.

Allianz SE, with its registered office in Munich, Germany, has notified Fresenius SE & Co. KGaA pursuant to Section 21 (1) WpHG that on January 28, 2011 their percentage holding of the voting rights in Fresenius SE & Co. KGaA, Else-Kröner-Str. 1, 61352 Bad Homburg v. d. H., Germany, crossed below the threshold of 5% and amounted to 4.26% (equivalent to 6,920,552 voting rights of a total of 162,450,090 voting rights). Thereof, 4.26% (6,919,271 voting rights) were attributable to Allianz SE pursuant to Section 22 (1) sentence 1 No. 1 WpHG and 0.0008% (1,281 voting rights) were attributable to Allianz SE pursuant to Section 22 (1) sentence 1 No. 6 WpHG.

The voting rights attributable to Allianz SE are held by the following companies controlled by Allianz SE; each of their percentage holding of voting rights in Fresenius SE & Co. KGaA exceeded 3% or more:

- ▶ Allianz Deutschland AG
- ▶ Jota Vermögensverwaltungsgesellschaft mbH
- ▶ Allianz Lebensversicherungs-AG

Artio Global Investors, Inc., with its registered office in New York, United States, has notified Fresenius SE & Co. KGaA pursuant to Section 21 (1) WpHG that on January 28, 2011 their percentage holding of the voting rights in Fresenius SE & Co. KGaA, Else-Kröner-Str. 1, 61352 Bad Homburg v. d. H., Germany, crossed below the threshold of 3% and amounted to 2.36% (equivalent to 3,840,708 voting rights) both in relation to the total number of voting rights of the issuer and in relation to all voting shares of the same share class.

The voting rights in the amount of 2.36% (equivalent to 3,840,708 voting rights) are entirely attributable to Artio Global Investors, Inc. pursuant to Section 22 (1) sentence 1 No. 6 WpHG in connection with Section 22 (1) sentence 2 WpHG.

FMR LLC, Boston, Massachusetts, United States, has notified Fresenius SE & Co. KGaA pursuant to Section 21 (1) WpHG that on January 28, 2011 the voting rights held by FMR LLC crossed below the threshold of 3% of the voting rights in Fresenius SE & Co. KGaA, Else-Kröner-Straße 1, 61352 Bad Homburg v. d. H., Germany. On that date, FMR LLC held 1.69% of the voting rights in Fresenius SE & Co. KGaA, arising from 2,740,382 voting rights.

All voting rights in Fresenius SE & Co. KGaA were attributed to FMR LLC pursuant to Section 22 (1) sentence 1 No. 6 WpHG in connection with Section 22 (1) sentence 2 WpHG.

Furthermore, Fresenius SE (as of January 28, 2011: Fresenius SE & Co. KGaA) disclosed in 2010 the following notification in accordance with Section 26 (1) WpHG:

On July 13, 2010, Fidelity Investment Trust, Boston, Massachusetts, United States, notified Fresenius SE (since January 28, 2011: Fresenius SE & Co. KGaA) that on July 9, 2010, the voting rights held by Fidelity Investment Trust fell below the threshold of 3% of the voting rights in Fresenius SE, Else-Kröner-Straße 1, 61352 Bad Homburg v. d. H., Germany. On that date, Fidelity Investment Trust held 2.95% of the voting rights in Fresenius SE, arising from 2,387,886 voting rights.

All notifications by shareholders are published on the website of the Company [www.fresenius.com](http://www.fresenius.com) under Investor Relations/ The Fresenius Shares/ Shareholder Structure.

## AUTHORIZED CAPITAL

At the Annual General Meeting on May 12, 2010, the articles of association of Fresenius SE & Co. KGaA were adopted with the following Authorized Capitals. Authorized Capitals I and II correspond in their scope to the Authorized Capitals of the former Fresenius SE. The Authorized Capitals I and II remain unchanged except that in the future only ordinary shares will be issued. The Authorized Capitals III, IV and V are solely to be used as an alternative source of ordinary shares for the stock option plans of 1998, 2003 and 2008 (see note 34, Stock options) as far as these plans are not filled from the Conditional Capitals I, II and III. The Conditional Capitals themselves have been adjusted to reflect the issuance of ordinary shares.

In accordance with the articles of association of Fresenius SE & Co. KGaA, the general partner Fresenius Management SE is authorized, with the approval of the Supervisory Board, until May 7, 2014,

- ▶ to increase Fresenius SE & Co. KGaA's subscribed capital by a total amount of up to €12,800,000 through a single or multiple issue of new bearer ordinary shares against cash contributions (Authorized Capital I). A subscription right must be granted to the shareholders. The general partner is authorized to exclude the shareholders' subscription right for fractional amounts.
- ▶ to increase Fresenius SE & Co. KGaA's subscribed capital by a total amount of up to €6,400,000 through a single or multiple issue of new bearer ordinary shares against cash contributions and/or contributions in kind (Authorized Capital II). The general partner is authorized, in each case with the consent of the Supervisory Board, to decide on the exclusion of the shareholders' subscription right. For cash contributions, the authorization can only be exercised if the issue price is not significantly below the stock exchange price. In case of a contribution in kind, the subscription right can be excluded only in order to acquire an undertaking, parts of an undertaking or a participation in an undertaking. The general partner is authorized to exclude the shareholders' subscription right for fractional amounts.



In addition, pursuant to the articles of association of Fresenius SE & Co. KGaA, the general partner is authorized, with the approval of the Supervisory Board, until May 11, 2015,

- ▶ to increase Fresenius SE & Co. KGaA's subscribed capital by a total amount of up to €1,313,000 through a single or multiple issue of new bearer ordinary shares against cash contributions (Authorized Capital III). The general partner may only make use of the Authorized Capital III to the extent that subscription rights for bearer ordinary shares were issued under the 1998 Stock Option Plan, the holders of these rights make use of their exercise right and provided that no Conditional Capital is used to satisfy the subscription rights.
- ▶ to increase Fresenius SE & Co. KGaA's subscribed capital by a total amount of up to €4,298,442 through a single or multiple issue of new bearer ordinary shares against cash contributions and/or contributions in kind (Authorized Capital IV). The general partner may only make use of the Authorized Capital IV to the extent that convertible bonds on bearer ordinary shares were issued under the 2003 Stock Option Plan, the holders of these convertible bonds exercise their conversion right and provided that no Conditional Capital is used to satisfy the conversion rights.
- ▶ to increase Fresenius SE & Co. KGaA's subscribed capital by a total amount of up to €6,200,000 through a single or multiple issue of new bearer ordinary shares against cash contributions (Authorized Capital V). The general partner may only make use of the Authorized Capital V to the extent that subscription rights for bearer ordinary shares were or will be issued under the 2008 Stock Option Plan, the holders of these rights make use of their exercise right, Fresenius SE & Co. KGaA does not grant own shares or exercise its right to pay a cash compensation in order to satisfy these subscription rights and provided that no Conditional Capital is used to satisfy the subscription rights.

The shareholders' subscription right is excluded for the Authorized Capital III, IV and V.

The resolved changes to the Authorized Capital became effective after registration of the new articles of association with the commercial register on January 28, 2011.

Two shareholder complaints (Anfechtungsklagen) were lodged against the resolutions of the Annual General Meeting held on May 8, 2009 creating the Authorized Capitals I and II. The Frankfurt Regional Court (Landgericht) has decided in favor of one complaint through judgment dated February 2, 2010, the other complaint was rejected. On February 15, 2011, the Higher Regional Court (Oberlandesgericht) of Frankfurt am Main confirmed the validity of the resolutions creating the Authorized Capitals I and II.

The clearance procedure (Freigabeverfahren) pursuant to Section 246a of the German Stock Corporation Act (AktG) initiated by Fresenius SE in order to secure the Authorized Capital I and II already entered in the commercial register was decided by the Higher Regional Court (Oberlandesgericht) of Frankfurt am Main in favor of Fresenius SE on March 30, 2010. Through this, the entry of the Authorized Capital I and II into the commercial register had already been final and conclusive.

#### **CONDITIONAL CAPITAL**

Corresponding to the stock option plans, the Conditional Capital of Fresenius SE (since January 28, 2011: Fresenius SE & Co. KGaA) is divided into Conditional Capital I, Conditional Capital II and Conditional Capital III. These are used to satisfy the subscription rights in connection with already issued stock options or convertible bonds, as the case may be, on bearer ordinary shares under the stock option plans of 1998, 2003 and 2008 (see note 34, Stock options).

After the registration of the change of legal form with the commercial register on January 28, 2011, the Conditional Capitals in the articles of association of Fresenius SE & Co. KGaA correspond in their scope to the Conditional Capitals of the former Fresenius SE, adjusted for stock options that have been exercised in the meantime.

Due to the conversion of all preference shares into ordinary shares, the Conditional Capital was amended to the effect that only subscription rights for bearer ordinary shares are granted.

The following table shows the development of the Conditional Capital:

| in €                                                        | Ordinary shares  | Preference shares | Total             |
|-------------------------------------------------------------|------------------|-------------------|-------------------|
| Conditional Capital I Fresenius AG Stock Option Plan 1998   | 656,550          | 656,550           | 1,313,100         |
| Conditional Capital II Fresenius AG Stock Option Plan 2003  | 2,149,221        | 2,149,221         | 4,298,442         |
| Conditional Capital III Fresenius SE Stock Option Plan 2008 | 3,100,000        | 3,100,000         | 6,200,000         |
| <b>Total Conditional Capital as of January 1, 2010</b>      | <b>5,905,771</b> | <b>5,905,771</b>  | <b>11,811,542</b> |
| Fresenius AG Stock Option Plan 1998 – options exercised     | -161,295         | -161,295          | -322,590          |
| Fresenius AG Stock Option Plan 2003 – options exercised     | -406,062         | -406,062          | -812,124          |
| <b>Total Conditional Capital as of December 31, 2010</b>    | <b>5,338,414</b> | <b>5,338,414</b>  | <b>10,676,828</b> |

### CAPITAL RESERVES

Capital reserves comprise the premium paid on the issue of shares and the exercise of stock options (additional paid-in capital).

### OTHER RESERVES

Other reserves comprise earnings generated by Group entities in prior years to the extent that they have not been distributed.

### DIVIDENDS

Under the German Stock Corporation Act (AktG), the amount of dividends available for distribution to shareholders is based upon the unconsolidated retained earnings of Fresenius SE (since January 28, 2011: Fresenius SE & Co. KGaA) as reported

in its statement of financial position determined in accordance with the German Commercial Code (HGB).

In May 2010, a dividend of €0.75 per bearer ordinary share and €0.76 per bearer preference share was approved by Fresenius SE's shareholders at the Annual General Meeting and paid. The total dividend payment was €122 million.

### 28. OTHER COMPREHENSIVE INCOME (LOSS)

Other comprehensive income (loss) comprises all amounts recognized directly in equity (net of tax) resulting from the currency translation of foreign subsidiaries' financial statements and the effects of measuring financial instruments at their fair value as well as the change in benefit obligation.

Changes in the components of other comprehensive income (loss) in 2010 and 2009 were as follows:

| € in millions                                                          | 2010                |            |                    | 2009                |            |                    |
|------------------------------------------------------------------------|---------------------|------------|--------------------|---------------------|------------|--------------------|
|                                                                        | Amount before taxes | Tax effect | Amount after taxes | Amount before taxes | Tax effect | Amount after taxes |
| Changes in unrealized gains/losses on derivative financial instruments | -15                 | 3          | -12                | 2                   | -10        | -8                 |
| Change in unrealized gains/losses                                      | -32                 | 7          | -25                | -1                  | -9         | -10                |
| Realized gains/losses due to reclassifications                         | 17                  | -4         | 13                 | 3                   | -1         | 2                  |
| Benefit obligation adjustment                                          | -54                 | 16         | -38                | -5                  | -1         | -6                 |
| Foreign currency translation adjustment                                | 238                 | -8         | 230                | -35                 | 6          | -29                |
| <b>Other comprehensive income (loss)</b>                               | <b>169</b>          | <b>11</b>  | <b>180</b>         | <b>-38</b>          | <b>-5</b>  | <b>-43</b>         |

## OTHER NOTES

### 29. COMMITMENTS AND CONTINGENT LIABILITIES

#### OPERATING LEASES AND RENTAL PAYMENTS

Fresenius Group's subsidiaries lease office and manufacturing buildings as well as machinery and equipment under various lease agreements expiring on dates through 2101. Rental expense recorded for operating leases for the years ended December 31, 2010 and 2009 was €480 million and €430 million, respectively.

Future minimum rental payments under non-cancellable operating leases for the years subsequent to December 31, 2010 are:

| for the fiscal years | € in millions |
|----------------------|---------------|
| 2011                 | 405           |
| 2012                 | 345           |
| 2013                 | 298           |
| 2014                 | 250           |
| 2015                 | 210           |
| Thereafter           | 766           |
| <b>Total</b>         | <b>2,274</b>  |

As of December 31, 2010, future investment commitments existed up to the year 2014 from the acquisition contracts for hospitals at projected costs of up to €137 million. Thereof €71 million relates to the year 2011.

Besides the above mentioned contingent liabilities, the amount of other commitments is immaterial.

#### LEGAL PROCEEDINGS

The Fresenius Group is routinely involved in numerous claims, lawsuits, regulatory and tax audits, investigations and other legal matters arising, for the most part, in the ordinary course of its business of providing healthcare services and products. The outcome of litigation and other legal matters is always difficult to accurately predict and outcomes that are not consistent with Fresenius Group's view of the merits can occur. The Fresenius Group believes that it has valid defenses to the

legal matters pending against it and is defending itself vigorously. Nevertheless, it is possible that the resolution of one or more of the legal matters currently pending or threatened could have a material adverse effect on its business, results of operations and financial condition.

#### Commercial litigation

##### W.R. Grace & Co. lawsuit

Fresenius Medical Care was originally formed as a result of a series of transactions it completed pursuant to the Agreement and Plan of Reorganization dated as of February 4, 1996, by and between W.R. Grace & Co. and Fresenius SE (the Merger). At the time of the Merger, a W.R. Grace & Co. subsidiary known as W.R. Grace & Co.-Conn. had, and continues to have, significant liabilities arising out of product-liability related litigation (including asbestos-related actions), pre-Merger tax claims and other claims unrelated to National Medical Care, Inc. (NMC), which was W.R. Grace & Co.'s dialysis business prior to the Merger. In connection with the Merger, W.R. Grace & Co.-Conn. agreed to indemnify Fresenius Medical Care, Fresenius Medical Care Holdings, Inc. (FMCH), and NMC against all liabilities of W.R. Grace & Co., whether relating to events occurring before or after the Merger, other than liabilities arising from or relating to NMC's operations. W.R. Grace & Co. and certain of its subsidiaries filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code (the Grace Chapter 11 Proceedings) on April 2, 2001.

Prior to and after the commencement of the Grace Chapter 11 Proceedings, class action complaints were filed against W.R. Grace & Co. and FMCH by plaintiffs claiming to be creditors of W.R. Grace & Co.-Conn., and by the asbestos creditors' committees on behalf of the W.R. Grace & Co. bankruptcy estate in the Grace Chapter 11 Proceedings, alleging among other things that the Merger was a fraudulent conveyance, violated the uniform fraudulent transfer act and constituted a conspiracy. All such cases have been stayed and transferred to or are pending before the U.S. District Court as part of the Grace Chapter 11 Proceedings.

In 2003, Fresenius Medical Care reached agreement with the asbestos creditors' committees on behalf of the W.R. Grace & Co. bankruptcy estate and W.R. Grace & Co. in the matters pending in the Grace Chapter 11 Proceedings for the settlement of all fraudulent conveyance and tax claims against it and other claims related to Fresenius Medical Care that arise out of the bankruptcy of W.R. Grace & Co. Under the terms of the settlement agreement as amended (Settlement Agreement), fraudulent conveyance and other claims raised on behalf of asbestos claimants will be dismissed with prejudice and Fresenius Medical Care will receive protection against existing and potential future W.R. Grace & Co. related claims, including fraudulent conveyance and asbestos claims, and indemnification against income tax claims related to the non-NMC members of the W.R. Grace & Co. consolidated tax group upon confirmation of a W.R. Grace & Co. bankruptcy reorganization plan that contains such provisions. Under the Settlement Agreement, Fresenius Medical Care will pay a total of US\$115 million without interest to the W.R. Grace & Co. bankruptcy estate, or as otherwise directed by the Court, upon plan confirmation. No admission of liability has been or will be made. The Settlement Agreement has been approved by the U.S. District Court. On January 31, 2011, the U.S. Bankruptcy Court approved W.R. Grace & Co.'s plan of reorganization, including the Settlement Agreement, and recommended approval of the plan to the U.S. District Court. Subsequent to the Merger, W.R. Grace & Co. was involved in a multi-step transaction involving Sealed Air Corporation (Sealed Air, formerly known as Grace Holding, Inc.). Fresenius Medical Care is engaged in litigation with Sealed Air to confirm its entitlement to indemnification from Sealed Air for all losses and expenses incurred by Fresenius Medical Care relating to pre-Merger tax liabilities and Merger-related claims. Under the Settlement Agreement, upon final confirmation of a plan of reorganization that satisfies the conditions of Fresenius Medical Care's payment obligation, this litigation will be dismissed with prejudice.

#### **Baxter patent dispute "touchscreen interfaces" (1)**

On April 4, 2003, FMCH filed a suit in the U.S. District Court for the Northern District of California, styled Fresenius USA, Inc., et al., v. Baxter International Inc., et al., Case No. C 03-1431, seeking a declaratory judgment that FMCH does not infringe patents held by Baxter International Inc. and its subsidiaries and affiliates (Baxter), that the patents are invalid, and that Baxter is without right or authority to threaten or maintain suit against FMCH for alleged infringement of Baxter's patents. In general, the asserted patents concern the use of touch screen interfaces for hemodialysis machines. Baxter filed counterclaims against FMCH seeking more than US\$140 million in monetary damages and injunctive relief, and alleging that FMCH willfully infringed on Baxter's patents. On July 17, 2006, the court entered judgment on a jury verdict in favor of FMCH finding that all the asserted claims of the Baxter patents are invalid as obvious and/or anticipated in light of prior art.

On February 13, 2007, the court granted Baxter's motion to set aside the jury's verdict in favor of FMCH and reinstated the patents and entered judgment of infringement. Following a trial on damages, the court entered judgment on November 6, 2007 in favor of Baxter on a jury award of US\$14.3 million. On April 4, 2008, the court denied Baxter's motion for a new trial, established a royalty payable to Baxter of 10% of the sales price for continuing sales of FMCH's 2008K hemodialysis machines and 7% of the sales price of related disposables, parts and service beginning November 7, 2007, and enjoined sales of the touchscreen-equipped 2008K machine effective January 1, 2009. Fresenius Medical Care appealed the court's rulings to the United States Court of Appeals for the Federal Circuit (Federal Circuit). In October 2008, Fresenius Medical Care completed design modifications to the 2008K machine that eliminate any incremental hemodialysis machine royalty payment exposure under the original District Court order. On September 10, 2009, the Federal Circuit reversed the district court's decision and determined that the asserted claims in two of the three patents at issue are invalid. As to the third patent, the Federal Circuit affirmed the district court's

decision; however, the Court also vacated the injunction and award of damages. These issues were remanded to the District Court for reconsideration in light of the invalidity ruling on most of the claims. As a result, FMCH is no longer required to fund the court-approved escrow account set up to hold the royalty payments ordered by the district court, although funds already contributed will remain in escrow until the case is finally concluded. On March 18, 2010, the U.S. Patent and Trademark Office (USPTO) and the Board of Patent Appeals and Interferences ruled in reexamination that the remaining Baxter patent is invalid. On October 5, 2010, Baxter appealed the Board's ruling to the Federal Circuit.

#### **Baxter patent dispute "touchscreen interfaces" (2)**

On April 28, 2008, Baxter filed suit in the U.S. District Court for the Northern District of Illinois, Eastern Division (Chicago), styled Baxter International, Inc. and Baxter Healthcare Corporation v. Fresenius Medical Care Holdings, Inc. and Fresenius USA, Inc., Case No. CV 2389, asserting that FMCH's hemodialysis machines infringe four patents issued in 2007 and 2008, all of which are based on one of the patents at issue in the April 2003 Baxter case described above. The new patents expire in April 2011 and relate to trend charts shown on touch screen interfaces and the entry of ultrafiltration profiles (ultrafiltration is the removing of liquid from a patient's body using osmotic pressure). This case is currently stayed pursuant to court order. Fresenius Medical Care believes that its hemodialysis machines do not infringe any valid claims of the Baxter patents at issue. All the asserted patents now stand rejected in an ongoing reexamination at the USPTO.

#### **Baxter patent dispute "Liberty cyclor"**

On October 17, 2006, Baxter and DEKA Products Limited Partnership (DEKA) filed suit in the U.S. District Court for the Eastern District of Texas which was subsequently transferred to the Northern District of California, styled Baxter Healthcare Corporation and DEKA Products Limited Partnership v. Fresenius Medical Care Holdings, Inc. d/b/a Fresenius

Medical Care North America and Fresenius USA, Inc., Case No. CV 438 TJW. The complaint alleged that FMCH's Liberty™ cyclor infringes nine patents owned by or licensed to Baxter. During and after discovery, seven of the asserted patents were dropped from the suit. On July 28, 2010, at the conclusion of the trial, the jury returned a verdict in favor of FMCH finding that the Liberty™ cyclor does not infringe any of the asserted claims of the Baxter patents. Baxter has asked the District Court to overturn the jury verdict.

#### **Gambro patent dispute**

A patent infringement action had been pending in Germany between Gambro Industries (Gambro) on the one side and Fresenius Medical Care Deutschland GmbH and Fresenius Medical Care AG & Co. KGaA on the other side (hereinafter collectively: Fresenius Medical Care). Fresenius Medical Care and Gambro have resolved this and other current patent infringement lawsuits between the parties by entering into respective settlements and a series of patent licenses between the parties.

#### **Other litigation and potential exposures**

##### **Renal Care Group – Class action "acquisition"**

Renal Care Group, Inc. (RCG) is named as a nominal defendant in a complaint originally filed September 13, 2006 in the Chancery Court for the State of Tennessee Twentieth Judicial District at Nashville styled Indiana State District Council of Laborers and Hod Carriers Pension Fund v. Gary Brukardt et al. Following the trial court's dismissal of the complaint, plaintiff's appeal in part, and reversal in part by the appellate court, the cause of action purports to be a class action on behalf of former shareholders of RCG and seeks monetary damages only against the individual former directors of RCG. The individual defendants, however, may have claims for indemnification and reimbursement of expenses against Fresenius Medical Care. Fresenius Medical Care expects to continue as a defendant in the litigation, which is proceeding toward trial in the Chancery Court, and believes that defendants will prevail.

### **Renal Care Group – Complaint “Method II”**

On July 17, 2007, resulting from an investigation begun in 2005, the United States Attorney filed a civil complaint in the United States District Court for the Eastern District of Missouri (St. Louis) against RCG, its subsidiary RCG Supply Company, and FMCH in its capacity as RCG’s current corporate parent. The complaint seeks monetary damages and penalties with respect to issues arising out of the operation of RCG’s Method II supply company through 2005, prior to FMCH’s acquisition of RCG in 2006. The complaint is styled United States of America ex rel. Julie Williams et al. vs. Renal Care Group, Renal Care Group Supply Company and FMCH. On August 11, 2009, the Missouri District Court granted RCG’s motion to transfer venue to the United States District Court for the Middle District of Tennessee (Nashville). On March 22, 2010, the Tennessee District Court entered judgment against defendants for approximately US\$23 million in damages and interest under the unjust enrichment count of the complaint but denied all relief under the six False Claims Act counts of the complaint. Fresenius Medical Care appealed the Tennessee District Court’s decision to the United States Court of Appeals for the Sixth Circuit and secured a stay of enforcement of the judgment pending appeal. The United States Attorney filed a cross appeal, but also asked the Tennessee District Court for an indicative or supplemental ruling. On June 23, 2010, the Tennessee District Court issued an indicative ruling to the effect that, if the case were remanded to the District Court, it would expect to enter a judgment under the False Claims Act against Fresenius Medical Care for approximately US\$104 million. On September 23, 2010, the Court of Appeals remanded the case to the Tennessee District Court to permit revision or supplementation of the original judgment, after which Fresenius Medical Care may pursue its appeals to the Court of Appeals. Fresenius Medical Care believes that RCG’s operation of its Method II supply company was in compliance with applicable law, that no relief is due to the United States, and that its position in the litigation will ultimately be sustained.

### **Fresenius Medical Care Holdings – Qui tam complaint**

On November 27, 2007, the United States District Court for the Western District of Texas (El Paso) unsealed and permitted service of two complaints previously filed under seal by a qui tam relator, a former FMCH local clinic employee. The first complaint alleged that a nephrologist unlawfully employed in his practice an assistant to perform patient care tasks that the assistant was not licensed to perform and that Medicare billings by the nephrologist and FMCH therefore violated the False Claims Act. The second complaint alleged that FMCH unlawfully retaliated against the relator by discharging her from employment constructively. The United States Attorney for the Western District of Texas declined to intervene and to prosecute on behalf of the United States. On March 30, 2010, the District Court issued final judgment in favor of defendants on all counts based on a jury verdict rendered on February 25, 2010 and on rulings of law made by the Court during the trial. The plaintiff has appealed from the District Court judgment.

In the ordinary course of Fresenius Group’s operations, the Fresenius Group is subject to litigation, arbitration and investigations relating to various aspects of its business. The Fresenius Group regularly analyzes current information about such claims for probable losses and provides accruals for such matters, including estimated expenses for legal services, as appropriate.

### **Accrued special charge of Fresenius Medical Care for legal matters**

At December 31, 2001, Fresenius Medical Care recorded a pre-tax special charge of US\$258 million to reflect anticipated expenses associated with the defense and resolution of pre-Merger tax claims, Merger-related claims, and commercial insurer claims. The costs associated with the Settlement

Agreement and settlements with insurers have been charged against this accrual. With the exception of the proposed US\$115 million (€86 million) payment under the Settlement Agreement in the Grace Chapter 11 Proceedings, all other matters included in the special charge have been resolved.

While Fresenius Medical Care believes that its remaining accrual reasonably estimates its currently anticipated costs related to the continued defense and resolution of this matter, no assurances can be given that its actual costs incurred will not exceed the amount of this accrual.

### 30. FINANCIAL INSTRUMENTS

The relationship between classes and categories as well as the reconciliation to the statement of financial position line items is shown in the following table:

|                                                                                   | Categories                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                             |                                                                                                                                                                                             |
|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                   | Loans and receivables                                                             | Financial liabilities measured at amortized cost                                                                                                                                                                                                                                                                                                                                                                   | Financial liabilities/assets measured at fair value                                                                                                                                         | Relating to no category                                                                                                                                                                     |
| <b>Cash and cash equivalents</b>                                                  |                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                             | ► Cash and cash equivalents                                                                                                                                                                 |
| <b>Assets recognized at carrying amount</b>                                       | ► Trade accounts receivable (incl. receivables from and loans to related parties) |                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                             |                                                                                                                                                                                             |
| <b>Liabilities recognized at carrying amount</b>                                  |                                                                                   | <ul style="list-style-type: none"> <li>► Trade accounts payable</li> <li>► Short-term accounts payable to related parties</li> <li>► Short-term debt (incl. short-term loans from related parties)</li> <li>► Long-term debt excluding capital lease obligations</li> <li>► Senior Notes</li> <li>► Trust preferred securities</li> <li>► Mandatory exchangeable bonds (excluding embedded derivatives)</li> </ul> |                                                                                                                                                                                             | ► Long-term capital lease obligations                                                                                                                                                       |
| <b>Liabilities recognized at fair value</b>                                       |                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                    | ► Other short-term liabilities (solely Contingent Value Rights and derivatives embedded in the Mandatory Exchangeable Bonds) (2009: other long-term liabilities)                            |                                                                                                                                                                                             |
| <b>Noncontrolling interest subject to put provisions recognized at fair value</b> |                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                             | ► Noncontrolling interest subject to put provisions                                                                                                                                         |
| <b>Derivatives for hedging purposes</b>                                           |                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                    | <ul style="list-style-type: none"> <li>► Other current assets</li> <li>► Other non-current assets</li> <li>► Other short-term liabilities</li> <li>► Other long-term liabilities</li> </ul> | <ul style="list-style-type: none"> <li>► Other current assets</li> <li>► Other non-current assets</li> <li>► Other short-term liabilities</li> <li>► Other long-term liabilities</li> </ul> |



The derivative financial instruments embedded in the Mandatory Exchangeable Bonds (MEB) are included in the statement of financial position item short-term accrued expenses and other short-term liabilities (in 2009: long-term accrued expenses and other long-term liabilities) (for details relating to the MEB, please see note 23, Mandatory Exchangeable

Bonds). Due to their special character and the difference in valuation, the embedded derivatives are classified separately. Also because of their special character and different valuation, the Contingent Value Rights (CVR) are classified separately from their statement of financial position item.

## VALUATION OF FINANCIAL INSTRUMENTS

The carrying amounts of financial instruments at December 31, classified into categories, were as follows:

| € in millions                                    | 2010  | 2009  |
|--------------------------------------------------|-------|-------|
| Loans and receivables                            | 2,950 | 2,535 |
| Financial liabilities measured at amortized cost | 9,977 | 9,416 |
| Assets measured at fair value <sup>1</sup>       | 11    | 11    |
| Liabilities measured at fair value <sup>1</sup>  | 174   | 73    |
| Relating to no category                          | 311   | 106   |

<sup>1</sup> There are no financial instruments designated as at fair value through profit or loss upon initial recognition.

### Estimation of fair values of financial instruments

The significant methods and assumptions used to estimate the fair values of financial instruments are as follows:

Cash and cash equivalents are stated at nominal value which equals the fair value.

The nominal value of short-term financial instruments like accounts receivables and payables and short-term debt represents its carrying amount, which is a reasonable estimate of the fair value due to the relatively short period to maturity of these instruments.

The fair values of the major long-term financial instruments are calculated on the basis of market information. Financial instruments for which market quotes are available are measured with the market quotes at the reporting date. The fair values of the other long-term financial liabilities are calculated at present value of respective future cash flows. To determine these present values, the prevailing interest rates and credit spreads for the Fresenius Group as of the date of the statement of financial position are used. The fair values of the noncontrolling interest subject to put provisions are determined using significant unobservable inputs.

The credit risk exposure related to Fresenius Group's financing receivables is insignificant and any impact on

Fresenius Group's operating results from allowances on credit losses of financing receivables can be considered immaterial.

The carrying amounts of derivatives embedded in the MEB and the CVR correspond with their fair values. The embedded derivatives have to be measured at fair value, which is estimated based on a Black-Scholes model. The CVR are traded at the stock exchange in the United States and are therefore valued with the current stock exchange price at the reporting date.

Derivatives, mainly consisting of interest rate swaps and foreign exchange forward contracts, are valued as follows: The fair value of interest rate swaps is calculated by discounting the future cash flows on the basis of the market interest rates applicable for the remaining term of the contract as of the date of the statement of financial position. To determine the fair value of foreign exchange forward contracts, the contracted forward rate is compared to the current forward rate for the remaining term of the contract as of the date of the statement of financial position. The result is then discounted on the basis of the market interest rates prevailing at the date of the statement of financial position for the respective currency.

Fresenius Group's own credit risk is incorporated in the fair value estimation of derivatives that are liabilities. Counterparty credit-risk adjustments are factored into the valuation of derivatives that are assets.

## Fair value of financial instruments

The following table presents the carrying amounts and fair values of Fresenius Group's financial instruments as of December 31:

| € in millions                                                              | 2010            |            | 2009            |            |
|----------------------------------------------------------------------------|-----------------|------------|-----------------|------------|
|                                                                            | Carrying amount | Fair value | Carrying amount | Fair value |
| Cash and cash equivalents                                                  | 769             | 769        | 420             | 420        |
| Assets recognized at carrying amount                                       | 2,950           | 2,950      | 2,535           | 2,535      |
| Liabilities recognized at carrying amount                                  | 10,031          | 10,259     | 9,461           | 9,611      |
| Liabilities recognized at fair value                                       | 133             | 133        | 55              | 55         |
| Noncontrolling interest subject to put provisions recognized at fair value | 209             | 209        | 161             | 161        |
| Derivatives for hedging purposes                                           | -225            | -225       | -115            | -115       |

Derivative and non-derivative financial instruments recognized at fair value are classified according to the three-tier fair value hierarchy. For the fair value measurement of derivatives for hedging purposes, significant other observable inputs are used. Therefore, they are classified as Level 2 in accordance with the defined fair value hierarchy levels. The derivatives embedded in the MEB are also classified as Level 2. The valuation of the CVR is based on the current

stock exchange price, they are therefore classified as Level 1. The liabilities recognized at fair value consist of embedded derivatives and the CVR and are consequently classified in their entirety as the lower hierarchy Level 2. The valuation of the noncontrolling interests subject to put provisions is determined using significant unobservable inputs, they are therefore classified as Level 3.

### FAIR VALUES OF DERIVATIVE FINANCIAL INSTRUMENTS

| € in millions                                                    | Dec. 31, 2010 |             | Dec. 31, 2009 |             |
|------------------------------------------------------------------|---------------|-------------|---------------|-------------|
|                                                                  | Assets        | Liabilities | Assets        | Liabilities |
| Interest rate contracts (current)                                | –             | 43          | –             | –           |
| Interest rate contracts (non-current)                            | 1             | 115         | –             | 134         |
| Foreign exchange contracts (current)                             | 8             | 49          | 18            | 11          |
| Foreign exchange contracts (non-current)                         | 5             | 2           | 20            | 1           |
| <b>Derivatives designated as hedging instruments<sup>1</sup></b> | <b>14</b>     | <b>209</b>  | <b>38</b>     | <b>146</b>  |
| Interest rate contracts (current)                                | 0             | 2           | 0             | 0           |
| Foreign exchange contracts (current) <sup>1</sup>                | 10            | 34          | 11            | 17          |
| Foreign exchange contracts (non-current) <sup>1</sup>            | 1             | 7           | –             | 1           |
| Derivatives embedded in the MEB (current)                        | 0             | 111         | 0             | 0           |
| Derivatives embedded in the MEB (non-current)                    | 0             | 0           | 0             | 21          |
| <b>Derivatives not designated as hedging instruments</b>         | <b>11</b>     | <b>154</b>  | <b>11</b>     | <b>39</b>   |

<sup>1</sup> Derivatives designated as hedging instruments and foreign exchange contracts not designated as hedging instruments are classified as derivatives for hedging purposes.

Derivative financial instruments are marked to market each reporting period, resulting in carrying amounts equal to fair values at the reporting date.

Derivatives not designated as hedging instruments, which are derivatives that do not qualify for hedge accounting, are also solely concluded to hedge economic business transactions and not for speculative purposes.

Derivatives for hedging purposes as well as derivatives embedded in the MEB were recognized at gross values within other assets in an amount of €25 million and other liabilities in an amount of €363 million.

The current portions of interest rate contracts and foreign exchange contracts indicated as assets in the previous table are recognized within other current assets in the consolidated statement of financial position, while the current portions of those indicated as liabilities are included in short-term accrued expenses and other short-term liabilities. The non-current portions indicated as assets or liabilities are recognized in other non-current assets or in long-term accrued expenses and other long-term liabilities, respectively. The derivatives embedded in the MEB are recognized within other short-term liabilities (2009: other long-term liabilities).

## Effects of financial instruments recorded in the consolidated statement of income

The net gains and losses from financial instruments consisted of allowances for doubtful accounts in an amount of €175 million and foreign currency transactions of -€25 million. In addition, income of €32 million resulted from the fair value measurement of the CVR and expenses of €90 million resulted from the fair value measurement of the derivatives embedded in the MEB. Interest income of €30 million resulted mainly from trade accounts receivable and loans to related parties. Interest expense of €596 million resulted mainly from financial liabilities.

### EFFECT OF DERIVATIVES DESIGNATED AS HEDGING INSTRUMENTS ON THE CONSOLIDATED STATEMENT OF COMPREHENSIVE INCOME

| € in millions                                                     | 2010                                                                             |                                                                                                  |                                                                 |
|-------------------------------------------------------------------|----------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|
|                                                                   | Gain or loss recognized in other comprehensive income (loss) (effective portion) | Gain or loss reclassified from accumulated other comprehensive income (loss) (effective portion) | Gain or loss recognized in the consolidated statement of income |
| Interest rate contracts                                           | -25                                                                              | -8                                                                                               | 1                                                               |
| Foreign exchange contracts                                        | -7                                                                               | -9                                                                                               | -1                                                              |
| <b>Derivatives in cash flow hedging relationships<sup>1</sup></b> | <b>-32</b>                                                                       | <b>-17</b>                                                                                       | <b>0</b>                                                        |
| Foreign exchange contracts                                        |                                                                                  |                                                                                                  | -24                                                             |
| <b>Derivatives in fair value hedging relationships</b>            |                                                                                  |                                                                                                  | <b>-24</b>                                                      |
| <b>Derivatives designated as hedging instruments</b>              | <b>-32</b>                                                                       | <b>-17</b>                                                                                       | <b>-24</b>                                                      |

<sup>1</sup> The amount of gain or loss recognized in the consolidated statement of income solely relates to the ineffective portion.

| € in millions                                                     | 2009                                                                             |                                                                                                  |                                                                 |
|-------------------------------------------------------------------|----------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|
|                                                                   | Gain or loss recognized in other comprehensive income (loss) (effective portion) | Gain or loss reclassified from accumulated other comprehensive income (loss) (effective portion) | Gain or loss recognized in the consolidated statement of income |
| Interest rate contracts                                           | 5                                                                                | -5                                                                                               | -                                                               |
| Foreign exchange contracts                                        | -6                                                                               | 2                                                                                                | -                                                               |
| <b>Derivatives in cash flow hedging relationships<sup>1</sup></b> | <b>-1</b>                                                                        | <b>-3</b>                                                                                        | <b>-</b>                                                        |
| Foreign exchange contracts                                        |                                                                                  |                                                                                                  | 21                                                              |
| <b>Derivatives in fair value hedging relationships</b>            |                                                                                  |                                                                                                  | <b>21</b>                                                       |
| <b>Derivatives designated as hedging instruments</b>              | <b>-1</b>                                                                        | <b>-3</b>                                                                                        | <b>21</b>                                                       |

<sup>1</sup> The amount of gain or loss recognized in the consolidated statement of income solely relates to the ineffective portion.

EFFECT OF DERIVATIVES NOT DESIGNATED AS HEDGING INSTRUMENTS  
ON THE CONSOLIDATED STATEMENT OF COMPREHENSIVE INCOME

| € in millions                                            | Gain or loss recognized in<br>the consolidated statement of income |            |
|----------------------------------------------------------|--------------------------------------------------------------------|------------|
|                                                          | 2010                                                               | 2009       |
| Interest rate contracts                                  | –                                                                  | 0          |
| Foreign exchange contracts                               | -97                                                                | -22        |
| Derivatives embedded in the MEB                          | -90                                                                | -29        |
| <b>Derivatives not designated as hedging instruments</b> | <b>-187</b>                                                        | <b>-51</b> |

Losses from derivatives in fair value hedging relationships and from foreign exchange contracts not designated as hedging instruments recognized in the consolidated statement of income are faced by gains from the underlying transactions in the corresponding amount.

The Fresenius Group expects to recognize a net amount of €4 million of the existing losses for foreign exchange contracts deferred in accumulated other comprehensive income (loss) in the consolidated statement of income within the next 12 months. For interest rate contracts, the Fresenius Group expects to recognize €95 million of losses in the course of normal business during the next 12 months in interest expense.

Gains and losses from foreign exchange contracts and the corresponding underlying transactions are accounted for as cost of sales, selling, general and administrative expenses and net interest. Gains and losses resulting from interest rate contracts are recognized as net interest in the consolidated statement of income. The position other financial result in the consolidated statement of income includes gains and losses from the valuation of the derivatives embedded in the MEB (see note 10, Other financial result).

## MARKET RISK

### General

The Fresenius Group is exposed to effects related to foreign exchange fluctuations in connection with its international business activities that are denominated in various currencies. In order to finance its business operations, the Fresenius Group issues senior notes, trust preferred securities and commercial papers and enters into mainly long-term credit

agreements and euro notes (Schuldscheindarlehen) with banks. Due to these financing activities, the Fresenius Group is exposed to interest risk caused by changes in variable interest rates and the risk of changes in the fair value of statement of financial position items bearing fixed interest rates.

In order to manage the risk of interest rate and foreign exchange rate fluctuations, the Fresenius Group enters into certain hedging transactions with highly rated financial institutions as authorized by the Management Board. Derivative financial instruments are not concluded for trading purposes.

In general, the Fresenius Group conducts its derivative financial instrument activities under the control of a single centralized department. The Fresenius Group has established guidelines derived from best practice standards in the banking industry for risk assessment procedures and supervision concerning the use of financial derivatives. These guidelines require amongst other things a clear segregation of duties in the areas of execution, administration, accounting and controlling.

The Fresenius Group defines benchmarks for individual exposures in order to quantify interest and foreign exchange risks. The benchmarks are derived from achievable and sustainable market rates. Depending on the individual benchmarks, hedging strategies are determined and implemented.

Earnings of the Fresenius Group were not materially affected by hedge ineffectiveness in the reporting period since the critical terms of the interest and foreign exchange derivatives mainly matched the critical terms of the underlying exposures.

## Derivative financial instruments

### Foreign exchange risk management

The Fresenius Group has determined the euro as its financial reporting currency. Therefore, foreign exchange translation risks resulting from the fluctuation of exchange rates between the euro and the local currencies, in which the financial statements of the foreign subsidiaries are prepared, have an impact on results of operations and financial positions reported in the consolidated financial statements.

Besides translation risks, foreign exchange transaction risks exist, which mainly relate to transactions such as purchases and sales as well as engineering and services provided by the Fresenius Group which are denominated in foreign currencies. A major part of transaction risks arise from products manufactured in Fresenius Group's worldwide production sites which are usually denominated in the local currency of the respective manufacturer and are delivered worldwide to various Fresenius Group entities. These intragroup sales are mainly denominated in euros, U.S. dollars and yens. Therefore, Group companies are exposed to changes of the foreign exchange rates between the invoicing currencies and the local currencies in which they conduct their businesses. Solely for the purpose of hedging existing and foreseeable foreign exchange transaction exposures, the Fresenius Group enters into foreign exchange forward contracts and, on a small scale, foreign exchange options. In order to ensure that no foreign exchange risks result from loans in foreign currencies, the Fresenius Group enters into foreign exchange swap contracts.

As of December 31, 2010, the notional amounts of foreign exchange contracts totaled €3,323 million. These foreign exchange contracts have been entered into to hedge risks from operational business and in connection with loans in foreign currency. The predominant part of the foreign exchange forward contracts to hedge risks from operational business was recognized as cash flow hedge, while foreign exchange contracts in connection with loans in foreign currencies are partly recognized as fair value hedges. The fair values of cash flow hedges and fair value hedges were -€39 million and €1 million, respectively.

The hedge-effective portion of changes in the fair value of foreign exchange forward contracts that are designated and qualified as cash flow hedges of forecasted product purchases

and sales is reported in accumulated other comprehensive income (loss). These amounts are subsequently reclassified into earnings as a component of cost of sales or as selling, general and administrative expenses in the same period in which the hedged transaction affects earnings.

As of December 31, 2010, the Fresenius Group was party to foreign exchange contracts with a maximum maturity of 59 months.

In order to estimate and quantify the transaction risks from foreign currencies, the Fresenius Group considers the cash flows reasonably expected for the following three months as the relevant assessment basis for a sensitivity analysis. For this analysis, the Fresenius Group assumes that all foreign exchange rates in which the Group had unhedged positions as of reporting date would be negatively impacted by 10%. By multiplying the calculated unhedged risk positions with this factor, the maximum possible negative impact of the foreign exchange transaction risks on the Group's results of operations would be €18 million.

### Interest rate risk management

Fresenius Group's interest rate risks mainly arise from money market and capital market transactions of the Group for financing its business activities.

The Fresenius Group enters into interest rate swaps and, on a small scale, into interest rate options in order to hedge against interest rate exposures arising from long-term borrowings at variable rates by swapping them into fixed rates.

For purposes of analyzing the impact of changes in the relevant reference interest rates on Fresenius Group's results of operations, the Group calculates the portion of financial debt which bears variable interest rates and which has not been hedged by means of interest rate swaps or options against rising interest rates. For this particular part of its liabilities, the Fresenius Group assumes an increase in the reference rates of 0.5% compared to the actual rates as of the date of the statement of financial position. The corresponding additional annual interest expense is then compared to the net income attributable to Fresenius SE & Co. KGaA. This analysis shows that an increase of 0.5% in the relevant reference rates would

have an effect of less than 1% on the consolidated net income attributable to Fresenius SE & Co. KGaA and Fresenius SE & Co. KGaA shareholders' equity.

The Fresenius Group enters into interest rate swaps that are designated as cash flow hedges effectively converting certain variable interest rate payments, resulting from existing loans and Euro Notes (Schuldscheindarlehen) denominated in U.S. dollars or euros, into fixed interest rate payments. Furthermore, interest rate swaps have been entered into in anticipation of future debt issuances. The U.S. dollar interest rate swaps with a notional volume of US\$4,675 million (€3,499 million) and a fair value of -US\$184 million (-€138 million) expire at various dates in the years 2011 to 2014. The euro interest rate swaps with a notional volume of €407 million and a fair value of -€21 million expire in the years 2011 to 2016. The U.S. dollar interest rate swaps bear an average interest rate of 3.94% and the euro interest rate swaps bear an average interest rate of 4.34%.

Interest payables and interest receivables in connection with the swap agreements are accrued and recorded as an adjustment to the interest expense at each reporting date.

## CREDIT RISK

The Fresenius Group is exposed to potential losses regarding financial instruments in the event of non-performance by counterparties. With respect to derivative financial instruments, it is not expected that any counterparty fails to meet its obligations as the counterparties are highly rated financial

institutions. The maximum credit exposure of derivatives is represented by the fair value of those contracts with a positive fair value amounting to €24 million for foreign exchange derivatives at December 31, 2010. No credit exposure existed from interest rate derivatives. The maximum credit risk resulting from the use of non-derivative financial instruments is defined as the total amount of all receivables. In order to control this credit risk, the Management of the Fresenius Group performs an ageing analysis of trade accounts receivable. For details on the ageing analysis and on the allowance for doubtful accounts, please see note 14, Trade accounts receivable.

## LIQUIDITY RISK

The liquidity risk is defined as the risk that a company is potentially unable to meet its financial obligations. The Management of the Fresenius Group manages the liquidity of the Group by means of effective working capital and cash management as well as an anticipatory evaluation of refinancing alternatives. The Management of the Fresenius Group believes that existing credit facilities as well as the cash generated by operating activities and additional short-term borrowings are sufficient to meet the Company's foreseeable demand for liquidity (see note 21, Debt and capital lease obligations).

The following table shows the future undiscounted contractual cash flows (including interests) resulting from recognized financial liabilities as well as the fair value of noncontrolling interest subject to put provisions and the fair value of derivative financial instruments:

| € in millions                                                             | up to 1 year | 1 to 5 years | more than 5 years |
|---------------------------------------------------------------------------|--------------|--------------|-------------------|
| Long-term debt and capital lease obligations <sup>1</sup>                 | 557          | 5,054        | 110               |
| Short-term debt<br>(including accounts receivable securitization program) | 637          | 0            | 0                 |
| Senior Notes                                                              | 158          | 1,719        | 1,357             |
| Mandatory Exchangeable Bonds <sup>2</sup>                                 | 31           | 0            | 0                 |
| Trade accounts payable                                                    | 691          | –            | –                 |
| Trust preferred securities                                                | 486          | –            | –                 |
| Noncontrolling interest subject to put provisions                         | 69           | 78           | 62                |
| Derivative financial instruments                                          | 128          | 124          | 0                 |
| <b>Total</b>                                                              | <b>2,757</b> | <b>6,975</b> | <b>1,529</b>      |

<sup>1</sup> Future interest payments for financial liabilities with variable interest rates were calculated using the latest interest rates fixed prior to December 31, 2010.

<sup>2</sup> The line Mandatory Exchangeable Bonds includes only interests, as the bonds will be exchangeable into shares of Fresenius Medical Care AG & Co. KGaA and not redeemable in cash upon maturity.

### 31. SUPPLEMENTARY INFORMATION ON CAPITAL MANAGEMENT

The Fresenius Group has a solid financial profile. Capital management includes both equity and debt. A principal objective of Fresenius Group's capital management is to optimize the weighted-average cost of capital. Further, it is sought to achieve a balanced mix of equity and debt. To secure growth on a long-term basis, a capital increase may also be considered in exceptional cases, for instance to finance a major acquisition.

Due to the Company's diversification within the health care sector and the strong market positions of the business segments in global, growing and non-cyclical markets, predictable and sustainable cash flows are generated. They allow a reasonable proportion of debt, i. e. the employment of an extensive mix of financial instruments. Moreover, Fresenius Group's customers are generally of high credit quality.

Equity and debt have developed as follows:

#### SHAREHOLDERS' EQUITY

| € in millions        | Dec. 31, 2010 | Dec. 31, 2009 |
|----------------------|---------------|---------------|
| Shareholders' equity | <b>8,844</b>  | 7,491         |
| Total assets         | <b>23,577</b> | 20,882        |
| Equity ratio         | <b>37.5%</b>  | 35.9%         |

Fresenius SE & Co. KGaA is not subject to any capital requirements provided for in its articles of association. Fresenius SE & Co. KGaA has obligations to issue shares out of the Conditional Capital relating to the exercise of stock options and convertible bonds on the basis of the existing 1998, 2003 and 2008 stock option plans (see note 34, Stock options).

#### DEBT

| € in millions | Dec. 31, 2010 | Dec. 31, 2009 |
|---------------|---------------|---------------|
| Debt          | <b>8,784</b>  | 8,299         |
| Total assets  | <b>23,577</b> | 20,882        |
| Debt ratio    | <b>37.3%</b>  | 39.7%         |

According to the definitions in the underlying agreements, the Mandatory Exchangeable Bonds and the Contingent Value Rights are not categorized as debt.

Assuring financial flexibility is the top priority in the Group's financing strategy. This flexibility is achieved through a wide range of financing instruments and a high degree of diversification of the investors. Fresenius Group's maturity profile displays a broad spread of maturities with a high proportion of medium- and long-term financing. In the choice of financing instruments, market capacity, investor diversification, flexibility, credit conditions and the existing maturity profile are taken into account.

The net debt/EBITDA ratio is a key financial figure for the Fresenius Group. As of December 31, 2010, the net debt/EBITDA ratio was 2.6 and was therefore within Fresenius Group's target corridor of 2.5 to 3.0. The net debt/EBITDA ratio is expected to remain within this corridor in 2011.

Fresenius Group's financing strategy is reflected in its credit ratings. Fresenius is covered by the rating agencies Moody's, Standard & Poor's and Fitch.

The following table shows the company rating of Fresenius SE & Co. KGaA:

|                | Standard & Poor's | Moody's | Fitch    |
|----------------|-------------------|---------|----------|
| Company rating | BB                | Ba1     | BB       |
| Outlook        | positive          | stable  | positive |

In 2010, all rating agencies increased the outlook:

In April 2010, Standard & Poor's raised the outlook from stable to positive. In May 2010, Moody's increased the outlook from negative to stable. Eventually, Fitch raised the outlook from stable to positive in August 2010.



### 32. SUPPLEMENTARY INFORMATION ON THE CONSOLIDATED STATEMENT OF CASH FLOWS

The statements of cash flows of the Fresenius Group for the fiscal years 2010 and 2009 are shown on pages 122 to 123.

Cash funds reported in the consolidated statement of cash flows and in the consolidated statement of financial position comprise cash on hand, checks, securities and cash at bank which are readily convertible within three months and are subject to insignificant risk of changes in value.

The following table provides additional information with regard to the consolidated statement of cash flows:

| € in millions     | 2010 | 2009 |
|-------------------|------|------|
| Interest paid     | 534  | 554  |
| Income taxes paid | 504  | 393  |

Cash paid for acquisitions (without investments in licenses) consisted of the following:

| € in millions                                 | 2010       | 2009       |
|-----------------------------------------------|------------|------------|
| Assets acquired                               | 562        | 348        |
| Liabilities assumed                           | -85        | -48        |
| Noncontrolling interest                       | -29        | -31        |
| Notes assumed in connection with acquisitions | -32        | -19        |
| Cash paid                                     | 416        | 250        |
| Cash acquired                                 | -14        | -24        |
| <b>Cash paid for acquisitions, net</b>        | <b>402</b> | <b>226</b> |

### 33. NOTES ON THE CONSOLIDATED SEGMENT REPORTING

#### GENERAL

The consolidated segment reporting tables shown on pages 126 to 129 of this annual report are an integral part of the notes.

The Fresenius Group has identified the business segments Fresenius Medical Care, Fresenius Kabi, Fresenius Helios and Fresenius Vamed which corresponds to the internal organizational and reporting structures (Management Approach) at December 31, 2010.

The key data disclosed in conjunction with the consolidated segment reporting correspond to the key data of the internal reporting system of the Fresenius Group. Internal and external reporting and accounting correspond to each other; the same key data and definitions are used.

Sales and proceeds between the segments are indicative of the actual sales and proceeds agreed with third parties. Administrative services are billed in accordance with service level agreements.

The business segments were identified in accordance with FASB ASC Topic 280, Segment Reporting, which defines the segment reporting requirements in the annual financial statements and interim reports with regard to the operating business, product and service businesses and regions. The business segments of the Fresenius Group are as follows:

- ▶ Fresenius Medical Care
- ▶ Fresenius Kabi
- ▶ Fresenius Helios
- ▶ Fresenius Vamed
- ▶ Corporate/Other

The segment Corporate/Other mainly comprises the holding functions of Fresenius SE & Co. KGaA as well as Fresenius Netcare GmbH, which provides services in the field of information technology as well as Fresenius Biotech, which does not fulfill the characteristics of a reportable segment. In addition, the segment Corporate/Other includes intersegment consolidation adjustments as well as special items in connection with the fair value measurement of the Mandatory Exchangeable Bonds and the Contingent Value Rights.

Details on the business segments are shown on page 131 of the notes.

Segment reporting by region takes account of geographical factors and the similarity of markets in terms of opportunities and risks. The allocation to a particular region is based on the domicile of the customers.

## NOTES ON THE BUSINESS SEGMENTS

The key figures used by the Management Board to assess segment performance, have been selected in such a way that they include all items of income and expenses which fall under the area of responsibility of the business segments. The Management Board is convinced that the most suitable performance indicator is the operating income (EBIT). The Management Board believes that, in addition to the operating income, the figure for earnings before interest, taxes and depreciation/amortization (EBITDA) can also help investors to assess the ability of the Fresenius Group to generate cash flows and to meet its financial obligations. The EBITDA figure is also the basis for assessing Fresenius Group's compliance with the terms of its credit agreements (e. g. the Fresenius Medical Care 2006 Senior Credit Agreement or the 2008 Senior Credit Agreement).

Depreciation and amortization is presented for property, plant and equipment, intangible assets with definite useful lives of the respective business segment.

Net interest comprises interest expenses and interest income.

Net income attributable to Fresenius SE & Co. KGaA is defined as earnings after income taxes and noncontrolling interest.

The operating cash flow is the cash provided by/used in operating activities.

The cash flow before acquisitions and dividends is the operating cash flow less net capital expenditure.

Debt comprises bank loans, senior notes, trust preferred securities, capital lease obligations, liabilities relating to outstanding acquisitions as well as intercompany liabilities. The Mandatory Exchangeable Bonds and the Contingent Value Rights are not categorized as debt (see note 31, Supplementary information on capital management).

Capital expenditure mainly includes additions to property, plant and equipment.

Acquisitions refer to the purchase of shares in legally-independent companies and the acquisition of business divisions and intangible assets (e. g. licenses). The key figures shown with regard to acquisitions present the contractual purchase prices comprising amounts paid in cash (less cash acquired), debts assumed and the issuance of shares, whereas for the purposes of the statement of cash flows, only cash purchase price components less acquired cash and cash equivalents are reported.

The EBITDA margin is calculated as a ratio of EBITDA to sales.

The EBIT margin is calculated as a ratio of EBIT to sales.

The return on operating assets (ROOA) is defined as the ratio of EBIT to average operating assets. Operating assets are defined as total assets less deferred tax assets, trade accounts payable and advance payments from customers as well as guaranteed subsidies.

In addition, the key indicators "Depreciation and amortization in % of sales" and "Operating cash flow in % of sales" are also disclosed.

## RECONCILIATION OF KEY FIGURES TO CONSOLIDATED EARNINGS

| € in millions                     | 2010         | 2009         |
|-----------------------------------|--------------|--------------|
| Total EBIT of reporting segments  | 2,464        | 2,107        |
| General corporate expenses        |              |              |
| Corporate/Other (EBIT)            | -46          | -53          |
| <b>Group EBIT</b>                 | <b>2,418</b> | <b>2,054</b> |
| Interest expenses                 | -596         | -602         |
| Interest income                   | 30           | 22           |
| Other financial result            | -66          | -31          |
| <b>Income before income taxes</b> | <b>1,786</b> | <b>1,443</b> |

## RECONCILIATION OF NET DEBT WITH THE CONSOLIDATED STATEMENT OF FINANCIAL POSITION

| € in millions                                                                     | Dec. 31, 2010 | Dec. 31, 2009 |
|-----------------------------------------------------------------------------------|---------------|---------------|
| Short-term debt                                                                   | 606           | 287           |
| Short-term loans from related parties                                             | 2             | 2             |
| Current portion of long-term debt and capital lease obligations                   | 420           | 261           |
| Trust preferred securities of Fresenius Medical Care Capital Trusts (current)     | 468           | 0             |
| Long-term debt and capital lease obligations, less current portion                | 4,919         | 5,228         |
| Senior Notes                                                                      | 2,369         | 2,066         |
| Trust preferred securities of Fresenius Medical Care Capital Trusts (non-current) | 0             | 455           |
| <b>Debt</b>                                                                       | <b>8,784</b>  | <b>8,299</b>  |
| less cash and cash equivalents                                                    | 769           | 420           |
| <b>Net debt</b>                                                                   | <b>8,015</b>  | <b>7,879</b>  |

The following table shows the non-current assets by geographical region:

| € in millions                               | Dec. 31, 2010 | Dec. 31, 2009 |
|---------------------------------------------|---------------|---------------|
| Germany                                     | 3,574         | 3,205         |
| Europe (excluding Germany)                  | 1,984         | 1,938         |
| North America                               | 10,182        | 9,241         |
| Asia-Pacific                                | 882           | 681           |
| Latin America                               | 354           | 282           |
| Africa                                      | 47            | 37            |
| <b>Total non-current assets<sup>1</sup></b> | <b>17,023</b> | <b>15,384</b> |

<sup>1</sup> The aggregate amount of net non-current assets is the sum of non-current assets less deferred tax assets and derivative financial instruments.

In 2010, the Fresenius Group generated sales of €3,355 million (2009: €3,152 million) in Germany. Sales in the United States were €6,849 million in 2010 (2009: €5,976 million).

## 34. STOCK OPTIONS

### COMPENSATION COST IN CONNECTION WITH THE STOCK OPTION PLANS OF THE FRESENIUS GROUP

In 2010, the Fresenius Group recognized compensation cost in an amount of €33 million for convertible bonds and stock options granted since 2006. For stock incentive plans which are performance based, the Fresenius Group recognizes compensation cost over the vesting periods, based on the market values of the underlying stock at the grant date.

### FAIR VALUE OF STOCK OPTIONS

The Fresenius Group elected to adopt FAS 123(R), Share-Based Payment, prospectively.

The Fresenius Group uses a binomial option pricing model in determining the fair value of stock options granted under the stock option plans of Fresenius SE & Co. KGaA and Fresenius Medical Care AG & Co. KGaA. Option valuation models require the input of highly subjective assumptions including expected stock price volatility. Fresenius Group's assumptions are based upon its past experiences, market trends and the experiences of other entities of the same size and in similar industries. To incorporate the effects of expected early exercise in the model, an early exercise of vested options was assumed as soon as the share price exceeds 150% of the exercise price. Fresenius Group's stock options have characteristics that vary significantly from traded options and changes in subjective assumptions can materially affect the fair value of the option.

The weighted-average assumptions for the calculation of the fair value of grants of the Fresenius SE Stock Option Plan 2008 made during the years 2010 and 2009 are as follows:

| € in millions                  | 2010           |            | 2009           |            |
|--------------------------------|----------------|------------|----------------|------------|
|                                | December Grant | July Grant | December Grant | July Grant |
| Expected dividend yield        | 1.58%          | 1.92%      | 2.33%          | 2.90%      |
| Risk-free interest rate        | 2.38%          | 2.12%      | 2.73%          | 3.04%      |
| Expected volatility            | 28.44%         | 28.94%     | 28.83%         | 29.01%     |
| Life of options                | 7 years        | 7 years    | 7 years        | 7 years    |
| Exercise price per option in € | 63.94          | 53.49      | 39.61          | 36.89      |

The expected volatility results from the historical volatility calculated over the expected life of options. The volatility was determined when the fair value of stock options was calculated for the first time and since then has been controlled every year upon issuance of a new tranche.

## FRESENIUS SE & CO. KGAA STOCK OPTION PLANS

### Description of the Fresenius SE & Co. KGaA stock option plans in place

On December 31, 2010, Fresenius SE (since January 28, 2011: Fresenius SE & Co. KGaA) had three stock option plans in place; the Fresenius AG stock option based plan of 1998 (1998 Plan), the Fresenius AG Stock Option Plan 2003 (2003 Plan) which is based on convertible bonds and the stock option based Fresenius SE Stock Option Plan 2008 (2008 Plan). During 2010, stock options were only granted under the 2008 Plan.

The following descriptions reflect the stock option plans at December 31, 2010 whereas the changes resulting from the conversion of the subscribed capital into bearer ordinary shares in combination with the change of legal form are shown in a separate chapter thereafter.

### Stock Option Plan 2008

During 2008, Fresenius SE adopted the 2008 Plan to grant subscription rights to members of the Management Board and managerial employees of the Company and affiliated companies.

Under the 2008 Plan, up to 6.2 million options can be issued, which carry entitlement to obtain 3.1 million ordinary shares and 3.1 million preference shares. Up to 1.2 million options are designated for members of the Management Board of Fresenius SE, up to 3.2 million options are designated for members of the management of directly or indirectly affiliated companies (except for Fresenius Medical Care) and up to 1.8 million options are designated for managerial staff members of Fresenius SE and its affiliated companies (except for Fresenius Medical Care). With respect to the members of Fresenius SE's Management Board, the Supervisory Board has sole authority to grant stock options and administer the 2008 Plan. The Management Board of Fresenius SE has such authority with respect to all other participants in the 2008 Plan. The options can be granted in five tranches with effect as of the first bank working day in July and/or the first bank working day in December. The exercise price of options shall be the average closing price of Fresenius SE's ordinary shares and preference shares, respectively, on the Frankfurt Stock Exchange during the 30 trading days immediately prior to each grant date. For participants in the United States, the exercise price may be the average closing price of both share classes during the 30 calendar days immediately prior to the grant date, if these are higher. Options granted have a seven-year term but can be exercised only after a three-year vesting period. The vesting of options granted is mandatorily subject to the condition, in each case, that the annual success target within the three-year vesting period is achieved. For each such year, the success target is achieved if the consolidated net income attributable to Fresenius SE, adjusted for extraordinary effects, has increased by at least 8% compared to the respective adjusted net income attributable to Fresenius SE of the previous fiscal year. For each year in which the success target has not been met, one-third of the options granted shall forfeit. The adjusted net income attributable to Fresenius SE

shall be calculated on the basis of the calculation method of the accounting principles according to U.S. GAAP. For the purposes of the 2008 Plan, the adjusted net income attributable to Fresenius SE is determined and will be verified bindingly by Fresenius SE's auditor during the audit of the consolidated financial statements. The performance targets for 2009 and 2010 were met. Upon exercise of vested options, Fresenius SE has the right to grant treasury shares or a cash payment in lieu of increasing capital by the issuance of new shares. If all conditions are fulfilled, stock options may be exercised throughout the year with the exception of certain pre-determined black-out periods.

#### **Stock Option Plan 2003**

During 2003, Fresenius AG adopted the 2003 Plan for members of the Management Board and executive employees. This incentive plan which is based on convertible bonds was replaced by the 2008 Plan and no options have been granted since 2008. Under the 2003 Plan, eligible employees have the right to acquire ordinary and preference shares of Fresenius SE. The bonds expire in ten years and one third of them can be exercised beginning after two, three and four years after the grant date, respectively. Upon issuance of the option, the employees have the right to choose options with or without a stock price target. The conversion price of options subject to a stock price target corresponds to the stock exchange quoted price of the ordinary or preference shares upon the first time the stock exchange quoted price exceeds the initial value (after the share split in 2007:  $\frac{1}{3}$  of the initial value) by at least 25%. If converted after the share split, the conversion price which entitles to three ordinary shares or preference shares, respectively, is equal to the triple of one third of the initial value. The initial value is the joint average stock exchange price of bearer ordinary shares and non-voting bearer preference shares during the last 30 trading days prior to the date of grant. The conversion price of options without

a stock price target is the initial value. In the case of options not subject to a stock price target, the number of convertible bonds awarded to the eligible employee would be 15% less than if the employee elected options subject to the stock price target. Each convertible bond granted after the share split entitles to subscribe one ordinary or preference share, subject to payment of the conversion price. Bonds granted and converted prior to the share split were entitled to subscribe one ordinary or preference share, conversion after the share split entitles to three ordinary or preference shares.

#### **Stock Option Plan 1998**

During 1998, Fresenius AG adopted the 1998 Plan for members of the Management Board and executive employees. This stock incentive plan was replaced by the 2003 Plan and no options have been granted since 2003. Under the 1998 Plan, eligible employees have the right to acquire ordinary and preference shares of Fresenius SE. Options granted under this plan have a ten-year term. At December 31, 2010, all options were exercisable. Prior to the share split, one ordinary or one preference share could be acquired for each option. After the share split in 2007, each option entitles to acquire three ordinary or preference shares. The maximum number of ordinary or preference shares to be issued to the members of the Management Board or executive employees has been adjusted accordingly.

#### **Adaptations of the stock option plans due to the change of legal form**

Upon registration of Fresenius SE's change of legal form into Fresenius SE & Co. KGaA with the commercial register on January 28, 2011, adaptations of the three stock option plans were required. Due to the conversion of all preference shares into ordinary shares in combination with the change of legal form, all already issued subscription rights under the respective stock option plan are to be satisfied, in case of exercise, with ordinary shares. Furthermore, the beneficiaries under the

2008 Plan are exclusively granted subscription rights for ordinary shares. With regard to the eligible beneficiaries, the members of Fresenius Management SE's Management Board replace the previous members of the Fresenius SE Management Board for future stock option grants. With regard to the 2008 Plan, the Supervisory Board of Fresenius Management SE determines the grants for the Management Board members of that company. All other plan participants will be determined by the Management Board of Fresenius Management SE. In addition, due to the discontinuation of the preference shares, the success target of the 2003 Plan was adjusted to the effect, that it is deemed to be achieved if and when the sum of the following price increases amounts to at least 25%:

- ▶ increase of the joint average stock exchange price of ordinary and preference shares from the day of the issuance until the day when the change of legal form took effect
- ▶ increase of the stock exchange price of ordinary shares since the change of legal form took effect

Whereas the number of stock options remains unchanged, in future, the exercise price of the stock options corresponds to the stock exchange price of the ordinary share without considering the stock exchange price of the preference share.

The resolved changes to the stock option plans became effective upon the Management Board's resolution on September 27, 2010 with the approval of the Supervisory Board on October 12, 2010.

## Transactions during 2010

In 2010, Fresenius SE (since January 28, 2011: Fresenius SE & Co. KGaA) awarded 1,109,738 stock options, including 198,660 options to members of the Management Board of Fresenius SE (since January 28, 2011: Fresenius SE & Co. KGaA), at a weighted-average exercise price of €53.57, a weighted-average fair value of €12.95 each and a total fair value of €14 million, which will be amortized over the three-year vesting period.

During the fiscal year 2010, Fresenius SE (since January 28, 2011: Fresenius SE & Co. KGaA) received cash of €38 million from the exercise of 1,134,714 stock options. The

average stock price at the exercise date was €57.56 for ordinary shares and €58.61 for preference shares. The intrinsic value of options exercised in 2010 was €27 million.

Under the 1998 Plan, 134,452 stock options were outstanding and exercisable at December 31, 2010. No options were held by the members of the Fresenius SE (since January 28, 2011: Fresenius SE & Co. KGaA) Management Board. 1,958,284 convertible bonds were outstanding under the 2003 Plan, of which 1,679,338 were exercisable. The members of the Fresenius SE (since January 28, 2011: Fresenius SE & Co. KGaA) Management Board held 419,100 convertible bonds. Out of 3,196,586 outstanding stock options issued under the 2008 Plan, 559,860 were held by the members of the Fresenius SE (since January 28, 2011: Fresenius SE & Co. KGaA) Management Board.

Stock option transactions are summarized as follows:

| Ordinary shares<br>Dec. 31 | Number of<br>options | Weighted-<br>average<br>exercise price<br>in € | Number of<br>options<br>exercisable |
|----------------------------|----------------------|------------------------------------------------|-------------------------------------|
| <b>Balance 2008</b>        | <b>2,370,299</b>     | <b>40.05</b>                                   | <b>951,484</b>                      |
| Granted                    | 533,624              | 33.82                                          |                                     |
| Exercised                  | 85,821               | 24.55                                          |                                     |
| Forfeited                  | 121,376              | 36.14                                          |                                     |
| <b>Balance 2009</b>        | <b>2,696,726</b>     | <b>39.49</b>                                   | <b>1,205,185</b>                    |
| Granted                    | 554,869              | 53.61                                          |                                     |
| Exercised                  | 567,357              | 32.90                                          |                                     |
| Forfeited                  | 39,577               | 47.82                                          |                                     |
| <b>Balance 2010</b>        | <b>2,644,661</b>     | <b>43.87</b>                                   | <b>906,895</b>                      |

| Preference shares<br>Dec. 31 | Number of<br>options | Weighted-<br>average<br>exercise price<br>in € | Number of<br>options<br>exercisable |
|------------------------------|----------------------|------------------------------------------------|-------------------------------------|
| <b>Balance 2008</b>          | <b>2,370,299</b>     | <b>40.21</b>                                   | <b>951,484</b>                      |
| Granted                      | 533,624              | 39.97                                          |                                     |
| Exercised                    | 85,821               | 25.24                                          |                                     |
| Forfeited                    | 121,376              | 38.10                                          |                                     |
| <b>Balance 2009</b>          | <b>2,696,726</b>     | <b>40.73</b>                                   | <b>1,205,185</b>                    |
| Granted                      | 554,869              | 53.54                                          |                                     |
| Exercised                    | 567,357              | 34.63                                          |                                     |
| Forfeited                    | 39,577               | 48.95                                          |                                     |
| <b>Balance 2010</b>          | <b>2,644,661</b>     | <b>44.74</b>                                   | <b>906,895</b>                      |

The following tables provide a summary of fully vested options outstanding and exercisable for both preference and ordinary shares at December 31, 2010:

#### OPTIONS FOR ORDINARY SHARES

| Range of exercise price in € | Options outstanding |                                                      |                                      | Options exercisable |                                                      |                                      |
|------------------------------|---------------------|------------------------------------------------------|--------------------------------------|---------------------|------------------------------------------------------|--------------------------------------|
|                              | Number of options   | Weighted-average remaining contractual life in years | Weighted-average exercise price in € | Number of options   | Weighted-average remaining contractual life in years | Weighted-average exercise price in € |
| 10.01 – 15.00                | 58,101              | 2.50                                                 | 13.65                                | 58,101              | 2.50                                                 | 13.65                                |
| 15.01 – 20.00                | 62,394              | 1.62                                                 | 19.59                                | 62,394              | 1.62                                                 | 19.59                                |
| 20.01 – 25.00                | 107,710             | 3.50                                                 | 21.96                                | 107,710             | 3.50                                                 | 21.96                                |
| 25.01 – 30.00                | 180,695             | 4.46                                                 | 28.57                                | 180,695             | 4.46                                                 | 28.57                                |
| 30.01 – 35.00                | 534,638             | 5.38                                                 | 33.74                                | 12,530              | 0.58                                                 | 30.83                                |
| 35.01 – 40.00                | 266,800             | 5.39                                                 | 39.23                                | 265,050             | 5.39                                                 | 39.24                                |
| 40.01 – 45.00                | 46,205              | 4.92                                                 | 41.62                                | 0                   |                                                      |                                      |
| 45.01 – 50.00                | 8,484               | 5.50                                                 | 48.81                                | 8,484               | 5.50                                                 | 48.81                                |
| 50.01 – 55.00                | 1,023,730           | 5.61                                                 | 54.07                                | 0                   |                                                      |                                      |
| 55.01 – 60.00                | 339,441             | 6.50                                                 | 56.43                                | 203,959             | 6.50                                                 | 56.43                                |
| 60.01 – 65.00                | 4,500               | 6.92                                                 | 63.53                                | 0                   |                                                      |                                      |
| 70.01 – 75.00                | 11,963              | 6.50                                                 | 70.54                                | 7,972               | 6.50                                                 | 70.54                                |
|                              | <b>2,644,661</b>    | <b>5.32</b>                                          | <b>43.87</b>                         | <b>906,895</b>      | <b>4.73</b>                                          | <b>36.19</b>                         |

#### OPTIONS FOR PREFERENCE SHARES

| Range of exercise price in € | Options outstanding |                                                      |                                      | Options exercisable |                                                      |                                      |
|------------------------------|---------------------|------------------------------------------------------|--------------------------------------|---------------------|------------------------------------------------------|--------------------------------------|
|                              | Number of options   | Weighted-average remaining contractual life in years | Weighted-average exercise price in € | Number of options   | Weighted-average remaining contractual life in years | Weighted-average exercise price in € |
| 10.01 – 15.00                | 65,799              | 2.50                                                 | 12.14                                | 65,799              | 2.50                                                 | 12.14                                |
| 15.01 – 20.00                | 107,710             | 3.50                                                 | 19.00                                | 107,710             | 3.50                                                 | 19.00                                |
| 20.01 – 25.00                | 54,696              | 1.50                                                 | 21.13                                | 54,696              | 1.50                                                 | 21.13                                |
| 25.01 – 30.00                | 180,695             | 4.46                                                 | 29.33                                | 180,695             | 4.46                                                 | 29.33                                |
| 30.01 – 35.00                | 12,530              | 0.58                                                 | 34.73                                | 12,530              | 0.58                                                 | 34.73                                |
| 35.01 – 40.00                | 550,896             | 5.45                                                 | 39.88                                | 28,788              | 4.50                                                 | 38.52                                |
| 40.01 – 45.00                | 238,012             | 5.50                                                 | 40.57                                | 236,262             | 5.50                                                 | 40.55                                |
| 45.01 – 50.00                | 46,205              | 4.92                                                 | 45.40                                | 0                   |                                                      |                                      |
| 50.01 – 55.00                | 1,032,214           | 5.61                                                 | 52.98                                | 8,484               | 5.50                                                 | 53.01                                |
| 55.01 – 60.00                | 339,441             | 6.50                                                 | 56.11                                | 203,959             | 6.50                                                 | 56.11                                |
| 60.01 – 65.00                | 4,500               | 6.92                                                 | 64.34                                | 0                   |                                                      |                                      |
| 70.01 – 75.00                | 11,963              | 6.50                                                 | 70.14                                | 7,972               | 6.50                                                 | 70.14                                |
|                              | <b>2,644,661</b>    | <b>5.32</b>                                          | <b>44.74</b>                         | <b>906,895</b>      | <b>4.73</b>                                          | <b>36.25</b>                         |



At December 31, 2010, the aggregate intrinsic value of exercisable options for ordinary shares and preference shares was €24 million and €25 million, respectively.

At December 31, 2010, total unrecognized compensation costs related to non-vested options granted under the 2003 Plan and the 2008 Plan were €18 million. These costs are expected to be recognized over a weighted-average period of 1.9 years.

## **FRESENIUS MEDICAL CARE AG & CO. KGAA STOCK OPTION PLANS**

### **Stock Option Plan 2006**

On May 9, 2006, as amended on May 15, 2007, the Fresenius Medical Care AG & Co. KGaA Stock Option Plan 2006 (Amended 2006 Plan) was established by resolution of Fresenius Medical Care AG & Co. KGaA's (FMC-AG & Co. KGaA) Annual General Meeting with a conditional capital increase up to €15 million subject to the issue of up to 15 million non-par value bearer ordinary shares with a nominal value of €1.00 each. Under the Amended 2006 Plan, up to 15 million options can be issued, each of which can be exercised to obtain one ordinary share, with up to 3 million options designated for members of the Management Board of Fresenius Medical Care Management AG (FMC Management AG), the general partner, up to 3 million options designated for members of management boards of direct or indirect subsidiaries of FMC-AG & Co. KGaA and up to 9 million options designated for managerial staff members of FMC-AG & Co. KGaA and such subsidiaries. With respect to participants who are members of the Management Board of FMC Management AG, its Supervisory Board has sole authority to grant stock options and exercise other decision making powers under the Amended 2006 Plan (including decisions regarding certain adjustments and forfeitures). The Management Board of FMC Management AG has such authority with respect to all other participants in the Amended 2006 Plan.

Options under the Amended 2006 Plan can be granted the last Monday in July and/or the first Monday in December. The exercise price of options granted under the Amended 2006

Plan shall be the average closing price on the Frankfurt Stock Exchange of FMC-AG & Co. KGaA's ordinary shares during the 30 calendar days immediately prior to each grant date. Options granted under the Amended 2006 Plan have a seven-year term but can be exercised only after a three-year vesting period. The vesting of options granted is subject to achievement of performance targets, measured over a three-year period from the grant date. For each such year, the performance target is achieved if FMC-AG & Co. KGaA's adjusted basic income per ordinary share (EPS), as calculated in accordance with the Amended 2006 Plan, increases by at least 8% year over year during the vesting period, beginning with EPS for the year of grant as compared to EPS for the year preceding such grant. Calculation of EPS under the Amended 2006 Plan excluded, among other items, the costs of the transformation of Fresenius Medical Care's legal form and the conversion of preference shares into ordinary shares. For each grant, one-third of the options granted are forfeited for each year in which EPS does not meet or exceed the 8% target. The performance targets for 2010 and 2009 were met. Vesting of the portion or portions of a grant for a year or years in which the performance target is met does not occur until completion of the entire three-year vesting period.

Options granted under the Amended 2006 Plan to U.S. participants are non-qualified stock options under the United States Internal Revenue Code of 1986, as amended. Options under the Amended 2006 Plan are not transferable by a participant or a participant's heirs, and may not be pledged, assigned, or otherwise disposed of.

As of December 2010, no further grants will be issued under the Amended 2006 Plan.

### **2001 International Stock Option Plan**

Under the Fresenius Medical Care 2001 International Stock Incentive Plan (2001 Plan), options in the form of convertible bonds with a principal of up to €12 million were issued to the members of the Management Board and other employees

of FMC-AG & Co. KGaA representing grants for up to 12 million non-voting preference shares. The convertible bonds have a par value of €1.00 and bear interest at a rate of 5.5%. Except for the members of the Management Board, eligible employees may purchase the bonds by issuing a non-recourse note with terms corresponding to the terms of and secured by the bond. FMC-AG & Co. KGaA has the right to offset its obligation on a bond against the employee's obligation on the related note; therefore, the convertible bond obligations and employee note receivables represent stock options issued by FMC-AG & Co. KGaA and are not reflected in the consolidated financial statements. The options expire ten years from issuance and can be exercised beginning two, three or four years after issuance. Compensation costs related to awards granted under this plan are amortized on a straight-line basis over the vesting period for each separately vesting portion of the awards. Bonds issued to Management Board members who did not issue a note to FMC-AG & Co. KGaA are recognized as a liability on the Group's statement of financial position.

Upon issuance of the option, the employees had the right to choose options with or without a stock price target. The conversion price of options subject to a stock price target corresponds to the stock exchange quoted price of the preference shares upon the first time the stock exchange quoted price exceeds the initial value by at least 25%. The initial value is the average price of the preference shares during the last 30 trading days prior to the date of grant. In the case of options

not subject to a stock price target, the number of convertible bonds awarded to the eligible employee would be 15% less than if the employee elected options subject to the stock price target. The conversion price of the options without a stock price target is the initial value. Each option entitles the holder thereof, upon payment of the respective conversion price, to acquire one preference share. Effective May 2006, no further grants can be issued under the 2001 Plan and no options were granted under the 2001 Plan after 2005.

### Transactions during 2010

During 2010, FMC-AG & Co. KGaA awarded 2,817,879 options, including 423,300 to members of the Management Board of FMC Management AG, at a weighted-average exercise price of €42.71, a weighted-average fair value of €8.10 each and a total fair value of €23 million, which will be amortized over the three-year vesting period.

During 2010, FMC-AG & Co. KGaA received cash of €73 million from the exercise of stock options and €10 million from a related tax benefit. The intrinsic value of options exercised in 2010 was €38 million.

At December 31, 2010, the Management Board members of FMC Management AG, held 2,178,699 stock options for ordinary shares and employees of FMC-AG & Co. KGaA held 9,973,409 stock options for ordinary shares and 58,663 stock options for preference shares under the various stock-based compensation plans of Fresenius Medical Care.

The table below provides reconciliations for options outstanding at December 31, 2010 as compared to December 31, 2009:

|                                                                     | Number of options<br>in thousand | Weighted-average<br>exercise price<br>in € |
|---------------------------------------------------------------------|----------------------------------|--------------------------------------------|
| <b>Balance at December 31, 2009 (options for ordinary shares)</b>   | <b>11,894</b>                    | <b>30.50</b>                               |
| Granted                                                             | 2,818                            | 42.71                                      |
| Exercised                                                           | 2,532                            | 28.38                                      |
| Forfeited                                                           | 28                               | 30.35                                      |
| <b>Balance at December 31, 2010 (options for ordinary shares)</b>   | <b>12,152</b>                    | <b>33.78</b>                               |
| <b>Balance at December 31, 2009 (options for preference shares)</b> | <b>147</b>                       | <b>18.35</b>                               |
| Exercised                                                           | 73                               | 18.57                                      |
| Forfeited                                                           | 15                               | 13.95                                      |
| <b>Balance at December 31, 2010 (options for preference shares)</b> | <b>59</b>                        | <b>19.19</b>                               |

The following table provides a summary of fully vested options outstanding and exercisable for both preference and ordinary shares at December 31, 2010:

|                               | Number of options in thousand | Weighted-average remaining contractual life in years | Weighted-average exercise price in € | Aggregate intrinsic value € in millions |
|-------------------------------|-------------------------------|------------------------------------------------------|--------------------------------------|-----------------------------------------|
| Options for ordinary shares   | 4,316                         | 3                                                    | 27.99                                | 66                                      |
| Options for preference shares | 59                            | 3                                                    | 19.19                                | 1                                       |

At December 31, 2010, total unrecognized compensation costs related to non-vested options granted under all plans were €33 million. These costs are expected to be recognized over a weighted-average period of 1.6 years.

### 35. RELATED PARTY TRANSACTIONS

Prof. Dr. h. c. Roland Berger, a member of the Supervisory Board of Fresenius SE & Co. KGaA, is a partner and was the chairman of the supervisory board of Roland Berger Strategy Consultants until August 1, 2010. In 2010, the Fresenius Group paid this company €0.2 million for consulting services rendered. In 2009, no services were rendered to the Fresenius Group by this company.

Klaus-Peter Müller, a member of the Supervisory Board of Fresenius SE & Co. KGaA, is the chairman of the supervisory board of Commerzbank AG. The Fresenius Group maintains business relations with Commerzbank under customary conditions.

Dr. Gerhard Rupprecht, a member of the Supervisory Board of Fresenius SE & Co. KGaA, was a member of the management board of Allianz SE until December 31, 2010 and the chairman of the management board of Allianz Deutschland AG until June 30, 2010. Dr. Francesco De Meo, member of the Management Board of the general partner of Fresenius SE & Co. KGaA, is a member of the supervisory board of Allianz Private Krankenversicherungs-AG. In 2010, the Fresenius Group paid €3 million for insurance premiums to Allianz (2009: €7 million).

Dr. Dieter Schenk, deputy chairman of the Supervisory Board of Fresenius SE until January 28, 2011, member of the Supervisory Board of Fresenius Management SE since March 11, 2010 and deputy chairman of the Supervisory Board of Fresenius Management SE since May 12, 2010, is a partner in the law firm Noerr LLP (formerly: Nörr Stiefenhofer Lutz) that provides legal services to the Fresenius Group. In 2010, the Fresenius Group paid this law firm €1 million for services rendered (2009: €1 million).

### 36. SUBSEQUENT EVENTS

In 2010, Fresenius initiated a change of its legal form to a partnership limited by shares (KGaA) together with a conversion of the preference shares into ordinary shares. Fresenius SE's change of legal form and stock conversion became effective with their entry in the commercial register on January 28, 2011. The registration of the change of legal form with the commercial register was finally cleared following a court settlement of pending disputes initiated by minority shareholders.

The Company is now operating under the name Fresenius SE & Co. KGaA. All shareholders of the former Fresenius SE are now shareholders of Fresenius SE & Co. KGaA. As part of the transaction, all non-voting preference shares were mandatorily converted into voting ordinary shares at a 1:1 exchange ratio. This simplifies the share structure, increases the liquidity of the Fresenius share, further strengthens Fresenius' position in the capital market, and improves access to the equity market.

In January 2011, Fresenius Medical Care announced the signing of a purchase agreement to acquire International Dialysis Centers (ICD), the dialysis care business of Euromedic International. With the acquisition, Fresenius Medical Care wants to expand its activities in dialysis care especially in Eastern Europe, where IDC is market leader. IDC operates 70 dialysis clinics in 9 countries and currently treats over 8,200 hemodialysis patients, largely in Central and Eastern Europe. After the acquisition is completed, IDC will contribute about US\$180 million to the annual sales of Fresenius Medical Care. The acquisition price was €485 million. Closing is subject to necessary regulatory approvals by the relevant anti-trust authorities and is expected to occur in the first half of 2011.

There have been no significant changes in the Fresenius Group's operating environment following the end of the fiscal year 2010. No other events of material importance on the assets and liabilities, financial position, and results of operations of the Group have occurred following the end of the fiscal year.

## NOTES IN ACCORDANCE WITH THE GERMAN COMMERCIAL CODE (HGB)

### 37. COMPENSATION OF THE MANAGEMENT BOARD AND THE SUPERVISORY BOARD

Individualized information regarding the compensation of the members of the Management Board and of the Supervisory Board is disclosed in the audited Compensation Report (see page 27 ff.), which is part of the Management Report.

The Management Board's compensation is, as a whole, performance-oriented and consisted of three components in 2010: non-performance-related compensation (basic salary), performance-related compensation (variable bonus), long-term incentive component (stock options).

The cash compensation paid to the Management Board for the performance of its responsibilities was €9,398 thousand (2009: €9,345 thousand). Thereof, €4,105 thousand (2009: €3,635 thousand) is not performance-related and €4,685 thousand (2009: €5,204 thousand) is performance-related. The amount of the performance-related compensation depends on the achievement of targets relating to the net income of the Fresenius Group and business segments. As a long-term incentive component, the members of the Management

Board received 198,660 stock options under the Fresenius SE Stock Option Plan 2008 and 99,600 stock options under the Fresenius Medical AG & Co. KGaA Stock Option Plan 2006.

The payment of a part of the performance-related compensation in an amount of €897 thousand was postponed by two years as a long-term incentive component. The payment depends on the achievement of targets relating to the net income attributable to Fresenius SE & Co. KGaA of the years 2011 and 2012.

The compensation paid to the Supervisory Board and its committees was €1,782 thousand in 2010 (2009: €1,584 thousand). Of this amount, €183 thousand was fixed compensation (2009: €183 thousand), €100 thousand was compensation for committees services (2009: €100 thousand), and €1,499 thousand was variable compensation (2009: €1,301 thousand).

In 2010, to former members of the Management Board, €776 thousand (2009: €744 thousand) was paid. The pension obligation for these persons amounted to €11,039 thousand in 2010 (2009: €9,878 thousand).

In the fiscal years 2010 and 2009, no loans or advance payments of future compensation components were made to members of the Management Board of the former Fresenius SE.

### 38. AUDITOR'S FEES

In 2010 and 2009, fees for the auditor KPMG AG Wirtschaftsprüfungsgesellschaft were expensed as follows:

| € in millions               | 2010      |          | 2009      |          |
|-----------------------------|-----------|----------|-----------|----------|
|                             | Total     | Germany  | Total     | Germany  |
| Audit fees                  | 15        | 5        | 14        | 5        |
| Audit-related fees          | 1         | –        | –         | –        |
| Tax consulting fees         | 1         | –        | 1         | 0        |
| Other fees                  | –         | –        | –         | –        |
| <b>Total auditor's fees</b> | <b>17</b> | <b>5</b> | <b>15</b> | <b>5</b> |

### 39. CORPORATE GOVERNANCE

For each consolidated stock exchange listed entity, the declaration pursuant to Section 161 of the German Stock Corporation Act (Aktiengesetz) has been issued and made available to shareholders on the website of Fresenius SE & Co. KGaA [www.fresenius.com](http://www.fresenius.com) under Who we are/Corporate Governance/Declaration of Conformity and of Fresenius Medical Care AG & Co. KGaA [www.fmc-ag.com](http://www.fmc-ag.com) under Investor Relations/Corporate Governance/Declaration of Compliance, respectively.

### 40. PROPOSAL FOR THE DISTRIBUTION OF EARNINGS

The general partner and the Supervisory Board of Fresenius SE & Co. KGaA propose to the Annual General Meeting that the earnings for 2010 of Fresenius SE (since January 28, 2011: Fresenius SE & Co. KGaA) are distributed as follows:

|                                                                                                                  |                       |
|------------------------------------------------------------------------------------------------------------------|-----------------------|
| in €                                                                                                             |                       |
| Payment of a dividend of €0.86 per bearer ordinary share on the 162,450,090 ordinary shares entitled to dividend | 139,707,077.40        |
| Balance to be carried forward                                                                                    | 50,880.80             |
| <b>Retained earnings</b>                                                                                         | <b>139,757,958.20</b> |

#### 41. RESPONSIBILITY STATEMENT

"To the best of our knowledge, and in accordance with the applicable reporting principles, the consolidated financial statements give a true and fair view of the assets, liabilities, financial position and profit or loss of the Group, and the

Group management report includes a fair review of the development and performance of the business and the position of the Group, together with a description of the principal opportunities and risks associated with the expected development of the Group."

Bad Homburg v. d. H., February 23, 2011

Fresenius SE & Co. KGaA,

represented by:

Fresenius Management SE, its General Partner

The Management Board



Dr. U. M. Schneider



R. Baule



Dr. F. De Meo



Dr. J. Götz



Dr. B. Lipps



S. Sturm



Dr. E. Wastler

## AUDITOR'S REPORT

To the Fresenius SE & Co. KGaA

We have audited the consolidated financial statements prepared by the Fresenius SE & Co. KGaA (until February 28, 2011: Fresenius SE), Bad Homburg v. d. Höhe, comprising the consolidated statement of income, the consolidated statement of comprehensive income, the consolidated statement of financial position, the consolidated statement of cash flows, the statement of changes in equity and the notes to the consolidated financial statements for the business year from January 1 to December 31, 2010. The preparation of the consolidated financial statements in accordance with Accounting Principles Generally Accepted in the United States of America (U.S. GAAP) is the responsibility of the legal representative of the Company. Our responsibility is to express an opinion on the consolidated financial statements based on our audit. In addition, we have been engaged to express an opinion as to whether the voluntarily prepared group management report is in agreement with the group management report of Fresenius SE & Co. KGaA, Bad Homburg v. d. Höhe, prepared in accordance with § 290 and § 315 HGB [Handelsgesetzbuch "German Commercial Code"] apart from appropriate incorporation of U.S. GAAP financial data.

We conducted our audit of the consolidated financial statements in accordance with § 317 HGB and German generally accepted standards for the audit of financial statements promulgated by the Institut der Wirtschaftsprüfer (IDW). Those standards require that we plan and perform the audit such that misstatements materially affecting the presentation of the net assets, financial position and results of operations in the consolidated financial statements in accordance with the

applicable financial reporting framework and in the group management report are detected with reasonable assurance. Knowledge of the business activities and the economic and legal environment of the Group and expectations as to possible misstatements are taken into account in the determination of audit procedures. The effectiveness of the accounting-related internal control system and the evidence supporting the disclosures in the consolidated financial statements and the group management report are examined primarily on a test basis within the framework of the audit. The audit includes assessing the annual financial statements of those entities included in consolidation, the determination of entities to be included in consolidation, the accounting and consolidation principles used and significant estimates made by the legal representative, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audit provides a reasonable basis for our opinion.

Our audit has not led to any reservations.

In our opinion, based on the findings of our audit, the consolidated financial statements comply with U.S. GAAP and give a true and fair view of the net assets, financial position and results of operations of the Group in accordance with these requirements. The voluntarily prepared group management report is consistent with the consolidated financial statements prepared in accordance with U.S. GAAP and is, apart from appropriate incorporation of U.S. GAAP financial data, in agreement with the group management report of Fresenius SE & Co. KGaA prepared in accordance with § 290 and § 315 HGB, on which we issued an unqualified statutory audit opinion. Based on this, the group management report as a whole provides a suitable view of the Group's position and suitably presents the opportunities and risks of future development.

Frankfurt am Main, February 23, 2011

KPMG AG

Wirtschaftsprüfungsgesellschaft



Hölzl  
German Public Auditor



Hommel  
German Public Auditor

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**Consolidated Financial Statements of Fresenius SE for 2009 (US-GAAP)**

## CONSOLIDATED STATEMENT OF INCOME

| in million €                                     | Note | 2009         | 2008         |
|--------------------------------------------------|------|--------------|--------------|
| Sales                                            | 4    | 14,164       | 12,336       |
| Cost of sales                                    | 5    | -9,528       | -8,408       |
| <b>Gross profit</b>                              |      | <b>4,636</b> | <b>3,928</b> |
| Selling, general and administrative expenses     | 8    | -2,342       | -1,972       |
| Research and development expenses                |      | -240         | -479         |
| <b>Operating income (EBIT)</b>                   |      | <b>2,054</b> | <b>1,477</b> |
| Interest income                                  | 9    | 22           | 25           |
| Interest expenses                                | 9    | -602         | -456         |
| Other financial result                           | 10   | -31          | 68           |
| <b>Financial result</b>                          |      | <b>-611</b>  | <b>-363</b>  |
| <b>Income before income taxes</b>                |      | <b>1,443</b> | <b>1,114</b> |
| Income taxes                                     | 11   | -452         | -431         |
| <b>Net income</b>                                |      | <b>991</b>   | <b>683</b>   |
| Less noncontrolling interest                     | 26   | 497          | 413          |
| <b>Net income attributable to Fresenius SE</b>   |      | <b>494</b>   | <b>270</b>   |
| <b>Earnings per ordinary share in €</b>          | 12   | <b>3.06</b>  | <b>1.71</b>  |
| Fully diluted earnings per ordinary share in €   | 12   | 3.04         | 1.58         |
| <b>Earnings per preference share in €</b>        | 12   | <b>3.07</b>  | <b>1.72</b>  |
| Fully diluted earnings per preference share in € | 12   | 3.05         | 1.59         |

The following notes are an integral part of the consolidated financial statements.

## CONSOLIDATED STATEMENT OF COMPREHENSIVE INCOME

| in million €                                                            | Note   | 2009        | 2008       |
|-------------------------------------------------------------------------|--------|-------------|------------|
| <b>Net income</b>                                                       |        | <b>991</b>  | <b>683</b> |
| <b>Other comprehensive income (loss)</b>                                |        |             |            |
| Foreign currency translation                                            | 28, 30 | -125        | 148        |
| Cash flow hedges                                                        | 28, 30 | 2           | -147       |
| Actuarial gains (losses) on defined benefit pension plans               | 25, 28 | -5          | -7         |
| Income taxes related to components of other comprehensive income (loss) | 28     | -5          | 56         |
| <b>Other comprehensive income (loss)</b>                                |        | <b>-133</b> | <b>50</b>  |
| <b>Total comprehensive income</b>                                       |        | <b>858</b>  | <b>733</b> |
| <b>Comprehensive income attributable to noncontrolling interest</b>     |        | <b>409</b>  | <b>450</b> |
| <b>Comprehensive income attributable to Fresenius SE</b>                |        | <b>449</b>  | <b>283</b> |

The following notes are an integral part of the consolidated financial statements.

## CONSOLIDATED STATEMENT OF FINANCIAL POSITION

### ASSETS

as of December 31, in million €

|                                                                 | Note | 2009          | 2008          |
|-----------------------------------------------------------------|------|---------------|---------------|
| Cash and cash equivalents                                       | 13   | 420           | 370           |
| Trade accounts receivable, less allowance for doubtful accounts | 14   | 2,509         | 2,477         |
| Accounts receivable from and loans to related parties           |      | 26            | 22            |
| Inventories                                                     | 15   | 1,235         | 1,127         |
| Other current assets                                            | 16   | 893           | 773           |
| Deferred taxes                                                  | 11   | 280           | 309           |
| <b>I. Total current assets</b>                                  |      | <b>5,363</b>  | <b>5,078</b>  |
| Property, plant and equipment                                   | 17   | 3,559         | 3,420         |
| Goodwill                                                        | 18   | 10,356        | 10,379        |
| Other intangible assets                                         | 18   | 1,053         | 1,078         |
| Other non-current assets                                        | 16   | 436           | 433           |
| Deferred taxes                                                  | 11   | 115           | 156           |
| <b>II. Total non-current assets</b>                             |      | <b>15,519</b> | <b>15,466</b> |
| <b>Total assets</b>                                             |      | <b>20,882</b> | <b>20,544</b> |

## LIABILITIES AND SHAREHOLDERS' EQUITY

as of December 31, in million €

|                                                                     | Note   | 2009          | 2008          |
|---------------------------------------------------------------------|--------|---------------|---------------|
| Trade accounts payable                                              |        | 601           | 598           |
| Short-term accounts payable to related parties                      |        | 7             | 6             |
| Short-term accrued expenses and other short-term liabilities        | 19, 20 | 2,197         | 2,129         |
| Short-term debt                                                     | 21     | 287           | 729           |
| Short-term loans from related parties                               |        | 2             | 2             |
| Current portion of long-term debt and capital lease obligations     | 21     | 261           | 431           |
| Current portion of Senior Notes                                     | 22     | 0             | 100           |
| Short-term accruals for income taxes                                |        | 122           | 104           |
| Deferred taxes                                                      | 11     | 51            | 70            |
| <b>A. Total short-term liabilities</b>                              |        | <b>3,528</b>  | <b>4,169</b>  |
| Long-term debt and capital lease obligations, less current portion  | 21     | 5,228         | 5,716         |
| Senior Notes, less current portion                                  | 22     | 2,066         | 1,354         |
| Mandatory Exchangeable Bonds                                        | 23     | 554           | 554           |
| Long-term accrued expenses and other long-term liabilities          | 19, 20 | 481           | 475           |
| Trust preferred securities of Fresenius Medical Care Capital Trusts | 24     | 455           | 455           |
| Pension liabilities                                                 | 25     | 309           | 282           |
| Long-term accruals for income taxes                                 |        | 194           | 147           |
| Deferred taxes                                                      | 11     | 415           | 449           |
| <b>B. Total long-term liabilities</b>                               |        | <b>9,702</b>  | <b>9,432</b>  |
| <b>I. Total liabilities</b>                                         |        | <b>13,230</b> | <b>13,601</b> |
| <b>A. Noncontrolling interest</b>                                   | 26     | <b>3,382</b>  | <b>3,033</b>  |
| Subscribed capital                                                  | 27     | 161           | 161           |
| Capital reserve                                                     | 27     | 2,073         | 2,048         |
| Other reserves                                                      | 27     | 2,183         | 1,803         |
| Accumulated other comprehensive loss                                | 28     | -147          | -102          |
| <b>B. Total Fresenius SE shareholders' equity</b>                   |        | <b>4,270</b>  | <b>3,910</b>  |
| <b>II. Total shareholders' equity</b>                               |        | <b>7,652</b>  | <b>6,943</b>  |
| <b>Total liabilities and shareholders' equity</b>                   |        | <b>20,882</b> | <b>20,544</b> |

The following notes are an integral part of the consolidated financial statements.

## CONSOLIDATED STATEMENT OF CASH FLOWS

January 1 to December 31, in million €

|                                                                                                          | Note       | 2009         | 2008          |
|----------------------------------------------------------------------------------------------------------|------------|--------------|---------------|
| <b>Operating activities</b>                                                                              |            |              |               |
| Net income                                                                                               |            | 991          | 683           |
| <b>Adjustments to reconcile net income to cash and cash equivalents provided by operating activities</b> |            |              |               |
| Depreciation and amortization                                                                            | 16, 17, 18 | 562          | 783           |
| Change in deferred taxes                                                                                 | 11         | 11           | 113           |
| Gain on sale of fixed assets                                                                             |            | -            | -71           |
| <b>Changes in assets and liabilities, net of amounts from businesses acquired or disposed of</b>         |            |              |               |
| Trade accounts receivable, net                                                                           | 14         | -7           | -230          |
| Inventories                                                                                              | 15         | -92          | -107          |
| Other current and non-current assets                                                                     | 16         | -96          | -102          |
| Accounts receivable from/payable to related parties                                                      |            | -4           | -10           |
| Trade accounts payable, accrued expenses and other short-term and long-term liabilities                  |            | 122          | 15            |
| Accruals for income taxes                                                                                |            | 66           | 0             |
| <b>Net cash provided by operating activities</b>                                                         |            | <b>1,553</b> | <b>1,074</b>  |
| <b>Investing activities</b>                                                                              |            |              |               |
| Purchase of property, plant and equipment                                                                |            | -677         | -759          |
| Proceeds from sales of property, plant and equipment                                                     |            | 15           | 23            |
| Acquisitions and investments, net of cash acquired and net purchases of intangible assets                | 2, 32      | -236         | -3,053        |
| Proceeds from divestitures                                                                               |            | 9            | 96            |
| <b>Net cash used in investing activities</b>                                                             |            | <b>-889</b>  | <b>-3,693</b> |

January 1 to December 31, in million €

|                                                                                   | Note | 2009        | 2008         |
|-----------------------------------------------------------------------------------|------|-------------|--------------|
| <b>Financing activities</b>                                                       |      |             |              |
| Proceeds from short-term borrowings                                               | 21   | 73          | 141          |
| Repayments of short-term borrowings                                               | 21   | -296        | -186         |
| Proceeds from long-term debt and capital lease obligations                        | 21   | 700         | 2,417        |
| Repayments of long-term debt and capital lease obligations                        | 21   | -1,288      | -231         |
| Proceeds from the issuance of Senior Notes                                        | 22   | 753         | 0            |
| Repayments of liabilities from Senior Notes                                       | 22   | -100        | 0            |
| Redemption of trust preferred securities of Fresenius Medical Care Capital Trusts | 24   | 0           | -461         |
| Proceeds from the issuance of bearer ordinary shares                              | 27   | 0           | 143          |
| Proceeds from the issuance of bearer preference shares                            | 27   | 0           | 146          |
| Payments of additional costs of capital increase                                  | 27   | 0           | -6           |
| Proceeds from the issuance of mandatory exchangeable bonds                        | 23   | 0           | 554          |
| Changes of accounts receivable securitization program                             | 21   | -233        | 309          |
| Proceeds from the exercise of stock options                                       | 34   | 56          | 43           |
| Dividends paid                                                                    |      | -275        | -245         |
| Change in noncontrolling interest                                                 | 26   | -2          | -2           |
| Exchange rate effect due to corporate financing                                   |      | 1           | 2            |
| <b>Net cash used in/provided by financing activities</b>                          |      | <b>-611</b> | <b>2,624</b> |
| <b>Effect of exchange rate changes on cash and cash equivalents</b>               |      | <b>-3</b>   | <b>4</b>     |
| <b>Net increase in cash and cash equivalents</b>                                  |      | <b>50</b>   | <b>9</b>     |
| <b>Cash and cash equivalents at the beginning of the reporting period</b>         | 13   | <b>370</b>  | <b>361</b>   |
| <b>Cash and cash equivalents at the end of the reporting period</b>               | 13   | <b>420</b>  | <b>370</b>   |

The following notes are an integral part of the consolidated financial statements.



## STATEMENT OF CHANGES IN EQUITY

|                                                          | Note   | Ordinary shares              |                      | Preference shares            |                      | Subscribed Capital   |                     |
|----------------------------------------------------------|--------|------------------------------|----------------------|------------------------------|----------------------|----------------------|---------------------|
|                                                          |        | Number of shares in thousand | Amount in thousand € | Number of shares in thousand | Amount in thousand € | Amount in thousand € | Amount in million € |
| <b>As of December 31, 2007</b>                           |        | <b>77,582</b>                | <b>77,582</b>        | <b>77,582</b>                | <b>77,582</b>        | <b>155,164</b>       | <b>155</b>          |
| Issuance of bearer ordinary and bearer preference shares | 27     | 2,748                        | 2,748                | 2,748                        | 2,748                | 5,496                | 5                   |
| Proceeds from the exercise of stock options              | 34     | 242                          | 242                  | 242                          | 242                  | 484                  | 1                   |
| Compensation expense related to stock options            | 34     |                              |                      |                              |                      |                      |                     |
| Dividends paid                                           | 27     |                              |                      |                              |                      |                      |                     |
| Purchase/sale of noncontrolling interest                 | 26     |                              |                      |                              |                      |                      |                     |
| Comprehensive income (loss)                              |        |                              |                      |                              |                      |                      |                     |
| Net income                                               |        |                              |                      |                              |                      |                      |                     |
| Other comprehensive income (loss)                        |        |                              |                      |                              |                      |                      |                     |
| Cash flow hedges                                         | 28, 30 |                              |                      |                              |                      |                      |                     |
| Foreign currency translation                             | 28, 30 |                              |                      |                              |                      |                      |                     |
| Adjustments relating to pension obligations              | 25, 28 |                              |                      |                              |                      |                      |                     |
| Comprehensive income (loss)                              |        |                              |                      |                              |                      |                      |                     |
| <b>As of December 31, 2008</b>                           |        | <b>80,572</b>                | <b>80,572</b>        | <b>80,572</b>                | <b>80,572</b>        | <b>161,144</b>       | <b>161</b>          |
| Proceeds from the exercise of stock options              | 34     | 86                           | 86                   | 86                           | 86                   | 172                  | –                   |
| Compensation expense related to stock options            | 34     |                              |                      |                              |                      |                      |                     |
| Dividends paid                                           | 27     |                              |                      |                              |                      |                      |                     |
| Purchase/sale of noncontrolling interest                 | 26     |                              |                      |                              |                      |                      |                     |
| Comprehensive income (loss)                              |        |                              |                      |                              |                      |                      |                     |
| Net income                                               |        |                              |                      |                              |                      |                      |                     |
| Other comprehensive income (loss)                        |        |                              |                      |                              |                      |                      |                     |
| Cash flow hedges                                         | 28, 30 |                              |                      |                              |                      |                      |                     |
| Foreign currency translation                             | 28, 30 |                              |                      |                              |                      |                      |                     |
| Adjustments relating to pension obligations              | 25, 28 |                              |                      |                              |                      |                      |                     |
| Comprehensive income (loss)                              |        |                              |                      |                              |                      |                      |                     |
| <b>As of December 31, 2009</b>                           |        | <b>80,658</b>                | <b>80,658</b>        | <b>80,658</b>                | <b>80,658</b>        | <b>161,316</b>       | <b>161</b>          |

|                                                             | Note   | Reserves                           |                                   | Accumulated<br>other com-<br>prehensive<br>income (loss)<br>in million € | Total<br>Fresenius SE<br>shareholders'<br>equity<br>in million € | Non-<br>controlling<br>interest<br>in million € | Total<br>shareholders'<br>equity<br>in million € |
|-------------------------------------------------------------|--------|------------------------------------|-----------------------------------|--------------------------------------------------------------------------|------------------------------------------------------------------|-------------------------------------------------|--------------------------------------------------|
|                                                             |        | Capital<br>reserve<br>in million € | Other<br>reserves<br>in million € |                                                                          |                                                                  |                                                 |                                                  |
| <b>As of December 31, 2007</b>                              |        | <b>1,739</b>                       | <b>1,636</b>                      | <b>- 115</b>                                                             | <b>3,415</b>                                                     | <b>2,644</b>                                    | <b>6,059</b>                                     |
| Issuance of bearer ordinary<br>and bearer preference shares | 27     | 278                                |                                   |                                                                          | 283                                                              | 0                                               | 283                                              |
| Proceeds from the exercise of stock options                 | 34     | 12                                 |                                   |                                                                          | 13                                                               | 30                                              | 43                                               |
| Compensation expense related to stock options               | 34     | 19                                 |                                   |                                                                          | 19                                                               | 14                                              | 33                                               |
| Dividends paid                                              | 27     |                                    | - 103                             |                                                                          | - 103                                                            | - 142                                           | - 245                                            |
| Purchase/sale of noncontrolling interest                    | 26     |                                    |                                   |                                                                          | 0                                                                | 37                                              | 37                                               |
| Comprehensive income (loss)                                 |        |                                    |                                   |                                                                          |                                                                  |                                                 |                                                  |
| Net income                                                  |        |                                    | 270                               |                                                                          | 270                                                              | 413                                             | 683                                              |
| Other comprehensive income (loss)                           |        |                                    |                                   |                                                                          |                                                                  |                                                 |                                                  |
| Cash flow hedges                                            | 28, 30 |                                    |                                   | - 95                                                                     | - 95                                                             | 0                                               | - 95                                             |
| Foreign currency translation                                | 28, 30 |                                    |                                   | 111                                                                      | 111                                                              | 37                                              | 148                                              |
| Adjustments relating to<br>pension obligations              | 25, 28 |                                    |                                   | - 3                                                                      | - 3                                                              | 0                                               | - 3                                              |
| Comprehensive income (loss)                                 |        |                                    | 270                               | 13                                                                       | 283                                                              | 450                                             | 733                                              |
| <b>As of December 31, 2008</b>                              |        | <b>2,048</b>                       | <b>1,803</b>                      | <b>- 102</b>                                                             | <b>3,910</b>                                                     | <b>3,033</b>                                    | <b>6,943</b>                                     |
| Proceeds from the exercise of stock options                 | 34     | 4                                  |                                   |                                                                          | 4                                                                | 52                                              | 56                                               |
| Compensation expense related to stock options               | 34     | 21                                 |                                   |                                                                          | 21                                                               | 15                                              | 36                                               |
| Dividends paid                                              | 27     |                                    | - 114                             |                                                                          | - 114                                                            | - 166                                           | - 280                                            |
| Purchase/sale of noncontrolling interest                    | 26     |                                    |                                   |                                                                          | 0                                                                | 39                                              | 39                                               |
| Comprehensive income (loss)                                 |        |                                    |                                   |                                                                          |                                                                  |                                                 |                                                  |
| Net income                                                  |        |                                    | 494                               |                                                                          | 494                                                              | 497                                             | 991                                              |
| Other comprehensive income (loss)                           |        |                                    |                                   |                                                                          |                                                                  |                                                 |                                                  |
| Cash flow hedges                                            | 28, 30 |                                    |                                   | - 8                                                                      | - 8                                                              | 0                                               | - 8                                              |
| Foreign currency translation                                | 28, 30 |                                    |                                   | - 31                                                                     | - 31                                                             | - 88                                            | - 119                                            |
| Adjustments relating to<br>pension obligations              | 25, 28 |                                    |                                   | - 6                                                                      | - 6                                                              | 0                                               | - 6                                              |
| Comprehensive income (loss)                                 |        |                                    | 494                               | - 45                                                                     | 449                                                              | 409                                             | 858                                              |
| <b>As of December 31, 2009</b>                              |        | <b>2,073</b>                       | <b>2,183</b>                      | <b>- 147</b>                                                             | <b>4,270</b>                                                     | <b>3,382</b>                                    | <b>7,652</b>                                     |

The following notes are an integral part of the consolidated financial statements.

## SEGMENT REPORTING

by business segment

| in million €                                    | Fresenius Medical Care |        |        | Fresenius Kabi |                    |        |
|-------------------------------------------------|------------------------|--------|--------|----------------|--------------------|--------|
|                                                 | 2009                   | 2008   | Change | 2009           | 2008               | Change |
| Sales                                           | 8,064                  | 7,213  | 12 %   | 3,086          | 2,495              | 24 %   |
| thereof contribution to consolidated sales      | 8,061                  | 7,209  | 12 %   | 3,046          | 2,458              | 24 %   |
| thereof intercompany sales                      | 3                      | 4      | -25 %  | 40             | 37                 | 8 %    |
| contribution to consolidated sales              | 57 %                   | 59 %   |        | 22 %           | 20 %               |        |
| EBITDA                                          | 1,586                  | 1,419  | 12 %   | 742            | 544                | 36 %   |
| Depreciation and amortization                   | 327                    | 282    | 16 %   | 135            | 101                | 34 %   |
| EBIT                                            | 1,259                  | 1,137  | 11 %   | 607            | 443                | 37 %   |
| Net interest                                    | -215                   | -229   | 6 %    | -302           | -145               | -108 % |
| Income taxes                                    | -352                   | -324   | -9 %   | -89            | -88                | -1 %   |
| Net income attributable to Fresenius SE         | 639                    | 556    | 15 %   | 200            | 200                | 0 %    |
| Operating cash flow                             | 960                    | 691    | 39 %   | 397            | 205                | 94 %   |
| Cash flow before acquisitions and dividends     | 557                    | 233    | 139 %  | 272            | 83                 | --     |
| Total assets                                    | 10,982                 | 10,720 | 2 %    | 6,335          | 6,240              | 2 %    |
| Debt                                            | 3,865                  | 4,123  | -6 %   | 4,184          | 4,288              | -2 %   |
| Capital expenditure                             | 411                    | 467    | -12 %  | 125            | 137                | -9 %   |
| Acquisitions                                    | 138                    | 220    | -37 %  | 32             | 3,612              | -99 %  |
| Research and development expenses               | 67                     | 55     | 22 %   | 129            | 109                | 18 %   |
| Employees<br>(per capita on balance sheet date) | 71,617                 | 68,050 | 5 %    | 21,872         | 20,457             | 7 %    |
| Key figures                                     |                        |        |        |                |                    |        |
| EBITDA margin                                   | 19.7 %                 | 19.7 % |        | 24.0 %         | 21.8 %             |        |
| EBIT margin                                     | 15.6 %                 | 15.8 % |        | 19.7 %         | 17.8 %             |        |
| Depreciation and amortization in % of sales     | 4.1 %                  | 3.9 %  |        | 4.4 %          | 4.0 %              |        |
| Operating cash flow in % of sales               | 11.9 %                 | 9.6 %  |        | 12.9 %         | 8.2 %              |        |
| ROOA                                            | 12.2 %                 | 12.3 % |        | 10.2 %         | 8.9 % <sup>1</sup> |        |

<sup>1</sup> The underlying pro-forma EBIT does not include special items from the acquisition of APP Pharmaceuticals, Inc. (APP).

<sup>2</sup> Including special items from the APP acquisition

<sup>3</sup> Before special items from the APP acquisition

|  | Fresenius Helios |        |        | Fresenius Vamed |        |        | Corporate/Other <sup>2</sup> |      |        | Fresenius Group |                     |        |
|--|------------------|--------|--------|-----------------|--------|--------|------------------------------|------|--------|-----------------|---------------------|--------|
|  | 2009             | 2008   | Change | 2009            | 2008   | Change | 2009                         | 2008 | Change | 2009            | 2008                | Change |
|  | 2,416            | 2,123  | 14 %   | 618             | 524    | 18 %   | -20                          | -19  | -5 %   | 14,164          | 12,336              | 15 %   |
|  | 2,416            | 2,123  | 14 %   | 618             | 524    | 18 %   | 23                           | 22   | 5 %    | 14,164          | 12,336              | 15 %   |
|  | 0                | 0      |        | –               | –      | --     | -43                          | -41  | -5 %   | 0               | 0                   |        |
|  | 17 %             | 17 %   |        | 4 %             | 4 %    |        | 0 %                          | 0 %  |        | 100 %           | 100 %               |        |
|  | 286              | 251    | 14 %   | 42              | 35     | 20 %   | -40                          | 11   | --     | 2,616           | 2,260               | 16 %   |
|  | 81               | 76     | 7 %    | 6               | 5      | 20 %   | 13                           | 319  | -96 %  | 562             | 783                 | -28 %  |
|  | 205              | 175    | 17 %   | 36              | 30     | 20 %   | -53                          | -308 | 83 %   | 2,054           | 1,477               | 39 %   |
|  | -55              | -60    | 8 %    | 3               | 6      | -50 %  | -11                          | -3   | --     | -580            | -431                | -35 %  |
|  | -32              | -23    | -39 %  | -12             | -10    | -20 %  | 33                           | 14   | 136 %  | -452            | -431                | -5 %   |
|  | 107              | 80     | 34 %   | 27              | 26     | 4 %    | -479                         | -592 | 19 %   | 494             | 270                 | 83 %   |
|  |                  |        |        |                 |        |        |                              |      |        |                 |                     |        |
|  | 219              | 225    | -3 %   | 29              | 27     | 7 %    | -52                          | -74  | 30 %   | 1,553           | 1,074               | 45 %   |
|  | 95               | 94     | 1 %    | 24              | 23     | 4 %    | -57                          | -95  | 40 %   | 891             | 338                 | 164 %  |
|  |                  |        |        |                 |        |        |                              |      |        |                 |                     |        |
|  | 3,199            | 3,092  | 3 %    | 456             | 469    | -3 %   | -90                          | 23   | --     | 20,882          | 20,544              | 2 %    |
|  | 1,099            | 1,090  | 1 %    | 2               | 2      | 0 %    | -851                         | -716 | -19 %  | 8,299           | 8,787               | -6 %   |
|  | 124              | 135    | -8 %   | 5               | 4      | 25 %   | 6                            | 21   | -71 %  | 671             | 764                 | -12 %  |
|  | 79               | 5      | --     | 2               | 35     | -94 %  | 9                            | -19  | 147 %  | 260             | 3,853               | -93 %  |
|  |                  |        |        |                 |        |        |                              |      |        |                 |                     |        |
|  | –                | –      | --     | 0               | 0      |        | 44                           | 315  | -86 %  | 240             | 479                 | -50 %  |
|  |                  |        |        |                 |        |        |                              |      |        |                 |                     |        |
|  | 33,364           | 30,088 | 11 %   | 2,849           | 2,802  | 2 %    | 808                          | 820  | -1 %   | 130,510         | 122,217             | 7 %    |
|  |                  |        |        |                 |        |        |                              |      |        |                 |                     |        |
|  | 11.8 %           | 11.8 % |        | 6.8 %           | 6.7 %  |        |                              |      |        | 18.5 %          | 17.9 % <sup>3</sup> |        |
|  | 8.5 %            | 8.2 %  |        | 5.8 %           | 5.7 %  |        |                              |      |        | 14.5 %          | 14.0 % <sup>3</sup> |        |
|  | 3.4 %            | 3.6 %  |        | 1.0 %           | 1.0 %  |        |                              |      |        | 4.0 %           | 3.9 % <sup>3</sup>  |        |
|  | 9.1 %            | 10.6 % |        | 4.7 %           | 5.2 %  |        |                              |      |        | 11.0 %          | 8.7 %               |        |
|  | 7.1 %            | 6.3 %  |        | 22.8 %          | 22.2 % |        |                              |      |        | 10.5 %          | 9.8 % <sup>1</sup>  |        |

The segment reporting by business segment is an integral part of the notes.  
The following notes are an integral part of the consolidated financial statements.

## SEGMENT REPORTING

by region

| in million €                                 | Europe |        |        | North America |                  |        |
|----------------------------------------------|--------|--------|--------|---------------|------------------|--------|
|                                              | 2009   | 2008   | Change | 2009          | 2008             | Change |
| Sales                                        | 6,045  | 5,549  | 9 %    | 6,113         | 5,029            | 22 %   |
| contribution to consolidated sales           | 42 %   | 45 %   |        | 43 %          | 41 %             |        |
| EBIT                                         | 673    | 640    | 5 %    | 1,092         | 602 <sup>1</sup> | 81 %   |
| Depreciation and amortization                | 271    | 252    | 8 %    | 232           | 482 <sup>2</sup> | -52 %  |
| Total assets                                 | 7,763  | 7,545  | 3 %    | 11,176        | 11,350           | -2 %   |
| Capital expenditure                          | 350    | 390    | -10 %  | 229           | 271              | -15 %  |
| Acquisitions                                 | 136    | 272    | -50 %  | 98            | 3,278            | -97 %  |
| Employees (per capita on balance sheet date) | 63,602 | 59,310 | 7 %    | 44,590        | 42,885           | 4 %    |

<sup>1</sup> Before special items from the APP acquisition, EBIT was € 851 million.

<sup>2</sup> Before special items from the APP acquisition, depreciation and amortization were € 176 million.

|  | Asia-Pacific  |       |        | Latin America |        |        | Africa       |      |        | Fresenius Group |         |        |
|--|---------------|-------|--------|---------------|--------|--------|--------------|------|--------|-----------------|---------|--------|
|  | 2009          | 2008  | Change | 2009          | 2008   | Change | 2009         | 2008 | Change | 2009            | 2008    | Change |
|  | <b>1,088</b>  | 935   | 16 %   | <b>641</b>    | 582    | 10 %   | <b>277</b>   | 241  | 15 %   | <b>14,164</b>   | 12,336  | 15 %   |
|  | <b>8 %</b>    | 7 %   |        | <b>5 %</b>    | 5 %    |        | <b>2 %</b>   | 2 %  |        | <b>100 %</b>    | 100 %   |        |
|  | <b>173</b>    | 129   | 34 %   | <b>87</b>     | 71     | 23 %   | <b>29</b>    | 35   | - 17 % | <b>2,054</b>    | 1,477   | 39 %   |
|  | <b>36</b>     | 29    | 24 %   | <b>19</b>     | 17     | 12 %   | <b>4</b>     | 3    | 33 %   | <b>562</b>      | 783     | -28 %  |
|  |               |       |        |               |        |        |              |      |        |                 |         |        |
|  | <b>1,233</b>  | 1,082 | 14 %   | <b>616</b>    | 493    | 25 %   | <b>94</b>    | 74   | 27 %   | <b>20,882</b>   | 20,544  | 2 %    |
|  | <b>50</b>     | 42    | 19 %   | <b>37</b>     | 55     | -33 %  | <b>5</b>     | 6    | -17 %  | <b>671</b>      | 764     | -12 %  |
|  | <b>12</b>     | 269   | -96 %  | <b>13</b>     | 34     | -62 %  | <b>1</b>     | 0    |        | <b>260</b>      | 3,853   | -93 %  |
|  |               |       |        |               |        |        |              |      |        |                 |         |        |
|  | <b>10,356</b> | 9,114 | 14 %   | <b>10,804</b> | 10,021 | 8 %    | <b>1,158</b> | 887  | 31 %   | <b>130,510</b>  | 122,217 | 7 %    |

The segment reporting by region is an integral part of the notes.  
The following notes are an integral part of the consolidated financial statements.

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## GENERAL NOTES

### 1. PRINCIPLES

#### I. GROUP STRUCTURE

Fresenius is a worldwide operating health care group with products and services for dialysis, the hospital and the medical care of patients at home. Further areas of activity are hospital operations as well as engineering and services for hospitals and other health care facilities. In addition to the activities of Fresenius SE, the operating activities were split into the following legally-independent business segments (subgroups) in the fiscal year 2009:

- ▶ Fresenius Medical Care
- ▶ Fresenius Kabi
- ▶ Fresenius Helios
- ▶ Fresenius Vamed

Fresenius Medical Care is the world's leading provider of dialysis products and dialysis care for the life-saving treatment of patients with chronic kidney failure. Fresenius Medical Care treats 195,651 patients in its 2,553 own dialysis clinics.

Fresenius Kabi is a globally active company, providing infusion therapies, intravenously administered generic drugs, clinical nutrition and the related medical devices. The products are used for the therapy and care of critically and chronically ill patients in and outside the hospital. In Europe, Fresenius Kabi is the market leader in infusion therapies and clinical nutrition, in the US, the company is a leading provider of intravenously administered generic drugs.

Fresenius Helios is one of the largest private hospital operators in Germany.

Fresenius Vamed offers engineering and services for hospitals and other health care facilities.

Fresenius SE owned 36.05 % of the ordinary voting shares of Fresenius Medical Care AG & Co. KGaA (FMC-AG & Co. KGaA) and 35.58 % of the total subscribed capital of FMC-AG & Co. KGaA at the end of the fiscal year 2009. Fresenius Medical Care Management AG, the general partner of FMC-AG & Co. KGaA, is a wholly-owned subsidiary of Fresenius SE. Therefore,

FMC-AG & Co. KGaA is fully consolidated in the consolidated financial statements of the Fresenius Group. Fresenius SE continued to hold 100 % of the management companies of the business segments Fresenius Kabi (Fresenius Kabi AG) as well as Fresenius Helios and Fresenius Vamed (both held through Fresenius ProServe GmbH) on December 31, 2009. In addition, Fresenius SE holds interests in companies with holding functions regarding real estate, financing and insurance, as well as in Fresenius Netcare GmbH which offers services in the field of information technology and in Fresenius Biotech Beteiligungs GmbH.

The reporting currency in the Fresenius Group is the euro. In order to make the presentation clearer, amounts are mostly shown in million euros. Amounts under € 1 million after rounding are marked with "–".

#### II. BASIS OF PRESENTATION

The accompanying consolidated financial statements have been prepared in accordance with the United States Generally Accepted Accounting Principles (US GAAP).

On July 1, 2009, the Financial Accounting Standards Board (FASB) issued The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles (originally issued as Statement No. 168), the Codification, which became the exclusive authoritative reference for non-governmental US GAAP for use in financial statements issued for interim and annual periods ending after September 15, 2009, except for Securities and Exchange Commission (SEC) rules and interpretive releases, which are also authoritative GAAP for SEC registrants. This divides nongovernmental US GAAP into the authoritative Codification and guidance that is nonauthoritative. The contents of the Codification carries the same level of authority, eliminating the four-level GAAP hierarchy previously set forth in Statement No. 162, which has been superseded by the Codification. The Codification supersedes all existing non-SEC accounting and reporting standards.

Fresenius SE as a stock exchange listed company with a domicile in a member state of the European Union fulfills its obligation to prepare and publish the consolidated financial

statements in accordance with the International Financial Reporting Standards (IFRS) applying Section 315a of the German Commercial Code (HGB). Simultaneously, the Fresenius Group voluntarily prepares and publishes the consolidated financial statements in accordance with US GAAP.

In order to improve readability, various items are aggregated in the consolidated statement of financial position and statement of income. These items are shown separately in the notes to provide useful information to the readers of the consolidated financial statements.

The consolidated statement of financial position is classified on the basis of the liquidity of assets and liabilities; the consolidated statement of income is classified using the cost-of-sales accounting format.

### **III. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

#### **a) Principles of consolidation**

The financial statements of consolidated entities have been prepared using uniform accounting methods.

Capital consolidation is performed by offsetting investments in subsidiaries against the underlying revaluated equity at the date of acquisition. The identifiable assets and liabilities of subsidiaries are recognized at their fair values. Any remaining debit balance is recognized as goodwill and is tested at least once a year for impairment.

Associated companies (usually 20 % to 50 % of voting rights) are consolidated under the equity method. Investments that are not classified as in associated companies are recorded at acquisition costs.

All significant intercompany revenues, expenses, income, receivables and payables are eliminated. Profits and losses on items of property, plant and equipment and inventory acquired from other Group entities are also eliminated. Deferred tax assets and liabilities are recognized on temporary differences resulting from consolidation procedures.

Noncontrolling interest comprises the interest of noncontrolling shareholders in the consolidated equity of Group entities. Profits and losses attributable to the noncontrolling shareholders are separately disclosed in the statement of income.

#### **b) Composition of the Group**

The consolidated financial statements include all material companies in which Fresenius SE has legal or effective control. In addition, the Fresenius Group consolidates variable interest entities (VIEs) for which it is deemed the primary beneficiary.

Fresenius Medical Care entered into various arrangements with certain dialysis clinics to provide management services, financing and product supply. A group of these clinics has negative equity and is unable to provide its own funding, therefore Fresenius Medical Care has agreed to fund its operations for at least a six year period.

The funding carries no interest but Fresenius Medical Care is entitled to a prorata share of profits, if any, and has a right of first refusal in the event the owners sell the business or assets. These clinics are VIEs in which Fresenius Medical Care has been determined to be the primary beneficiary and which therefore have been fully consolidated. They generated approximately € 63 million (US\$ 88 million) and € 60 million (US\$ 89 million) in revenue in 2009 and 2008, respectively. Relating to the VIEs, Fresenius Medical Care consolidated assets in an amount of € 49 million (US\$ 70 million), liabilities in an amount of € 20 million (US\$ 29 million) and € 29 million (US\$ 41 million) in equity. The interest held by the other shareholders in these consolidated VIEs is reported as noncontrolling interest in the consolidated statement of financial position at December 31, 2009.

Fresenius Vamed participates in long-term project entities which are set up for long-term defined periods of time and for the specific purpose of constructing and operating thermal centers. Some of these project entities qualify as VIEs, in which Fresenius Vamed is not the primary beneficiary based on the cash flow analysis of the involved parties. The project entities generated approximately € 32 million in revenue in 2009 (2008: € 42 million). The VIEs finance themselves mainly through debt, profit participation rights and investment grants. Assets and liabilities relating to the VIEs are not material. Fresenius Vamed made no payments to the VIEs other than contractually stipulated. From today's perspective and due to the contractual situation, Fresenius Vamed is not exposed to any material risk of loss from these VIEs.

The consolidated financial statements of 2009 include, in addition to Fresenius SE, 136 (2008: 132) German and 912 (2008: 898) foreign companies.

The composition of the Group changed as follows:

|                                 | Germany    | Abroad     | Total        |
|---------------------------------|------------|------------|--------------|
| <b>December 31, 2008</b>        | <b>132</b> | <b>898</b> | <b>1,030</b> |
| Additions                       | 11         | 71         | 82           |
| of which newly founded          | 2          | 37         | 39           |
| of which acquired               | 5          | 28         | 33           |
| Disposals                       | 7          | 57         | 64           |
| of which no longer consolidated | 4          | 27         | 31           |
| of which merged                 | 3          | 30         | 33           |
| <b>December 31, 2009</b>        | <b>136</b> | <b>912</b> | <b>1,048</b> |

10 companies (2008: 16) were accounted for under the equity method.

The complete list of the investments of Fresenius SE, registered office in Bad Homburg v. d. H., will be submitted to the electronic Federal Gazette and the electronic companies register.

In 2009, the following fully consolidated German subsidiaries of the Fresenius Group applied the exemption provided in Sections 264 (3) and 264b, respectively, of the German Commercial Code (HGB):

| Name of the company                                               | Registered office    |
|-------------------------------------------------------------------|----------------------|
| <b>Corporate/Other</b>                                            |                      |
| Fresenius Biotech GmbH                                            | Gräfelfing           |
| Fresenius Biotech Beteiligungs GmbH                               | Frankfurt am Main    |
| Fresenius Immobilien-Verwaltungs-GmbH & Co. Objekt St. Wendel KG  | Bad Homburg v. d. H. |
| Fresenius Immobilien-Verwaltungs-GmbH & Co. Objekt Schweinfurt KG | Bad Homburg v. d. H. |
| Fresenius Netcare GmbH                                            | Berlin               |
| Fresenius ProServe GmbH                                           | Bad Homburg v. d. H. |
| FPS Immobilien Verwaltungs GmbH & Co. Reichenbach KG              | Bad Homburg v. d. H. |
| ProServe Krankenhaus Beteiligungs-gesellschaft mbH & Co. KG       | München              |

| Name of the company                           | Registered office    |
|-----------------------------------------------|----------------------|
| <b>Fresenius Kabi</b>                         |                      |
| Fresenius HemoCare GmbH                       | Bad Homburg v. d. H. |
| Fresenius HemoCare Beteiligungs GmbH          | Frankfurt am Main    |
| Fresenius Kabi AG                             | Frankfurt am Main    |
| Fresenius Kabi Deutschland GmbH               | Bad Homburg v. d. H. |
| Hosped GmbH                                   | Friedberg            |
| MC Medizintechnik GmbH                        | Alzenau              |
| V. Krütten Medizinische Einmalgeräte GmbH     | Idstein              |
| <b>Fresenius Helios</b>                       |                      |
| D.i.a.-Solution GmbH                          | Erfurt               |
| HELIOS Agnes Karll Krankenhaus GmbH           | Bochum               |
| HELIOS Care GmbH                              | Berlin               |
| HELIOS Catering GmbH                          | Berlin               |
| HELIOS Kids in Pflege GmbH                    | Geesthacht           |
| HELIOS Klinik Dresden-Wachwitz GmbH           | Dresden              |
| HELIOS Klinik Geesthacht GmbH                 | Geesthacht           |
| HELIOS Klinik Lengerich GmbH                  | Lengerich            |
| HELIOS Kliniken GmbH                          | Berlin               |
| HELIOS Kliniken Breisgau-Hochschwarzwald GmbH | Müllheim             |
| HELIOS Kliniken Leipziger Land GmbH           | Borna                |
| HELIOS Klinikum Bad Saarow GmbH               | Bad Saarow           |
| HELIOS Klinikum Erfurt GmbH                   | Erfurt               |
| HELIOS Klinikum Wuppertal GmbH                | Wuppertal            |
| HELIOS Privatkliniken GmbH                    | Bad Homburg v. d. H. |
| HELIOS Schlossbergklinik Oberstaufen GmbH     | Oberstaufen          |
| HELIOS Service GmbH                           | Berlin               |
| HELIOS Versorgungszentren GmbH                | Berlin               |
| HELIOS Versorgungszentrum Bad Saarow GmbH     | Frankfurt a. d. Oder |
| HELIOS Vogtland-Klinikum Plauen GmbH          | Plauen               |
| HUMAINE Kliniken GmbH                         | Berlin               |
| Poliklinik am HELIOS Klinikum Buch GmbH       | Berlin               |
| Senioren- und Pflegeheim Erfurt GmbH          | Erfurt               |
| St. Josefs-Hospital GmbH                      | Bochum               |

### c) Classifications

Certain items in the consolidated financial statements of 2008 have been reclassified to conform with the presentation in 2009.

### d) Sales recognition policy

Sales from services are recognized at amounts estimated to be received under reimbursement arrangements with third party payors. Sales are recognized on the date services and related products are provided and the payor is obligated to pay.

Product sales are recognized when title to the product passes to the customers, either at the time of shipment, upon receipt by the customer or upon any other terms that clearly define passage of title. As product returns are not typical, no return allowances are established. In the event a return is required, the appropriate reductions to sales, cost of sales and accounts receivable are made. Sales are stated net of discounts, allowances and rebates.

In the business segment Fresenius Vamed, sales for long-term production contracts are recognized using the percentage of completion (PoC) method when the accounting conditions are met. The sales to be recognized are calculated as a percentage of the costs already incurred based on the estimated total cost of the contract, milestones laid down in the contract or the percentage of completion. Profits are only recognized when the outcome of a production contract accounted for using the PoC method can be measured reliably.

Any tax assessed by a governmental authority that is incurred as a result of a revenue transaction (e.g. sales tax) is excluded from revenues and reported on a net basis.

### e) Government grants

Public sector grants are not recognized until there is reasonable assurance that the respective conditions are met and the grants will be received. At first, the grant is recorded as a liability and as soon as the asset is acquired it is offset against the acquisition costs. Expense-related grants are recognized as income in the periods in which related costs occur.

### f) Research and development expenses

Research is the original and planned investigation undertaken with the prospect of gaining new scientific or technical knowledge and understanding. Development is the technical and commercial implementation of research findings. Research and development expenses are expensed as incurred.

### g) Impairment

The Fresenius Group reviews the carrying amounts of its property, plant and equipment, its intangible assets as well as other non-current assets for impairment whenever events or changes in circumstances indicate that the carrying amount of these assets may not be recoverable. Recoverability of these assets is measured by a comparison of the carrying amount of an asset to the future net cash flow directly associated with the asset. If assets are considered to be impaired, the impairment recognized is the amount by which the carrying amount exceeds the fair value of the asset. The Fresenius Group uses a discounted cash flow approach or other methods, if appropriate, to assess fair value. Long-lived assets to be disposed of by sale are reported at the lower of carrying amount or fair value less cost to sell and depreciation is ceased.

### h) Capitalized interest

The Fresenius Group includes capitalized interest as part of the cost of the asset if they are directly attributable to the acquisition, construction or manufacture of qualifying assets. For the fiscal years 2009 and 2008, interest of € 8 million and € 6 million, based on an average interest rate of 5.56 % and 5.52 %, respectively, was recognized as a component of the cost of assets.

### i) Deferred taxes

Deferred tax assets and liabilities are recognized for the future consequences attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. Furthermore, deferred taxes are recognized on consolidation procedures affecting net income attributable to Fresenius SE. Deferred tax assets also include claims to future tax reductions which arise from the more likely than not expected usage of existing tax losses available for carryforward.

Deferred taxes are computed using enacted or adopted tax rates in the relevant national jurisdictions when the amounts are recovered. Tax rates, which will be valid in the future, but are not adopted till the date of the statement of financial position, are not considered.

The recoverability of the carrying amount of a deferred tax asset is reviewed at each date of the statement of financial position. In assessing the recoverability of deferred tax assets, the Management considers whether it is more likely than not that some portion or all of the deferred tax assets will be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. The Management considers the scheduled reversal of deferred tax liabilities and projected future taxable income in making this assessment.

If it is no longer more likely than not that sufficient taxable income will be available to allow the benefit of part or of the entire deferred tax asset to be utilized, the carrying amount of the deferred tax asset is reduced to that certain extent. The reduction is reversed to the date and extent that it becomes probable that sufficient taxable profit will be available.

#### **j) Unrecognized tax benefits**

The recognition and measurement of all tax positions taken or expected to be taken in a tax return requires a two step approach. The enterprise must determine whether it is more likely than not that a tax position will be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. If the threshold is met, the tax position is measured at the largest amount of benefit that is greater than 50 % likely of being realized upon ultimate settlement and is recognized in the financial statements.

#### **k) Earnings per ordinary share and preference share**

Basic earnings per ordinary share is computed by dividing net income attributable to Fresenius SE less preference amounts by the weighted-average number of ordinary shares and preference shares outstanding during the year. Basic earnings per preference share is derived by adding the preference per preference share to the basic earnings per ordinary share. Diluted earnings per share include the effect of all potentially dilutive instruments on ordinary shares and preference shares that would have been outstanding during the fiscal year. The awards granted under Fresenius' and Fresenius Medical Care's stock option plans can result in a dilutive effect.

#### **l) Cash and cash equivalents**

Cash and cash equivalents comprise cash funds and all short-term liquid investments with original maturities of up to three months.

#### **m) Trade accounts receivable**

Trade accounts receivable are stated at their nominal value less allowance for doubtful accounts. Allowances are estimated mainly on the basis of payment history to date, the age structure of balances and the contractual partner involved. In order to assess the appropriateness of allowances, the Fresenius Group checks regularly whether there have been any divergences to previous payment history.

#### **n) Inventories**

Inventories comprise all assets which are held for sale in the normal course of business (finished goods), in the process of production for such sale (work in process) or consumed in the production process or in the rendering of services (raw materials and purchased components).

Inventories are stated at the lower of acquisition and manufacturing cost (determined by using the average or first-in, first-out method) or market value. Manufacturing costs comprise direct costs, production and material overhead, including depreciation charges.

#### **o) Property, plant and equipment**

Property, plant and equipment are stated at acquisition and manufacturing cost less accumulated depreciation. Significant improvements are capitalized; repairs and maintenance

costs that do not extend the useful lives of the assets are charged to expense as incurred. Depreciation on property, plant and equipment is calculated using the straight-line method over the estimated useful lives of the assets ranging from 4 to 50 years for buildings and improvements (with a weighted-average life of 16 years) and 3 to 15 years for machinery and equipment (with a weighted-average life of 10 years).

#### **p) Intangible assets with finite useful lives**

Intangible assets with finite useful lives, for example patents, product and distribution rights, non-compete agreements, technology and licenses to manufacture, distribute and sell pharmaceutical drugs are amortized using the straight-line method over their respective useful lives to their residual values and reviewed for impairment (see note 1. III g, Impairment). The useful life of patents, product and distribution rights ranges from 5 to 20 years. Non-compete agreements with finite useful lives have useful lives ranging from 2 to 25 years with an average useful life of 8 years. The useful life of management contracts with finite useful lives ranges from 5 to 40 years. Technology has a useful life of 15 years. Licenses to manufacture, distribute and sell pharmaceutical drugs are amortized over the contractual license period based upon the annual estimated units of sale of the licensed product. All other intangible assets are amortized over their individual estimated useful lives between 3 and 15 years.

Losses in value of a lasting nature are impaired.

#### **q) Goodwill and other intangible assets with indefinite useful lives**

The Fresenius Group identified intangible assets with indefinite useful lives because, based on an analysis of all of the relevant factors, there is no foreseeable limit to the period over which those assets are expected to generate net cash inflows for the Group. The identified intangible assets with indefinite useful lives such as trade names and certain qualified management contracts acquired in a purchase method business

combination are recognized and reported apart from goodwill. They are recorded at acquisition costs. Goodwill and intangible assets with indefinite useful lives are not amortized but tested for impairment annually or when an event becomes known that could trigger an impairment (impairment test).

To perform the annual impairment test of goodwill, the Fresenius Group identified several reporting units and determined their carrying amount by assigning the assets and liabilities, including the existing goodwill and intangible assets, to those reporting units. A reporting unit is usually defined one level below the segment level according to regions or legal entities. Five reporting units were identified in the segment Fresenius Medical Care (Europe, Latin America, Asia-Pacific, North American Renal Therapy Group, North American Fresenius Medical Services). In the segment Fresenius Kabi exists one reporting unit for the region North America and one reporting unit for the business outside of North America. According to the regional organizational structure, the segment Fresenius Helios consists of seven reporting units, which are managed by a central division. The segment Fresenius Vamed consists of two reporting units (Project business and Service business). At least once a year, the Fresenius Group compares the fair value of each reporting unit to the reporting unit's carrying amount. The fair value of a reporting unit is determined using a discounted cash flow approach based upon the cash flow expected to be generated by the reporting unit. In case that the fair value of the reporting unit is less than its carrying amount, the difference is at first recorded as an impairment of the fair value of the goodwill.

To evaluate the recoverability of separable intangible assets with indefinite useful lives, the Fresenius Group compares the fair values of these intangible assets with their carrying amounts. An intangible asset's fair value is determined using a discounted cash flow approach and other methods, if appropriate.

The recoverability of goodwill and other separable intangible assets with indefinite useful lives recorded in the Group's consolidated statement of financial position was verified. As a result, the Fresenius Group did not record any impairment losses in 2009 and 2008.

#### **r) Leases**

Leased assets assigned to the Fresenius Group based on the risk and rewards approach (finance leases) are recognized as property, plant and equipment and measured on receipt date at the present values of lease payments as long as their fair values are not lower. Leased assets are depreciated in straight-line over their useful lives. If there is doubt as to whether title to the asset passes at a later stage and there is no opportune purchase option the asset is depreciated over the lease term, if this is shorter. An impairment loss is recognized if the recoverable amount is lower than the amortized cost of the leased asset.

Finance lease liabilities are measured at the present value of the future lease payments and are recognized as financial liability.

Property, plant and equipment, rented by the Fresenius Group, is accounted at its purchase costs. Its depreciation is calculated using the straight-line method over the leasing time and its expected residual value.

#### **s) Financial instruments**

A financial instrument is any contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another entity. The following categories (according to International Accounting Standard 39, Financial Instruments: Recognition and Measurement) are relevant for the Fresenius Group: loans and receivables, financial liabilities measured at amortized cost as well as financial liabilities/assets measured at fair value. Other categories are immaterial or not existing in the Fresenius Group. According to their character, the Fresenius Group classifies its financial instruments into the following classes: cash and cash equivalents, assets recognized at carrying amount, liabilities recognized at carrying amount, derivatives designated as hedging instruments as well as assets recognized at fair value and liabilities recognized at fair value.

The relationship between classes and categories as well as the reconciliation to the statement of financial position is shown in tabular form in note 30, Financial instruments.

Derivative financial instruments which primarily include foreign currency forward contracts and interest rate swaps are recognized at fair value as assets or liabilities in the statement of financial position. Changes in the fair value of derivative financial instruments classified as fair value hedges and in the corresponding underlyings are recognized periodically in earnings. The effective portion of changes in fair value of cash flow hedges is recognized in accumulated other comprehensive income (loss) in shareholders' equity until the secured underlying transaction is realized (see note 30, Financial instruments). The non-effective portion of cash flow hedges is recognized in earnings immediately. Changes in the fair value of derivatives that are not designated as hedging instruments are recognized periodically in earnings.

#### **t) Liabilities**

Liabilities are generally stated at present value which normally corresponds to the value of products or services which are delivered. As a general policy, short-term liabilities are measured at their repayment amount.

#### **u) Legal contingencies**

In the ordinary course of Fresenius Group's operations, the Fresenius Group is involved in litigation, arbitration, administrative procedure and investigations relating to various aspects of its business. The Fresenius Group regularly analyzes current information about such claims for probable losses and provides accruals for such matters, including estimated expenses for legal services, as appropriate. The Fresenius Group utilizes its internal legal department as well as external resources for these assessments. In making the decision regarding the need for a loss accrual, the Fresenius Group considers the degree of probability of an unfavorable outcome and its ability to make a reasonable estimate of the amount of loss.

The filing of a suit or formal assertion of a claim, or the disclosure of any such suit or assertion, does not necessarily indicate that an accrual of a loss is appropriate.



#### **v) Other accrued expenses**

Accruals for taxes and other obligations are recognized when there is a present obligation to a third party arising from past events, it is probable that the obligation will be settled in the future and the amount can be reliably estimated.

Tax accruals include obligations for the current year and for prior years.

#### **w) Pension liabilities and similar obligations**

The Fresenius Group recognizes the underfunded status of its defined benefit plans, measured as the difference between the benefit obligation and plan assets at fair value, as a liability. Changes in the funded status of a plan, net of tax, resulting from actuarial gains or losses, prior service costs or costs that are not recognized as components of the net periodic benefit cost, will be recognized through accumulated other comprehensive income (loss) in the year in which they occur. Actuarial gains or losses and prior service costs are subsequently recognized as components of net periodic benefit cost when realized.

#### **x) Debt issuance costs**

Debt issuance costs are amortized over the term of the related obligation.

#### **y) Stock option plans**

In line with the standard for share-based payment, the Fresenius Group uses the modified prospective transition method. Under this transition method, compensation cost recognized in 2008 and in 2009 include applicable amounts of: (a) compensation cost of all stock-based payments granted prior to, but not yet vested as of, January 1, 2006; (b) compensation cost for all stock-based payments subsequent to January 1, 2006 (based on the grant-date fair value estimated).

#### **z) Self-insurance programs**

Under the insurance programs for professional, product and general liability, auto liability and worker's compensation claims, the largest subsidiary of the Fresenius Group, located in North America, is partially self-insured for professional liability claims. For all other coverages, this subsidiary assumes responsibility for incurred claims up to predetermined amounts above which third party insurance applies. Reported liabilities for the year represent estimated future payments of the anticipated expense for claims incurred (both reported and incurred but not reported) based on historical experience and existing claim activity. This experience includes both the rate of claims incidence (number) and claim severity (cost) and is combined with individual claim expectations to estimate the reported amounts.

#### **aa) Foreign currency translation**

The reporting currency is the euro. Substantially all assets and liabilities of the foreign subsidiaries are translated at mid-closing rate on the date of the statement of financial position, while revenues and expenses are translated at average exchange rates. Adjustments due to foreign currency translation fluctuations are excluded from net earnings and are reported in accumulated other comprehensive income (loss). In addition, the translation adjustments of certain intercompany borrowings, which are considered foreign equity investments, are also reported in accumulated other comprehensive income (loss).

Gains and losses arising from the translation of foreign currency positions as well as those arising from the elimination of foreign currency intercompany loans are recorded as general and administrative expenses, as far as they are not considered foreign equity instruments. In the fiscal year 2009, only immaterial gains resulted out of this transaction.



The exchange rates of the main currencies affecting foreign currency translation developed as follows:

|                        | Year-end exchange rate <sup>1</sup> |              | Average exchange rate |         |
|------------------------|-------------------------------------|--------------|-----------------------|---------|
|                        | Dec 31, 2009                        | Dec 31, 2008 | 2009                  | 2008    |
| US-Dollar per €        | <b>1.4406</b>                       | 1.3917       | <b>1.3948</b>         | 1.4713  |
| Pound sterling per €   | <b>0.8881</b>                       | 0.9525       | <b>0.8909</b>         | 0.7961  |
| Swedish krona per €    | <b>10.2520</b>                      | 10.8700      | <b>10.6191</b>        | 9.6138  |
| Chinese renminbi per € | <b>9.8350</b>                       | 9.4956       | <b>9.5277</b>         | 10.2287 |
| Japanese yen per €     | <b>133.16</b>                       | 126.14       | <b>130.34</b>         | 152.47  |

<sup>1</sup> Mid-closing rate on the date of the statement of financial position

## bb) Fair value hierarchy

The three-tier fair value hierarchy defined in Accounting Standards Codification 820, Fair Value Measurements and Disclosures, classifies assets and liabilities recognized at fair value based on the inputs used in estimating the fair value. Level 1 is defined as observable inputs, such as quoted prices in active markets. Level 2 is defined as inputs other than quoted prices in active markets that are directly or indirectly observable. Level 3 is defined as unobservable inputs for which little or no market data exists, therefore requiring (the company) to develop its own assumptions. The three-tier fair value hierarchy is used in note 25, Pensions and similar obligations and in note 30, Financial instruments.

## cc) Use of estimates

The preparation of consolidated financial statements in conformity with US GAAP requires the management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

## dd) Receivables management

The entities of the Fresenius Group perform ongoing evaluations of the financial situation of their customers and generally do not require a collateral from the customers for the supply of products and provision of services. Approximately 19 % and 21 % of Fresenius Group's sales were earned and subject to

the regulations under governmental health care programs, Medicare and Medicaid, administered by the United States government in 2009 and 2008, respectively.

## ee) Recent pronouncements, applied

The Fresenius Group has prepared its consolidated financial statements at December 31, 2009 in conformity with the Financial Accounting Standards (FAS) that have to be applied for fiscal years beginning on January 1, 2009 or FAS that can be applied earlier on a voluntary basis.

The Fresenius Group applied the following standards, as far as they are relevant for Fresenius Group's business, for the first time in 2009:

In January 2010, the FASB issued **Accounting Standards Update 2010-06** (ASU 2009-06), an update for ASC 820-10, Fair Value Measurements and Disclosures, resulting in new disclosure requirements regarding the following areas:

- ▶ fair value measurements are to be disaggregated by class, as opposed to the current disclosure requirement of by major category,
- ▶ disclosure of significant transfers of assets and liabilities in and/or out of Level 1 and Level 2, in addition to transfers in and/or out of the Level 3 category,
- ▶ purchases, sales, issuances, and settlements of Level 3 assets and liabilities are to be disclosed separately,
- ▶ disclosure of the valuation techniques and inputs used to determine fair value for Level 2 and Level 3 fair value measurements, as well as changes in valuation techniques used and the reasons for the changes.

The disclosures required under ASU 2010-06 are effective for reporting periods beginning after December 15, 2009, with the exception of the disclosures about purchases, sales, issuances, and settlements in the roll forward of Level 3 activity, which are effective for fiscal years beginning after December 31, 2010, and for interim periods within those fiscal years. Early adoption is permitted for the additional disclosures. The Company adopted all disclosures required under this update as of December 31, 2009.

As of January 1, 2009, the Fresenius Group adopted **Statement No. 160**, Noncontrolling Interest in Consolidated Financial Statements – an amendment of ARB No. 51 (FAS 160). The requirements of FAS 160 are included in Financial Accounting Standards Board Accounting Standards Codification (ASC) 810, Consolidation. FAS 160 establishes a framework for the reporting of noncontrolling or minority interests. The main changes are the extended disclosures about noncontrolling interests in the statement of income and the statement of financial position.

Furthermore, the Fresenius Group adopted **Statement No. 161**, Disclosures about Derivative Instruments and Hedging Activities – an amendment of FASB Statement No. 133 (FAS 161) as of January 1, 2009. ASC 815, Derivatives and Hedging, contains the requirements of FAS 161. This Statement changes the disclosure requirements for derivative instruments and hedging activities. Entities are required to provide enhanced disclosures about (a) how and why an entity uses derivative instruments, (b) how derivative instruments and related hedged items are accounted for under ASC 815 and its related interpretations, and (c) how derivative instruments and related hedged items affect an entity's financial position, financial performance, and cash flows. The extended disclosure requirements are implemented in note 30, Financial instruments.

On December 30, 2008, the FASB issued final staff position **FSP FAS 132R-1**, Employers' Disclosures about Postretirement Benefit Plan Assets (FSP 132R-1). FSP 132R-1 requires more disclosure about pension plan assets mainly regarding the following areas:

- ▶ how investment allocation decisions are made, including the factors that are pertinent to an understanding of investment policies and strategies,

- ▶ the major categories of plan assets,
- ▶ the inputs and valuation techniques used to measure the fair value of plan assets,
- ▶ the effect of fair value measurements using significant unobservable inputs (Level 3) on changes in plan assets for the period, and
- ▶ significant concentrations of risk within plan assets.

Upon initial application, the provisions of this FSP are not required for prior periods that are presented for comparative purposes. ASC 715 contains the guidance, including the amendments in FSP 132R-1, on postretirement benefit plan assets. The Fresenius Group complies with the disclosure requirements of FSP 132R-1 in its report on its consolidated financial statements for fiscal year ended December 31, 2009. The implementation of the disclosure requirements is included in note 25, Pensions and similar obligations.

#### ff) Recent pronouncements, not yet applied

The FASB issued the following for the Fresenius Group relevant new standards, which are mandatory for fiscal years commencing on or after January 1, 2010:

In June 2009, the FASB issued **Accounting Standards Update 2009-17** (ASU 2009-17) (originally issued as FASB Statement No. 167), ASC 810, Consolidations – Improvements to Financial Reporting by Enterprises Involved with Variable Interest Entities. ASU 2009-17 requires reporting entities to evaluate former Qualifying Special Purpose Entities (QSPE) for consolidation and changes the approach to determining a Variable Interest Entity's (VIE) primary beneficiary from a quantitative assessment to a qualitative assessment designed to identify a controlling financial interest. In addition, ASU 2009-17 increases the frequency of required reassessments to determine whether a company is the primary beneficiary of a VIE. It also clarifies, but does not significantly change, the characteristics that identify a VIE. ASU 2009-17 also requires additional year-end and interim disclosures about risks related to continuing involvement in transferred financial assets.

The amendments contained in ASU 2009-17 are effective as of the beginning of a company's first fiscal year that begins after November 15, 2009 and for subsequent interim and annual reporting periods. All former QSPEs and other VIEs will need to be reevaluated under the amended consolidation requirements as of the beginning of the first annual reporting period that begins after November 15, 2009. Early adoption is prohibited. The Fresenius Group will implement the amendments prescribed by ASU 2009-17 as of January 1, 2010.

In June 2009, the FASB issued **Accounting Standards Update 2009-16** (ASU 2009-16) (originally issued as FASB Statement No. 166), ASC 860, Transfers and Servicing-Accounting for Transfers of Financial Assets. ASU 2009-16 eliminates the QSPE concept, creates more stringent conditions for reporting a transfer of a portion of a financial asset as a sale, clarifies the derecognition criteria, revises how retained interests are initially measured, and removes the guaranteed mortgage securitization recharacterization provisions. ASU 2009-16 also requires additional year-end and interim disclosures about risks related to VIEs.

ASU 2009-16 is effective as of the beginning of a company's first fiscal year that begins after November 15, 2009, and for subsequent interim and annual reporting periods. ASU 2009-16's disclosure requirements must be applied to transfers that occurred before and after its effective date. Early adoption is prohibited. The Fresenius Group will adopt the provisions of ASU 2009-16 as of January 1, 2010.

The Fresenius Group does not generally adopt new accounting standards before compulsory adoption date.

#### IV. CRITICAL ACCOUNTING POLICIES

In the opinion of the Management of the Fresenius Group, the following accounting policies and topics are critical for the consolidated financial statements in the present economic environment. The influences and judgments as well as the uncertainties which affect them are also important factors to be considered when looking at present and future operating earnings of the Fresenius Group.

##### a) Recoverability of goodwill and intangible assets with indefinite useful lives

The amount of intangible assets, including goodwill, product rights, tradenames and management contracts, represents a considerable part of the total assets of the Fresenius Group. At December 31, 2009 and December 31, 2008, the carrying amount of goodwill and non-amortizable intangible assets with indefinite useful lives was € 10,670 million and € 10,703 million, respectively. This represented 51 % and 52 %, respectively, of total assets.

An impairment test of goodwill and non-amortizable intangible assets with indefinite useful lives is performed at least once a year, or if events occur or circumstances change that would indicate the carrying amount might be impaired (Impairment test).

To determine possible impairments of these assets, the fair value of the reporting units is compared to their carrying amount. The fair value of each reporting unit is determined using estimated future cash flows for the unit discounted by a weighted-average cost of capital (WACC) specific to that reporting unit. Estimating the discounted future cash flows involves significant assumptions, especially regarding future reimbursement rates and sales prices, number of treatments, sales volumes and costs. In determining discounted cash flows, the Fresenius Group utilizes for every reporting unit its three-year budget, projections for years four to ten and a corresponding growth rate for all remaining years. Projections for up to ten years are possible due to the stability of Fresenius Group's business, which is largely independent from the economic cycle. These growth rates are 0 % to 4 % for Fresenius Medical Care, 3 % for Fresenius Kabi and 1 % for Fresenius Helios and Fresenius Vamed. This discount factor is determined by the WACC of the respective reporting unit. Fresenius Medical Care's WACC consisted of a basic rate of 6.45 % for 2009. This basic rate is then adjusted by a country-specific risk rate within each reporting unit. In 2009, WACC's for the reporting units of Fresenius Medical Care ranged from 6.45 % to 12.05 %. In the business segments Fresenius Kabi, Fresenius Helios and Fresenius Vamed, the WACC was 6.61 %, country-specific adjustments did not occur. If the fair value of the reporting unit is less than its carrying amount, the difference

is recorded as an impairment of the fair value of the goodwill at first. An increase of the WACC by 0.5 % would not have resulted in the recognition of an impairment loss in 2009.

A prolonged downturn in the health care industry with lower than expected increases in reimbursement rates and/or higher than expected costs for providing health care services could adversely affect the estimated future cash flows of certain countries or segments. Future adverse changes in a reporting unit's economic environment could affect the discount rate. A decrease in the estimated future cash flows and/or a decline in the reporting unit's economic environment could result in impairment charges to goodwill and other intangible assets with indefinite useful lives which could materially and adversely affect the Group's future operating results.

#### **b) Legal contingencies**

The Fresenius Group is involved in several legal matters arising from the ordinary course of its business. The outcome of these matters may have a material effect on the financial position, results of operations or cash flows of the Fresenius Group. For details, please see note 29, Commitments and contingent liabilities.

The Fresenius Group regularly analyzes current information about such claims for probable losses and provides accruals for such matters, including estimated expenses for legal services, as appropriate. The Fresenius Group utilizes its internal legal department as well as external resources for these assessments. In making the decision regarding the need for a loss accrual, the Fresenius Group considers the degree of probability of an unfavorable outcome and its ability to make a reasonable estimate of the amount of loss.

The filing of a suit or formal assertion of a claim, or the disclosure of any such suit or assertion, does not necessarily indicate that an accrual of a loss is appropriate.

#### **c) Allowance for doubtful accounts**

Trade accounts receivable are a significant asset and the allowance for doubtful accounts is a significant estimate made by the Management. Trade accounts receivable were €2,509 million and €2,477 million in 2009 and 2008, respectively, net of allowance. Approximately two thirds of receivables derive from the business segment Fresenius Medical Care and mainly relate to the dialysis care business in North America.

The major debtors or debtor groups of trade accounts receivable were US Medicare and Medicaid health care programs with 12 % as well as private insurers in the US with 14 % at December 31, 2009. Other than that, the Fresenius Group has no significant risk concentration, due to its international and heterogeneous customer structure.

The allowance for doubtful accounts was €285 million and €257 million as of December 31, 2009 and December 31, 2008, respectively.

Sales are invoiced at amounts estimated to be receivable under reimbursement arrangements with third party payors. Estimates for the allowance for doubtful accounts are mainly based on historic collection experience, taking into account the aging of accounts receivable and the contract partners. The Fresenius Group believes that these analyses result in a well-founded estimate of allowances for doubtful accounts. From time to time, the Fresenius Group reviews changes in collection experience to ensure the appropriateness of the allowances.

Deterioration in the ageing of receivables and collection difficulties could require that the Fresenius Group increases the estimates of allowances for doubtful accounts. Additional expenses for uncollectible receivables could have a significant negative impact on future operating results.

#### d) Self-insurance programs

Under the insurance programs for professional, product and general liability, auto liability and worker's compensation claims, the largest subsidiary of the Fresenius Group, located in North America, is partially self-insured for professional liability claims. For further details regarding the accounting policies for self-insurance programs, please see note 1. III z, Self-insurance programs.

## 2. ACQUISITIONS AND DIVESTITURES

### ACQUISITIONS AND DIVESTITURES

The Fresenius Group made acquisitions of € 260 million and € 3,853 million in 2009 and 2008, respectively. Of this amount, € 236 million were paid in cash and € 24 million were assumed obligations in 2009.

#### Fresenius Medical Care

In the year 2009, acquisition spending of Fresenius Medical Care in an amount of € 138 million related mainly to the purchase of dialysis clinics.

In the year 2008, acquisition spending of Fresenius Medical Care in an amount of € 220 million related mainly to the purchase of dialysis clinics and license agreements. In July 2008, Fresenius Medical Care entered into license and distribution agreements to market and distribute intravenous iron products. For further details on these license and distribution agreements, please see note 18, Goodwill and other intangible assets.

#### Fresenius Kabi

In the year 2009, Fresenius Kabi spent € 32 million on acquisitions. The acquisition of a Lactulose business division in Italy was the biggest individual project.

In the year 2008, Fresenius Kabi spent € 3,612 million which mainly referred to the acquisitions of APP Pharmaceuticals, Inc. (APP), United States, and Fresenius Kabi Oncology Ltd. (former: Dabur Pharma Ltd.), India.

#### Acquisition of APP Pharmaceuticals, Inc.

In July 2008, Fresenius Kabi has signed definitive agreements to acquire 100 % of the share capital of APP. APP is a leading manufacturer of intravenously administered generic drugs in North America.

Fresenius Kabi has completed the acquisition on September 10, 2008. The acquisition of APP has been accounted for applying the purchase method and has been first-time consolidated starting September 1, 2008. APP shareholders received a Cash Purchase Price of US\$ 23.00 per share. Based on the Cash Purchase Price, the transaction values the fully diluted equity capital of APP at approximately US\$ 3.7 billion. Furthermore, the shareholders received a registered and tradable Contingent Value Right. In addition, US\$ 0.9 billion of net debt was assumed and refinanced.

The acquisition was financed with a mix of debt and equity by launching Mandatory Exchangeable Bonds, capital increase and entering into a syndicated credit agreement and into a bridge credit agreement. The latter was redeemed using proceeds of the issuance of new Senior Notes in January 2009 (see note 22, Senior Notes).

The final purchase price allocation is as follows:

| in million US\$                                  |              |
|--------------------------------------------------|--------------|
| Net working capital and other assets/liabilities | 227          |
| Property, plant and equipment                    | 109          |
| In-process research and development              | 366          |
| Identifiable intangible assets                   | 542          |
| Goodwill                                         | 3,664        |
| <b>Total</b>                                     | <b>4,908</b> |

In comparison to the preliminary purchase price allocation, changes incurred in property, plant and equipment, goodwill as well as in net working capital and other assets/liabilities resulted from the finalization of a plan to close a manufacturing facility and to transfer its production operations to other plants.

The following financial information on a pro forma basis reflects the consolidated results of operations as if the acquisition of APP had been consummated at the beginning of 2008. The adjusted net income attributable to Fresenius SE includes corresponding pro forma adjustments mainly for interest expense on acquisition debt as well as income taxes. The pro forma financial information is not necessarily indicative of the results of operations as it would have been had the acquisition of APP been consummated at the beginning of the respective periods.

| in million €                                                  | 2008        |                   |
|---------------------------------------------------------------|-------------|-------------------|
|                                                               | as reported | pro forma         |
| Sales                                                         | 12,336      | 12,641            |
| Adjusted net income attributable to Fresenius SE <sup>1</sup> | 450         | 412               |
| Net income attributable to Fresenius SE                       | 270         | 232               |
| Basic earnings per ordinary share in €                        | 1.71        | 1.46              |
| Fully diluted earnings per ordinary share in €                | 1.58        | 1.50 <sup>2</sup> |
| Basic earnings per preference share in €                      | 1.72        | 1.47              |
| Fully diluted earnings per preference share in €              | 1.59        | 1.51 <sup>2</sup> |

<sup>1</sup> Before special items relating to the APP acquisition (for details see note 3, Special items)

<sup>2</sup> Under consideration of dilution effects which positively influence the earnings per share

### Acquisition of Fresenius Kabi Oncology Ltd. (former: Dabur Pharma Ltd.)

In April 2008, Fresenius Kabi has entered into agreements to acquire 73.3 % of the share capital of the Indian company Fresenius Kabi Oncology Ltd. (former: Dabur Pharma Ltd.) for a price of Indian rupee 76.50 per share in cash (total amount: € 139 million). In accordance with Indian regulations, Fresenius Kabi also announced a public offer to acquire up to a further 20 % shareholding for a price of Indian rupee 76.50 per share in cash. After the successful completion in the third quarter of 2008, the transaction was closed on August 11, 2008. Fresenius Kabi holds 90 % of the shares. The total cash purchase price of Fresenius Kabi Oncology Ltd. (former: Dabur Pharma Ltd.) was € 177 million.

### Fresenius Helios

In 2009, Fresenius Helios spent € 79 million which mainly referred to the acquisitions of five acute care hospitals. Fresenius Helios entered into agreements to acquire these hospitals in December 2008 and closed the transactions in February 2009.

### Fresenius Vamed

In 2009, Fresenius Vamed did not make any material acquisition.

In 2008, Fresenius Vamed spent € 35 million on acquisitions mainly related to the intercompany purchase of the hospital group Mediterra, Czechia, from Fresenius Helios and to the purchase of HERMED Technische Beratungs GmbH, Germany.

### Corporate/Other

In 2009, in the segment Corporate/Other, € 9 million milestone payments were paid in conjunction with the acquisition of additional shares of Trion Pharma GmbH, Germany, in 2007.

In the first quarter of 2008, in the segment Corporate/Other additional shares of HELIOS Kliniken GmbH, Germany, were acquired for a purchase price of € 31 million.

### IMPACTS ON FRESENIUS GROUP'S CONSOLIDATED FINANCIAL STATEMENTS RESULTING FROM ACQUISITIONS

In the fiscal year 2009, all acquisitions have been accounted for applying the purchase method and accordingly have been consolidated starting with the date of acquisition. Each single acquisition is not material. The excess of the total acquisition costs over the fair value of the net assets acquired was € 310 million and € 3,659 million in 2009 and 2008, respectively.

The purchase price allocations are not yet finalized for all acquisitions. Based on preliminary purchase price allocations, the recognized goodwill was € 229 million and the other intangible assets were € 81 million. Of this goodwill, € 125 million is attributable to the acquisitions of Fresenius Medical Care, € 43 million to Fresenius Kabi's acquisitions and € 61 million to the acquisitions of Fresenius Helios.

The acquisitions completed in 2009 or included in the consolidated statements for the first time for a full year, contributed the following amounts to the development of sales and earnings:

| in million €                            | 2009        |                      |
|-----------------------------------------|-------------|----------------------|
|                                         | as reported | before special items |
| Sales                                   | 683         | 683                  |
| EBITDA                                  | 161         | 161                  |
| EBIT                                    | 125         | 125                  |
| Net interest                            | -163        | -163                 |
| Other financial result                  | -31         | 0                    |
| Net income attributable to Fresenius SE | -53         | -33                  |

The acquisitions increased the total assets of the Fresenius Group by € 337 million.

## NOTES ON THE CONSOLIDATED STATEMENT OF INCOME

### 3. SPECIAL ITEMS

The consolidated statements of income for the years 2008 and 2009 include special items relating to the acquisition of APP. The tables below reconcile adjusted earnings to earnings according to US GAAP.

| in million €                                  | Other financial result | Net income attributable to Fresenius SE |
|-----------------------------------------------|------------------------|-----------------------------------------|
| <b>Earnings 2009, adjusted</b>                |                        | 514                                     |
| Mandatory Exchangeable Bonds (mark-to-market) | -37                    | -26                                     |
| Contingent Value Rights (mark-to-market)      | 6                      | 6                                       |
| <b>Earnings 2009 according to US GAAP</b>     |                        | <b>494</b>                              |

| in million €                                  | EBIT         | Other financial result | Net income attributable to Fresenius SE |
|-----------------------------------------------|--------------|------------------------|-----------------------------------------|
| <b>Earnings 2008, adjusted</b>                | 1,727        |                        | 450                                     |
| Purchase accounting adjustments               |              |                        |                                         |
| In-process R & D                              | -272         |                        | -272                                    |
| Inventory step-up                             | -35          |                        | -22                                     |
| Foreign exchange gain                         | 57           |                        | 41                                      |
| Other financial result                        |              |                        |                                         |
| Mandatory Exchangeable Bonds (mark-to-market) |              | 28                     | 20                                      |
| Contingent Value Rights (mark-to-market)      |              | 75                     | 75                                      |
| One-time financing expenses                   |              | -35                    | -22                                     |
| <b>Earnings 2008 according to US GAAP</b>     | <b>1,477</b> |                        | <b>270</b>                              |

Acquired in-process R & D activities were fully depreciated under US GAAP accounting principles valid at the closing date.

The inventory step-up reflects the excess of fair value over book value of acquired semi-finished and finished products. The amount was realized in line with the sale of the respective products.

For further information regarding Mandatory Exchangeable Bonds (MEB), Contingent Value Rights (CVR) and one-time financing expenses see note 10, Other financial result.

### 4. SALES

Sales by activity were as follows:

| in million €                              | 2009          | 2008          |
|-------------------------------------------|---------------|---------------|
| Sales of services                         | 8,643         | 7,614         |
| Sales of products and related goods       | 5,097         | 4,380         |
| Sales from long-term production contracts | 423           | 341           |
| Other sales                               | 1             | 1             |
| <b>Sales</b>                              | <b>14,164</b> | <b>12,336</b> |

A sales analysis by business segment and region is shown in the segment information on pages 116 to 119.

### 5. COST OF SALES

Cost of sales comprised the following:

| in million €                                     | 2009         | 2008         |
|--------------------------------------------------|--------------|--------------|
| Costs of services                                | 6,519        | 5,771        |
| Manufacturing cost of products and related goods | 2,655        | 2,353        |
| Cost of long-term production contracts           | 354          | 284          |
| Other cost of sales                              | –            | –            |
| <b>Cost of sales</b>                             | <b>9,528</b> | <b>8,408</b> |

### 6. COST OF MATERIALS

Cost of materials comprised cost of raw materials, supplies and purchased components and of purchased services:

| in million €                                              | 2009         | 2008         |
|-----------------------------------------------------------|--------------|--------------|
| Costs of raw materials, supplies and purchased components | 4,077        | 3,668        |
| Cost of purchased services                                | 571          | 536          |
| <b>Cost of materials</b>                                  | <b>4,648</b> | <b>4,204</b> |



## 7. PERSONNEL EXPENSES

Cost of sales, selling, general and administrative expenses and research and development expenses included personnel expenses of € 4,880 million and € 4,332 million in 2009 and 2008, respectively.

Personnel expenses comprised the following:

| in million €                                                                     | 2009         | 2008  |
|----------------------------------------------------------------------------------|--------------|-------|
| Wages and salaries                                                               | <b>3,882</b> | 3,508 |
| Social security contributions, cost of retirement pensions and social assistance | <b>998</b>   | 824   |
| thereof retirement pensions                                                      | <b>120</b>   | 99    |
| <b>Personnel expenses</b>                                                        | <b>4,880</b> | 4,332 |

Fresenius Group's annual average number of employees by function is shown below:

|                                     | 2009           | 2008    |
|-------------------------------------|----------------|---------|
| Production and service              | <b>102,003</b> | 95,723  |
| Administration                      | <b>16,131</b>  | 13,858  |
| Sales and marketing                 | <b>8,397</b>   | 7,931   |
| Research and development            | <b>1,372</b>   | 1,156   |
| <b>Total employees (per capita)</b> | <b>127,903</b> | 118,668 |

## 8. SELLING, GENERAL AND ADMINISTRATIVE EXPENSES

Selling expenses were € 561 million (2008: € 513 million) and mainly included expenditures for sales personnel of € 270 million (2008: € 250 million).

General and administrative expenses amounted to € 1,781 million (2008: € 1,459 million) and are related to expenditures for administrative functions not attributable to research and development, production or selling.

## 9. NET INTEREST

The net interest expenses of € -580 million included interest expenses of € 602 million and interest income of € 22 million. Interest expenses resulted from Fresenius Group's financial liabilities (see note 30, Financial instruments).

## 10. OTHER FINANCIAL RESULT

The item other financial result includes the following special expenses and income with regard to the acquisition of APP and its financing:

The CVR awarded to the APP shareholders are traded at the NASDAQ Stock Exchange in the United States. The corresponding liability is therefore valued with the current stock exchange price at the reporting date. This valuation resulted in an income of € 6 million in 2009 (2008: income of € 75 million).

Due to its contractual definition, the issued MEB include derivative financial instruments that have to be measured at fair value. This measurement resulted in an expense (before tax) of € 37 million in 2009 (2008: income of € 28 million). However, this measurement does not cause a change of the MEB's nominal amount of € 554.4 million that has to be settled in ordinary shares of Fresenius Medical Care AG & Co. KGaA (FMC-AG & Co. KGaA) upon maturity, but mainly reflects the share price development of these shares (see note 23, Mandatory Exchangeable Bonds).

Furthermore, in the year 2008, one-time financing expenses in an amount of € 35 million were incurred relating to the APP acquisition.

## 11. TAXES

### INCOME TAXES

Income before income taxes was attributable to the following geographic regions:

| in million €  | 2009         | 2008  |
|---------------|--------------|-------|
| Germany       | <b>342</b>   | 463   |
| International | <b>1,101</b> | 651   |
| <b>Total</b>  | <b>1,443</b> | 1,114 |



Income tax expenses (benefits) for 2009 and 2008 consisted of the following:

| in million €  | Current taxes | Deferred taxes | Income taxes |
|---------------|---------------|----------------|--------------|
| <b>2008</b>   |               |                |              |
| Germany       | 69            | 61             | 130          |
| International | 249           | 52             | 301          |
| <b>Total</b>  | <b>318</b>    | <b>113</b>     | <b>431</b>   |
| <b>2009</b>   |               |                |              |
| Germany       | 83            | –              | 83           |
| International | 358           | 11             | 369          |
| <b>Total</b>  | <b>441</b>    | <b>11</b>      | <b>452</b>   |

In 2009 and 2008, Fresenius SE was subject to German federal corporation income tax at a base rate of 15 % plus a solidarity surcharge of 5.5 % on federal corporation taxes payable.

A reconciliation between the expected and actual income tax expense is shown below. The expected corporate income tax expense is computed by applying the German corporation tax rate (including the solidarity surcharge) and the effective trade tax rate on income before income taxes. The respective combined tax rate was 29.0 % for the fiscal years 2009 and 2008.

| in million €                                                                     | 2009          | 2008          |
|----------------------------------------------------------------------------------|---------------|---------------|
| Computed "expected" income tax expense                                           | 418           | 323           |
| Increase (reduction) in income taxes resulting from:                             |               |               |
| Items not recognized for tax purposes                                            | 11            | 88            |
| Foreign tax rate differential                                                    | 54            | 27            |
| Tax-free income                                                                  | -32           | -29           |
| Taxes for prior years                                                            | 19            | 33            |
| Changes in valuation allowances on deferred tax assets                           | -14           | 19            |
| Book income of consolidated partnership attributable to non-controlling interest | -19           | -9            |
| Other                                                                            | 15            | -21           |
| <b>Income tax</b>                                                                | <b>452</b>    | <b>431</b>    |
| <b>Effective tax rate</b>                                                        | <b>31.3 %</b> | <b>38.7 %</b> |

## DEFERRED TAXES

The tax effects of the temporary differences that gave rise to deferred tax assets and liabilities at December 31 are presented below:

| in million €                                           | 2009       | 2008       |
|--------------------------------------------------------|------------|------------|
| <b>Deferred tax assets</b>                             |            |            |
| Accounts receivable                                    | 33         | 33         |
| Inventories                                            | 54         | 52         |
| Other current assets                                   | 38         | 19         |
| Other non-current assets                               | 54         | 46         |
| Accrued expenses                                       | 208        | 218        |
| Other short-term liabilities                           | 61         | 76         |
| Other liabilities                                      | 39         | 27         |
| Benefit obligations                                    | 37         | 36         |
| Losses carried forward from prior years                | 105        | 138        |
| <b>Deferred tax assets, before valuation allowance</b> | <b>629</b> | <b>645</b> |
| less valuation allowance                               | 73         | 87         |
| <b>Deferred tax assets</b>                             | <b>556</b> | <b>558</b> |
| <b>Deferred tax liabilities</b>                        |            |            |
| Accounts receivable                                    | 10         | 9          |
| Inventories                                            | 13         | 7          |
| Other current assets                                   | 54         | 66         |
| Other non-current assets                               | 486        | 439        |
| Accrued expenses                                       | 43         | 68         |
| Other short-term liabilities                           | 7          | 7          |
| Other liabilities                                      | 14         | 16         |
| <b>Deferred tax liabilities</b>                        | <b>627</b> | <b>612</b> |
| <b>Accumulated deferred taxes</b>                      | <b>-71</b> | <b>-54</b> |

In the statement of financial position, the accumulated amounts of deferred tax assets and liabilities are included as follows:

|                                   | 2009       |                   | 2008       |                   |
|-----------------------------------|------------|-------------------|------------|-------------------|
| in million €                      |            | thereof long-term |            | thereof long-term |
| Deferred tax assets               | 395        | 115               | 465        | 156               |
| Deferred tax liabilities          | 466        | 415               | 519        | 449               |
| <b>Accumulated deferred taxes</b> | <b>-71</b> | <b>-300</b>       | <b>-54</b> | <b>-293</b>       |

As of December 31, 2009, Fresenius Medical Care has not recognized a deferred tax liability on approximately € 1.9 billion of undistributed earnings of its foreign subsidiaries, because those earnings are intended to be indefinitely reinvested.

## NET OPERATING LOSSES

The expiration of net operating losses is as follows:

| for the fiscal years | in million € |
|----------------------|--------------|
| 2010                 | 34           |
| 2011                 | 6            |
| 2012                 | 7            |
| 2013                 | 10           |
| 2014                 | 17           |
| 2015                 | 11           |
| 2016                 | 10           |
| 2017                 | 17           |
| 2018                 | 8            |
| 2019                 | 5            |
| Thereafter           | 19           |
| <b>Total</b>         | <b>144</b>   |

The total remaining operating losses of € 208 million can mainly be carried forward for an unlimited period.

Based upon the level of historical taxable income and projections for future taxable income, the Management of the Fresenius Group believes it is more likely than not that the Fresenius Group will realize the benefits of these deductible differences, net of the existing valuation allowances at December 31, 2009.

## UNRECOGNIZED TAX BENEFITS

Fresenius SE and its subsidiaries are subject to tax audits on a regular basis.

In Germany, the tax audit for the years 1998 until 2001 has been finalized. All results of the completed tax audits are already sufficiently recognized in the financial statements as

of December 31, 2008. The fiscal years 2002 to 2005 are currently under audit. All further fiscal years are open to tax audits. For the tax year 1997, Fresenius Medical Care recognized an impairment of one of its subsidiaries which the German tax authorities disallowed in 2003 at the conclusion of its audit for the years 1996 and 1997. Fresenius Medical Care has filed a complaint with the appropriate German court to challenge the tax authority's decision. As a result of a change in judgment based on new information which became available in the second quarter of 2009, Fresenius Medical Care has increased its recognition of the tax benefit related to this claim by € 10.4 million (US\$ 14.6 million).

In the United States, Fresenius Medical Care filed claims for refunds contesting the Internal Revenue Service's (IRS) disallowance of Fresenius Medical Care Holdings, Inc.'s (FMCH) civil settlement payment deductions in prior year tax returns. As a result of a settlement agreement with the IRS to resolve Fresenius Medical Care's appeal of the IRS's disallowance of deductions for the civil settlement payments made to qui tam relators (see note 29, Commitments and Contingent Liabilities) in connection with the resolution of the 2000 US government investigation, Fresenius Medical Care received a refund in September 2008 of US\$ 37 million, inclusive of interest. The settlement agreement preserves the right to continue to pursue claims in the US federal courts for refunds of all other disallowed deductions. The unrecognized tax benefit relating to these deductions is included in the total unrecognized tax benefit noted on the following page. The IRS tax audits of FMCH in the United States for the years 2002 through 2006 have been completed. The IRS has disallowed all deductions taken during these audit periods related to intercompany mandatorily redeemable preference shares. In addition, the IRS proposed other adjustments which have been recognized in the financial statements. Fresenius Medical Care has protested the disallowed deductions and will avail itself of all remedies. An adverse determination with respect to the disallowed deductions related to the intercompany mandatorily redeemable preference shares could have a material adverse effect on Fresenius Medical Care's results of operations and liquidity. Fiscal years 2007, 2008 and 2009 are open to audit. There are

a number of state audits in progress and various years are open to audit in other states. All expected results have been recognized in the consolidated financial statements.

Subsidiaries of Fresenius SE in a number of countries outside of Germany and the United States are also subject to tax audits. The Fresenius Group estimates that the tax effects of such audits are not material to the consolidated financial statements.

The following table shows the changes to unrecognized tax benefits during the year 2009:

| in million €                                          | 2009       |
|-------------------------------------------------------|------------|
| <b>Balance at January 1, 2009</b>                     | <b>323</b> |
| Increase in unrecognized tax benefits prior periods   | 48         |
| Decrease in unrecognized tax benefits prior periods   | - 11       |
| Increase in unrecognized tax benefits current periods | 21         |
| Changes related to settlements with tax authorities   | - 6        |
| Foreign currency translation                          | - 20       |
| <b>Balance at December 31, 2009</b>                   | <b>355</b> |

Included in the balance at December 31, 2009 are € 355 million of unrecognized tax benefits, which would affect the effective tax rate if recognized. The Fresenius Group is currently not in a position to forecast the timing and magnitude of changes in the unrecognized tax benefits.

It is Fresenius Group's policy to recognize interest and penalties related to its tax positions as income tax expense. During the fiscal year 2009, the Fresenius Group recognized € 12 million in interest and penalties. The Fresenius Group had a total accrual of € 33 million of tax related interest and penalties at December 31, 2009.

## 12. EARNINGS PER SHARE

The following table shows the earnings per ordinary and preference share including and excluding the dilutive effect from stock options issued and the MEB.

|                                                                                | 2009               | 2008        |
|--------------------------------------------------------------------------------|--------------------|-------------|
| <b>Numerators in million €</b>                                                 |                    |             |
| Net income attributable to Fresenius SE                                        | <b>494</b>         | 270         |
| less preference on preference shares                                           | <b>1</b>           | 1           |
| less effect from dilution due to Fresenius Medical Care shares and MEB         | <b>1</b>           | 17          |
| Income available to all classes of shares                                      | <b>492</b>         | 252         |
| <b>Denominators in number of shares</b>                                        |                    |             |
| Weighted-average number of ordinary shares outstanding                         | <b>80,595,319</b>  | 78,855,197  |
| Weighted-average number of preference shares outstanding                       | <b>80,595,319</b>  | 78,855,197  |
| Weighted-average number of shares outstanding of all classes                   | <b>161,190,638</b> | 157,710,394 |
| Potentially dilutive ordinary shares                                           | <b>268,447</b>     | 592,526     |
| Potentially dilutive preference shares                                         | <b>268,447</b>     | 592,526     |
| Weighted-average number of ordinary shares outstanding assuming dilution       | <b>80,863,766</b>  | 79,447,723  |
| Weighted-average number of preference shares outstanding assuming dilution     | <b>80,863,766</b>  | 79,447,723  |
| Weighted-average number of shares outstanding of all classes assuming dilution | <b>161,727,532</b> | 158,895,446 |
| <b>Basic earnings per ordinary share in €</b>                                  | <b>3.06</b>        | 1.71        |
| Preference per preference share in €                                           | <b>0.01</b>        | 0.01        |
| <b>Basic earnings per preference share in €</b>                                | <b>3.07</b>        | 1.72        |
| <b>Fully diluted earnings per ordinary share in €</b>                          | <b>3.04</b>        | 1.58        |
| Preference per preference share in €                                           | <b>0.01</b>        | 0.01        |
| <b>Fully diluted earnings per preference share in €</b>                        | <b>3.05</b>        | 1.59        |

The owners of preference shares are entitled to a preference of € 0.01 per bearer preference share per fiscal year.

## NOTES ON THE CONSOLIDATED STATEMENT OF FINANCIAL POSITION

### 13. CASH AND CASH EQUIVALENTS

As of December 31, cash and cash equivalents were as follows:

| in million €                                                    | 2009       | 2008       |
|-----------------------------------------------------------------|------------|------------|
| Cash                                                            | 411        | 361        |
| Time deposits and securities (with a maturity of up to 90 days) | 9          | 9          |
| <b>Total cash and cash equivalents</b>                          | <b>420</b> | <b>370</b> |

As of December 31, 2009 and December 31, 2008, earmarked funds of € 17 million and € 78 million, respectively, were included in cash and cash equivalents.

### 14. TRADE ACCOUNTS RECEIVABLE

As of December 31, trade accounts receivable were as follows:

| in million €                          | 2009         | 2008         |
|---------------------------------------|--------------|--------------|
| Trade accounts receivable             | 2,794        | 2,734        |
| less allowance for doubtful accounts  | 285          | 257          |
| <b>Trade accounts receivable, net</b> | <b>2,509</b> | <b>2,477</b> |

All trade accounts receivable are due within one year.

The following table shows the development of the allowance for doubtful accounts during the fiscal year:

| in million €                                                                       | 2009       | 2008       |
|------------------------------------------------------------------------------------|------------|------------|
| <b>Allowance for doubtful accounts at the beginning of the year</b>                | <b>257</b> | <b>223</b> |
| Change in valuation allowances as recorded in the consolidated statement of income | 174        | 159        |
| Write-offs and recoveries of amounts previously written-off                        | -141       | -129       |
| Foreign currency translation                                                       | -5         | 4          |
| <b>Allowance for doubtful accounts at the end of the year</b>                      | <b>285</b> | <b>257</b> |

The following table shows the ageing analysis of trade accounts receivable and their allowance for doubtful accounts:

| in million €                          | not overdue  | up to 3 months overdue | 3 to 6 months overdue | 6 to 12 months overdue | more than 12 months overdue | Total        |
|---------------------------------------|--------------|------------------------|-----------------------|------------------------|-----------------------------|--------------|
| Trade accounts receivable             | 1,648        | 450                    | 225                   | 187                    | 284                         | 2,794        |
| less allowance for doubtful accounts  | 7            | 32                     | 27                    | 45                     | 174                         | 285          |
| <b>Trade accounts receivable, net</b> | <b>1,641</b> | <b>418</b>             | <b>198</b>            | <b>142</b>             | <b>110</b>                  | <b>2,509</b> |

### 15. INVENTORIES

As of December 31, inventories consisted of the following:

| in million €                           | 2009         | 2008         |
|----------------------------------------|--------------|--------------|
| Raw materials and purchased components | 311          | 289          |
| Work in process                        | 188          | 180          |
| Finished goods                         | 794          | 713          |
| less reserves                          | 58           | 55           |
| <b>Inventories, net</b>                | <b>1,235</b> | <b>1,127</b> |

The companies of the Fresenius Group are obliged to purchase approximately € 1,739 million of raw materials and purchased components under fixed terms, of which € 334 million was committed at December 31, 2009 for 2010. The terms of these agreements run one to nine years. Advance payments from customers of € 186 million (2008: € 83 million) have been offset against inventories.

Inventories as of December 31, 2009 and December 31, 2008 included approximately € 24 million and approximately € 25 million, respectively, of the product Erythropoietin (EPO),

which is supplied by a single source supplier in the United States. Delays, stoppages, or interruptions in the supply of EPO could adversely affect the operating results of Fresenius Medical Care. In October 2006, Fresenius Medical Care

entered into a five-year exclusive sourcing and supply agreement with its EPO supplier. Revenues from EPO accounted for approximately 7 % of total sales of the Fresenius Group in 2009 and 2008, respectively.

## 16. OTHER CURRENT AND NON-CURRENT ASSETS

As of December 31, other current and non-current assets comprised the following:

| in million €                                                               | 2009         |                       | 2008         |                       |
|----------------------------------------------------------------------------|--------------|-----------------------|--------------|-----------------------|
|                                                                            |              | thereof<br>short-term |              | thereof<br>short-term |
| Tax receivables                                                            | 253          | 242                   | 170          | 164                   |
| Accounts receivable resulting from German "Krankenhausfinanzierungsgesetz" | 145          | 89                    | 128          | 101                   |
| Discounts                                                                  | 129          | 129                   | 116          | 116                   |
| Capitalized debt financing costs                                           | 107          | 10                    | 116          | 7                     |
| Investments and long-term loans                                            | 74           | 5                     | 98           | 3                     |
| Leasing receivables                                                        | 55           | 22                    | 48           | 26                    |
| Derivative financial instruments                                           | 49           | 29                    | 87           | 74                    |
| Advances made                                                              | 41           | 39                    | 32           | 32                    |
| Prepaid expenses                                                           | 32           | 16                    | 39           | 13                    |
| Re-insurance claims                                                        | 23           | 0                     | 27           | 0                     |
| Accounts receivable from management contracts in clinics                   | 6            | 6                     | 10           | 10                    |
| Other assets                                                               | 428          | 318                   | 344          | 236                   |
| <b>Other assets, gross</b>                                                 | <b>1,342</b> | <b>905</b>            | <b>1,215</b> | <b>782</b>            |
| less allowances                                                            | 13           | 12                    | 9            | 9                     |
| <b>Other assets, net</b>                                                   | <b>1,329</b> | <b>893</b>            | <b>1,206</b> | <b>773</b>            |

The receivables resulting from the German "Krankenhausfinanzierungsgesetz" primarily contain approved but not yet received earmarked subsidies of the Fresenius Helios operations. The approval is evidenced in a letter written by the granting authorities that Fresenius Helios has already received.

Depreciation on other non-current assets in an amount of € 2 million was recognized in the fiscal years 2009 and 2008, respectively.

## 17. PROPERTY, PLANT AND EQUIPMENT

As of December 31, the acquisition and manufacturing costs as well as accumulated depreciation of property, plant and equipment consisted of the following:

### ACQUISITION AND MANUFACTURING COSTS

| in million €                                                      | As of<br>January 1,<br>2009 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions  | Reclassifi-<br>cations | Disposals  | As of<br>December 31,<br>2009 |
|-------------------------------------------------------------------|-----------------------------|------------------------------------|----------------------------------------|------------|------------------------|------------|-------------------------------|
| Land and land facilities                                          | 199                         | 1                                  | 4                                      | 3          | 1                      | 2          | 206                           |
| Buildings and improvements                                        | 2,424                       | -20                                | 11                                     | 85         | 144                    | 16         | 2,628                         |
| Machinery and equipment                                           | 3,023                       | 8                                  | 29                                     | 283        | 96                     | 84         | 3,355                         |
| Machinery, equipment and rental<br>equipment under capital leases | 138                         | –                                  | 1                                      | 9          | -1                     | 1          | 146                           |
| Construction in progress                                          | 346                         | –                                  | 3                                      | 252        | -254                   | 7          | 340                           |
| <b>Property, plant and equipment</b>                              | <b>6,130</b>                | <b>-11</b>                         | <b>48</b>                              | <b>632</b> | <b>-14</b>             | <b>110</b> | <b>6,675</b>                  |

## DEPRECIATION

| in million €                                                      | As of<br>January 1,<br>2009 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions  | Reclassifi-<br>cations | Disposals | As of<br>December 31,<br>2009 |
|-------------------------------------------------------------------|-----------------------------|------------------------------------|----------------------------------------|------------|------------------------|-----------|-------------------------------|
| Land and land facilities                                          | 2                           | –                                  | –                                      | –          | –                      | –         | 2                             |
| Buildings and improvements                                        | 898                         | - 10                               | 2                                      | 158        | 1                      | 11        | 1,038                         |
| Machinery and equipment                                           | 1,744                       | 5                                  | 12                                     | 305        | - 1                    | 64        | 2,001                         |
| Machinery, equipment and rental<br>equipment under capital leases | 65                          | –                                  | –                                      | 10         | –                      | 1         | 74                            |
| Construction in progress                                          | 1                           | 0                                  | 0                                      | –          | 0                      | 0         | 1                             |
| <b>Property, plant and equipment</b>                              | <b>2,710</b>                | <b>- 5</b>                         | <b>14</b>                              | <b>473</b> | <b>–</b>               | <b>76</b> | <b>3,116</b>                  |

## ACQUISITION AND MANUFACTURING COSTS

| in million €                                                      | As of<br>January 1,<br>2008 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions  | Reclassifi-<br>cations | Disposals  | As of<br>December 31,<br>2008 |
|-------------------------------------------------------------------|-----------------------------|------------------------------------|----------------------------------------|------------|------------------------|------------|-------------------------------|
| Land and land facilities                                          | 168                         | –                                  | 26                                     | 6          | 0                      | 1          | 199                           |
| Buildings and improvements                                        | 2,108                       | 19                                 | 60                                     | 201        | 51                     | 15         | 2,424                         |
| Machinery and equipment                                           | 2,598                       | - 19                               | 129                                    | 321        | 95                     | 101        | 3,023                         |
| Machinery, equipment and rental<br>equipment under capital leases | 137                         | 1                                  | –                                      | 4          | 0                      | 4          | 138                           |
| Construction in progress                                          | 300                         | - 2                                | 22                                     | 217        | - 189                  | 2          | 346                           |
| <b>Property, plant and equipment</b>                              | <b>5,311</b>                | <b>- 1</b>                         | <b>237</b>                             | <b>749</b> | <b>- 43</b>            | <b>123</b> | <b>6,130</b>                  |

## DEPRECIATION

| in million €                                                      | As of<br>January 1,<br>2008 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions  | Reclassifi-<br>cations | Disposals  | As of<br>December 31,<br>2008 |
|-------------------------------------------------------------------|-----------------------------|------------------------------------|----------------------------------------|------------|------------------------|------------|-------------------------------|
| Land and land facilities                                          | 2                           | –                                  | 0                                      | –          | –                      | –          | 2                             |
| Buildings and improvements                                        | 752                         | 11                                 | 9                                      | 136        | –                      | 10         | 898                           |
| Machinery and equipment                                           | 1,526                       | - 11                               | 44                                     | 276        | - 2                    | 89         | 1,744                         |
| Machinery, equipment and rental<br>equipment under capital leases | 59                          | –                                  | 0                                      | 9          | –                      | 3          | 65                            |
| Construction in progress                                          | 1                           | –                                  | 0                                      | –          | –                      | 0          | 1                             |
| <b>Property, plant and equipment</b>                              | <b>2,340</b>                | <b>–</b>                           | <b>53</b>                              | <b>421</b> | <b>- 2</b>             | <b>102</b> | <b>2,710</b>                  |

## CARRYING AMOUNTS

| in million €                                                   | December 31,<br>2009 | December 31,<br>2008 |
|----------------------------------------------------------------|----------------------|----------------------|
| Land and land facilities                                       | 204                  | 197                  |
| Buildings and improvements                                     | 1,590                | 1,526                |
| Machinery and equipment                                        | 1,354                | 1,279                |
| Machinery, equipment and rental equipment under capital leases | 72                   | 73                   |
| Construction in progress                                       | 339                  | 345                  |
| <b>Property, plant and equipment</b>                           | <b>3,559</b>         | <b>3,420</b>         |

Depreciation on property, plant and equipment for the years 2009 and 2008 was € 473 million and € 421 million, respectively. It is allocated within cost of sales, selling, general and

administrative expenses and research and development expenses, depending upon the area in which the asset is used.

## LEASING

Machinery and equipment as of December 31, 2009 and 2008 included peritoneal dialysis cyclers machines which Fresenius Medical Care leases to customers with end-stage renal disease on a month-to-month basis and hemodialysis machines which Fresenius Medical Care leases to physicians under operating leases in an amount of €253 million and €215 million, respectively.

To a lesser extent, property, plant and equipment are also leased for the treatment of patients by other business segments.

For details of minimum lease payments see note 21, Debt and capital lease obligations.

## 18. GOODWILL AND OTHER INTANGIBLE ASSETS

As of December 31, the acquisition cost and accumulated amortization of intangible assets consisted of the following:

### ACQUISITION COST

| in million €                                | As of<br>January 1,<br>2009 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions | Reclassifi-<br>cations | Disposals | As of<br>December 31,<br>2009 |
|---------------------------------------------|-----------------------------|------------------------------------|----------------------------------------|-----------|------------------------|-----------|-------------------------------|
| Goodwill                                    | 10,383                      | -252                               | 220                                    | 5         | –                      | 0         | 10,356                        |
| Patents, product and distribution rights    | 540                         | -14                                | –                                      | 12        | 1                      | 1         | 538                           |
| Tradenames                                  | 166                         | -5                                 | 0                                      | –         | –                      | –         | 161                           |
| Management contracts                        | 158                         | -5                                 | 0                                      | 0         | –                      | 0         | 153                           |
| Technology                                  | 71                          | -2                                 | 0                                      | 0         | 0                      | 0         | 69                            |
| Non-compete agreements                      | 158                         | -5                                 | 3                                      | 1         | 0                      | 0         | 157                           |
| Other                                       | 361                         | -4                                 | 11                                     | 54        | 6                      | 5         | 423                           |
| <b>Goodwill and other intangible assets</b> | <b>11,837</b>               | <b>-287</b>                        | <b>234</b>                             | <b>72</b> | <b>7</b>               | <b>6</b>  | <b>11,857</b>                 |

### AMORTIZATION

| in million €                                | As of<br>January 1,<br>2009 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions | Reclassifi-<br>cations | Disposals | As of<br>December 31,<br>2009 |
|---------------------------------------------|-----------------------------|------------------------------------|----------------------------------------|-----------|------------------------|-----------|-------------------------------|
| Goodwill                                    | 4                           | 0                                  | -4                                     | 0         | 0                      | 0         | 0                             |
| Patents, product and distribution rights    | 54                          | -1                                 | –                                      | 41        | –                      | 1         | 93                            |
| Tradenames                                  | 0                           | 0                                  | 0                                      | 0         | 0                      | 0         | 0                             |
| Management contracts                        | 0                           | 0                                  | 0                                      | 0         | 0                      | 0         | 0                             |
| Technology                                  | 8                           | 0                                  | 0                                      | 4         | 0                      | 0         | 12                            |
| Non-compete agreements                      | 102                         | -4                                 | 0                                      | 11        | –                      | 0         | 109                           |
| Other                                       | 212                         | -2                                 | –                                      | 31        | –                      | 7         | 234                           |
| <b>Goodwill and other intangible assets</b> | <b>380</b>                  | <b>-7</b>                          | <b>-4</b>                              | <b>87</b> | <b>–</b>               | <b>8</b>  | <b>448</b>                    |

## ACQUISITION COST

| in million €                                | As of<br>January 1,<br>2008 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions  | Reclassifi-<br>cations | Disposals | As of<br>December 31,<br>2008 |
|---------------------------------------------|-----------------------------|------------------------------------|----------------------------------------|------------|------------------------|-----------|-------------------------------|
| Goodwill                                    | 7,098                       | 166                                | 3,079                                  | 50         | 8                      | 18        | 10,383                        |
| Patents, product and distribution rights    | 64                          | -15                                | 403                                    | 89         | –                      | 1         | 540                           |
| Tradenames                                  | 168                         | 7                                  | 1                                      | –          | -9                     | 1         | 166                           |
| Management contracts                        | 149                         | 9                                  | 0                                      | 0          | 0                      | 0         | 158                           |
| Technology                                  | 68                          | 3                                  | 0                                      | 0          | 0                      | 0         | 71                            |
| Non-compete agreements                      | 144                         | 9                                  | 5                                      | –          | 0                      | 0         | 158                           |
| Other                                       | 283                         | 0                                  | 11                                     | 29         | 42                     | 4         | 361                           |
| <b>Goodwill and other intangible assets</b> | <b>7,974</b>                | <b>179</b>                         | <b>3,499</b>                           | <b>168</b> | <b>41</b>              | <b>24</b> | <b>11,837</b>                 |

## AMORTIZATION

| in million €                                | As of<br>January 1,<br>2008 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions | Reclassifi-<br>cations | Disposals | As of<br>December 31,<br>2008 |
|---------------------------------------------|-----------------------------|------------------------------------|----------------------------------------|-----------|------------------------|-----------|-------------------------------|
| Goodwill                                    | 4                           | 0                                  | 0                                      | 0         | 0                      | 0         | 4                             |
| Patents, product and distribution rights    | 39                          | –                                  | –                                      | 15        | 0                      | 0         | 54                            |
| Tradenames                                  | 0                           | 0                                  | 0                                      | 0         | 0                      | 0         | 0                             |
| Management contracts                        | 0                           | 0                                  | 0                                      | 0         | 0                      | 0         | 0                             |
| Technology                                  | 3                           | –                                  | 0                                      | 5         | 0                      | 0         | 8                             |
| Non-compete agreements                      | 88                          | 4                                  | 0                                      | 10        | 0                      | 0         | 102                           |
| Other                                       | 200                         | -6                                 | 1                                      | 23        | –                      | 6         | 212                           |
| <b>Goodwill and other intangible assets</b> | <b>334</b>                  | <b>-2</b>                          | <b>1</b>                               | <b>53</b> | <b>–</b>               | <b>6</b>  | <b>380</b>                    |

## CARRYING AMOUNTS

| in million €                                | December 31,<br>2009 | December 31,<br>2008 |
|---------------------------------------------|----------------------|----------------------|
| Goodwill                                    | 10,356               | 10,379               |
| Patents, product and distribution rights    | 445                  | 486                  |
| Tradenames                                  | 161                  | 166                  |
| Management contracts                        | 153                  | 158                  |
| Technology                                  | 57                   | 63                   |
| Non-compete agreements                      | 48                   | 56                   |
| Other                                       | 189                  | 149                  |
| <b>Goodwill and other intangible assets</b> | <b>11,409</b>        | <b>11,457</b>        |



The split of intangible assets into amortizable and non-amortizable intangible assets is shown in the following table:

#### AMORTIZABLE INTANGIBLE ASSETS

| in million €                             | December 31, 2009 |                          |                 | December 31, 2008 |                          |                 |
|------------------------------------------|-------------------|--------------------------|-----------------|-------------------|--------------------------|-----------------|
|                                          | Acquisition cost  | Accumulated amortization | Carrying amount | Acquisition cost  | Accumulated amortization | Carrying amount |
| Patents, product and distribution rights | 538               | 93                       | 445             | 540               | 54                       | 486             |
| Technology                               | 69                | 12                       | 57              | 71                | 8                        | 63              |
| Non-compete agreements                   | 157               | 109                      | 48              | 158               | 102                      | 56              |
| Other                                    | 423               | 234                      | 189             | 361               | 212                      | 149             |
| <b>Total</b>                             | <b>1,187</b>      | <b>448</b>               | <b>739</b>      | <b>1,130</b>      | <b>376</b>               | <b>754</b>      |

#### NON-AMORTIZABLE INTANGIBLE ASSETS

| in million €         | December 31, 2009 |                          |                 | December 31, 2008 |                          |                 |
|----------------------|-------------------|--------------------------|-----------------|-------------------|--------------------------|-----------------|
|                      | Acquisition cost  | Accumulated amortization | Carrying amount | Acquisition cost  | Accumulated amortization | Carrying amount |
| Tradenames           | 161               | 0                        | 161             | 166               | 0                        | 166             |
| Management contracts | 153               | 0                        | 153             | 158               | 0                        | 158             |
| Goodwill             | 10,356            | 0                        | 10,356          | 10,383            | 4                        | 10,379          |
| <b>Total</b>         | <b>10,670</b>     | <b>0</b>                 | <b>10,670</b>   | <b>10,707</b>     | <b>4</b>                 | <b>10,703</b>   |

Amortization on intangible assets amounted to € 87 million and € 53 million for the years 2009 and 2008, respectively. It is allocated within cost of sales, selling, general and administrative

expenses and research and development expenses, depending upon the area in which the asset is used.

Estimated regular amortization expenses of intangible assets for the next five years are shown in the following table:

| in million €                    | 2010 | 2011 | 2012 | 2013 | 2014 |
|---------------------------------|------|------|------|------|------|
| Estimated amortization expenses | 86   | 82   | 79   | 74   | 71   |

The carrying amount of goodwill has developed as follows:

| in million €                                   | Fresenius Medical Care | Fresenius Kabi | Fresenius Helios | Fresenius Vamed | Corporate/ Other | Total         |
|------------------------------------------------|------------------------|----------------|------------------|-----------------|------------------|---------------|
| <b>Carrying amount as of January 1, 2008</b>   | <b>4,923</b>           | <b>598</b>     | <b>1,534</b>     | <b>34</b>       | <b>5</b>         | <b>7,094</b>  |
| Additions                                      | 65                     | 3,014          | 40               | 10              | 0                | 3,129         |
| Disposals                                      | 0                      | -9             | -9               | 0               | 0                | -18           |
| Reclassifications                              | 8                      | 0              | 0                | 0               | 0                | 8             |
| Foreign currency translation                   | 257                    | -92            | 0                | 0               | 1                | 166           |
| <b>Carrying amount as of December 31, 2008</b> | <b>5,253</b>           | <b>3,511</b>   | <b>1,565</b>     | <b>44</b>       | <b>6</b>         | <b>10,379</b> |
| Additions                                      | 125                    | 43             | 61               | 0               | 0                | 229           |
| Foreign currency translation                   | -164                   | -88            | 0                | 0               | 0                | -252          |
| <b>Carrying amount as of December 31, 2009</b> | <b>5,214</b>           | <b>3,466</b>   | <b>1,626</b>     | <b>44</b>       | <b>6</b>         | <b>10,356</b> |

## LICENSE AND DISTRIBUTION AGREEMENTS

In July 2008, Fresenius Medical Care entered into two separate licence and distribution agreements, one for the US (the US Agreement) and one for certain countries in Europe and the Middle East (the International Agreement), to market and distribute Galenica Ltd.'s and Luitpold Pharmaceuticals, Inc.'s intravenous iron products, such as Venofer® and Ferinject® for dialysis treatment. In North America, the license agreement among Fresenius Medical Care's subsidiary, FUSA Manufacturing, Inc. (FMI), Luitpold Pharmaceuticals, Inc., American Regent, Inc. and Vifor (International), Inc. provides FMI with exclusive rights to manufacture and distribute Venofer® to freestanding (non-hospital based) US dialysis facilities. In addition, it grants FMI similar rights for Injectafer® (ferric carboxymaltose), a proposed new intravenous iron medication currently under clinical study in the US. The US license agreement has a term of ten years, includes FMI extension options, and requires payment by FMI over the ten year term of approximately US\$ 2 billion, which Fresenius Medical Care will expense as incurred (based upon the annual estimated units of

sale of the licensed product), subject to certain early termination provisions.

In addition to these payments, Fresenius Medical Care will pay a total of approximately US\$ 47 million over a four year period for the US Agreement. Thereof in 2009 and 2008 payments were made in an amount of US\$ 6 million (€ 4 million) and US\$ 22 million (€ 15 million), respectively. Fresenius Medical Care recorded a liability for the balance. The cost of the US Agreement and related transaction costs of US\$ 6 million will be amortized over their 10-year expected useful life (based upon the annual estimated units of sale of the licensed product). Fresenius Medical Care paid US\$ 15 million (€ 10 million) upon signing of the International Agreement in 2008 and could pay up to € 40 million more upon certain milestones being met. The International Agreement costs will be amortized over their expected 20-year useful life. Milestone payments will be capitalized and amortized over their useful lives at the time the milestone payments are made, of which € 15 million of milestone payments was paid in 2009.

## 19. OTHER ACCRUED EXPENSES

As of December 31, other accrued expenses consisted of the following:

| in million €                           | 2009         |                       | 2008         |                       |
|----------------------------------------|--------------|-----------------------|--------------|-----------------------|
|                                        |              | thereof<br>short-term |              | thereof<br>short-term |
| Personnel expenses                     | 379          | 331                   | 365          | 320                   |
| Invoices outstanding                   | 147          | 147                   | 137          | 137                   |
| Self-insurance programs                | 119          | 119                   | 93           | 93                    |
| Special charge for legal matters       | 80           | 80                    | 83           | 83                    |
| Bonuses and discounts                  | 78           | 78                    | 76           | 76                    |
| Legal matters, advisory and audit fees | 42           | 42                    | 40           | 40                    |
| Warranties and complaints              | 28           | 24                    | 27           | 23                    |
| Commissions                            | 18           | 18                    | 17           | 17                    |
| Physician compensation                 | 5            | 5                     | 9            | 9                     |
| All other accrued expenses             | 316          | 278                   | 318          | 288                   |
| <b>Other accrued expenses</b>          | <b>1,212</b> | <b>1,122</b>          | <b>1,165</b> | <b>1,086</b>          |

The following table shows the development of other accrued expenses in the fiscal year:

| in million €                              | As of<br>January 1,<br>2009 | Foreign<br>currency<br>translation | Changes in<br>entities<br>consolidated | Additions  | Reclassifi-<br>cations | Utilized    | Reversed   | As of<br>December 31,<br>2009 |
|-------------------------------------------|-----------------------------|------------------------------------|----------------------------------------|------------|------------------------|-------------|------------|-------------------------------|
| Personnel expenses                        | 365                         | -3                                 | 4                                      | 194        | -4                     | -150        | -27        | 379                           |
| Invoices outstanding                      | 137                         | 1                                  | –                                      | 115        | 2                      | -94         | -14        | 147                           |
| Self-insurance programs                   | 93                          | -4                                 | 0                                      | 33         | –                      | -2          | -1         | 119                           |
| Special charge for<br>legal matters       | 83                          | -3                                 | 0                                      | 0          | 0                      | 0           | 0          | 80                            |
| Bonuses and discounts                     | 76                          | -1                                 | 0                                      | 83         | 1                      | -78         | -3         | 78                            |
| Legal matters, advisory<br>and audit fees | 40                          | –                                  | 1                                      | 32         | –                      | -29         | -2         | 42                            |
| Warranties and complaints                 | 27                          | –                                  | –                                      | 16         | -1                     | -11         | -3         | 28                            |
| Commissions                               | 17                          | –                                  | 0                                      | 18         | –                      | -16         | -1         | 18                            |
| Physician compensation                    | 9                           | -1                                 | 0                                      | -3         | 0                      | 0           | 0          | 5                             |
| All other accrued expenses                | 318                         | 3                                  | 5                                      | 275        | -1                     | -255        | -29        | 316                           |
| <b>Total</b>                              | <b>1,165</b>                | <b>-8</b>                          | <b>10</b>                              | <b>763</b> | <b>-3</b>              | <b>-635</b> | <b>-80</b> | <b>1,212</b>                  |

Accruals for personnel expenses mainly refer to bonus, severance payments, contribution of partial retirement and holiday entitlements.

In 2001, Fresenius Medical Care recorded a US\$ 258 million special charge to address legal matters relating to transactions pursuant to the Agreement and Plan of Reorganization dated as of February 4, 1996 by and between W.R. Grace & Co. and Fresenius AG, estimated liabilities and legal expenses arising in connection with the W.R. Grace & Co. Chapter 11 proceedings (Grace Chapter 11 Proceedings) and the cost of resolving pending litigation and other disputes with certain

commercial insurers. During the second quarter of 2003, the court supervising the Grace Chapter 11 Proceedings approved a definitive settlement agreement entered into among Fresenius Medical Care, the committee representing the asbestos creditors and W.R. Grace & Co. Under the settlement agreement, Fresenius Medical Care will pay US\$ 115 million (€ 80 million), without interest, upon plan confirmation (see note 29, Commitments and contingent liabilities). With the exception of the proposed US\$ 115 million settlement payment, all other matters included in the special charge have been resolved.

## 20. OTHER LIABILITIES

As of December 31, other liabilities consisted of the following:

| in million €                                                            | 2009         |                       | 2008         |                       |
|-------------------------------------------------------------------------|--------------|-----------------------|--------------|-----------------------|
|                                                                         |              | thereof<br>short-term |              | thereof<br>short-term |
| Accounts payable resulting from German "Krankenhausfinanzierungsgesetz" | 215          | 203                   | 187          | 174                   |
| Derivative financial instruments                                        | 185          | 28                    | 239          | 100                   |
| Interest liabilities                                                    | 117          | 117                   | 98           | 98                    |
| Tax liabilities                                                         | 117          | 114                   | 96           | 93                    |
| Accounts receivable credit balance                                      | 97           | 22                    | 95           | 23                    |
| Personnel liabilities                                                   | 90           | 86                    | 73           | 70                    |
| Advance payments from customers                                         | 55           | 49                    | 69           | 32                    |
| Leasing liabilities                                                     | 46           | 46                    | 39           | 39                    |
| All other liabilities                                                   | 544          | 410                   | 543          | 414                   |
| <b>Other liabilities</b>                                                | <b>1,466</b> | <b>1,075</b>          | <b>1,439</b> | <b>1,043</b>          |

The payables resulting from the German “Krankenhausfinanzierungsgesetz” primarily contain earmarked subsidies received but not yet spent appropriately by Fresenius Helios. The amount not yet spent appropriately is classified as liability.

At December 31, 2009, the total amount of other non-current liabilities was € 391 million, thereof € 324 million were due between one and five years and € 67 million were due later than five years. The statement of financial position line item long-term accrued expenses and other long-term liabilities of € 481 million also included long-term accrued expenses of € 90 million as of December 31, 2009.

## 21. DEBT AND CAPITAL LEASE OBLIGATIONS

### SHORT-TERM DEBT

#### Borrowings

Short-term debt of € 287 million and € 729 million at December 31, 2009 and 2008, respectively, consisted of € 138 million borrowed by certain subsidiaries of the Fresenius Group under lines of credit with commercial banks and € 149 million outstanding short-term borrowings under the accounts receivable facility described in the following. The average interest rates on these borrowings (excluding the accounts receivable facility) at December 31, 2009 and 2008 were 5.03 % and 5.17 %, respectively.

### Accounts receivable facility

Fresenius Medical Care has an asset securitization facility (accounts receivable facility), which was extended to October 15, 2010 and increased by US\$ 100 million to US\$ 650 million in November 2009. Under the accounts receivable facility, certain receivables are sold to NMC Funding Corp. (NMC Funding), a wholly-owned subsidiary of Fresenius Medical Care. NMC Funding then assigns percentage ownership interests in the accounts receivable to certain bank investors. Under the terms of the accounts receivable facility, NMC Funding retains the right, at any time, to recall all the then outstanding transferred interests in the accounts receivable. Consequently, the receivables remain on Fresenius Medical Care’s consolidated statement of financial position and the proceeds from the transfer of percentage ownership interests are recorded as short-term debt.

At December 31, 2009, there were outstanding short-term borrowings under the accounts receivable facility of US\$ 214 million (€ 149 million). NMC Funding pays interest to the bank investors, calculated based on the commercial paper rates for the particular tranches selected. The average interest rate during 2009 was 2.90 %. Annual refinancing fees, which include legal costs and bank fees (if any), are amortized over the term of the facility.

### LONG-TERM DEBT AND CAPITAL LEASE OBLIGATIONS

As of December 31, long-term debt and capital lease obligations consisted of the following:

| in million €                                                              | 2009         | 2008         |
|---------------------------------------------------------------------------|--------------|--------------|
| Fresenius Medical Care 2006 Senior Credit Agreement                       | 2,445        | 2,419        |
| 2008 Senior Credit Agreement                                              | 1,602        | 1,896        |
| Euro Notes                                                                | 800          | 800          |
| European Investment Bank Agreements                                       | 424          | 309          |
| Capital lease obligations                                                 | 45           | 42           |
| Bridge Credit Agreement                                                   | 0            | 467          |
| Other                                                                     | 173          | 214          |
| Subtotal                                                                  | 5,489        | 6,147        |
| less current portion                                                      | 261          | 431          |
| <b>Long-term debt and capital lease obligations, less current portion</b> | <b>5,228</b> | <b>5,716</b> |

Maturities of long-term debt and capital lease obligations are shown in the following table:

| in million €                                        | up to<br>1 year | 1 to 5<br>years | more than<br>5 years |
|-----------------------------------------------------|-----------------|-----------------|----------------------|
| Fresenius Medical Care 2006 Senior Credit Agreement | 93              | 2,352           | 0                    |
| 2008 Senior Credit Agreement                        | 110             | 1,492           | 0                    |
| Euro Notes                                          | 0               | 800             | 0                    |
| European Investment Bank Agreements                 | 8               | 376             | 40                   |
| Capital lease obligations                           | 12              | 22              | 11                   |
| Other                                               | 38              | 85              | 50                   |
| <b>Long-term debt and capital lease obligations</b> | <b>261</b>      | <b>5,127</b>    | <b>101</b>           |

Aggregate annual repayments applicable to the above listed long-term debt and capital lease obligations for the five years subsequent to December 31, 2009 are:

| for the fiscal years | in million € |
|----------------------|--------------|
| 2010                 | 261          |
| 2011                 | 1,523        |
| 2012                 | 1,510        |
| 2013                 | 727          |
| 2014                 | 1,367        |
| Subsequent years     | 101          |
| <b>Total</b>         | <b>5,489</b> |

### Fresenius Medical Care 2006 Senior Credit Agreement

Fresenius Medical Care, Fresenius Medical Care Holdings, and certain other subsidiaries of Fresenius Medical Care that are borrowers and/or guarantors thereunder, including Fresenius Medical Care Deutschland GmbH, entered into a US\$ 4.6 billion syndicated credit facility (Fresenius Medical Care 2006 Senior Credit Agreement) with Bank of America, N.A. (BoFA); Deutsche Bank AG New York Branch; The Bank of Nova Scotia; Credit Suisse, Cayman Islands Branch; JP Morgan Chase Bank, National Association; and certain other lenders (collectively the Lenders) on March 31, 2006 which replaced a prior credit agreement.

The following table shows the available and outstanding amounts under the Fresenius Medical Care 2006 Senior Credit Agreement at December 31:

| in million US\$  | Maximum amount available |              | Balance outstanding |              |
|------------------|--------------------------|--------------|---------------------|--------------|
|                  | 2009                     | 2008         | 2009                | 2008         |
| Revolving Credit | 1,000                    | 1,000        | 595                 | 305          |
| Term Loan A      | 1,373                    | 1,491        | 1,373               | 1,491        |
| Term Loan B      | 1,554                    | 1,570        | 1,554               | 1,570        |
| <b>Total</b>     | <b>3,927</b>             | <b>4,061</b> | <b>3,522</b>        | <b>3,366</b> |

In addition, at December 31, 2009, US\$ 97 million and at December 31, 2008, US\$ 112 million were utilized as letters of credit which are not included as part of the balances outstanding at those dates.

The Fresenius Medical Care 2006 Senior Credit Agreement consists of:

- ▶ A five-year US\$ 1 billion revolving credit facility (of which up to US\$ 250 million is available for letters of credit, up to US\$ 300 million is available for borrowings in certain non-US currencies, up to US\$ 150 million is available as swing line loans in US dollars, up to US\$ 250 million is available as a competitive loan facility and up to US\$ 50 million is available as swing line loans in certain non-US currencies, the total of which cannot exceed US\$ 1 billion which will be due and payable on March 31, 2011.
- ▶ A five-year term loan facility (Term Loan A) of US\$ 1,850 million, also scheduled to mature on March 31, 2011. The Fresenius Medical Care 2006 Senior Credit Agreement requires 19 quarterly payments on Term Loan A of US\$ 30 million each that permanently reduce the term loan facility which began June 30, 2006 and continue through December 31, 2010. The remaining amount outstanding is due on March 31, 2011. As a result of the voluntary repayment made in July 2007 from the proceeds of the issuance of Senior Notes, which reduced the principal balance outstanding, the quarterly payments were reduced to US\$ 29 million beginning with the payment for September 30, 2008.
- ▶ A seven-year term loan facility (Term Loan B) of US\$ 1,750 million scheduled to mature on March 31, 2013. The terms of the Fresenius Medical Care 2006 Senior Credit Agreement require 28 quarterly payments on Term Loan B that permanently reduce the term loan facility. The repayment

began June 30, 2006. The first 24 quarterly payments are US\$ 4.4 million and payments 25 through 28 are US\$ 411 million with the final payment of the remaining balance due on March 31, 2013, subject to an early repayment requirement on March 1, 2011 if the Trust Preferred Securities due June 15, 2011 are not repaid or refinanced or their maturity is not extended prior to that date. As a result of the voluntary repayment made in July 2007 from the proceeds of the issuance of senior notes, the balance of the remaining payments of US\$ 4.4 million was reduced to US\$ 4.0 million beginning with the September 30, 2008 payment and payments 25 through 28 were reduced to US\$ 379 million.

Interest on these facilities will be, at Fresenius Medical Care's option, depending on the interest periods chosen, at a rate equal to either LIBOR plus an applicable margin or the higher of (a) BofA's prime rate or (b) the Federal Funds rate plus 0.5 %, plus an applicable margin.

The applicable margin is variable and depends on Fresenius Medical Care's consolidated leverage ratio which is a ratio of its consolidated funded debt (less up to US\$ 30 million cash and cash equivalents) to consolidated EBITDA (as these terms are defined in the Fresenius Medical Care 2006 Senior Credit Agreement).

For a large portion of the floating rate borrowings under the Fresenius Medical Care 2006 Senior Credit Agreement, interest rate hedges have been arranged (see note 30, Financial instruments).

In addition to scheduled principal payments, indebtedness outstanding under the Fresenius Medical Care 2006 Senior Credit Agreement will be reduced by mandatory prepayments utilizing portions of the net cash proceeds from certain sales of assets, securitization transactions other than Fresenius Medical Care's existing accounts receivable facility, the issuance of subordinated debt other than certain inter-company transactions, certain issuances of equity and excess cash flow.

The obligations under the Fresenius Medical Care 2006 Senior Credit Agreement are secured by pledges of capital stock of certain material subsidiaries in favor of the Lenders.

The Fresenius Medical Care 2006 Senior Credit Agreement contains affirmative and negative covenants with respect to Fresenius Medical Care and its subsidiaries and other payment restrictions. Certain of the covenants limit indebtedness of Fresenius Medical Care and require Fresenius Medical Care to maintain certain financial ratios defined in the agreement. Additionally, the Fresenius Medical Care 2006 Senior Credit Agreement provides for a limitation on dividends and other restricted payments which is US\$ 300 million (€ 208 million) for dividends paid in 2010, and increases in subsequent years. Fresenius Medical Care paid dividends of US\$ 232 million (€ 173 million) in May of 2009 which was in compliance with the restrictions set forth in the Fresenius Medical Care 2006 Senior Credit Agreement. In default, the outstanding balance under the Fresenius Medical Care 2006 Senior Credit Agreement becomes immediately due and payable at the option of the Lenders. As of December 31, 2009, Fresenius Medical Care was in compliance with all covenants under the Fresenius Medical Care 2006 Senior Credit Agreement.

Fresenius Medical Care incurred fees of approximately US\$ 86 million in conjunction with the Fresenius Medical Care 2006 Senior Credit Agreement which are being amortized over the life of this agreement.

On January 31, 2008, the Fresenius Medical Care 2006 Senior Credit Agreement was amended to increase certain types of permitted borrowings and to remove all limitations on capital expenditures.

During the fourth quarter of 2008, one of the participating banks defaulted on its obligation to provide funds under the terms of the revolving facility of the Fresenius Medical Care 2006 Senior Credit Agreement. As Fresenius Medical Care deemed the amount in default immaterial, it took no action to amend the Fresenius Medical Care 2006 Senior Credit Agreement to replace the defaulting bank. Fresenius Medical Care believes it has enough availability under this agreement and other credit facilities to meet its immediate needs.

## 2008 Senior Credit Agreement

In connection with the acquisition of APP, the Fresenius Group entered into a US\$ 2.45 billion syndicated credit agreement (2008 Senior Credit Agreement) on August 20, 2008. The following table shows the available and outstanding amounts under the 2008 Senior Credit Agreement at December 31, 2009:

|                             | Maximum amount available |              | Balance outstanding |              |
|-----------------------------|--------------------------|--------------|---------------------|--------------|
|                             |                          | in million € |                     | in million € |
| Revolving Credit Facilities | US\$ 550 million         | 382          | US\$ 0 million      | 0            |
| Term Loan A                 | US\$ 925 million         | 642          | US\$ 925 million    | 642          |
| Term Loan B (in US\$)       | US\$ 1,117 million       | 775          | US\$ 1,117 million  | 775          |
| Term Loan B (in €)          | € 185 million            | 185          | € 185 million       | 185          |
| <b>Total</b>                |                          | <b>1,984</b> |                     | <b>1,602</b> |

The 2008 Senior Credit Agreement consists of:

- five-year Term Loan A Facilities (Term Loan A) in the aggregate principal amount of US\$ 1 billion (of which US\$ 500 million is available to Fresenius US Finance I, Inc., a wholly-owned subsidiary of Fresenius SE, and US\$ 500 million is available to APP Pharmaceuticals, LLC). Term Loan A amortizes and is repayable in ten unequal semi-annual installments that commenced on June 10, 2009 with a final maturity date on September 10, 2013;
- six-year Term Loan B Facilities (Term Loan B) in the aggregate principal amount of US\$ 1 billion (of which US\$ 502.5 million is available to Fresenius US Finance I, Inc. and US\$ 497.5 million is available to APP Pharmaceuticals, LLC). Term Loan B amortizes and is repayable in eleven substantially equal semi-annual installments that commenced on June 10, 2009 with a final bullet payment on September 10, 2014; and
- five-year Revolving Credit Facilities in the aggregate principal amount of US\$ 450 million (of which US\$ 150 million is available to APP Pharmaceuticals, LLC and US\$ 300 million is available as multicurrency facility to Fresenius Finance I S.A., a wholly-owned subsidiary of Fresenius SE).

In December 2009, US\$ 78.7 million and € 13 million were used to voluntarily prepay parts of the existing Term Loan B.

In October 2008, the 2008 Senior Credit Agreement was amended to increase Term Loan B available to Fresenius US Finance I, Inc. by US\$ 210.5 million and € 200 million. The

proceeds were used for the repayment of the bridge credit agreement described in the following. In November 2008, Fresenius SE agreed with the lenders upon an increase of the revolving credit facility available to Fresenius Finance I S.A. by US\$ 100 million.

The interest rate on each borrowing under the 2008 Senior Credit Agreement is a rate per annum equal to the aggregate of (a) the applicable margin (as described below) and (b) LIBOR or, in relation to any loan in euros, EURIBOR for the relevant interest period, subject, in the case of Term Loan B, to a minimum LIBOR or EURIBOR of 3.25 %. The applicable margin for Term Loan A and the Revolving Credit Facilities is variable and depends on the Leverage Ratio as defined in the 2008 Senior Credit Agreement.

To hedge part of the interest rate risk connected with the floating rate borrowings under the 2008 Senior Credit Agreement, the Fresenius Group entered into interest rate hedges.

In addition to scheduled principal payments, indebtedness outstanding under the 2008 Senior Credit Agreement will be reduced by mandatory prepayments in some events. This means especially portions of the net cash proceeds from certain sales of assets, incurrence of additional indebtedness, equity issuances and certain intercompany loan repayments.

The 2008 Senior Credit Agreement is guaranteed by Fresenius SE, Fresenius ProServe GmbH and Fresenius Kabi AG. The obligations of APP Pharmaceuticals, LLC under the 2008 Senior Credit Agreement that refinanced outstanding indebtedness under the former APP credit facility are secured

by the assets of APP and its subsidiaries and guaranteed by APP's subsidiaries on the same basis as the former APP credit facility. All lenders also benefit from indirect security through pledges over the shares of certain subsidiaries of Fresenius Kabi AG and pledges over certain intercompany loans.

The 2008 Senior Credit Agreement contains a number of customary affirmative and negative covenants and other payment restrictions. These covenants include, among others, limitations on liens, sale of assets, incurrence of debt, investments and acquisitions and restrictions on the payment of dividends. The 2008 Senior Credit Agreement also includes financial covenants – as defined in the agreement – that require Fresenius SE and its subsidiaries (other than Fresenius Medical Care and its subsidiaries) to maintain a maximum leverage ratio, a minimum fixed charge coverage ratio, a minimum interest coverage ratio and limits amounts spent on

capital expenditure. As of December 31, 2009, Fresenius SE was in compliance with all covenants under the 2008 Senior Credit Agreement.

### Bridge Credit Agreement

On August 20, 2008, the Fresenius Group entered into a Bridge Credit Agreement of US\$ 1.3 billion to fund part of the purchase price of APP. The Bridge Credit Agreement was fully drawn down on September 10, 2008. In October 2008, the Bridge Credit Agreement was reduced to US\$ 650 million using the proceeds of the increase of Term Loan B under the 2008 Senior Credit Agreement and funds obtained under other existing credit facilities.

On January 21, 2009, the residual amount of the Bridge Credit Agreement was redeemed using the proceeds of new Senior Notes (see note 22, Senior Notes).

### Euro Notes

As of December 31, 2009, Euro Notes (Schuldscheindarlehen) of the Fresenius Group consisted of the following:

|                                                | Maturity      | Interest rate | Book value/<br>nominal value<br>in million € |
|------------------------------------------------|---------------|---------------|----------------------------------------------|
| Fresenius Finance B.V. 2008/2012               | April 2, 2012 | 5.59 %        | 62                                           |
| Fresenius Finance B.V. 2008/2012               | April 2, 2012 | variable      | 138                                          |
| Fresenius Finance B.V. 2007/2012               | July 2, 2012  | 5.51 %        | 26                                           |
| Fresenius Finance B.V. 2007/2012               | July 2, 2012  | variable      | 74                                           |
| Fresenius Finance B.V. 2008/2014               | April 2, 2014 | 5.98 %        | 112                                          |
| Fresenius Finance B.V. 2008/2014               | April 2, 2014 | variable      | 88                                           |
| Fresenius Finance B.V. 2007/2014               | July 2, 2014  | 5.75 %        | 38                                           |
| Fresenius Finance B.V. 2007/2014               | July 2, 2014  | variable      | 62                                           |
| Fresenius Medical Care AG & Co. KGaA 2009/2012 | Oct. 27, 2012 | 7.41 %        | 36                                           |
| Fresenius Medical Care AG & Co. KGaA 2009/2012 | Oct. 27, 2012 | variable      | 119                                          |
| Fresenius Medical Care AG & Co. KGaA 2009/2014 | Oct. 27, 2014 | 8.38 %        | 15                                           |
| Fresenius Medical Care AG & Co. KGaA 2009/2014 | Oct. 27, 2014 | variable      | 30                                           |
| <b>Euro Notes</b>                              |               |               | <b>800</b>                                   |



On April 27, 2009, Fresenius Medical Care issued new senior and unsecured Euro Notes in a total amount of € 200 million. They consist of four tranches having terms of 3.5 and 5.5 years with fixed and floating interest rate tranches. Proceeds were used to liquidate the balance of the existing Euro Notes of FMC Finance IV Luxembourg which were due in July 2009.

In April 2008, Fresenius Finance B.V., a wholly-owned subsidiary of Fresenius SE, issued Euro Notes in an amount of € 400 million in four tranches with four and six year terms. The proceeds from the issuance of the Euro Notes were mainly utilized to finance acquisitions as well as for the repayment of debt and to redeem Euro Notes of € 40 million that were due in May 2008.

The Euro Notes of Fresenius Finance B.V. are guaranteed by Fresenius SE. The Euro Notes of FMC-AG & Co. KGaA are guaranteed by Fresenius Medical Care Holdings, Inc. (FMCH) and Fresenius Medical Care Deutschland GmbH (FMC D-GmbH).

Interest of the floating rate tranches of the Euro Notes is based on EURIBOR plus applicable margin. For a large portion of these tranches, interest rate swaps have been arranged (see note 30, Financial instruments). Only the floating rate tranches of the Euro Notes of FMC-AG & Co. KGaA in an amount of € 149 million are exposed to the risk of interest rate increases.

## European Investment Bank Agreements

Various subsidiaries of the Fresenius Group maintain credit facilities with the European Investment Bank (EIB).

The following table shows the outstanding amounts under the EIB facilities as of December 31, 2009:

|                                      | Maximum<br>amount available<br>in million € | Maturity  | Book value<br>in million € |
|--------------------------------------|---------------------------------------------|-----------|----------------------------|
| Fresenius SE                         | 196                                         | 2013      | 196                        |
| Fresenius Medical Care AG & Co. KGaA | 271                                         | 2013/2014 | 148                        |
| HELIOS Kliniken GmbH                 | 80                                          | 2019      | 80                         |
| <b>Loans from EIB</b>                | <b>547</b>                                  |           | <b>424</b>                 |

The EIB is the not-for-profit long-term lending institution of the European Union and loans funds at favorable rates for the purpose of specific capital investment and research and development projects. The facilities were granted to finance certain research and development projects, to invest in expansion and the optimization of existing production facilities in Germany and for the construction of a hospital.

In December 2009, an additional loan agreement of € 50 million was entered by FMC-AG & Co. KGaA. This loan has a four-year term. The loan is guaranteed by FMCH and FMC D-GmbH.

In August 2009, Fresenius SE entered into an additional credit agreement with the EIB of € 100 million having a four-year term. Disbursement of the loan took place on September 10, 2009. The loan is guaranteed by Fresenius Kabi AG and Fresenius ProServe GmbH.

Some advances under these agreements can be denominated in certain foreign currencies including US dollars. Accordingly, the liabilities of FMC-AG & Co. KGaA comprise

loans of US\$ 84 million and € 90 million. FMC-AG & Co. KGaA borrowed this € 90 million loan under a credit agreement with the EIB which was entered into in December 2006. This facility was fully drawn down on February 1, 2008. The loan matures on February 1, 2014.

Repayment of the loan of HELIOS Kliniken GmbH already started in December 2007 and will continue through December 2019 with constant half-yearly payments.

The above mentioned loans bear variable interest rates which are based on EURIBOR or LIBOR plus applicable margin. These interest rates change quarterly. To some extent, the borrowers may opt to convert those interest rates into fixed rates. The loans under the EIB Agreements entered before 2009 are secured by bank guarantees. All credit agreements with the EIB have customary covenants.

## Capital lease obligations

Details of capital lease obligations are given below:

| in million €                                                               | 2009      |
|----------------------------------------------------------------------------|-----------|
| <b>Capital lease obligations (minimum lease payments)</b>                  | <b>50</b> |
| due within one year                                                        | 13        |
| due between one and five years                                             | 25        |
| due later than five years                                                  | 12        |
| <b>Interest component included in future minimum lease payments</b>        | <b>5</b>  |
| due within one year                                                        | 1         |
| due between one and five years                                             | 3         |
| due later than five years                                                  | 1         |
| <b>Present value of capital lease obligations (minimum lease payments)</b> | <b>45</b> |
| due within one year                                                        | 12        |
| due between one and five years                                             | 22        |
| due later than five years                                                  | 11        |

## CREDIT LINES

In addition to the financial liabilities described before, the Fresenius Group maintains additional credit facilities which have not been utilized, or have only been utilized in part as of reporting date. As of December 31, 2009, the additional financial cushion resulting from unutilized credit facilities was approximately € 1.3 billion.

Syndicated credit facilities accounted for € 596 million. This portion comprises the Fresenius Medical Care 2006 Senior Credit Agreement in the amount of US\$ 308 million (€ 214 million) and the 2008 Senior Credit Agreement in the amount of US\$ 550 million (€ 382 million). Furthermore, bilateral facilities of approximately € 750 million were available. They include

the already described credit facilities with the EIB and credit facilities which subsidiaries of the Fresenius Group have arranged with commercial banks. These credit facilities are used for general corporate purposes and are usually unsecured.

In addition, Fresenius SE has a commercial paper program under which up to € 250 million in short-term notes can be issued. As of December 31, 2009, no commercial papers were outstanding.

Additional financing of up to US\$ 650 million can be provided using the Fresenius Medical Care accounts receivable facility which had been utilized by US\$ 214 million as of December 31, 2009.

## 22. SENIOR NOTES

As of December 31, 2009, Senior Notes of the Fresenius Group consisted of the following:

|                                         | Notional amount  | Maturity       | Interest rate | Book value in million € |              |
|-----------------------------------------|------------------|----------------|---------------|-------------------------|--------------|
|                                         |                  |                |               | 2009                    | 2008         |
| Fresenius Finance B.V. 2003/2009        | € 100 million    | April 30, 2009 | 7.50 %        | 0                       | 100          |
| Fresenius Finance B.V. 2006/2013        | € 500 million    | Jan 31, 2013   | 5.00 %        | 500                     | 500          |
| Fresenius Finance B.V. 2006/2016        | € 650 million    | Jan 31, 2016   | 5.50 %        | 639                     | 500          |
| Fresenius US Finance II, Inc. 2009/2015 | € 275 million    | July 15, 2015  | 8.75 %        | 259                     | 0            |
| Fresenius US Finance II, Inc. 2009/2015 | US\$ 500 million | July 15, 2015  | 9.00 %        | 326                     | 0            |
| FMC Finance III S.A. 2007/2017          | US\$ 500 million | July 15, 2017  | 6 7/8 %       | 342                     | 354          |
| <b>Senior Notes</b>                     |                  |                |               | <b>2,066</b>            | <b>1,454</b> |

In June 2009, Fresenius Finance B.V. has placed a tap in an amount of € 150 million to the Senior Notes which are due in 2016. The proceeds were used to repay short-term debt.

The Senior Notes issued by Fresenius Finance B.V. which matured on April 30, 2009 were repaid on schedule.

Fresenius US Finance II, Inc., a wholly-owned subsidiary of Fresenius SE, has issued unsecured Senior Notes in January 2009. The Notes comprise a US dollar tranche with a notional amount of US\$ 500 million and a euro tranche with a notional amount of € 275 million. Both tranches will mature in 2015. Proceeds of the Senior Notes offering in an amount of approximately US\$ 800 million were used to repay the Bridge Credit Agreement entered into in connection with the acquisition of APP, to repay other debt and for general corporate purposes.

The Senior Notes of Fresenius Finance B.V. maturing in 2016 may be redeemed at the option of the issuer from January 31, 2011 onwards. The respective redemption prices have already been fixed at the date of issuance in the indentures.

All Senior Notes of Fresenius Finance B.V. and of Fresenius US Finance II, Inc. are guaranteed by Fresenius SE, Fresenius Kabi AG and Fresenius ProServe GmbH. Fresenius SE has agreed to a number of covenants to provide protection to the bondholders, which, under certain circumstances, partly restrict the scope of action of Fresenius SE and its subsidiaries (excluding FMC-AG & Co. KGaA and its subsidiaries). These covenants include, amongst other things, restrictions on further debt that can be raised, the payment of dividends, the volume of capital expenditure, the redemption of subordinated liabilities and the mortgaging or sale of assets. Some of these restrictions are lifted automatically when the rating of the respective Notes reaches investment grade. In the event of non-compliance with the terms of the Senior Notes, the bondholders (owning in aggregate more than 25 % of the outstanding Senior Notes) are entitled to call the Senior Notes and demand immediate repayments plus interest. As of December 31, 2009, the Fresenius Group was in compliance with all of its covenants.

The Senior Notes of FMC Finance III S.A., a wholly-owned subsidiary of FMC-AG & Co. KGaA, are guaranteed on a senior basis jointly and severally by FMC-AG & Co. KGaA and by its subsidiaries FMCH and FMC D-GmbH. Fresenius Medical Care may redeem the Senior Notes at any time at 100 % of principal amount plus accrued interest and a premium calculated pursuant to the terms of the indenture. The holders have a right to request that Fresenius Medical Care repurchases the Senior Notes at 101 % of principal amount plus accrued interest upon the occurrence of a change of control followed by a decline in the rating of the Senior Notes.

On January 20, 2010, FMC-AG & Co. KGaA's wholly-owned subsidiary, FMC Finance VI S.A. (Finance VI), issued € 250 million of senior unsecured notes with a coupon of 5.50 % at an issue price of 98.66 %. The Senior Notes have a yield to maturity of 5.75 % and are due July 15, 2016. Finance VI may redeem the Senior Notes at any time at 100 % of principal plus accrued interest and a premium calculated pursuant to the terms of the indenture. The holders have a right to request that Finance VI repurchase the Senior Notes at 101 % of principal plus accrued interest upon the occurrence of a change of control followed by a decline in the rating of the Senior Notes.

Proceeds were used to repay short-term indebtedness and for general corporate purposes. The Senior Notes will be guaranteed on a senior basis jointly and severally by FMC-AG & Co. KGaA, FMCH and FMC D-GmbH.

### **23. MANDATORY EXCHANGEABLE BONDS**

To finance the acquisition of APP, Mandatory Exchangeable Bonds (MEB) in an aggregate nominal amount of € 554.4 million were launched in July 2008. Fresenius Finance B.V. subscribed for these MEB issued by Fresenius Finance (Jersey) Ltd. at 100 % of their principal amount. Afterwards, the MEB were on-lent to Fresenius SE who placed the MEB in the market. The bonds carry a coupon of 5<sup>5</sup>/<sub>8</sub> % per annum and will mature on August 14, 2011. Upon maturity, the bonds will be mandatorily exchangeable into ordinary shares of FMC-AG & Co. KGaA with a maximum of 17.14 million and a minimum of 14.53 million shares (based on the current exchange price) being deliverable, subject to anti-dilution adjustments with respect to FMC-AG & Co. KGaA (e. g. in case of corporate actions). The MEB are not redeemable in cash.

The initial minimum exchange price was set to € 33.00 and the initial maximum exchange price was set to € 38.94 (i. e. 118 % of the initial minimum exchange price). Due to the dividend payments in May 2009, the minimum exchange price and the maximum exchange price were decreased to € 32.34 and € 38.16, respectively. Pursuant to the terms and conditions of the MEB, both the holder and the issuer may procure for the exchange of the bonds before maturity. In principal, the issuer, Fresenius Finance (Jersey) Ltd., may procure the exchange of all of the outstanding MEB for shares of FMC-AG & Co. KGaA at the maximum exchange ratio calculated on the relevant exchange date plus payment of any accrued and unpaid interest and a make-whole amount. Furthermore, the MEB shall be mandatorily exchangeable at the maximum exchange ratio plus such payments if the corporate rating of Fresenius SE falls below certain benchmarks and such benchmarks are subsequently not reinstated. Moreover, in the event of a change of control of Fresenius SE or FMC-AG & Co. KGaA, each holder of the MEB may elect to exchange its MEB at the maximum exchange ratio plus such payments. Each holder of the MEB may also exchange his MEB at the minimum exchange ratio calculated on the relevant exchange date without payment of accrued interest or any make-whole amount.

Fresenius SE guarantees in favor of Fresenius Finance (Jersey) Ltd. the payment of certain interest payments by Fresenius Finance B.V. Furthermore, it secures the delivery of the underlying shares of FMC-AG & Co. KGaA for exchange via a pledge agreement. In addition, Fresenius SE has undertaken to the holders of the bonds that neither it nor any of its material subsidiaries provides any security of its assets for certain capital market indebtedness, without at the same time having the holders share equally and rateably in such security.

The derivative financial instruments embedded in the MEB are measured at fair value and are shown separately in the statement of financial position as long-term accrued expenses and other long-term liabilities (in 2008 as: other non-current assets).

## 24. TRUST PREFERRED SECURITIES

Fresenius Medical Care issued trust preferred securities through Fresenius Medical Care Capital Trusts, statutory trusts organized under the laws of the State of Delaware, United States. FMC-AG & Co. KGaA owns all of the common securities of these trusts. The sole asset of each trust is a senior subordinated note of FMC-AG & Co. KGaA or a wholly-owned subsidiary of FMC-AG & Co. KGaA. FMC-AG & Co. KGaA, FMC D-GmbH and FMCH have guaranteed payment and performance of the senior subordinated notes to the respective Fresenius Medical Care Capital Trusts. The trust preferred securities are guaranteed by FMC-AG & Co. KGaA through a series of undertakings by Fresenius Medical Care and FMCH and FMC D-GmbH.

The trust preferred securities entitle the holders to distributions at a fixed annual rate of the stated amount and are mandatorily redeemable after ten years. Earlier redemption at the option of the holders may also occur upon a change of control followed by a rating decline or defined events of default including a failure to pay interest. Upon liquidation of the trusts, the holders of trust preferred securities are entitled to a distribution equal to the stated amount. The trust preferred securities do not hold voting rights in the trust except under limited circumstances.

The indentures governing the notes held by the Fresenius Medical Care Capital Trusts contain affirmative and negative covenants with respect to Fresenius Medical Care and its subsidiaries and other payment restrictions. Some of the covenants limit Fresenius Medical Care's indebtedness and its investments, and require Fresenius Medical Care to maintain certain ratios defined in the agreement. As of December 31, 2009, Fresenius Medical Care was in compliance with all financial covenants under all trust preferred securities agreements.

The trust preferred securities outstanding as of December 31, 2009 and 2008 were as follows:

|                                         | Year issued | Stated amount    | Interest rate                   | Mandatory redemption date | 2009<br>in million € | 2008<br>in million € |
|-----------------------------------------|-------------|------------------|---------------------------------|---------------------------|----------------------|----------------------|
| Fresenius Medical Care Capital Trust IV | 2001        | US\$ 225 million | 7 <sup>7</sup> / <sub>8</sub> % | June 15, 2011             | 156                  | 156                  |
| Fresenius Medical Care Capital Trust V  | 2001        | € 300 million    | 7 <sup>3</sup> / <sub>8</sub> % | June 15, 2011             | 299                  | 299                  |
| <b>Trust preferred securities</b>       |             |                  |                                 |                           | <b>455</b>           | <b>455</b>           |

## 25. PENSIONS AND SIMILAR OBLIGATIONS

### GENERAL

The Fresenius Group recognizes pension costs and related pension liabilities for current and future benefits to qualified current and former employees of the Fresenius Group. Fresenius Group's pension plans are structured differently according to the legal, economic and fiscal circumstances in each country. The Fresenius Group currently has two types of plans, defined benefit and defined contribution plans. In general, plan benefits in defined benefit plans are based on all or a portion of the employees' years of services and final salary. Plan benefits in defined contribution plans are determined by the amount of contribution by the employee and the employer, both of which may be limited by legislation, and the returns earned on the investment of those contributions.

Upon retirement under defined benefit plans, the Fresenius Group is required to pay defined benefits to former employees when the defined benefits become due. Defined benefit plans may be funded or unfunded. The Fresenius Group has funded defined benefit plans in particular in the United States, Norway, the United Kingdom, the Netherlands and Austria. Unfunded defined benefit plans are located in Germany and France.

Actuarial assumptions generally determine benefit obligations under defined benefit plans. The actuarial calculations require the use of estimates. The main factors used in the actuarial calculations affecting the level of the benefit obligations are: assumptions on life expectancy, the discount rate and future salary and benefit levels. Under Fresenius Group's

funded plans, assets are set aside to meet future payment obligations. An estimated return on the plan assets is recognized as income in the respective period. Actuarial gains and losses are generated when there are variations in the actuarial assumptions and differences between the actual and the estimated return on plan assets for that year. A company's pension liability is impacted by these actuarial gains or losses.

In the case of Fresenius Group's funded plans, the defined benefit obligation is offset against the fair value of plan assets. A pension liability is recognized in the statement of financial position if the defined benefit obligation exceeds the fair value of plan assets. An asset is recognized and reported under other assets in the statement of financial position if the fair value of plan assets exceeds the defined benefit obligation and if the Fresenius Group has a right of reimbursement against the fund or a right to reduce future payments to the fund.

Under defined contribution plans, the Fresenius Group pays defined contributions during the employee's service life which satisfies all obligations of the Fresenius Group to the employee. The Fresenius Group has a main defined contribution plan in North America.

### DEFINED BENEFIT PENSION PLANS

At December 31, 2009, the projected benefit obligation (PBO) of the Fresenius Group of € 556 million (2008: € 505 million) included € 237 million (2008: € 213 million) funded by plan assets and € 319 million (2008: € 292 million) covered by pension provisions. The current portion of the pension liability

in an amount of € 10 million is recognized in the statement of financial position as short-term accrued expenses and other short-term liabilities. The non-current portion of € 309 million is recorded as pension liability.

66 % of the pension liabilities in an amount of € 319 million relate to the "Versorgungsordnung der Fresenius-Unternehmen" established in 1988 (Pension plan 1988), which applies for most of the German entities of the Fresenius Group except Fresenius Helios. The rest of the pension liabilities relates to individual plans from Fresenius Helios entities in Germany and non-German Group entities.

Plan benefits are generally based on an employee's years of service and final salary. Consistent with predominant practice in Germany, the benefit obligations of the German entities of the Fresenius Group are unfunded. The German Pension Plan 1988 does not have a separate pension fund.

FMCH, a subsidiary of Fresenius Medical Care, has a defined benefit pension plan for its employees in the United States and supplemental executive retirement plans. During the first quarter of 2002, FMCH curtailed these pension plans. Under the curtailment amendment for substantially all employees eligible to participate in the plan, benefits have been frozen as of the curtailment date and no additional defined benefits for future services will be earned. FMCH has retained all employee benefit obligations as of the curtailment date. Each year, FMCH contributes at least the minimum amount required by the Employee Retirement Income Security Act of 1974, as amended. There was no minimum funding requirement for FMCH for the defined benefit plan in the year 2009. FMCH voluntarily contributed US\$ 0.8 million (€ 0.5 million) during the year 2009. Expected funding for 2010 is US\$ 0.6 million (€ 0.4 million).

Fresenius Group's benefit obligations relating to fully or partly funded pension plans were € 263 million. Benefit obligations relating to unfunded pension plans were € 293 million.

The following table shows the changes in benefit obligations, the changes in plan assets and the funded status of the pension plans. Benefits paid as shown in the changes in

benefit obligations represent payments made from both the funded and unfunded plans while the benefits paid as shown in the changes in plan assets include only benefit payments from Fresenius Group's funded benefit plans.

The funded status has developed as follows:

| in million €                                                  | 2009       | 2008       |
|---------------------------------------------------------------|------------|------------|
| <b>Benefit obligations at the beginning of the year</b>       | <b>505</b> | <b>498</b> |
| Changes in entities consolidated                              | 6          | 0          |
| Foreign currency translation                                  | -4         | 2          |
| Service cost                                                  | 14         | 15         |
| Prior service cost                                            | 1          | 2          |
| Interest cost                                                 | 31         | 28         |
| Contributions by plan participants                            | 1          | 1          |
| Transfer of plan participants                                 | -          | -          |
| Curtailments/settlements                                      | -5         | -1         |
| Actuarial losses/gains                                        | 23         | -25        |
| Benefits paid                                                 | -16        | -15        |
| Amendments                                                    | -          | -          |
| <b>Benefit obligations at the end of the year</b>             | <b>556</b> | <b>505</b> |
| thereof vested                                                | <b>463</b> | <b>437</b> |
| <b>Fair value of plan assets at the beginning of the year</b> | <b>213</b> | <b>226</b> |
| Changes in entities consolidated                              | 4          | 1          |
| Foreign currency translation                                  | -4         | 1          |
| Actual return on plan assets                                  | 27         | -15        |
| Contributions by the employer                                 | 4          | 6          |
| Contributions by plan participants                            | 1          | 1          |
| Settlements                                                   | -2         | -1         |
| Transfers                                                     | 0          | -          |
| Benefits paid                                                 | -6         | -6         |
| <b>Fair value of plan assets at the end of the year</b>       | <b>237</b> | <b>213</b> |
| <b>Funded status as of December 31</b>                        | <b>319</b> | <b>292</b> |

The discount rates for all plans are based upon yields of portfolios of equity and highly rated debt instruments with maturities that mirror the plan's benefit obligation. Fresenius Group's discount rate is the weighted average of these plans based upon their benefit obligations.

The following weighted-average assumptions were utilized in determining benefit obligations as of December 31:

| in %                          | 2009 | 2008 |
|-------------------------------|------|------|
| Discount rate                 | 5.86 | 6.21 |
| Rate of compensation increase | 3.30 | 3.56 |
| Rate of pension increase      | 1.81 | 1.94 |

At December 31, 2009, the accumulated benefit obligations for all defined benefit pension plans were € 515 million (2008: € 471 million).

The pre-tax changes of other comprehensive income (loss) relating to pension liabilities during the years 2009 and 2008 are provided in the following tables:

| in million €                                      | As of January 1, 2009 | Releases <sup>1</sup> | Additions  | Foreign currency translation | As of December 31, 2009 |
|---------------------------------------------------|-----------------------|-----------------------|------------|------------------------------|-------------------------|
| Actuarial gains and losses                        | -49                   | 4                     | -10        | 1                            | -54                     |
| Prior service cost                                | 4                     | —                     | —          | —                            | 4                       |
| Transition obligation                             | -1                    | 1                     | -1         | —                            | -1                      |
| <b>Adjustments related to pension liabilities</b> | <b>-46</b>            | <b>5</b>              | <b>-11</b> | <b>1</b>                     | <b>-51</b>              |

<sup>1</sup> Effects recognized in the consolidated statement of income

| in million €                                      | As of January 1, 2008 | Releases <sup>1</sup> | Additions | Foreign currency translation | As of December 31, 2008 |
|---------------------------------------------------|-----------------------|-----------------------|-----------|------------------------------|-------------------------|
| Actuarial gains and losses                        | -43                   | 2                     | -6        | -2                           | -49                     |
| Prior service cost                                | 5                     | 1                     | -2        | —                            | 4                       |
| Transition obligation                             | -1                    | —                     | 0         | —                            | -1                      |
| <b>Adjustments related to pension liabilities</b> | <b>-39</b>            | <b>3</b>              | <b>-8</b> | <b>-2</b>                    | <b>-46</b>              |

<sup>1</sup> Effects recognized in the consolidated statement of income

For the tax effects on other comprehensive income at December 31, 2009 see note 28, Other comprehensive income (loss).

The Fresenius Group expects the following amounts to be amortized from other comprehensive income into net periodic pension cost in the year 2010:

| in million €               | 2010 |
|----------------------------|------|
| Actuarial gains and losses | 4    |
| Prior service cost         | —    |
| Transition obligation      | —    |

The following table relates to pension plans with projected benefit obligations and accumulated benefit obligations in excess of plan assets:

| in million €                         | 2009 | 2008 |
|--------------------------------------|------|------|
| Projected benefit obligation (PBO)   | 556  | 505  |
| Accumulated benefit obligation (ABO) | 515  | 444  |
| Fair value of plan assets            | 237  | 213  |

Defined benefit pension plans' net periodic benefit costs of € 35 million (2008: € 28 million) were comprised of the following components:

| in million €                                           | 2009      | 2008      |
|--------------------------------------------------------|-----------|-----------|
| Service cost                                           | 14        | 15        |
| Interest cost                                          | 31        | 28        |
| Expected return on plan assets                         | -15       | -15       |
| Amortization of unrealized actuarial gains/losses, net | 3         | -1        |
| Amortization of prior service costs                    | —         | 1         |
| Amortization of transition obligations                 | 1         | —         |
| Settlement loss                                        | 1         | —         |
| <b>Net periodic benefit cost</b>                       | <b>35</b> | <b>28</b> |

Net periodic benefit cost is allocated as personnel expense within cost of sales or selling, general and administrative expenses as well as research and development expenses. The allocation depends upon the area in which the beneficiary is employed.

The following weighted-average assumptions were used in determining net periodic benefit cost for the year ended December 31:

| in %                           | 2009 | 2008 |
|--------------------------------|------|------|
| Discount rate                  | 6.21 | 5.80 |
| Expected return of plan assets | 5.74 | 7.06 |
| Rate of compensation increase  | 3.56 | 3.66 |

Changes in the discount factor, inflation and mortality assumptions used for the actuarial computation resulted in actuarial losses in 2009 which increased the fair value of the defined benefit obligation. Unrecognized actuarial losses outside the 10 % corridor for each defined benefit plan were € 54 million (2008: € 49 million).

The fair value of plan assets by categories are as follows:

| in million €                                | Quoted prices for active markets for identical assets Level 1 | Significant observable inputs Level 2 | Total as of December 31, 2009 |
|---------------------------------------------|---------------------------------------------------------------|---------------------------------------|-------------------------------|
| <b>Categories of plan assets</b>            |                                                               |                                       |                               |
| Equity investments                          | 78                                                            | 0                                     | 78                            |
| Index Funds <sup>1</sup>                    | 72                                                            | 0                                     | 72                            |
| Other equity investments                    | 6                                                             | 0                                     | 6                             |
| Fixed income investments                    | 37                                                            | 106                                   | 143                           |
| Government Bonds <sup>2</sup>               | 18                                                            | 2                                     | 20                            |
| Corporate Bonds <sup>3</sup>                | 13                                                            | 104                                   | 117                           |
| Other fixed income investments <sup>4</sup> | 6                                                             | —                                     | 6                             |
| Other <sup>5</sup>                          | 13                                                            | 3                                     | 16                            |
| <b>Total</b>                                | <b>128</b>                                                    | <b>109</b>                            | <b>237</b>                    |

<sup>1</sup> This category mainly comprises low-cost equity funds not actively managed that track the S & P 500, S & P 400, Russell 2000, MSCI EAFE Index, MSCI Emerging Markets Index and the Barclays Capital Long Corporate Index.

<sup>2</sup> This category comprises government fixed income investments with the majority coming from European countries.

<sup>3</sup> This category mainly represents investment grade bonds from diverse industries.

<sup>4</sup> This category mainly comprises US Treasury bills and bonds.

<sup>5</sup> This category mainly comprises cash, pension plan reinsurance and real estate investments.

The following table shows the expected benefit payments for the next ten years:

| for the fiscal years                   | in million € |
|----------------------------------------|--------------|
| 2010                                   | 18           |
| 2011                                   | 19           |
| 2012                                   | 20           |
| 2013                                   | 22           |
| 2014                                   | 23           |
| 2015 to 2019                           | 148          |
| <b>Total expected benefit payments</b> | <b>250</b>   |

The Fresenius Group uses December 31, 2009 as the measurement date in determining the funded status of all plans.

The major part of pension liabilities relates to Germany. At December 31, 2009, 81 % of the pension liabilities were recognized in Germany, 19 % in the rest of Europe and North America.

Approximately two thirds of the beneficiaries were located in North America, approximately one quarter in Germany and the remainder throughout the rest of Europe and other continents.



The methods and inputs used to measure the fair value of plan assets are as follows:

Index funds and other equity investments are valued at their market prices as of the balance sheet date.

The majority of the fair values of the government bonds are measured based on market quotes. The remaining government bonds are valued at their market prices.

Corporate bonds and other bonds are valued based on market quotes as of the balance sheet date.

US Treasury bills and bonds are valued at their market prices.

The fair values of real estate investments are confirmed by sources independent from the reporting entity at least once a year.

### Plan investment policy and strategy

For the North American funded plan, the Fresenius Group periodically reviews the assumptions for long-term expected return on pension plan assets. As part of the assumptions review, a range of reasonable expected investment returns for the pension plan as a whole was determined based on an analysis of expected future returns for each asset class weighted by the allocation of the assets. The range of returns developed relies both on forecasts, which include the actuarial firm's expected long-term rates of return for each significant asset class or economic indicator, and on broad-market historical benchmarks for expected return, correlation, and volatility for each asset class. As a result, the expected rate of return on pension plan assets of the North American pension plan was 7.5 % for the year 2009.

The overall investment strategy for the North American pension plan is to achieve a mix of approximately 98 % of investments for long-term growth and 2 % for near-term benefit payments with a wide diversification of asset types, fund strategies and fund managers.

The target allocations for plan assets in North America are 35 % equity securities and 65 % long-term US bonds. The investment policy considers that there will be a time horizon for invested funds of more than five years. The total portfolio will be measured against a policy index that reflects the asset class benchmarks and the target asset allocation. The plan

policy does not allow investments in securities of FMC-AG & Co. KGaA or other related party securities. The performance benchmarks for the separate asset classes include: S & P 500 Index, S & P 400 Index, Russell 2000 Growth Index, MSCI EAFE Index, MSCI Emerging Markets Index, Barclays Capital Long Term Government Index and Barclays Capital 20 Year US Treasury Strip Index.

The following schedule describes Fresenius Group's allocation for its funded plans.

| in %                     | Allocation<br>2009 | Allocation<br>2008 | Target<br>allocation |
|--------------------------|--------------------|--------------------|----------------------|
| Equity investments       | 33.15              | 34.27              | 35.32                |
| Fixed income investments | 60.35              | 61.94              | 58.97                |
| Other incl. real estate  | 6.50               | 3.79               | 5.71                 |
| <b>Total</b>             | <b>100.00</b>      | 100.00             | 100.00               |

The overall expected long-term rate of return on assets of the Fresenius Group amounts to 6.92 % compounded annually. Contributions to plan assets for the fiscal year 2010 are expected to amount to € 5 million.

### DEFINED CONTRIBUTION PLANS

Fresenius Group's total expense under defined contribution plans for 2009 was € 27 million (2008: € 22 million). The main part relates to the North American savings plan, which employees of FMCH can join. Employees can deposit up to 75 % of their pay up to an annual maximum of US\$ 16,500 if under 50 years old (US\$ 22,000 if 50 or over) under this savings plan. Fresenius Medical Care will match 50 % of the employee deposit up to a maximum Company contribution of 3 % of the employee's pay. Fresenius Medical Care's total expense under this defined contribution plan for the years ended December 31, 2009 and 2008 was € 20 million and € 18 million, respectively.

## 26. NONCONTROLLING INTEREST

As of December 31, noncontrolling interest in the Group was as follows:

| in million €                                                    | 2009         | 2008         |
|-----------------------------------------------------------------|--------------|--------------|
| Noncontrolling interest in Fresenius Medical Care AG & Co. KGaA | 3,050        | 2,751        |
| Noncontrolling interest in HELIOS Kliniken GmbH                 | 4            | 4            |
| Noncontrolling interest in VAMED AG                             | 33           | 30           |
| Noncontrolling interest in the business segments                |              |              |
| Fresenius Medical Care                                          | 145          | 115          |
| Fresenius Kabi                                                  | 37           | 32           |
| Fresenius Helios                                                | 110          | 99           |
| Fresenius Vamed                                                 | 3            | 2            |
| Corporate/Other                                                 | 0            | –            |
| <b>Total noncontrolling interest</b>                            | <b>3,382</b> | <b>3,033</b> |

In 2009, noncontrolling interest increased by €349 million to €3,382 million. The change resulted from the noncontrolling interest in profit of €497 million, less dividend payments of €166 million and other effects, mainly noncontrolling interest in stock options, currency effects and first-time consolidations, in a total amount of €18 million.

## 27. FRESENIUS SE SHAREHOLDERS' EQUITY

### SUBSCRIBED CAPITAL

#### Development of subscribed capital

On August 15, 2008, Fresenius SE successfully closed a capital increase to finance part of the acquisition of APP. In connection with the capital increase, 2,748,057 new ordinary shares and 2,748,057 new preference shares were issued. The transaction generated gross proceeds of approximately €289 million and increased the subscribed capital by €5.5 million. The new shares had full dividend entitlement for the fiscal year 2008.

During the fiscal year 2009, 171,642 stock options were exercised.

Accordingly, at December 31, 2009, the subscribed capital of Fresenius SE was divided into 80,657,688 bearer ordinary shares and 80,657,688 non-voting bearer preference shares. The shares are issued as non-par value shares. The proportionate amount of the subscribed capital is €1.00 per share.

#### Notification by shareholders

The following notifications disclosed in accordance with Section 26 (1) of the German Securities Trading Act (WpHG) reflect the level of investments held in Fresenius SE at the date of the statement of financial position:

The Else Kröner-Fresenius-Stiftung notified Fresenius SE on December 23, 2009, that it still holds 46,871,154 ordinary shares of Fresenius SE representing 58.11 % of the voting rights.

On October 1, 2009, the voting rights held by FIL Limited, Hamilton, Bermuda, fell below the threshold of 3 % of the voting rights in Fresenius SE, Else-Kröner-Straße 1, 61352 Bad Homburg v. d. H., Germany. On that date, FIL Limited held 2.90 % of the voting rights in Fresenius SE, arising from 2,340,841 voting rights. All voting rights in Fresenius SE were attributed to FIL Limited pursuant to Section 22 (1) sentence 1 No. 6 WpHG in connection with sentence 2 WpHG.

On May 28, 2009 the voting rights held by FMR LLC, Boston, Massachusetts, United States, crossed above the threshold of 3 % of the voting rights in Fresenius SE, Else-Kröner-Straße 1, 61352 Bad Homburg v. d. H., Germany. On that date, FMR LLC held 4.50 % of the voting rights in Fresenius SE, arising from 3,623,808 voting rights. All voting rights in Fresenius SE were attributed to FMR LLC pursuant to Section 22 (1) sentence 1 No. 6 in connection with sentence 2 WpHG. The voting rights were attributed to FMR LLC inter alia from Fidelity Investment Trust, being a shareholder holding 3 % or more of the voting rights in Fresenius SE.

All notifications by shareholders in the fiscal year 2009 are published on the website of the Company [www.fresenius.com](http://www.fresenius.com) under Investor Relations/The Fresenius Shares/Shareholder Structure.

## APPROVED CAPITAL

By resolution of the Annual General Meeting on May 8, 2009, the previous Approved Capital I and II were revoked and the Management Board of Fresenius SE was authorized, with the approval of the Supervisory Board, until May 7, 2014,

- ▶ to increase Fresenius SE's subscribed capital by a total amount of up to € 12,800,000 through a single or multiple issue of new bearer ordinary shares and/or non-voting bearer preference shares against cash contributions (Approved Capital I). A subscription right must be granted to shareholders.
- ▶ to increase Fresenius SE's subscribed capital by a total amount of up to € 6,400,000 through a single or multiple issue of new bearer ordinary shares and/or non-voting bearer preference shares against cash contributions and/or contributions in kind (Approved Capital II). The Management Board is authorized, in each case with the consent of the Supervisory Board, to decide on the exclusion of the shareholders' subscription right.

The resolved changes to the Approved Capital became effective after their registration in the commercial register in July 2009.

Against the resolutions of the Annual General Meeting dated May 8, 2009 creating Approved Capitals I and II, two challenging complaints (Anfechtungsklagen) were lodged. The Frankfurt Regional Court has decided in favor of one complaint through judgment dated February 2, 2010, the

other complaint was rejected. The judgment of the Frankfurt Regional Court dated February 2, 2010 is not yet final and binding. The clearance procedure (Freigabeverfahren) pursuant to Section 246a of the German Stock Corporation Act (AktG) initiated by Fresenius SE is pending before the Higher Regional Court (Oberlandesgericht) in Frankfurt/Main with the view of securing the validity of the Approved Capital which has already been registered in the commercial register.

## CONDITIONAL CAPITAL

Corresponding to the stock option plans, the Conditional Capital of Fresenius SE is divided into Conditional Capital I, Conditional Capital II and Conditional Capital III which exist to secure the subscription rights in connection with already issued stock options on bearer ordinary shares and bearer preference shares of the stock option plans of 1998, 2003 and 2008 (see note 34, Stock options).

On May 21, 2008, Fresenius SE's Annual General Meeting has resolved upon the Fresenius SE Stock Option Plan 2008 (2008 Plan) by authorizing the granting of subscription rights to members of the Management Board and managerial employees of Fresenius SE and affiliated companies. To fulfill the subscription rights under the 2008 Plan, the subscribed capital of Fresenius SE was increased conditionally by up to € 6.2 million through the issue of up to 3.1 million no par value bearer ordinary shares and 3.1 million no par value bearer preference shares (Conditional Capital III). The relevant change in Fresenius SE's Articles of Association became effective after its registration in the commercial register on July 11, 2008.

The following table shows the development of the Conditional Capital:

| in €                                                        | Ordinary shares  | Preference shares | Total             |
|-------------------------------------------------------------|------------------|-------------------|-------------------|
| Conditional Capital I Fresenius AG Stock Option Plan 1998   | 682,467          | 682,467           | 1,364,934         |
| Conditional Capital II Fresenius AG Stock Option Plan 2003  | 2,209,125        | 2,209,125         | 4,418,250         |
| Conditional Capital III Fresenius SE Stock Option Plan 2008 | 3,100,000        | 3,100,000         | 6,200,000         |
| <b>Total Conditional Capital as of January 1, 2009</b>      | <b>5,991,592</b> | <b>5,991,592</b>  | <b>11,983,184</b> |
| Fresenius AG Stock Option Plan 1998 – options exercised     | -25,917          | -25,917           | -51,834           |
| Fresenius AG Stock Option Plan 2003 – options exercised     | -59,904          | -59,904           | -119,808          |
| <b>Total Conditional Capital as of December 31, 2009</b>    | <b>5,905,771</b> | <b>5,905,771</b>  | <b>11,811,542</b> |

## CAPITAL RESERVES

Capital reserves comprise the premium paid on the issue of shares and the exercise of stock options (additional paid-in capital).

In the third quarter of 2008, the capital reserves increased by € 284 million in connection with Fresenius SE's capital increase to finance part of the acquisition of APP. The accrued expenses in an amount of € 6 million were charged against the capital reserves.

## OTHER RESERVES

Other reserves comprise earnings generated by Group entities in prior years to the extent that they have not been distributed.

## DIVIDENDS

Under the German Stock Corporation Act (AktG), the amount of dividends available for distribution to shareholders is based upon the unconsolidated retained earnings of Fresenius SE as reported in its statement of financial position determined in accordance with the German Commercial Code (HGB).

In May 2009, a dividend of € 0.70 per bearer ordinary share and € 0.71 per bearer preference share was approved by Fresenius SE's shareholders at the Annual General Meeting and paid. The total dividend payment was € 114 million.

## 28. OTHER COMPREHENSIVE INCOME (LOSS)

Other comprehensive income (loss) comprises all amounts recognized directly in equity (net of tax) resulting from the currency translation of foreign subsidiaries' financial statements and the effects of measuring financial instruments at their fair value as well as the change in benefit obligation.

Changes in the components of other comprehensive income (loss) in 2009 and 2008 were as follows:

| in million €                                                           | 2009                |            |                    | 2008                |            |                    |
|------------------------------------------------------------------------|---------------------|------------|--------------------|---------------------|------------|--------------------|
|                                                                        | Amount before taxes | Tax effect | Amount after taxes | Amount before taxes | Tax effect | Amount after taxes |
| Changes in unrealized gains/losses on derivative financial instruments | 2                   | -10        | -8                 | -147                | 52         | -95                |
| Change in unrealized gains/losses                                      | -1                  | -9         | -10                | -146                | 52         | -94                |
| Realized gains/losses due to reclassifications                         | 3                   | -1         | 2                  | -1                  | -          | -1                 |
| Benefit obligation adjustment                                          | -5                  | -1         | -6                 | -7                  | 4          | -3                 |
| Foreign currency translation adjustment                                | -37                 | 6          | -31                | 111                 | 0          | 111                |
| <b>Other comprehensive income (loss)</b>                               | <b>-40</b>          | <b>-5</b>  | <b>-45</b>         | <b>-43</b>          | <b>56</b>  | <b>13</b>          |

## OTHER NOTES

### 29. COMMITMENTS AND CONTINGENT LIABILITIES

#### OPERATING LEASES AND RENTAL PAYMENTS

Fresenius Group's subsidiaries lease office and manufacturing buildings as well as machinery and equipment under various lease agreements expiring on dates through 2101. Rental expense recorded for operating leases for the years ended December 31, 2009 and 2008 was €430 million and €379 million, respectively.

Future minimum rental payments under non-cancellable operating leases for the years subsequent to December 31, 2009 are:

| for the fiscal years | in million € |
|----------------------|--------------|
| 2010                 | 354          |
| 2011                 | 304          |
| 2012                 | 257          |
| 2013                 | 215          |
| 2014                 | 176          |
| Thereafter           | 630          |
| <b>Total</b>         | <b>1,936</b> |

As of December 31, 2009, future investment commitments existed up to the year 2014 from the acquisition contracts for hospitals at projected costs of up to €208 million. Thereof €70 million relate to the year 2010.

Besides the above mentioned contingent liabilities, the amount of other commitments is immaterial.

#### LEGAL PROCEEDINGS

The Fresenius Group is routinely involved in numerous claims, lawsuits, regulatory and tax audits, investigations and other legal matters arising, for the most part, in the ordinary course of its business of providing healthcare services and products. The outcome of litigation and other legal matters is always difficult to accurately predict and outcomes that are not

consistent with Fresenius Group's view of the merits can occur. The Fresenius Group believes that it has valid defenses to the legal matters pending against it and is defending itself vigorously. Nevertheless, it is possible that the resolution of one or more of the legal matters currently pending or threatened could have a material adverse effect on its business, results of operations and financial condition.

#### Commercial litigation

##### W.R. Grace & Co. lawsuit

Fresenius Medical Care was originally formed as a result of a series of transactions it completed pursuant to the Agreement and Plan of Reorganization dated as of February 4, 1996 by and between W.R. Grace & Co. and Fresenius SE (formerly: Fresenius AG) (the Merger). At the time of the Merger, a W.R. Grace & Co. subsidiary known as W.R. Grace & Co.-Conn. had, and continues to have, significant liabilities arising out of product-liability related litigation (including asbestos-related actions), pre-Merger tax claims and other claims unrelated to National Medical Care, Inc. (NMC), which was W.R. Grace & Co.'s dialysis business prior to the Merger. In connection with the Merger, W.R. Grace & Co.-Conn. agreed to indemnify Fresenius Medical Care, Fresenius Medical Care Holdings, Inc. (FMCH) and NMC against all liabilities of W.R. Grace & Co., whether relating to events occurring before or after the Merger, other than liabilities arising from or relating to NMC's operations. W.R. Grace & Co. and certain of its subsidiaries filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code (the Grace Chapter 11 Proceedings) on April 2, 2001.

Prior to and after the commencement of the Grace Chapter 11 Proceedings, class action complaints were filed against W.R. Grace & Co. and FMCH by plaintiffs claiming to be creditors of W.R. Grace & Co.-Conn., and by the asbestos creditors' committees on behalf of the W.R. Grace & Co. bankruptcy estate in the Grace Chapter 11 Proceedings, alleging among

other things that the Merger was a fraudulent conveyance, violated the uniform fraudulent transfer act and constituted a conspiracy. All such cases have been stayed and transferred to or are pending before the U.S. District Court as part of the Grace Chapter 11 Proceedings.

In 2003, Fresenius Medical Care reached agreement with the asbestos creditors' committees on behalf of the W.R. Grace & Co. bankruptcy estate and W.R. Grace & Co. in the matters pending in the Grace Chapter 11 Proceedings for the settlement of all fraudulent conveyance and tax claims against it and other claims related to Fresenius Medical Care that arise out of the bankruptcy of W.R. Grace & Co. Under the terms of the settlement agreement as amended (Settlement Agreement), fraudulent conveyance and other claims raised on behalf of asbestos claimants will be dismissed with prejudice and Fresenius Medical Care will receive protection against existing and potential future W.R. Grace & Co. related claims, including fraudulent conveyance and asbestos claims, and indemnification against income tax claims related to the non-NMC members of the W.R. Grace & Co. consolidated tax group upon confirmation of a W.R. Grace & Co. bankruptcy reorganization plan that contains such provisions. Under the Settlement Agreement, Fresenius Medical Care will pay a total of US\$ 115 million without interest to the W.R. Grace & Co. bankruptcy estate, or as otherwise directed by the Court, upon plan confirmation. No admission of liability has been or will be made. The Settlement Agreement has been approved by the U.S. District Court. Subsequent to the Merger, W.R. Grace & Co. was involved in a multi-step transaction involving Sealed Air Corporation (Sealed Air, formerly: Grace Holding, Inc.). Fresenius Medical Care is engaged in litigation with Sealed Air to confirm its entitlement to indemnification from Sealed Air for all losses and expenses incurred by Fresenius Medical Care relating to pre-Merger tax liabilities and Merger-related claims. Under the Settlement Agreement, upon confirmation of a plan that satisfies the conditions of Fresenius Medical Care's payment obligation, this litigation will be dismissed with prejudice.

#### **Baxter patent dispute "touchscreen interfaces" (1)**

On April 4, 2003, FMCH filed a suit in the U.S. District Court for the Northern District of California, styled Fresenius USA, Inc., et al., v. Baxter International, Inc., et al., Case No. C 03-1431, seeking a declaratory judgment that FMCH does not infringe patents held by Baxter International, Inc. and its subsidiaries and affiliates (Baxter), that the patents are invalid, and that Baxter is without right or authority to threaten or maintain suit against FMCH for alleged infringement of Baxter's patents. In general, the alleged patents concern the use of touchscreen interfaces for hemodialysis machines. Baxter filed counterclaims against FMCH seeking more than US\$ 140 million in monetary damages and injunctive relief, and alleging that FMCH willfully infringed on Baxter's patents. On July 17, 2006, the court entered judgment on a jury verdict in favor of FMCH finding that all the asserted claims of the Baxter patents are invalid as obvious and/or anticipated in light of prior art.

On February 13, 2007, the court granted Baxter's motion to set aside the jury's verdict in favor of FMCH and reinstated the patents and entered judgment of infringement. Following a trial on damages, the court entered judgment on November 6, 2007 in favor of Baxter on a jury award of US\$ 14.3 million. On April 4, 2008, the court denied Baxter's motion for a new trial, established a royalty payable to Baxter of 10 % of the sales price for continuing sales of FMCH's 2008K hemodialysis machines and 7 % of the sales price of related disposables, parts and service beginning November 7, 2007, and enjoined sales of the touchscreen-equipped 2008K machine effective January 1, 2009. Fresenius Medical Care appealed the court's rulings to the Court of Appeals for the Federal Circuit. On September 10, 2009, the Court of Appeals reversed the district court's decision and determined that the asserted claims in two of the three patents at issue are

invalid. As to the third patent, the Court of Appeals affirmed the district court's decision; however, the Court of Appeals vacated the injunction and award of damages. These issues have been remanded to the lower court for reconsideration in light of the invalidity ruling on most of the claims. As a result, FMCH is no longer required to fund the court-approved escrow account set up to hold the royalty payments ordered by the district court, although funds already contributed will remain in escrow until the case is concluded. The remaining patent has been found invalid in re-examination by the U.S. Patent and Trademark Office (USPTO) and Baxter has appealed this finding. If Fresenius Medical Care prevails with respect to the invalidity of the final remaining patent, the escrowed funds will be returned to it with interest. In October 2008, Fresenius Medical Care completed design modifications to the 2008K machine that eliminate any incremental hemodialysis machine royalty payment exposure under the original district court order, irrespective of the outcome of the remanded issues.

#### **Baxter patent dispute "touchscreen interfaces" (2)**

On April 28, 2008, Baxter filed suit in the U.S. District Court for the Northern District of Illinois, Eastern Division (Chicago), styled Baxter International, Inc. and Baxter Healthcare Corporation v. Fresenius Medical Care Holdings, Inc. and Fresenius USA, Inc., Case No. CV 2389, asserting that FMCH's hemodialysis machines infringe four recently issued patents (late 2007–2008), all of which are based on one of the patents at issue in the April 2003 Baxter case described above. The new patents expire in April 2011 and relate to trend charts shown on touch screen interfaces and the entry of ultrafiltration profiles (ultrafiltration is the removing of liquid from a patient's body using osmotic pressure). This case is currently stayed pursuant to court order. Fresenius Medical Care believes that its hemodialysis machines do not infringe any valid claims of the Baxter patents at issue, all of which are now subject to re-examination at, and to preliminary findings of invalidity by, the USPTO.

#### **Baxter patent dispute "Liberty cyclers"**

On October 17, 2006, Baxter and DEKA Products Limited Partnership (DEKA) filed suit in the U.S. District Court for the Eastern District of Texas which was subsequently transferred to the Northern District of California, styled Baxter Healthcare Corporation and DEKA Products Limited Partnership v. Fresenius Medical Care Holdings, Inc. d/b/a Fresenius Medical Care North America and Fresenius USA, Inc., Case No. CV 438 TJW. The complaint alleges that FMCH's Liberty peritoneal cyclers infringe certain patents owned by or licensed to Baxter. Sales of the Liberty cyclers commenced in July 2008. Fresenius Medical Care believes that the Liberty peritoneal cycler does not infringe any valid claims of the Baxter/DEKA patents.

A patent infringement action has been pending in Germany between Gambro Industries (Gambro) on the one side and Fresenius Medical Care Deutschland GmbH (FMC D-GmbH) and Fresenius Medical Care AG & Co. KGaA on the other side (hereinafter collectively: Fresenius Medical Care). Gambro herein alleged patent infringements by Fresenius Medical Care concerning a patent on a device for the preparation of medical solutions. The District Court of Mannheim rendered a judgment on June 27, 2008 deciding in favor of Gambro and declaring that Fresenius Medical Care has infringed a patent. Accordingly, the court ordered Fresenius Medical Care to pay compensation (to be determined in a separate court proceeding which was recently initiated by Gambro; a hearing has been scheduled in February 2010) for alleged infringement and to stop offering the alleged patent infringing technology in its original form in Germany. FMC D-GmbH brought an invalidity action in the Federal German Patent Court (BPatG) against Gambro's patent. This case is currently pending with the Federal Court of Justice as the court of appeal. Fresenius Medical Care has also filed an appeal against the District Court's verdict. On January 5, 2009, Gambro enforced such verdict provisionally by way of security. However,

preceding such enforcement Fresenius Medical Care had already developed design modifications, being an alternative technical solution, and replaced the alleged patent infringing technology in all of the affected devices. In view of the pending appeal against BPatG's verdict and Fresenius Medical Care's appeal against the District Court's verdict, Fresenius Medical Care continues to believe that the alleged patent infringing technology does not infringe any valid patent claims of Gambro. Therefore, Fresenius Medical Care has made no provision in the financial statements for any potential liability in this matter.

### **Other litigation and potential exposures**

#### **Renal Care Group – Class action “acquisition”**

Renal Care Group, Inc. (RCG) was named as a nominal defendant in a second amended complaint filed September 13, 2006, in the Chancery Court for the State of Tennessee Twentieth Judicial District at Nashville against former officers and directors of RCG which purports to constitute a class action and derivative action relating to alleged unlawful actions and breaches of fiduciary duty in connection with Fresenius Medical Care's acquisition of RCG (the RCG acquisition) and in connection with alleged improper backdating and/or timing of stock option grants by RCG. The amended complaint was styled Indiana State District Council of Laborers and Hod Carriers Pension Fund v. Gary Brukardt et al. The complaint sought damages against defendant and its former officers and directors but did not state a claim for money damages directly against RCG. As of August 24, 2009, appellate proceedings that reversed the trial court's dismissal of the complaint had concluded. The litigation is accordingly proceeding toward trial in the Chancery Court.

#### **Department of Justice subpoenas “Missouri”**

FMCH and its subsidiaries, including RCG (prior to the RCG acquisition), received subpoenas from the U.S. Department of Justice, U.S. Attorney for the Eastern District of Missouri,

in connection with a joint civil and criminal investigation. FMCH received its subpoena in April 2005. RCG received its subpoena in August 2005. The subpoenas require production of a broad range of documents relating to FMCH's and RCG's operations, with specific attention to documents related to clinical quality programs, business development activities, medical director compensation and physician relationships, joint ventures, and anemia management programs. RCG's supply company, pharmaceutical and other services that RCG provides to patients, RCG's relationships to pharmaceutical companies, and RCG's purchase of dialysis equipment from FMCH. The Office of Inspector General of the United States Department of Health and Human Services and the United States Attorney for the Eastern District of Texas participated in the Eastern District of Missouri's investigation of FMCH's and RCG's utilization of Epogen begun in 2005. Subsequently, the review of Epogen utilization was transferred to the Eastern District of Texas, where a qui tam relator's complaint has been pending under seal since 2005 (qui tam is a legal provision under the United States False Claims Act, which allows for private individuals to bring suit on behalf of the U.S. federal government, as far as such individuals believe to have knowledge of presumable fraud committed by third parties). The qui tam relator's complaint was made public by the United States District Court for the Eastern District of Texas during the fourth quarter of 2009 and was dismissed by the Court on January 11, 2010 with respect to FMCH and its subsidiaries following the relator's motion to dismiss FMCH and its subsidiaries and with the United States' consent.

#### **Renal Care Group – Complaint “Method II”**

On July 17, 2007, the U.S. Attorney's office filed a civil complaint against RCG and FMCH in its capacity as RCG's current corporate parent in the United States District Court, Eastern District of Missouri. The complaint seeks monetary damages



and penalties with respect to issues arising out of the operation of RCG's Method II supply company through 2005, prior to the date of FMCH's acquisition of RCG. The complaint is styled United States of America ex rel. Julie Williams et al. vs. Renal Care Group, Renal Care Group Supply Company and FMCH. On August 11, 2009, the Court granted RCG's motion to transfer venue to the Middle District of Tennessee (Nashville), where the case is proceeding toward trial. Fresenius Medical Care believes that RCG's operation of its Method II supply company was in compliance with applicable law and will defend this litigation vigorously.

#### **Fresenius Medical Care Holdings—Qui tam complaint**

On November 27, 2007, the United States District Court for the Western District of Texas (El Paso) unsealed and permitted service of two complaints previously filed under seal by a qui tam relator, a former FMCH local clinic employee (qui tam is a legal provision under the United States False Claims Act, which allows private individuals to bring suit on behalf of the U.S. federal government, as far as such individuals believe to have knowledge of presumable fraud committed by third parties). The first complaint alleges that a nephrologist unlawfully employed in his practice an assistant to perform patient care tasks that the assistant was not licensed to perform and that Medicare billings by the nephrologist and FMCH therefore violated the False Claims Act. The second complaint alleges that FMCH unlawfully retaliated against the relator by discharging her from employment constructively. The United States Attorney for the Western District of Texas declined to intervene and to prosecute on behalf of the United States. Litigation on the relator's complaint is proceeding to trial.

#### **Department of Justice subpoena "Massachusetts"**

On June 25, 2009, FMCH received a subpoena from the U.S. Department of Justice, U.S. Attorney for the District of Massachusetts. The subpoena seeks information relating to the results of certain laboratory tests ordered for patients treated in FMCH's dialysis facilities during the years 2004 through 2009. Fresenius Medical Care intends to cooperate fully in the government's investigation.

In the ordinary course of Fresenius Group's operations, the Fresenius Group is subject to litigation, arbitration and investigations relating to various aspects of its business. The Fresenius Group regularly analyzes current information about such claims for probable losses and provides accruals for such matters, including estimated expenses for legal services, as appropriate.

#### **Accrued special charge of Fresenius Medical Care for legal matters**

At December 31, 2001, Fresenius Medical Care recorded a pre-tax special charge of US\$ 258 million to reflect anticipated expenses associated with the defense and resolution of pre-Merger tax claims, Merger-related claims, and commercial insurer claims. The costs associated with the Settlement Agreement and settlements with insurers have been charged against this accrual. With the exception of the proposed US\$ 115 million (€ 80 million) payment under the Settlement Agreement in the Grace Chapter 11 Proceedings, all other matters included in the special charge have been resolved. While Fresenius Medical Care believes that its remaining accrual reasonably estimates its currently anticipated costs related to the continued defense and resolution of this matter, no assurances can be given that its actual costs incurred will not exceed the amount of this accrual.

### 30. FINANCIAL INSTRUMENTS

The relationship between classes and categories as well as the reconciliation to the statement of financial position line items is shown in the following table:

|         | Categories                                    |                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                             |                                                                                                                                                                                             |
|---------|-----------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|         | Loans and receivables                         | Financial liabilities measured at amortized cost                                                                                                                                                                                                                                                                                                                                                                         | Financial liabilities/assets measured at fair value                                                                                                                                         | Relating to no category                                                                                                                                                                     |
|         |                                               |                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                             |                                                                                                                                                                                             |
| Classes | Cash and cash equivalents                     |                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                             | ► Cash and cash equivalents                                                                                                                                                                 |
|         | Assets recognized at carrying amount          | ► Trade accounts receivable (incl. receivables from and loans to related parties)                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                             |                                                                                                                                                                                             |
|         | Assets recognized at fair value               |                                                                                                                                                                                                                                                                                                                                                                                                                          | ► (2008: Other non-current assets (solely derivatives embedded in the MEB))                                                                                                                 |                                                                                                                                                                                             |
|         | Liabilities recognized at carrying amount     | <ul style="list-style-type: none"> <li>► Trade accounts payable</li> <li>► Short-term accounts payable to related parties</li> <li>► Short-term debt (incl. short-term loans from related parties)</li> <li>► Long-term debt excluding capital lease obligations</li> <li>► Senior Notes</li> <li>► Trust preferred securities</li> <li>► Mandatory exchangeable bonds (MEB) (excluding embedded derivatives)</li> </ul> |                                                                                                                                                                                             | ► Long-term capital lease obligations                                                                                                                                                       |
|         | Liabilities recognized at fair value          |                                                                                                                                                                                                                                                                                                                                                                                                                          | ► Other long-term liabilities (solely Contingent Value Rights – CVR and derivatives embedded in the MEB)                                                                                    |                                                                                                                                                                                             |
|         | Derivatives designated as hedging instruments |                                                                                                                                                                                                                                                                                                                                                                                                                          | <ul style="list-style-type: none"> <li>► Other current assets</li> <li>► Other non-current assets</li> <li>► Other short-term liabilities</li> <li>► Other long-term liabilities</li> </ul> | <ul style="list-style-type: none"> <li>► Other current assets</li> <li>► Other non-current assets</li> <li>► Other short-term liabilities</li> <li>► Other long-term liabilities</li> </ul> |

The derivative financial instruments embedded in the MEB are included in the statement of financial position item long-term accrued expenses and other long-term liabilities (in 2008: other non-current assets) (for details relating to the MEB, please see note 23, Mandatory Exchangeable Bonds).

Due to their special character and the difference in valuation, the embedded derivatives are classified separately. Also because of their special character and different valuation, the CVR are classified separately from their statement of financial position item.

## VALUATION OF FINANCIAL INSTRUMENTS

The carrying amounts of financial instruments at December 31, classified into categories, were as follows:

| in million €                                     | 2009  | 2008  |
|--------------------------------------------------|-------|-------|
| Loans and receivables                            | 2,535 | 2,499 |
| Financial liabilities measured at amortized cost | 9,416 | 9,903 |
| Assets measured at fair value <sup>1</sup>       | 11    | 48    |
| Liabilities measured at fair value <sup>1</sup>  | 73    | 61    |
| Relating to no category                          | 267   | 148   |

<sup>1</sup> There are no financial instruments designated as at fair value through profit or loss upon initial recognition.

### Estimation of fair values of financial instruments

The significant methods and assumptions used to estimate the fair values of financial instruments are as follows:

Cash and cash equivalents are stated at nominal value which equals the fair value.

The nominal value of short-term financial instruments like accounts receivables and payables and short-term debt represents its carrying amounts, which is a reasonable estimate of the fair value due to the relatively short period to maturity of these instruments.

The fair values of the major long-term financial instruments are calculated on the basis of market information. Financial instruments for which market quotes are available are measured with the market quotes at the reporting date. The fair values of the other long-term financial liabilities are calculated at present value of respective future cash flows. To determine these present values, the prevailing interest rates and credit spreads for the Fresenius Group as of the date of the statement of financial position are used.

The carrying amounts of derivatives embedded in the MEB and the CVR correspond with their fair values. The embedded derivatives have to be measured at fair value, which is

estimated based on a Black-Scholes model. The CVR are traded at the stock exchange in the United States and are therefore valued with the current stock exchange price at the reporting date.

Derivatives, mainly consisting of interest rate swaps and foreign exchange forward contracts, are valued as follows: The fair value of interest rate swaps is calculated by discounting the future cash flows on the basis of the market interest rates applicable for the remaining term of the contract as of the date of the statement of financial position. To determine the fair value of foreign exchange forward contracts, the contracted forward rate is compared to the current forward rate for the remaining term of the contract as of the date of the statement of financial position. The result is then discounted on the basis of the market interest rates prevailing at the date of the statement of financial position for the respective currency.

Fresenius Group's own credit risk is incorporated in the fair value estimation of derivatives that are liabilities. Counterparty credit-risk adjustments are factored into the valuation of derivatives that are assets.

### Fair value of financial instruments

The following table presents the carrying amounts and fair values of the Group's financial instruments as of December 31:

| in million €                                  | 2009            |            | 2008            |            |
|-----------------------------------------------|-----------------|------------|-----------------|------------|
|                                               | Carrying amount | Fair value | Carrying amount | Fair value |
| Cash and cash equivalents                     | 420             | 420        | 370             | 370        |
| Assets recognized at carrying amount          | 2,535           | 2,535      | 2,499           | 2,499      |
| Assets recognized at fair value               | 0               | 0          | 8               | 8          |
| Liabilities recognized at carrying amount     | 9,461           | 9,611      | 9,945           | 9,835      |
| Liabilities recognized at fair value          | 55              | 55         | 41              | 41         |
| Derivatives designated as hedging instruments | -115            | -115       | -160            | -160       |

Derivatives for hedging purposes as well as derivatives embedded in the MEB were recognized at gross values as other assets in an amount of €49 million and other liabilities in an amount of €185 million.

Derivative and non-derivative financial instruments recognized at fair value are classified according to the three-tier fair value hierarchy. For the fair value measurement of derivatives for hedging purposes, significant other observable inputs are used. Therefore, they are classified as Level 2 in

accordance with the defined fair value hierarchy levels. The derivatives embedded in the MEB are also classified as Level 2. The valuation of the CVR is based on the current stock exchange price, they are therefore classified as Level 1. The liabilities recognized at fair value consist of embedded derivatives and the CVR and are consequently classified in their entirety as the lower hierarchy Level 2. Financial instruments that would have to be classified as Level 3 do not exist within the Fresenius Group.

#### FAIR VALUES OF DERIVATIVE FINANCIAL INSTRUMENTS

| in million €                                                     | December 31, 2009 |             |
|------------------------------------------------------------------|-------------------|-------------|
|                                                                  | Assets            | Liabilities |
| Interest rate contracts (current)                                | –                 | –           |
| Interest rate contracts (non-current)                            | –                 | 134         |
| Foreign exchange contracts (current)                             | 18                | 11          |
| Foreign exchange contracts (non-current)                         | 20                | 1           |
| <b>Derivatives designated as hedging instruments<sup>1</sup></b> | <b>38</b>         | <b>146</b>  |
| Foreign exchange contracts (current) <sup>1</sup>                | 11                | 17          |
| Foreign exchange contracts (non-current) <sup>1</sup>            | –                 | 1           |
| Derivatives embedded in the MEB (non-current)                    | 0                 | 21          |
| <b>Derivatives not designated as hedging instruments</b>         | <b>11</b>         | <b>39</b>   |

<sup>1</sup> Derivatives designated as hedging instruments and foreign exchange contracts not designated as hedging instruments are classified as derivatives for hedging purposes.

Derivative financial instruments are marked to market each reporting period resulting in carrying amounts being equal to fair values at reporting date.

Derivatives not designated as hedging instruments, which are derivatives that do not qualify for hedge accounting, are also solely used to hedge economic business transactions and not for speculative purposes.

The current portions of interest rate contracts and foreign exchange contracts indicated as assets in the table on the previous page are recognized as other current assets in the statement of financial position while the current portions of those indicated as liabilities are included in short-term accrued expenses and other short-term liabilities. The non-current portions indicated as assets or liabilities are recognized as

other non-current assets or as long-term accrued expenses and other long-term liabilities, respectively. The derivatives embedded in the MEB are recognized as other non-current assets/other long-term liabilities.

#### Effects of financial instruments recorded in the consolidated statement of income

The net gains and losses from financial instruments consisted of allowances for doubtful accounts in an amount of €174 million and foreign currency transactions of €3 million. In addition, income of €6 million resulted from the fair value measurement of the CVR and expenses of €29 million resulted from the fair value measurement of the derivatives embedded in the MEB. Interest income of €22 million resulted mainly from trade accounts receivables and loans to related parties. Interest expense of €602 million resulted mainly from financial liabilities.

EFFECT OF DERIVATIVE INSTRUMENTS DESIGNATED AS HEDGING INSTRUMENTS  
ON THE STATEMENT OF FINANCIAL PERFORMANCE

| in million €                                                      | 2009                                                                             |                                                                                                  |                                   |
|-------------------------------------------------------------------|----------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|-----------------------------------|
|                                                                   | Gain or loss recognized in other comprehensive income (loss) (effective portion) | Gain or loss reclassified from accumulated other comprehensive income (loss) (effective portion) | Gain or loss recognized in income |
| Interest rate contracts                                           | 5                                                                                | -5                                                                                               | –                                 |
| Foreign exchange contracts                                        | -6                                                                               | 2                                                                                                | –                                 |
| <b>Derivatives in cash flow hedging relationships<sup>1</sup></b> | <b>-1</b>                                                                        | <b>-3</b>                                                                                        | <b>–</b>                          |
| Foreign exchange contracts                                        |                                                                                  |                                                                                                  | 21                                |
| <b>Derivatives in fair value hedging relationships</b>            |                                                                                  |                                                                                                  | <b>21</b>                         |
| <b>Derivatives designated as hedging instruments</b>              | <b>-1</b>                                                                        | <b>-3</b>                                                                                        | <b>21</b>                         |

<sup>1</sup> The amount of gain or loss recognized in income relates solely to the ineffective portion.

Gains from derivatives in fair value hedging relationships recognized in income are faced by losses from the underlying transactions in the same amount.

EFFECT OF DERIVATIVE INSTRUMENTS NOT DESIGNATED AS HEDGING INSTRUMENTS  
ON THE STATEMENT OF FINANCIAL PERFORMANCE

| in million €                                             | 2009 |                                   |
|----------------------------------------------------------|------|-----------------------------------|
|                                                          |      | Gain or loss recognized in income |
| Foreign exchange contracts                               |      | -22                               |
| Derivatives embedded in the MEB                          |      | -29                               |
| <b>Derivatives not designated as hedging instruments</b> |      | <b>-51</b>                        |

The Fresenius Group expects to recognize a net amount of €-4 million of the existing gains and losses deferred in accumulated other comprehensive income (loss) in earnings within the next 12 months.

Gains and losses resulting from interest rate contracts (recognized in income) are recognized as net interest in the consolidated statement of income. Gains and losses from foreign exchange contracts and the corresponding underlying transactions are accounted as cost of sales, selling, general and administrative expenses and net interest. The position other financial result in the consolidated statement of income includes gains and losses from the valuation of the derivatives embedded in the MEB (see note 10, Other financial result).

## MARKET RISK

### General

The Fresenius Group is exposed to effects related to foreign exchange fluctuations in connection with its international business activities that are denominated in various currencies. In order to finance its business operations, the Fresenius Group issues senior notes, trust preferred securities and commercial papers and enters into mainly long-term credit agreements and euro notes (Schuldscheindarlehen) with banks. Due to these financing activities, the Fresenius Group is exposed to interest risk caused by changes in variable interest rates and the risk of changes in the fair value of statement of financial position items bearing fixed interest rates.

In order to manage the risks of interest rate and foreign exchange rate fluctuations, the Fresenius Group enters into certain hedging transactions with highly rated financial institutions as authorized by the Management Board. Derivative financial instruments are not used for trading purposes.

In general, the Fresenius Group conducts its derivative financial instrument activities under the control of a single centralized department. The Fresenius Group has established guidelines derived from best practice standards in the banking industry for risk assessment procedures and supervision concerning the use of financial derivatives. These guidelines require amongst other things a clear segregation of duties in the areas of execution, administration, accounting and controlling.

The Fresenius Group defines benchmarks for individual exposures in order to quantify interest and foreign exchange risks. The benchmarks are derived from achievable and sustainable market rates. Depending on the individual benchmarks, hedging strategies are determined and implemented.

Earnings of the Fresenius Group were not materially affected by hedge ineffectiveness in the reporting period since the critical terms of the interest and foreign exchange derivatives mainly matched the critical terms of the underlying exposures.

## **Derivative financial instruments**

### **Foreign exchange risk management**

The Fresenius Group has determined the euro as its financial reporting currency. Therefore, foreign exchange translation risks resulting from the fluctuation of exchange rates between the euro and the local currencies, in which the financial statements of the foreign subsidiaries are prepared, have an impact on results of operations and financial positions reported in the consolidated financial statements.

Besides translation risks, foreign exchange transaction risks exist, which mainly relate to transactions such as purchases and sales as well as engineering and services provided by the Fresenius Group which are denominated in foreign currencies. A major part of transaction risks arise from products manufactured in Fresenius Group's worldwide production sites which are usually denominated in the local currency of the respective manufacturer and are delivered worldwide to various Fresenius Group entities. These intragroup sales are mainly denominated in euros, US dollars and yens. Therefore, Group companies are exposed to changes of the foreign exchange rates between the invoicing currencies and the local currencies in which they conduct their businesses.

Solely for the purpose of hedging existing and foreseeable foreign exchange transaction exposures, the Fresenius Group enters into foreign exchange forward contracts and, on a small scale, foreign exchange options. In order to ensure that no foreign exchange risks result from loans in foreign currencies, the Fresenius Group enters into foreign exchange swap contracts.

As of December 31, 2009, the notional amounts of foreign exchange contracts totaled € 2,442 million. These foreign exchange contracts have been entered into to hedge risks from operational business and in connection with loans in foreign currency. The predominant part of the foreign exchange forward contracts to hedge risks from operational business was recognized as cash flow hedge, while foreign exchange contracts in connection with loans in foreign currencies are partly recognized as fair value hedges. The fair values of cash flow hedges and fair value hedges were € 6 million and € 20 million, respectively.

The hedge-effective portion of changes in the fair value of foreign exchange forward contracts that are designated and qualified as cash flow hedges of forecasted product purchases and sales is reported in accumulated other comprehensive income (loss). These amounts are subsequently reclassified into earnings as a component of cost of sales or as selling, general and administrative expenses in the same period in which the hedged transaction affects earnings.

As of December 31, 2009, the Fresenius Group was party to foreign exchange contracts with a maximum maturity of 40 months.

In order to estimate and quantify the transaction risks from foreign currencies, the Fresenius Group considers the cash flows reasonably expected for the following three months as the relevant assessment basis for a sensitivity analysis. For this analysis, the Fresenius Group assumes that all foreign exchange rates in which the Group had unhedged positions as of reporting date would be negatively impacted by 10 %. By multiplying the calculated unhedged risk positions with this factor, the maximum possible negative impact of the foreign exchange transaction risks on the Group's results of operations would be € 9 million.

### **Interest rate risk management**

Fresenius Group's interest rate risks mainly arise from money market and capital market transactions of the Group for financing its business activities.

The Fresenius Group enters into interest rate swaps and, on a small scale, into interest rate options in order to hedge against interest rate exposures arising from long-term borrowings at variable rates by swapping them into fixed rates.

For purposes of analyzing the impact of changes in the relevant reference interest rates on Fresenius Group's results of operations, the Group calculates the portion of financial debt which bears variable interest rates and which has not been hedged by means of interest rate swaps or options against rising interest rates. For this particular part of its liabilities, the Fresenius Group assumes an increase in the reference rates of 0.5 % compared to the actual rates as of the date of the statement of financial position. The corresponding additional annual interest expense is then compared to the net income attributable to Fresenius SE. This analysis shows that an increase of 0.5 % in the relevant reference rates would have an effect of less than 1 % on the consolidated net income attributable to Fresenius SE and Fresenius SE shareholders' equity.

The Fresenius Group enters into interest rate swaps that are designated as cash flow hedges effectively converting certain variable interest rate payments, resulting from existing loans and Euro Notes (Schuldscheindarlehen) mainly denominated in US dollars or euros, into fixed interest rate payments. The US dollar interest rate swaps with a notional volume of US\$ 3,300 million (€ 2,291 million) and a fair value of € -110 million expire at various dates in the years 2010 to 2013. The Euro interest rate swaps with a notional volume of € 407 million and a fair value of € -24 million expire in the years 2011 to 2016. The US dollar interest rate swaps bear an average interest rate of 4.20 % and the Euro interest rate swaps bear an average interest rate of 4.33 %.

Interest payables and interest receivables in connection with the swap agreements are accrued and recorded as an adjustment to the interest expense at each reporting date.

The following table shows the undiscounted contractual cash flows (including interests) resulting from recognized financial liabilities and the fair value of derivative financial instruments:

| in million €                                                              | up to 1 year | 1 to 5 years | more than 5 years |
|---------------------------------------------------------------------------|--------------|--------------|-------------------|
| Long-term debt and capital lease obligations <sup>1</sup>                 | 417          | 5,543        | 123               |
| Short-term debt<br>(including accounts receivable securitization program) | 302          | 0            | 0                 |
| Senior Notes                                                              | 140          | 1,022        | 1,800             |
| Mandatory Exchangeable Bonds <sup>2</sup>                                 | 31           | 31           | 0                 |
| Trade accounts payable                                                    | 601          | –            | –                 |
| Trust preferred securities                                                | 35           | 473          | –                 |
| Derivative financial instruments                                          | 28           | 136          | 0                 |
| <b>Total</b>                                                              | <b>1,554</b> | <b>7,205</b> | <b>1,923</b>      |

<sup>1</sup> Future interest payments for financial liabilities with variable interest rates were calculated using the latest interest rates fixed prior to December 31, 2009.

<sup>2</sup> The line Mandatory Exchangeable Bonds includes only interests, as the bonds will be exchangeable into shares of FMC-AG & Co. KGaA and not redeemable in cash upon maturity.

## CREDIT RISK

The Fresenius Group is exposed to potential losses in the event of non-performance by counterparties to derivative financial instruments. With respect to derivative financial instruments, it is not expected that any counterparty fails to meet its obligations as the counterparties are highly rated financial institutions. The maximum credit exposure of derivatives is represented by the fair value of those contracts with a positive fair value amounting to € 49 million for foreign exchange derivatives at December 31, 2009. No credit exposure existed from interest rate derivatives. The maximum credit risk resulting from the use of non-derivative financial instruments is defined as the total amount of all receivables. In order to control this credit risk, the Management of the Fresenius Group performs an ageing analysis of trade accounts receivable. For details on the ageing analysis and on the allowance for doubtful accounts, please see note 14, Trade accounts receivable.

## LIQUIDITY RISK

The liquidity risk is defined as the risk that a company is potentially unable to meet its financial obligations. The Management of the Fresenius Group manages the liquidity of the Group by means of effective working capital and cash management as well as an anticipatory evaluation of refinancing alternatives. The Management of the Fresenius Group believes that existing credit facilities as well as the cash generated by operating activities and additional short-term borrowings are sufficient to meet the Company's foreseeable demand for liquidity (see note 21, Debt and capital lease obligations).

### 31. SUPPLEMENTARY INFORMATION ON CAPITAL MANAGEMENT

The Fresenius Group has a solid financial profile. Capital management includes both equity and debt. A principal objective of Fresenius Group's capital management is to optimize the weighted-average cost of capital. Further, it is sought to achieve a balanced mix of equity and debt. To secure growth on a long-term basis, a capital increase may also be considered in exceptional cases, for instance to finance a major acquisition.

Due to the Company's diversification within the health care sector and the strong market positions of the business segments in global, growing and non-cyclical markets, predictable and sustainable cash flows are generated. They allow a reasonable proportion of debt, i. e. the employment of an extensive mix of financial instruments. Moreover, Fresenius Group's customers are almost invariably of high credit quality.

Equity and debt have developed as follows:

#### SHAREHOLDERS' EQUITY

| in million €         | December 31,<br>2009 | December 31,<br>2008 |
|----------------------|----------------------|----------------------|
| Shareholders' equity | 7,652                | 6,943                |
| Total assets         | 20,882               | 20,544               |
| Equity ratio         | 36.64 %              | 33.80 %              |

Fresenius SE is not subject to any capital requirements provided for in its Articles of Association. Fresenius SE has obligations to issue shares out of the Conditional Capital relating to the exercise of stock options and convertible bonds on the basis of the existing 1998, 2003 and 2008 stock option plans (see note 34, Stock options).

#### DEBT

| in million € | December 31,<br>2009 | December 31,<br>2008 |
|--------------|----------------------|----------------------|
| Debt         | 8,299                | 8,787                |
| Total assets | 20,882               | 20,544               |
| Debt ratio   | 39.74 %              | 42.77 %              |

According to the definitions in the underlying agreements, the MEB and the CVR are not categorized as debt.

Assuring financial flexibility is the top priority in the Group's financing strategy. This flexibility is achieved through a wide range of financing instruments and a high degree of diversification of the investors. Fresenius Group's maturity profile displays a broad spread of maturities with a high proportion of medium and long-term financing. In the choice of financing instruments, market capacity, investor diversification, flexibility, credit conditions and the existing maturity profile are taken into account.

A key financial performance indicator for the Fresenius Group is the net debt/EBITDA ratio, which is measured on the basis of US GAAP figures. This ratio was 3.0 as of December 31, 2009. The aim is to reduce this further. To achieve this goal, Fresenius Group's focus is primarily on earnings growth and sustained strong cash flows as well as debt reduction.

Fresenius Group's financing strategy is reflected in its credit ratings. Fresenius is covered by the rating agencies Moody's, Standard & Poor's and Fitch.

The following table shows the company rating of Fresenius SE:

|                | Standard & Poor's | Moody's  | Fitch  |
|----------------|-------------------|----------|--------|
| Company rating | BB                | Ba1      | BB     |
| Outlook        | stable            | negative | stable |

### 32. SUPPLEMENTARY INFORMATION ON THE CONSOLIDATED STATEMENT OF CASH FLOWS

The statements of cash flows of the Fresenius Group for the fiscal years 2009 and 2008 are shown on pages 112 to 113.

Cash funds reported in the consolidated statement of cash flows and in the statement of financial position comprise cash on hand, checks, securities and cash at bank which are readily convertible within three months and are subject to insignificant risk of changes in value.

The following summaries provide additional information with regard to the consolidated statement of cash flows:

| in million €      | 2009 | 2008 |
|-------------------|------|------|
| Interest paid     | 554  | 410  |
| Income taxes paid | 393  | 334  |



Cash paid for acquisitions (without investments in licenses) consisted of the following:

| in million €                                  | 2009       | 2008         |
|-----------------------------------------------|------------|--------------|
| Assets acquired                               | 348        | 4,238        |
| Liabilities assumed                           | -48        | -421         |
| Noncontrolling interest                       | -31        | 2            |
| Notes assumed in connection with acquisitions | -19        | -767         |
| Cash paid                                     | 250        | 3,052        |
| Cash acquired                                 | -24        | -105         |
| <b>Cash paid for acquisitions, net</b>        | <b>226</b> | <b>2,947</b> |

### 33. NOTES ON SEGMENT REPORTING

#### GENERAL

The segment reporting tables shown on pages 116 to 119 of this annual report are an integral part of the notes.

The Fresenius Group has identified the business segments Fresenius Medical Care, Fresenius Kabi, Fresenius Helios and Fresenius Vamed which corresponds to the internal organizational and reporting structures (Management Approach) at December 31, 2009.

The key data disclosed in conjunction with segment reporting correspond to the key data of the internal reporting system of the Fresenius Group. Internal and external reporting and accounting correspond to each other; the same key data and definitions are used.

Sales and proceeds between the segments are indicative of the actual sales and proceeds agreed with third parties. Administrative services are billed in accordance with service level agreements.

The business segments were identified in accordance with ASC 280, Segment Reporting, which defines the segment reporting requirements in the annual financial statements and interim reports with regard to the operating business, product and service businesses and regions. The business segments of the Fresenius Group are as follows:

Fresenius Medical Care is the world's leading provider of dialysis products and dialysis care for the life-saving treatment of patients with chronic kidney failure. Fresenius Medical Care treats 195,651 patients in its 2,553 own dialysis clinics.

Fresenius Kabi is a globally active company, providing infusion therapies, intravenously administered generic drugs, clinical nutrition and the related medical devices. The products are used for the therapy and care of critically and chronically

ill patients in and outside the hospital. In Europe, Fresenius Kabi is the market leader in infusion therapies and clinical nutrition, in the US, the company is a leading provider of intravenously administered generic drugs.

Fresenius Helios is one of the largest private hospital operators in Germany.

Fresenius Vamed offers engineering and services for hospitals and other health care facilities.

The segment Corporate/Other mainly comprises the holding functions of Fresenius SE as well as Fresenius Netcare GmbH, which provides services in the field of information technology as well as Fresenius Biotech, which does not fulfill the characteristics of a reportable segment. In addition, the segment Corporate/Other includes intersegment consolidation adjustments as well as special items regarding the acquisition of APP.

Segment reporting by region takes account of geographical factors and the similarity of markets in terms of opportunities and risks. The allocation to a particular region is based on the domicile of the customers.

#### NOTES ON THE BUSINESS SEGMENTS

The key figures used by the Management Board to assess segment performance, have been selected in such a way that they include all items of income and expenses which fall under the area of responsibility of the business segments. The Management Board is convinced that the most suitable performance indicator is the operating income (EBIT). The Management Board believes that, in addition to the operating income, the figure for earnings before interest, taxes and depreciation/amortization (EBITDA) can also help investors to assess the ability of the Fresenius Group to generate cash flows and to meet its financial obligations. The EBITDA figure is also the basis for assessing Fresenius Group's compliance with the terms of its credit agreements (e. g. the Fresenius Medical Care 2006 Senior Credit Agreement or the 2008 Senior Credit Agreement).

Depreciation and amortization is presented for property, plant and equipment, intangible assets with definite useful lives of the respective business segment.

Net interest comprises interest expenses and interest income.

Net income attributable to Fresenius SE is defined as earnings after income taxes and noncontrolling interest.

The operating cash flow is the cash provided by/used in operating activities.

The cash flow before acquisitions and dividends is the operating cash flow less net capital expenditure.

Debt comprises bank loans, senior notes, trust preferred securities, capital lease obligations, liabilities relating to outstanding acquisitions as well as intercompany liabilities. The MEB and the CVR are not categorized as debt (see note 31, Supplementary information on capital management).

Capital expenditure mainly includes additions to property, plant and equipment.

Acquisitions refer to the purchase of shares in legally-independent companies and the acquisition of business divisions and intangible assets (e. g. licenses). The key figures shown with regard to acquisitions present the contractual purchase prices comprising amounts paid in cash (less cash acquired), debts assumed and the issuance of shares, whereas for the purposes of the statement of cash flows, only cash purchase price components less acquired cash and cash equivalents are reported.

The EBITDA margin is calculated as a ratio of EBITDA to sales.

The EBIT margin is calculated as a ratio of EBIT to sales.

The return on operating assets (ROOA) is defined as the ratio of EBIT to average operating assets. Operating assets are defined as total assets less deferred tax assets, trade accounts payable and advance payments from customers as well as guaranteed subsidies.

In addition, the key indicators "Depreciation and amortization in % of sales" and "Operating cash flow in % of sales" are also disclosed.

#### RECONCILIATION OF KEY FIGURES TO CONSOLIDATED EARNINGS

| in million €                                      | 2009         | 2008         |
|---------------------------------------------------|--------------|--------------|
| Total EBIT of reporting segments                  | 2,107        | 1,785        |
| General corporate expenses Corporate/Other (EBIT) | -53          | -308         |
| <b>Group EBIT</b>                                 | <b>2,054</b> | <b>1,477</b> |
| Interest expenses                                 | -602         | -456         |
| Interest income                                   | 22           | 25           |
| Other financial result                            | -31          | 68           |
| <b>Income before income taxes</b>                 | <b>1,443</b> | <b>1,114</b> |

#### RECONCILIATION OF NET DEBT WITH THE CONSOLIDATED STATEMENT OF FINANCIAL POSITION

| in million €                                                        | December 31, 2009 | December 31, 2008 |
|---------------------------------------------------------------------|-------------------|-------------------|
| Short-term borrowings                                               | 287               | 729               |
| Short-term liabilities and loans from related parties               | 2                 | 2                 |
| Current portion of long-term debt and capital lease obligations     | 261               | 431               |
| Current portion of Senior Notes                                     | 0                 | 100               |
| Long-term debt and capital lease obligations, less current portion  | 5,228             | 5,716             |
| Senior Notes, less current portion                                  | 2,066             | 1,354             |
| Trust preferred securities of Fresenius Medical Care Capital Trusts | 455               | 455               |
| <b>Debt</b>                                                         | <b>8,299</b>      | <b>8,787</b>      |
| less cash and cash equivalents                                      | 420               | 370               |
| <b>Net debt</b>                                                     | <b>7,879</b>      | <b>8,417</b>      |

The following table shows the non-current assets by geographical region:

| in million €                                | December 31, 2009 | December 31, 2008 |
|---------------------------------------------|-------------------|-------------------|
| Germany                                     | 3,205             | 3,052             |
| Europe (excluding Germany)                  | 1,938             | 1,893             |
| North America                               | 9,241             | 9,459             |
| Asia-Pacific                                | 681               | 641               |
| Latin America                               | 282               | 221               |
| Africa                                      | 37                | 31                |
| <b>Total non-current assets<sup>1</sup></b> | <b>15,384</b>     | <b>15,297</b>     |

<sup>1</sup> The aggregate amount of net non-current assets is the sum of non-current assets less deferred tax assets and derivative financial instruments.

In 2009, the Fresenius Group generated sales of € 3,152 million (2008: € 2,793 million) in Germany.

## 34. STOCK OPTIONS

### COMPENSATION COST IN CONNECTION WITH THE STOCK OPTION PLANS OF THE FRESENIUS GROUP

In 2009, the Fresenius Group recognized compensation cost in an amount of €36 million for convertible bonds and stock options granted since 2005. For stock incentive plans which are performance based, the Fresenius Group recognizes compensation cost over the vesting periods, based on the then current market values of the underlying stock.

### FAIR VALUE OF STOCK OPTIONS

The Fresenius Group elected to adopt FAS 123(R), Share-Based Payment, prospectively.

The Fresenius Group uses a binomial option pricing model in determining the fair value of stock options granted under the stock option plans of Fresenius SE and Fresenius Medical Care. Option valuation models require the input of highly subjective assumptions including expected stock price volatility. Fresenius Group's assumptions are based upon its past experiences, market trends and the experiences of other entities of the same size and in similar industries. To incorporate the effects of expected early exercise in the model, an early exercise of vested options was assumed as soon as the share price exceeds 150 % of the exercise price. Fresenius Group's stock options have characteristics that vary significantly from traded options and changes in subjective assumptions can materially affect the fair value of the option.

The weighted-average assumptions for the calculation of the fair value of grants of the Fresenius SE Stock Option Plan 2008 made during the years 2009 and 2008 are as follows:

| in million €                   | 2009           |            | 2008           |              |
|--------------------------------|----------------|------------|----------------|--------------|
|                                | December Grant | July Grant | December Grant | August Grant |
| Expected dividend yield        | 2.33 %         | 2.90 %     | 2.39 %         | 1.63 %       |
| Risk-free interest rate        | 2.73 %         | 3.04 %     | 2.88 %         | 4.20 %       |
| Expected volatility            | 28.83 %        | 29.01 %    | 28.91 %        | 27.82 %      |
| Life of options                | 7 years        | 7 years    | 7 years        | 7 years      |
| Exercise price per option in € | 39.61          | 36.89      | 43.52          | 53.56        |

The expected volatility results from the historical volatility calculated over the expected life of options. The volatility was determined when the fair value of stock options was calculated for the first time and since then has been controlled every year upon issuance of a new tranche.

### FRESENIUS SE STOCK OPTION PLANS

#### Description of the Fresenius SE stock option plans in place

On December 31, 2009, Fresenius SE had three stock option plans in place; the Fresenius AG stock option based plan of 1998 (1998 Plan), the Fresenius AG Stock Option Plan 2003 (2003 Plan) which is based on convertible bonds and the stock option based Fresenius SE Stock Option Plan 2008 (2008 Plan). The latter is the only plan under which stock options were granted during 2009.

#### Stock Option Plan 2008

On May 21, 2008, Fresenius SE's Annual General Meeting has resolved upon the 2008 Plan by authorizing the granting of subscription rights to members of the Management Board and managerial employees of the Company and affiliated companies. To fulfill the subscription rights under the 2008 Plan, the subscribed capital of Fresenius SE was increased conditionally by up to €6.2 million through the issue of up to 3.1 million no par value bearer ordinary shares and 3.1 million no par value bearer preference shares.

Under the 2008 Plan, up to 6.2 million options can be issued, which carry entitlement to obtain 3.1 million ordinary shares and 3.1 million preference shares. Up to 1.2 million options are designated for members of the Management Board of Fresenius SE, up to 3.2 million options are designated for members of the management of directly or indirectly affiliated companies (except for Fresenius Medical Care) and up to 1.8 million options are designated for managerial staff members of Fresenius SE and its affiliated companies (except for Fresenius Medical Care). With respect to the members of Fresenius SE's Management Board, the Supervisory Board has sole authority to grant stock options and administer the 2008 Plan. The Management Board of Fresenius SE has such authority with respect to all other participants in the 2008 Plan. The options can be granted in five tranches with effect as of the first bank working day in July and/or the first bank

working day in December. The exercise price of options shall be the average closing price of Fresenius SE's ordinary shares and preference shares, respectively, on the Frankfurt Stock Exchange during the 30 trading days immediately prior to each grant date. For participants in the United States, the exercise price may be the average closing price of both classes of shares during the 30 calendar days immediately prior to the grant date, if these are higher. Options granted have a seven-year term but can be exercised only after a three-year vesting period. The vesting of options granted is mandatorily subject to the condition, in each case, that the annual success target within the three-year vesting period is achieved. For each such year, the success target is achieved if the consolidated net income attributable to Fresenius SE, adjusted for extraordinary effects, has increased by at least 8 % compared to the respective adjusted net income attributable to Fresenius SE of the previous fiscal year. For each year in which the success target has not been met, one-third of the options granted shall forfeit. The adjusted net income attributable to Fresenius SE shall be calculated on the basis of the calculation method of the accounting principles according to US GAAP. For the purposes of the 2008 Plan, the adjusted net income attributable to Fresenius SE is determined and will be verified bindingly by Fresenius SE's auditor during the audit of the consolidated financial statements. The performance targets for 2009 and 2008 were met. Upon exercise of vested options, Fresenius SE has the right to grant treasury shares or a cash payment in lieu of increasing capital by the issuance of new shares. If all conditions are fulfilled, stock options may be exercised throughout the year with the exception of certain pre-determined black-out periods.

#### **Stock Option Plan 2003**

During 2003, Fresenius AG adopted the 2003 Plan for members of the Management Board and executive employees. This incentive plan which is based on convertible bonds was replaced by the 2008 Plan and no options have been granted since 2008. Under the 2003 Plan, eligible employees have the right to acquire ordinary and preference shares of Fresenius SE. The bonds expire in ten years and one third of them can be exercised beginning after two, three and four years after the grant date, respectively. Upon issuance of the option, the

employees have the right to choose options with or without a stock price target. The conversion price of options subject to a stock price target corresponds to the stock exchange quoted price of the ordinary or preference shares upon the first time the stock exchange quoted price exceeds the initial value (after the share split in 2007:  $\frac{1}{3}$  of the initial value) by at least 25 %. If converted after the share split, the conversion price which entitles to three ordinary shares or preference shares, respectively, is equal to the triple of one third of the initial value. The initial value is the joint average stock exchange price of bearer ordinary shares and non-voting bearer preference shares during the last 30 trading days prior to the date of grant. The conversion price of options without a stock price target is the initial value. In the case of options not subject to a stock price target, the number of convertible bonds awarded to the eligible employee would be 15 % less than if the employee elected options subject to the stock price target. Each convertible bond granted after the share split entitles to subscribe one ordinary or preference share, subject to payment of the conversion price. Bonds granted and converted prior to the share split were entitled to subscribe one ordinary or preference share, conversion after the share split entitles to three ordinary or preference shares.

#### **Stock Option Plan 1998**

During 1998, Fresenius AG adopted the 1998 Plan for members of the Management Board and executive employees. This stock incentive plan was replaced by the 2003 Plan and no options have been granted since 2003. Under the 1998 Plan, eligible employees have the right to acquire ordinary and preference shares of Fresenius SE. Options granted under this plan have a ten-year term. At December 31, 2009, all options were exercisable. Prior to the share split, one ordinary or one preference share could be acquired for each option. After the share split in 2007, each option entitles to acquire three ordinary or preference shares. The maximum number of ordinary or preference shares to be issued to the members of the Management Board or executive employees has been adjusted accordingly.

## Transactions during 2009

In 2009, Fresenius SE awarded 1,067,248 stock options, including 180,600 options to members of the Management Board of Fresenius SE, at a weighted-average exercise price of € 36.90, a weighted-average fair value of € 8.25 each and a total fair value of € 9 million, which will be amortized over the three-year vesting period.

During the fiscal year 2009, Fresenius SE received cash of € 4 million from the exercise of 171,642 stock options. The average stock price at the exercise date was € 35.92 for ordinary shares and € 41.82 for preference shares. The intrinsic value of options exercised in 2009 was € 2 million.

At December 31, 2009, out of 457,062 outstanding and exercisable options issued under the 1998 Plan, 25,800 were held by the members of the Fresenius SE Management Board. The number of outstanding stock options issued under the 2003 Plan was 2,799,514, of which 1,953,308 were exercisable. The members of the Fresenius SE Management Board held 514,500 options. Out of 2,136,876 outstanding stock options issued under the 2008 Plan, 361,200 were held by the members of the Fresenius SE Management Board.

Stock option transactions are summarized as follows:

| Ordinary shares<br>December 31 | Number of<br>options | Weighted-<br>average<br>exercise price<br>in € | Number of<br>options<br>exercisable |
|--------------------------------|----------------------|------------------------------------------------|-------------------------------------|
| <b>Balance 2007</b>            | <b>2,121,996</b>     | <b>34.93</b>                                   | <b>822,094</b>                      |
| Granted                        | 549,551              | 53.48                                          |                                     |
| Exercised                      | 241,425              | 26.31                                          |                                     |
| Forfeited                      | 59,823               | 37.62                                          |                                     |
| <b>Balance 2008</b>            | <b>2,370,299</b>     | <b>40.05</b>                                   | <b>951,484</b>                      |
| Granted                        | 533,624              | 33.82                                          |                                     |
| Exercised                      | 85,821               | 24.55                                          |                                     |
| Forfeited                      | 121,376              | 36.14                                          |                                     |
| <b>Balance 2009</b>            | <b>2,696,726</b>     | <b>39.49</b>                                   | <b>1,205,185</b>                    |

| Preference shares<br>December 31 | Number of<br>options | Weighted-<br>average<br>exercise price<br>in € | Number of<br>options<br>exercisable |
|----------------------------------|----------------------|------------------------------------------------|-------------------------------------|
| <b>Balance 2007</b>              | <b>2,121,996</b>     | <b>35.74</b>                                   | <b>822,094</b>                      |
| Granted                          | 549,551              | 51.78                                          |                                     |
| Exercised                        | 241,425              | 27.75                                          |                                     |
| Forfeited                        | 59,823               | 38.88                                          |                                     |
| <b>Balance 2008</b>              | <b>2,370,299</b>     | <b>40.21</b>                                   | <b>951,484</b>                      |
| Granted                          | 533,624              | 39.97                                          |                                     |
| Exercised                        | 85,821               | 25.24                                          |                                     |
| Forfeited                        | 121,376              | 38.10                                          |                                     |
| <b>Balance 2009</b>              | <b>2,696,726</b>     | <b>40.73</b>                                   | <b>1,205,185</b>                    |

The following tables provide a summary of fully vested options outstanding and exercisable for both preference and ordinary shares at December 31, 2009:

### OPTIONS FOR ORDINARY SHARES

| Range of<br>exercise price<br>in € | Options outstanding |                                                               |                                            | Options exercisable |                                                               |                                            |
|------------------------------------|---------------------|---------------------------------------------------------------|--------------------------------------------|---------------------|---------------------------------------------------------------|--------------------------------------------|
|                                    | Number of options   | Weighted-average<br>remaining<br>contractual life<br>in years | Weighted-average<br>exercise price<br>in € | Number of options   | Weighted-average<br>remaining<br>contractual life<br>in years | Weighted-average<br>exercise price<br>in € |
| 10.01 – 15.00                      | 118,977             | 3.50                                                          | 13.65                                      | 118,977             | 3.50                                                          | 13.65                                      |
| 15.01 – 20.00                      | 102,702             | 2.61                                                          | 19.61                                      | 102,702             | 2.61                                                          | 19.61                                      |
| 20.01 – 25.00                      | 144,376             | 4.50                                                          | 21.96                                      | 144,376             | 4.50                                                          | 21.96                                      |
| 25.01 – 30.00                      | 280,598             | 5.45                                                          | 28.56                                      | 280,598             | 5.45                                                          | 28.56                                      |
| 30.01 – 35.00                      | 668,046             | 5.39                                                          | 33.17                                      | 137,109             | 1.08                                                          | 30.71                                      |
| 35.01 – 40.00                      | 409,786             | 6.41                                                          | 39.29                                      | 274,626             | 6.36                                                          | 39.11                                      |
| 40.01 – 45.00                      | 49,640              | 5.92                                                          | 41.62                                      | 0                   |                                                               |                                            |
| 45.01 – 50.00                      | 8,484               | 6.50                                                          | 48.81                                      | 4,812               | 6.50                                                          | 48.81                                      |
| 50.01 – 55.00                      | 486,111             | 5.58                                                          | 54.69                                      | 0                   |                                                               |                                            |
| 55.01 – 60.00                      | 415,337             | 7.50                                                          | 56.43                                      | 137,764             | 7.50                                                          | 56.43                                      |
| 70.01 – 75.00                      | 12,669              | 7.50                                                          | 70.54                                      | 4,221               | 7.50                                                          | 70.54                                      |
|                                    | <b>2,696,726</b>    | <b>5.70</b>                                                   | <b>39.49</b>                               | <b>1,205,185</b>    | <b>4.86</b>                                                   | <b>31.60</b>                               |

## OPTIONS FOR PREFERENCE SHARES

| Range of exercise price in € | Options outstanding |                                                      |                                      | Options exercisable |                                                      |                                      |
|------------------------------|---------------------|------------------------------------------------------|--------------------------------------|---------------------|------------------------------------------------------|--------------------------------------|
|                              | Number of options   | Weighted-average remaining contractual life in years | Weighted-average exercise price in € | Number of options   | Weighted-average remaining contractual life in years | Weighted-average exercise price in € |
| 10.01 – 15.00                | 130,257             | 3.50                                                 | 12.05                                | 130,257             | 3.50                                                 | 12.05                                |
| 15.01 – 20.00                | 144,376             | 4.50                                                 | 19.00                                | 144,376             | 4.50                                                 | 19.00                                |
| 20.01 – 25.00                | 91,422              | 2.50                                                 | 21.13                                | 91,422              | 2.50                                                 | 21.13                                |
| 25.01 – 30.00                | 280,598             | 5.45                                                 | 29.30                                | 280,598             | 5.45                                                 | 29.30                                |
| 30.01 – 35.00                | 73,607              | 1.58                                                 | 34.73                                | 73,607              | 1.58                                                 | 34.73                                |
| 35.01 – 40.00                | 569,856             | 6.43                                                 | 39.86                                | 38,919              | 5.50                                                 | 38.52                                |
| 40.01 – 45.00                | 434,369             | 5.62                                                 | 40.79                                | 299,209             | 5.23                                                 | 40.88                                |
| 45.01 – 50.00                | 49,640              | 5.92                                                 | 45.40                                | 0                   |                                                      |                                      |
| 50.01 – 55.00                | 494,595             | 5.60                                                 | 52.44                                | 4,812               | 6.50                                                 | 53.01                                |
| 55.01 – 60.00                | 415,337             | 7.50                                                 | 56.11                                | 137,764             | 7.50                                                 | 56.11                                |
| 70.01 – 75.00                | 12,669              | 7.50                                                 | 70.14                                | 4,221               | 7.50                                                 | 70.14                                |
|                              | <b>2,696,726</b>    | <b>5.70</b>                                          | <b>40.73</b>                         | <b>1,205,185</b>    | <b>4.86</b>                                          | <b>32.39</b>                         |

At December 31, 2009, the aggregate intrinsic value of exercisable options for ordinary shares and preference shares was € 14 million and € 21 million, respectively.

At December 31, 2009, total unrecognized compensation costs related to non-vested options granted under the 2003 Plan and the 2008 Plan were € 18 million. These costs are expected to be recognized over a weighted-average period of 1.9 years.

## FRESENIUS MEDICAL CARE AG & CO. KGAA

### STOCK OPTION PLANS

#### Stock Option Plan 2006

On May 9, 2006, as amended on May 15, 2007, the Fresenius Medical Care AG & Co. KGaA Stock Option Plan 2006 (Amended 2006 Plan) was established by resolution of FMC-AG & Co. KGaA's Annual General Meeting with a conditional capital increase up to € 15 million subject to the issue of up to 15 million no par value bearer ordinary shares with a nominal value of € 1.00 each. Under the Amended 2006 Plan, up to 15 million options can be issued, each of which can be exercised to obtain one ordinary share, with up to 3 million options designated for members of the Management Board of Fresenius Medical Care Management AG (FMC Management AG), the General Partner, up to 3 million options designated for members of management boards of direct or indirect subsidiaries

of FMC-AG & Co. KGaA and up to 9 million options designated for managerial staff members of FMC-AG & Co. KGaA and such subsidiaries. With respect to participants who are members of the Management Board of FMC Management AG, its Supervisory Board has sole authority to grant stock options and exercise other decision making powers under the Amended 2006 Plan (including decisions regarding certain adjustments and forfeitures). The Management Board of FMC Management AG has such authority with respect to all other participants in the Amended 2006 Plan.

Options under the Amended 2006 Plan can be granted the last Monday in July and/or the first Monday in December. The exercise price of options granted under the Amended 2006 Plan shall be the average closing price on the Frankfurt Stock Exchange of FMC-AG & Co. KGaA's ordinary shares during the 30 calendar days immediately prior to each grant date. Options granted under the Amended 2006 Plan have a seven-year term but can be exercised only after a three-year vesting period. The vesting of options granted is subject to achievement of performance targets, measured over a three-year period from the grant date. For each such year, the performance target is achieved if FMC-AG & Co. KGaA's adjusted

basic income per ordinary share (EPS), as calculated in accordance with the Amended 2006 Plan, increases by at least 8 % year over year during the vesting period, beginning with EPS for the year of grant as compared to EPS for the year preceding such grant. Calculation of EPS under the Amended 2006 Plan excluded, among other items, the costs of the transformation of Fresenius Medical Care's legal form and the conversion of preference shares into ordinary shares. For each grant, one-third of the options granted are forfeited for each year in which EPS does not meet or exceed the 8 % target. The performance targets for 2009 and 2008 were met. Vesting of the portion or portions of a grant for a year or years in which the performance target is met does not occur until completion of the entire three-year vesting period. Upon exercise of vested options, FMC-AG & Co. KGaA has the right to reissue treasury shares or issue new shares.

Options granted under the Amended 2006 Plan to US participants are non-qualified stock options under the United States Internal Revenue Code of 1986, as amended. Options under the Amended 2006 Plan are not transferable by a participant or a participant's heirs, and may not be pledged, assigned, or otherwise disposed of.

### 2001 International Stock Option Plan

Under the Fresenius Medical Care 2001 International Stock Incentive Plan (2001 Plan), options in the form of convertible bonds with a principal of up to € 12 million were issued to the members of the Management Board and other employees of FMC-AG & Co. KGaA representing grants for up to 12 million non-voting preference shares. The convertible bonds have a par value of € 1.00 and bear interest at a rate of 5.5 %. Except for the members of the Management Board, eligible employees may purchase the bonds by issuing a non-recourse note with terms corresponding to the terms of and secured by the bond. FMC-AG & Co. KGaA has the right to offset its obligation on a bond against the employee's obligation on the related note; therefore, the convertible bond obligations and employee note receivables represent stock options issued by FMC-AG & Co. KGaA and are not reflected in the consolidated financial statements. The options expire ten years from issuance and can be exercised beginning two, three or four years after issuance. Compensation costs related to awards granted

under this plan are amortized on a straight-line basis over the vesting period for each separately vesting portion of the awards. Bonds issued to Management Board members who did not issue a note to FMC-AG & Co. KGaA are recognized as a liability on the Group's statement of financial position.

Upon issuance of the option, the employees had the right to choose options with or without a stock price target. The conversion price of options subject to a stock price target corresponds to the stock exchange quoted price of the preference shares upon the first time the stock exchange quoted price exceeds the initial value by at least 25 %. The initial value is the average price of the preference shares during the last 30 trading days prior to the date of grant. In the case of options not subject to a stock price target, the number of convertible bonds awarded to the eligible employee would be 15 % less than if the employee elected options subject to the stock price target. The conversion price of the options without a stock price target is the initial value. Each option entitles the holder thereof, upon payment of the respective conversion price, to acquire one preference share. Effective May 2006, no further grants can be issued under the 2001 Plan and no options were granted under the 2001 Plan after 2005.

### Transactions during 2009

During 2009, Fresenius Medical Care awarded 2,585,196 options, including 348,600 to members of the Management Board of FMC Management AG, at a weighted-average exercise price of € 32.08, a weighted-average fair value of € 7.67 each and a total fair value of € 20 million, which will be amortized over the three-year vesting period.

During 2009, FMC-AG & Co. KGaA received cash of € 46 million from the exercise of stock options and € 6 million from a related tax benefit. The intrinsic value of options exercised in 2009 was € 20 million.

At December 31, 2009, the Management Board members of FMC Management AG, held 2,041,121 stock options for ordinary shares and employees of FMC-AG & Co. KGaA held 9,852,942 stock options for ordinary shares and 146,601 stock options for preference shares under the various stock-based compensation plans of Fresenius Medical Care.



The table below provides reconciliations for options outstanding at December 31, 2009 as compared to December 31, 2008.

|                                                                     | Number of options<br>in thousand | Weighted-average<br>exercise price<br>in € |
|---------------------------------------------------------------------|----------------------------------|--------------------------------------------|
| <b>Balance at December 31, 2008 (options for ordinary shares)</b>   | <b>11,280</b>                    | <b>29.15</b>                               |
| Granted                                                             | 2,585                            | 32.08                                      |
| Exercised                                                           | 1,815                            | 24.08                                      |
| Forfeited                                                           | 156                              | 33.18                                      |
| <b>Balance at December 31, 2009 (options for ordinary shares)</b>   | <b>11,894</b>                    | <b>30.50</b>                               |
| <b>Balance at December 31, 2008 (options for preference shares)</b> | <b>242</b>                       | <b>16.18</b>                               |
| Exercised                                                           | 74                               | 13.38                                      |
| Forfeited                                                           | 21                               | 11.04                                      |
| <b>Balance at December 31, 2009 (options for preference shares)</b> | <b>147</b>                       | <b>18.35</b>                               |

The following table provides a summary of fully vested options outstanding and exercisable for both preference and ordinary shares at December 31, 2009:

|                               | Number<br>of options<br>in thousand | Weighted-average<br>remaining<br>contractual life<br>in years | Weighted-average<br>exercise price<br>in € | Aggregate<br>intrinsic value<br>in million € |
|-------------------------------|-------------------------------------|---------------------------------------------------------------|--------------------------------------------|----------------------------------------------|
| Options for ordinary shares   | 4,589                               | 4.02                                                          | 25.27                                      | 54                                           |
| Options for preference shares | 147                                 | 3.91                                                          | 18.35                                      | 2                                            |

At December 31, 2009, total unrecognized compensation costs related to non-vested options granted under all plans were € 33 million. These costs are expected to be recognized over a weighted-average period of 1.6 years.

### 35. RELATED PARTY TRANSACTIONS

Prof. Dr. h.c. Roland Berger, a member of the Supervisory Board of Fresenius SE, is the chairman of the supervisory board of Roland Berger Strategy Consultants. In 2009, no services were rendered to the Fresenius Group by this company. In 2008 € 4 million were paid for consulting services rendered.

Klaus-Peter Müller, a member of the Supervisory Board of Fresenius SE, is the chairman of the supervisory board of Commerzbank AG. The Fresenius Group keeps business relations with Commerzbank under customary conditions. In 2008, the Fresenius Group paid € 4 million for services rendered in connection with the commitment relating to the financing for the APP acquisition.

Dr. Gerhard Rupprecht, a member of the Supervisory Board of Fresenius SE, is a member of the management board of Allianz SE and the chairman of the management board of Allianz Deutschland AG. Dr. Francesco De Meo, member of the Management Board of Fresenius SE, is a member of the supervisory board of Allianz Private Krankenversicherungs-AG. In 2009, the Fresenius Group paid € 7 million for insurance premiums to Allianz (2008: € 7 million).

Dr. Dieter Schenk, deputy chairman of the Supervisory Board of Fresenius SE, is a partner in the law firm Noerr LLP (formerly: Nörr Stiefenhofer Lutz) that provides legal services to the Fresenius Group. In 2009, the Fresenius Group paid this law firm € 1 million for services rendered (2008: € 1 million).

### 36. SUBSEQUENT EVENTS

There have been no significant changes in the Fresenius Group's operating environment following the end of the fiscal year 2009. No other events of material importance on the assets and liabilities, financial position, and results of operations of the Group have occurred following the end of the fiscal year.



## NOTES IN ACCORDANCE WITH THE GERMAN COMMERCIAL CODE (HGB)

### 37. COMPENSATION OF THE MANAGEMENT BOARD AND THE SUPERVISORY BOARD

Individualized information regarding the compensation of the members of the Management Board and of the Supervisory Board is disclosed in the Compensation Report (see page 20 ff.), which is part of the Management Report.

The Management Board's compensation is, as a whole, performance-oriented and consisted of three components in 2009: non-performance-related compensation (basic salary), performance-related compensation (variable bonus), and a long-term incentive component (stock options).

The cash compensation paid to the Management Board for the performance of its responsibilities was € 9,345 thousand (2008: € 9,138 thousand). Thereof, € 3,635 thousand (2008: € 3,591 thousand) were not performance-related and € 5,204 thousand (2008: € 5,118 thousand) were performance-related. The amount of the performance-related compensation generally depends on the achievement of targets relating

to the net income of the Fresenius Group and business segments. As a long-term incentive component, the members of the Management Board received 180,600 stock options under the Fresenius SE Stock Option Plan 2008 and 99,600 stock options under the Fresenius Medical AG & Co. KGaA Stock Option Plan 2006.

The compensation paid to the Supervisory Board and its committees was € 1,584 thousand in 2009 (2008: € 1,488 thousand). Of this amount, € 183 thousand was fixed compensation (2008: € 183 thousand), € 100 thousand was compensation for committees services (2008: € 100 thousand), and € 1,301 thousand was variable compensation (2008: € 1,205 thousand).

In 2009, to former members of the Management Board, € 875 thousand (2008: € 1,386 thousand) were paid. The pension obligation for these persons amounted to € 9,878 thousand in 2009 (2008: € 10,056 thousand).

In the fiscal years 2009 and 2008, no loans or advance payments of future compensation components were made to members of the Management Board of Fresenius SE.

### 38. AUDITOR'S FEES

In 2009 and 2008, fees for the auditor KPMG AG Wirtschaftsprüfungsgesellschaft were expensed as follows:

| in million €                | 2009      |          | 2008      |          |
|-----------------------------|-----------|----------|-----------|----------|
|                             | Total     | Germany  | Total     | Germany  |
| Audit fees                  | 14        | 5        | 13        | 5        |
| Audit-related fees          | –         | –        | 2         | 2        |
| Tax consulting fees         | 1         | 0        | 1         | –        |
| Other fees                  | –         | –        | –         | 0        |
| <b>Total auditor's fees</b> | <b>15</b> | <b>5</b> | <b>16</b> | <b>7</b> |

### 39. CORPORATE GOVERNANCE

For each consolidated stock exchange listed entity, the declaration pursuant to Section 161 of the German Stock Corporation Act (Aktiengesetz) has been issued and made available to shareholders on the website of Fresenius SE [www.fresenius.com](http://www.fresenius.com) under Who we are/Corporate Governance/Declaration of Conformity and of Fresenius Medical Care AG & Co. KGaA [www.fmc-ag.com](http://www.fmc-ag.com) under Investor Relations/Corporate Governance/Declaration of Compliance, respectively.

### 40. PROPOSAL FOR THE DISTRIBUTION OF EARNINGS

The Management Board of Fresenius SE proposes to the Annual General Meeting that the earnings for 2009 of Fresenius SE are distributed as follows:

| in €                                                                                                                 |                       |
|----------------------------------------------------------------------------------------------------------------------|-----------------------|
| Payment of a dividend of € 0.75 per bearer ordinary share on the 80,657,688 ordinary shares entitled to dividend     | 60,493,266.00         |
| Payment of a dividend of € 0.76 per bearer preference share on the 80,657,688 preference shares entitled to dividend | 61,299,842.88         |
| Balance to be carried forward                                                                                        | 48,422.82             |
| <b>Retained earnings</b>                                                                                             | <b>121,841,531.70</b> |

#### 41. RESPONSIBILITY STATEMENT

"To the best of our knowledge, and in accordance with the applicable reporting principles, the consolidated financial statements give a true and fair view of the assets, liabilities, financial position and profit or loss of the Group, and the

Group management report includes a fair review of the development and performance of the business and the position of the Group, together with a description of the principal opportunities and risks associated with the expected development of the Group."

Bad Homburg v. d. H., February 24, 2010

The Management Board



Dr. U. M. Schneider



R. Baule



Dr. F. De Meo



Dr. J. Götz



Dr. B. Lipps



S. Sturm



Dr. E. Wastler

## AUDITOR'S REPORT

To the Fresenius Societas Europaea, Bad Homburg v. d. Höhe

We have audited the consolidated financial statements prepared by the Fresenius Societas Europaea, Bad Homburg v. d. Höhe, comprising the consolidated statement of income, the consolidated statement of comprehensive income, the consolidated statement of financial position, the consolidated statement of cash flows, the statement of changes in equity and the notes to the consolidated financial statements for the business year from January 1 to December 31, 2009. The preparation of the consolidated financial statements in accordance with Accounting Principles Generally Accepted in the United States of America (US GAAP) is the responsibility of the parent company's management. Our responsibility is to express an opinion on the consolidated financial statements based on our audit. In addition, we have been engaged to express an opinion as to whether the voluntarily prepared group management report is in agreement with the group management report of Fresenius Societas Europaea, Bad Homburg v. d. Höhe, prepared in accordance with § 290 and § 315 HGB [Handelsgesetzbuch "German Commercial Code"] apart from appropriate incorporation of US GAAP financial data.

We conducted our audit of the consolidated financial statements in accordance with § 317 HGB and German generally accepted standards for the audit of financial statements promulgated by the Institut der Wirtschaftsprüfer (IDW). Those standards require that we plan and perform the audit such that misstatements materially affecting the presentation of the net assets, financial position and results of operations in the consolidated financial statements in accordance with the

applicable financial reporting framework and in the group management report are detected with reasonable assurance. Knowledge of the business activities and the economic and legal environment of the Group and expectations as to possible misstatements are taken into account in the determination of audit procedures. The effectiveness of the accounting-related internal control system and the evidence supporting the disclosures in the consolidated financial statements and the group management report are examined primarily on a test basis within the framework of the audit. The audit includes assessing the annual financial statements of those entities included in consolidation, the determination of entities to be included in consolidation, the accounting and consolidation principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audit provides a reasonable basis for our opinion.

Our audit has not led to any reservations.

In our opinion, based on the findings of our audit, the consolidated financial statements comply with US GAAP and give a true and fair view of the net assets, financial position and results of operations of the Group in accordance with these requirements. The voluntarily prepared group management report is consistent with the consolidated financial statements prepared in accordance with US GAAP and is, apart from appropriate incorporation of US GAAP financial data, in agreement with the group management report of Fresenius Societas Europaea prepared in accordance with § 290 and § 315 HGB, on which we issued an unqualified statutory audit opinion. Based on this, the group management report as a whole provides a suitable view of the Group's position and suitably presents the opportunities and risks of future development.

Frankfurt am Main, February 24, 2010

KPMG AG

Wirtschaftsprüfungsgesellschaft



Hölzl  
German Public Auditor



Hommel  
German Public Auditor

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**Unconsolidated Financial Statements of Fresenius Finance B.V. for 2011 (Dutch-GAAP)**

## **Director's report**

Management of Fresenius Finance B.V. ("the company") hereby presents its financial statements for the financial year ended on 31 December 2011.

## **General information**

The company is a financing company. The principal activities of the company consist of borrowing and lending activities to affiliated companies from Fresenius SE & Co. KGaA.

At balance sheet date the company has issued Eurobonds for EUR 1,150,000,000, the company has Euronotes for EUR 600,000,000 and the company has provided loans to affiliated companies for EUR 1,752,290,500.

The company, statutory seated in 's-Hertogenbosch, is a private limited company. The ultimate parent company is Fresenius SE & Co. KGaA, Bad Homburg, Germany.

The company is managed by two directors and uses services provided by affiliated companies and external advisers.

The objective of the company is to act as the most appropriate financing company for Fresenius SE & Co. KGaA and affiliated companies.

The company has not experienced significant problems related with the worldwide financial and economical crisis.

## **Financial information**

During 2011, the company continued her role as financing company for the Fresenius group.

In 2008, the company obtained participating interest in Fresenius Finance (Jersey) Limited. The principal activity of Fresenius Finance (Jersey) Limited was the issue of EUR 554,400,000 5.625%, Mandatory Exchangeable Bonds due 2011. The bonds have been bought by Fresenius Finance B.V. who in turn has sold the bonds to Fresenius SE & Co. KGaA, who has then sold the bonds to institutional investors. The company obtained a sellers loan from Fresenius Jersey Finance (Jersey) and a back-to-back receivers loan from Fresenius SE & Co. KGaA. The terms of the seller loans match the terms of the Mandatory Exchangeable Bonds, including the conversion option. Upon redemption these bonds will be mandatory exchangeable into ordinary shares in Fresenius Medical Care AG & Co. KGaA.

In 2011 the bonds were mandatory exchanged into ordinary shares in Fresenius Medical Care AG & Co. KGaA and both the sellers loan from Fresenius Finance (Jersey) Limited and the back-to-back receivers loan from Fresenius SE & Co. KGaA were settled.

Since the principal activity of Fresenius Finance (Jersey) Limited has ended with this mandatory exchange of the bonds the company was dissolved on 13 December 2011. As a result of this dissolution the participation of Fresenius Finance BV in Fresenius Finance (Jersey) has ended.

The operating result before taxation has increased from EUR 2,463,908 in 2010 to EUR 2,698,544 in 2011. This improvement (on balance) compared with 2010 is the result of a higher financial result (increased with EUR 231,998) and slightly decreased external costs (decreased with EUR 2,638).

The balance sheet total has decreased from EUR 2,358,691,122 at the end of 2010 to EUR 1,794,168,947 at the end of 2011.

The financial fixed assets decreased by EUR 302,280,879 (primary due to reclassification to receivables from affiliated companies).

The current assets decreased with EUR 262,237,380 (primary due to reclassification from financial fixed assets and repayments of loans by affiliated companies).

The shareholder's equity increased by EUR 6,170,706 to a negative amount of EUR 1,922,103 (mainly because of the change in hedging reserve of EUR 5,257,840 ). This negative hedging reserve will be offset against future interest receipts. Therefore, the company is considered as a going concern. On the other side the result of the current year of EUR 912,866 is added to the unappropriated result under the shareholder's equity.

The non-current liabilities decreased with EUR 304,723,753 (mainly because of EUR 300,000,000 Euronotes becoming due in 2012 which are now reported under current liabilities).

The current liabilities decreased with EUR 265,969,128 (mainly because of the loan of EUR 554,400,000 payable to Fresenius Finance (Jersey) Limited was paid in August 2011, this decrease was partly offset by the EUR 300,000,000 Euronotes that become due in 2012 which are now reported under current liabilities).

Significant risks and uncertainties depend on the risks and uncertainties in the affiliated companies that have outstanding loans from Fresenius Finance B.V.

Cash flows and funding requirements of the company are driven by the cash flows and funding requirements of the affiliated companies.

## **Financial and non-financial performance indicators**

Despite the improvement in operating result of EUR 234,636 the net result decreased with EUR 933,745 compared with 2010. This is mainly due to withholding taxes that are currently not deductible for an amount of EUR 1,108,549.

Outgoing cash flow exceeded incoming cash flows over the year and has resulted in a cash and cash equivalents net decrease of EUR 1,269,729.

## **Personnel related information**

During 2011 the company had two directors. One part time director (10% full time equivalent) was on the pay roll during the full year. The second director of the company received no emoluments.

## **Information regarding financial instruments**

### **General**

During the normal course of business, Fresenius Finance B.V. makes use of several financial instruments such as bonds, loans from and to affiliated companies, bank loans and cash balances with banks. Due to the use of these financial instruments, the company is exposed to interest rate risk, foreign currency risk and credit risk. The company uses derivative financial instruments to hedge its exposure to foreign exchange and interest rate risks arising from financing activities. Consequently a major part of the risk is covered. In accordance with its treasury policy, the company does not hold or issue derivative financial instruments for trading purposes.

### **Credit risk**

All financial instruments are concluded with either highly rated financial institutions or companies within the Fresenius SE & Co. KGaA group, which are expected to fully perform under the terms of the agreements. The company continuously monitors changes in credit ratings of counterparties. At the balance sheet date the credit risk concentrates on entities of the Fresenius SE & Co. KGaA group. Fresenius' credit quality is assessed and regularly reviewed by the leading rating agencies Moody's, Standard & Poor's, and Fitch. Standard & Poor's rating for Fresenius SE & Co. KGaA is currently BB with positive outlook, Moody's rating is currently Ba1 with stable outlook and Fitch's rating is currently BB+ with stable outlook.

The company does not expect any counterparties to fail to meet their obligations. The maximum exposure to credit risk is represented by the carrying amount of each financial asset, including derivative financial instruments, in the balance sheet.

### **Interest rate risk**

It is management's policy not to be exposed to significant open interest rate risk positions. Basically loans and borrowings are matched on an individual basis as much as possible. If this is not possible, the company enters into interest rate swaps to hedge the remaining interest rate risks. Interest rate swaps, denominated in euro, have been entered into to achieve an appropriate mix of fixed and floating rate exposure within the company's policy. The swaps mature in 2012 and 2014 following the maturity of the related loans and have fixed swap rates ranging from 5.495% to 5.905%. As from 31 December 2008 the variable interest on the long-term liabilities is 100% fixed by the interest rate swaps (effective hedge).

The company classifies interest rate swaps as cash flow hedges and states them at fair value. These amounts are recognised in the balance sheet as derivatives.

### **Foreign currency risk**

Until 1 September 2011, the company was exposed to foreign currency risk on loans to affiliated companies that were denominated in a currency other than the Euro. The company used forward exchange contracts to hedge its foreign currency risk. Most of the forward exchange contracts had maturities of less than one year after the balance sheet date. Where necessary, the forward exchange contracts were rolled over at maturity.



At balance sheet date the company has no foreign currency risk since the only loan in foreign currency between Fresenius Finance BV and Fresenius Kabi Poland issued in PLN was entirely settled by Fresenius Kabi Poland on 1 September 2011.

## **Future developments**

The company plans a new Senior Notes issue in March 2012 with the company being the issuer and Fresenius SE & Co. KGaA, Fresenius Kabi AG and Fresenius ProServe GmbH being the guarantors.

Investments in financial fixed assets (such as loans to affiliated companies) will be done if necessary for the affiliated companies.

No future activities regarding research and development are expected.

The profitability will mainly depend on the amounts of the loans provided to affiliated companies and the corresponding interest spread.

Incoming and outgoing cash flows are expected to remain in balance.

## **Responsibility statements**

As far as we are aware the financial statements give a true and fair view of the assets, liabilities, financial position and the profit or the loss of the company. The financial statements give a true and fair view regarding the position on the balance sheet date, the state of affairs during the financial year of the company and its associated companies whose information is disclosed in the financial statements, and the principal risks confronting the company are discussed.

Zeist, 28 February 2012

The Board of Directors

Jos Simons  
Bernard Dierickx

## Balance sheet as at 31 December 2011

(before profit appropriation)

|                                       |   | 2011          |     | 2010          |
|---------------------------------------|---|---------------|-----|---------------|
|                                       |   | EUR           | EUR | EUR           |
| <b>Fixed assets</b>                   |   |               |     |               |
| Fixed assets                          | 1 | 5,892         |     | 9,808         |
| Financial fixed assets                | 2 | 1,429,329,904 |     | 1,731,610,783 |
|                                       |   |               |     |               |
|                                       |   | 1,429,335,796 |     | 1,731,620,591 |
| <b>Current assets</b>                 |   |               |     |               |
| Receivables from affiliated companies | 3 | 364,590,976   |     | 624,944,926   |
| Other receivables                     | 4 | 155,897       |     | 769,598       |
| Cash and cash equivalents             | 5 | 86,278        |     | 1,356,007     |
|                                       |   |               |     |               |
|                                       |   | 364,833,151   |     | 627,070,531   |
|                                       |   |               |     |               |
|                                       |   | 1,794,168,947 |     | 2,358,691,122 |
| <b>Shareholder's equity</b>           |   |               |     |               |
| Issued capital                        | 6 | 18,151        |     | 18,151        |
| Share premium reserve                 | 6 | 1,981,857     |     | 1,981,857     |
| Hedging reserve                       | 6 | -9,404,135    |     | -14,661,975   |
| Retained earnings                     | 6 | 4,569,158     |     | 2,722,547     |
| Unappropriated result                 | 6 | 912,866       |     | 1,846,611     |
|                                       |   |               |     |               |
|                                       |   | -1,922,103    |     | -8,092,809    |
| <b>Non-current liabilities</b>        | 7 | 1,446,744,821 |     | 1,751,468,574 |
| <b>Current liabilities</b>            | 8 | 349,346,229   |     | 615,315,357   |
|                                       |   |               |     |               |
|                                       |   | 1,794,168,947 |     | 2,358,691,122 |

## Profit and loss account for the year ended 31 December 2011

|                                                   |    | 2011        |           | 2010        |           |
|---------------------------------------------------|----|-------------|-----------|-------------|-----------|
|                                                   |    | EUR         | EUR       | EUR         | EUR       |
| <b>Financial result</b>                           |    |             |           |             |           |
| Interest and similar income                       | 9  | 122,241,686 |           | 133,930,357 |           |
| Interest and similar charges                      | 10 | 119,305,170 |           | 131,225,839 |           |
|                                                   |    |             |           |             |           |
|                                                   |    |             | 2,936,516 |             | 2,704,518 |
| Costs of outsourced work and other external costs | 11 |             | 237,972   |             | 240,610   |
|                                                   |    |             |           |             |           |
| <b>Operating result before taxation</b>           |    |             | 2,698,544 |             | 2,463,908 |
|                                                   |    |             |           |             |           |
| Taxation on result                                | 12 |             | 677,129   |             | 617,297   |
| Withholding taxes                                 | 12 |             | 1,108,549 |             | -         |
|                                                   |    |             |           |             |           |
| <b>Net result</b>                                 |    |             | 912,866   |             | 1,846,611 |

## Cash flow statement for the year 2011

|                                                                                                            | 2011         |            | 2010        |            |
|------------------------------------------------------------------------------------------------------------|--------------|------------|-------------|------------|
|                                                                                                            | EUR          | EUR        | EUR         | EUR        |
| Result after taxation                                                                                      | 912,866      |            | 1,846,611   |            |
| Adjusted for:                                                                                              |              |            |             |            |
| • Changes in working capital<br>(excluding cash and cash<br>equivalents and short-term bank<br>overdrafts) | -6,921,586   |            | -3,701,585  |            |
| • Hedging reserve                                                                                          | 5,257,840    |            | 1,621,106   |            |
| • Exchange result                                                                                          | -            |            | -43,434     |            |
| • Depreciation fixed assets                                                                                | 3,915        |            | 2,273       |            |
| • Amortisation discount at issue and<br>issue costs Eurobonds                                              | 4,410,451    |            | 4,410,451   |            |
| <b>Cash flow from operating<br/>activities</b>                                                             |              | 3,663,486  |             | 4,135,422  |
| Investments in:                                                                                            |              |            |             |            |
| • Fixed assets                                                                                             | -            |            | -8,057      |            |
| • Financial fixed assets                                                                                   | -230,000,000 |            | -58,100,000 |            |
| Divestments in :                                                                                           |              |            |             |            |
| • Financial fixed assets                                                                                   | 232,081,215  |            | 61,299,921  |            |
| Loans to affiliated companies                                                                              | -7,014,430   |            | -6,128,156  |            |
| <b>Cash flow from investing<br/>activities</b>                                                             |              | -4,933,215 |             | -2,936,292 |
| Eurobonds and Euronotes                                                                                    | -            |            | -           |            |
| Short term bank loans                                                                                      | -            |            | -           |            |
| <b>Cash flow from financing</b>                                                                            |              | -          |             | -          |
| <b>Changes in cash equivalents</b>                                                                         |              | -1,269,729 |             | 1,199,130  |

## Statement of recognised income and expense for the year ended 31 December 2011

|                                                                    | 2011             |                  | 2010             |                  |
|--------------------------------------------------------------------|------------------|------------------|------------------|------------------|
|                                                                    | EUR              | EUR              | EUR              | EUR              |
| <b>Net result after taxes attributable to the company</b>          |                  | <b>912,866</b>   |                  | <b>1,846,611</b> |
| Changes in the fair value of the derivatives recognised in equity  | <b>5,257,840</b> |                  | <b>1,621,106</b> |                  |
| <b>Total of items recognised directly in equity of the company</b> |                  | <b>5,257,840</b> |                  | <b>1,621,106</b> |
| <b>Total result of the legal entity</b>                            |                  | <b>6,170,706</b> |                  | <b>3,467,717</b> |

# **Notes to the 2011 financial statements**

## **General**

### **Relationship with parent company and principal activities**

The company, statutory seated in 's-Hertogenbosch, the Netherlands, is a private limited company. The ultimate parent company is Fresenius SE & Co. KGaA, Bad Homburg, Germany.

The company is a financing company; the principal activities of the company consist of borrowing and lending activities.

The offices of the company are located at Amersfoortseweg 10 E, 3705 GJ ZEIST in the Netherlands.

### **Basis of preparation**

The financial statements have been prepared in accordance with Title 9 of Book 2 of the Netherlands Civil Code.

### **Solvency**

Given the objectives of the company, the company is economically interrelated with the ultimate holding company, Fresenius SE & Co. KGaA, Germany. In assessing the solvency and general risk profile of the company, the solvency of the Fresenius SE & Co. KGaA group as a whole needs to be considered.

### **Accounting policies**

If not stated otherwise, assets and liabilities are shown at historical cost.

An asset is disclosed in the balance sheet when it is probable that the expected future economic benefits that are attributable to the asset will flow to the entity and the cost of the asset can be reliably measured. A liability is disclosed in the balance sheet when it is expected to result in an outflow from the entity of resources embodying economic benefits and the amount of the obligation can be measured with sufficient reliability.

If a transaction results in a transfer of future economic benefits or when all risks relating to assets or liabilities transfer to a third party, the asset or liability is no longer included in the balance sheet. Assets and liabilities are not included in the balance sheet if economic benefits are not probable or cannot be measured with sufficient reliability.

The income and expenses are accounted for in the period to which they relate.

The preparation of the financial statements requires the management to form opinions and to make estimates and assumptions that influence the application of principles and the reported values of assets and liabilities and of income and expenditure. The actual results may differ from these estimates. The estimates and the underlying assumptions are constantly assessed. Revisions of estimates are recognised in the period in which the estimate is revised and in future periods for which the revision has consequences.

### **Application of Section 408, book 2 of the Netherlands Civil Code (BW)**

The company applied article 408 Book 2 of the Netherlands Civil Code, and was as such exempted from drawing up consolidated financial statements until Fresenius Finance (Jersey) Limited was dissolved in December 2011. The financial information of the company is consolidated in the consolidated financial statements of the ultimate parent company, Fresenius SE & Co. KGaA.

### **Principles for the translation of foreign currencies**

The reporting currency in the financial statements of Fresenius Finance B.V. is the euro (EUR), which is the company's functional currency.

Transactions in foreign currencies are translated at the foreign exchange rate ruling at the date of the transaction. Monetary assets and liabilities denominated in foreign currencies at the balance sheet date are translated to euro at the foreign exchange rate ruling at that date. Foreign exchange differences arising on translation are recognised in the income statement. Non-monetary assets and liabilities that are measured in terms of historical cost in a foreign currency are translated using the exchange rate at the date of the transaction. Non-monetary assets and liabilities denominated in foreign currencies that are stated at fair value are translated to euro at foreign exchange rates ruling at the dates the fair value was determined.

### **Financial instruments**

Financial instruments include investments in shares, trade and other receivables, cash and cash equivalents, loans and other financing commitments, trade and other payables.

Financial instruments also include derivative financial instruments (derivatives) embedded in contracts. These derivatives are not separated from the host contract by the company and are therefore recognised in accordance with the host contract.

Financial instruments are initially recognised at fair value. If instruments are not carried at fair value through profit and loss, then any directly attributable transaction costs are included in the initial measurement.

After initial recognition, financial instruments are valued in the manner described below.

### ***Derivatives and hedge accounting***

Derivatives are measured at fair value with recognition of all changes in value in the profit and loss account, except where hedge accounting is used to hedge the variability of future cash flows affecting the profit and loss account (cash flow hedge accounting).

If cash flow hedge accounting is used, the effective portion of the fair value changes of the derivatives is initially recognised in the revaluation reserve. As soon as the expected future transactions lead to the recognition of gains or losses in the profit and loss account, the respective amounts are taken from the revaluation reserve to the profit and loss account. If a hedged position in respect of an expected future transaction leads to the recognition in the balance sheet of a non-financial asset, the company adjust the cost price of this asset in line with the hedging results that have not yet been recognised in the profit and loss account.

In case a derivative no longer meets the conditions for hedge accounting, expires, is sold, or if the company has decided to no longer apply hedge accounting, the hedging relationship is terminated. The gains or losses recognised at the time of the termination of the hedging relationship remain in equity until the expected future transaction takes place. If the transaction is no longer expected to take place, the deferred gain or loss on the hedge recognised in equity is taken to the profit and loss account.

The company regularly assesses the effectiveness of its hedging relationships by comparing the cumulative value change of the hedged position with the cumulative value change of the derivatives.

The lower of the cumulative value change of the hedged position and the cumulative value change of the derivatives is recognised as a deferred gain or loss in the revaluation reserve.

If a derivative is a fair value hedge of a recognised asset or liability or an off-balance sheet commitment arising from a binding agreement, revaluation gains or losses on the derivative are recognised in profit or loss. These revaluation gains or losses are recognised simultaneously with any gains or losses on the hedged position that arise from the fair value change related to the specific risk of the hedged item or position.

The company documents its hedging relationships by means of specific hedging documentation.

The derivatives recorded under the current liabilities are linked with the current portion of the Euronotes. As from 2011 the derivatives linked with the non-current portion of the Euronotes are recorded under the non-current liabilities. For presentation and comparison purposes the 2010 figures have been adjusted accordingly resulting in the fact that all derivatives in the 2010 figures are now reported under non-current liabilities since at the end of 2010 all derivatives were linked with non-current portions of the Euronotes.

### ***Purchased notes and bonds***

Purchased notes and bonds which the company intends to hold to maturity (and is capable of doing so), are measured at amortised cost using the effective interest method, less impairment losses.

### ***Loans granted and other receivables***

Loans granted and other receivables are carried at amortised cost using the effective interest method, less impairment losses.



**Financial fixed assets**

Participating interests are valued at historic costs as the company applies section 408, book 2 BW.

The accounting policies for other financial fixed assets are included under the heading 'financial instruments'.

Dividends are recognised in the period in which they are declared. Interest income is recognised in the profit and loss account as it accrues, using the effective interest method. Any profit or loss is recognised in the profit or loss as accounted for under financial income or expenses.

**Interest and similar income**

Interest and similar income comprise interest income on funds invested, foreign exchange gains and gains on hedging instruments that are recognised in the income statement. Interest income is recognised in the income statement as it accrues, using the effective interest method.

**Interest and similar charges**

Interest and similar charges comprise interest charges on borrowings calculated using the effective interest rate method, foreign exchange losses and losses on hedging instruments that are recognised in the income statement.

**Costs of outsourced work and other external costs**

This concerns costs that are directly attributable to the operations of the company.

**Taxation on result**

The taxation on result comprises both current taxes payable and deferred taxes, taking account of tax facilities and non-deductible costs. No taxes are deducted from profits if and insofar as said profits can be offset against losses from previous years.

Taxes are deducted from losses if these can be offset against profits in previous years and results in a tax rebate. In addition, taxes may be deducted to the extent that it is probable that future taxable profits will be available against which the asset can be utilised.

Current tax is the expected tax payable on the taxable income for the year, using tax rates enacted or substantively enacted at the reporting date taking into account the tax facilities and any adjustment to tax payable in respect of previous years.

Deferred tax is provided using the balance sheet liability method, providing for temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for taxation purposes. The amount of deferred tax provided is based on the expected manner of realization or settlement of the carrying amount of assets and liabilities, using tax rates enacted or substantively enacted at the balance sheet date.

### **Share in the result from investments in participating interests**

The share in the result of participating interests consists of the share of the company in the result of these participating interests. The results of participating interests acquired or sold during the financial year are stated in the group result from the date of acquisition or until the date of sale respectively.

### **Cash flow statement**

The cash flow statement has been prepared using the indirect method. Cash flows in foreign currency are translated into euros at the average weighted exchange rates at the dates of the transactions.

Cash flows from financial derivatives that are stated as fair value hedges or cash flow hedges are attributed to the same category as the cash flows from the hedged balance sheet items. Cash flows from financial derivatives to which hedge accounting is no longer applied, are categorised in accordance with the nature of the instrument as from the date on which the hedge accounting is ended. The company uses the corporate treasury facilities offered by the parent company Fresenius SE & Co. KGaA. Consequently the cash movements need to be considered as cash movements in Fresenius SE & Co. KGaA on behalf of Fresenius Finance B.V.

### **Determination of fair value**

A number of accounting principles and disclosures require the determination of fair values, for both financial and non-financial assets and liabilities. For measurement and disclosure purposes, the fair value is determined on the basis of the following methods. If applicable, detailed information concerning the principles for determining the fair value is included in the section that specifically relates to the relevant asset or liability.

#### ***Financial assets***

The fair value of financial assets is determined on the basis of the listed closing (bid) price as at reporting date. The fair value of investments held to maturity is only determined for the benefit of the disclosures.

#### ***Trade and other receivables***

The fair value of trade and other receivables is estimated at the present value of future cash flows.

#### ***Derivatives***

The fair value of derivative instruments is based on the quoted market price, if available. If there is no market price available, the fair value is estimated on the basis of the expected cash flows discounted at the current interest rates, including a margin for discounting the relevant risks.

***Non-derivative financial obligations***

The fair value of non-derivative financial commitments is only determined for disclosure purposes and is calculated on the basis of the net present value of future repayments and interest payments, discounted at the market interest rate, including a margin for the relevant risks as at the reporting date.

## 1 Fixed assets

The fixed assets can be detailed as follows:

|                           | <b>Book value<br/>2011<br/>EUR</b> | <b>Book value<br/>2010<br/>EUR</b> |
|---------------------------|------------------------------------|------------------------------------|
| Office equipment          | <b>1,192</b>                       | 1,795                              |
| Hardware                  | <b>4,700</b>                       | 8,013                              |
| Balance as at 31 December | <b>5,892</b>                       | 9,808                              |

Office equipment is depreciated over 5 years. The asset value of the office equipment was 3,015 euro at start date. The total write-off at 31/12/2011 amounts to EUR 1,823. The remaining book value will be depreciated till 2014.

Hardware is depreciated over 3 years. The asset value of the hardware was EUR 10,405 at start date. The total write-off at 31/12/2011 amounts to EUR 5,705. The remaining book value will be depreciated till 2013.

## 2 Financial fixed assets

Movements in the financial fixed assets can be detailed as follows:

|                                                                           | <b>Participating<br/>interests<br/>EUR</b> | <b>Loans to affiliated<br/>companies<br/>EUR</b> | <b>Deferred taxes<br/>EUR</b> | <b>Total<br/>EUR</b> |
|---------------------------------------------------------------------------|--------------------------------------------|--------------------------------------------------|-------------------------------|----------------------|
| Balance as at 1 January 2010                                              | 125                                        | 1,726,603,270                                    | 5,007,388                     | 1,731,610,783        |
| • Loans provided                                                          |                                            | 230,000,000                                      |                               | 230,000,000          |
| • Loans redemptions                                                       |                                            | -232,081,090                                     |                               | -232,081,090         |
| • Other redemptions                                                       | -125                                       |                                                  |                               | -125                 |
| • Reclassification to Receivables from affiliated companies               |                                            | -298,400,000                                     |                               | -298,400,000         |
| • Tax effect of changes in fair value of derivatives recognized in equity |                                            |                                                  | -1,799,664                    | -1,799,664           |
| Balance as at 31 December 2011                                            | -                                          | 1,426,122,180                                    | 3,207,724                     | 1,429,329,904        |

**Loans to affiliated companies:**

The loans to affiliated companies as at 31 December 2011 comprise long-term loans to

*Fresenius SE & Co. KGaA* with a principal amount of EUR 381,874,860 (31 December 2010: EUR 583,355,950) containing the following loans

EUR 8,904,860 at 5.45 % due in 2013

EUR 50,700,000 at 6.10 % due in 2014

EUR 184,270,000 at 5.45 % due in 2016

EUR 138,000,000 at 7.40 % due in 2016

*Fresenius Kabi Spain* with a principal amount of EUR 42,740,000 (31 December 2010: EUR 42,740,000) at 5.45% due in 2013

*Fresenius Kabi Austria* with a principal amount of EUR 338,300,000 (31 December 2010: EUR 356,600,000) containing the following loans

EUR 50,000,000 at 5.45 % due in 2013

EUR 39,000,000 at 5.45 % due in 2013

EUR 149,300,000 at 6.10 % due in 2014

EUR 100,000,000 at 5.45 % due in 2015

*Fresenius Kabi Italia* with a principal amount of EUR 82,360,000 (31 December 2010: EUR 101,360,000) containing the following loans

EUR 77,860,000 at 5.45 % due in 2013

EUR 4,500,000 at 5.85 % due in 2014

*Fresenius Kabi Sweden* with a principal amount of EUR 326,500,000 (31 December 2010: EUR 326,500,000) containing the following loans

EUR 258,000,000 at 5.45 % due in 2013

EUR 68,500,000 at 5.45 % due in 2013

*Fresenius Kabi France* has no long term loans (31 December 2010: EUR 83,000,000) since the long term loan became a short term loan.

*Fresenius Kabi AG* with a principal amount of EUR 194,847,320 (31 December 2010: EUR 172,947,320) containing the following loans

EUR 158,847,320 at 5.45 % due in 2013

EUR 36,000,000 at 5.85 % due in 2014

*Proserve GMBH* with a principal amount of EUR 57,000,000 (31 December 2010: EUR 57,000,000) at 5.85% due in 2014

*Clinico Poland* with a principal amount of EUR 2,500,000 (31 December 2010: EUR 2,500,000) at 5.85% due in 2014

*Immobiliare Della Scalla* has no more loans as the outstanding loan was repaid earlier than was planned (31 December 2010: EUR 600,000).

The loans to affiliated companies are not secured.

The carrying amount of the loans does not significantly differ from the fair value of the loan.

### **Participating interest**

Until 13 December 2011, the company had a 100 % participating interest in Fresenius Finance (Jersey) Limited with registered office: 47 Esplanade, St. Helier, Jersey, JE01 OBD.

The principal activity of Fresenius Finance (Jersey) Limited was the issue of EUR 554,400,000 5.625%, Mandatory Exchangeable Bonds due 2011. The bonds have been bought by Fresenius Finance B.V. who in turn has sold the bonds to Fresenius SE & Co. KGaA, who has then sold the bonds to institutional investors. The company obtained a sellers-loan from Fresenius Jersey Finance (Jersey) and a back-to-back receivers-loan from Fresenius SE & Co. KGaA. The terms of the seller loans match the terms of the Mandatory Exchangeable Bonds. Upon redemption these bonds will be mandatory exchangeable into ordinary shares in Fresenius Medical Care AG & Co. KGaA.

In 2011 the bonds were mandatory exchanged into ordinary shares in Fresenius Medical Care AG & Co. KGaA and both the sellers loan from Fresenius Finance (Jersey) Limited and the back-to-back receivers loan from Fresenius SE & Co. KGaA were settled.

Since the principal activity of Fresenius Finance (Jersey) Limited has ended with this mandatory exchange of the bonds the company was dissolved on 13 December 2011. As a result of this dissolution the participation of Fresenius Finance BV in Fresenius Finance (Jersey) has ended.

### 3 Receivables from affiliated companies

|                                                                | 2011<br>EUR        | 2010<br>EUR        |
|----------------------------------------------------------------|--------------------|--------------------|
| Loans to Fresenius SE & Co. KGaA                               | 227,768,320        | 572,966,468        |
| Loan to Fresenius Kabi Poland                                  | -                  | 2,187,422          |
| Loan to Fresenius Kabi Italia                                  | 15,000,000         | -                  |
| Loan to Fresenius Kabi France                                  | 76,000,000         | -                  |
| Loan to Fresenius Kabi AG                                      | 7,400,000          | -                  |
| Accrued interest to receive from Fresenius SE & Co. KGaA       | 12,618,031         | 24,502,045         |
| Accrued interest to receive from Fresenius Kabi Austria        | 6,882,027          | 7,156,846          |
| Accrued interest to receive from Fresenius Kabi France         | 2,145,956          | 2,298,739          |
| Accrued interest to receive from Fresenius Kabi Poland         | -                  | 7,778              |
| Accrued interest to receive from Fresenius Kabi Sweden         | 7,414,271          | 7,448,787          |
| Accrued interest to receive from Fresenius Kabi Italia         | 2,299,667          | 1,846,512          |
| Accrued interest to receive from Fresenius Kabi Spain          | 970,554            | 970,554            |
| Accrued interest to receive from Clinico Poland                | 72,330             | 85,922             |
| Accrued interest to receive from Fresenius Kabi AG             | 4,370,692          | 3,824,099          |
| Accrued interest to receive from Fresenius Proserve GMBH       | 1,649,128          | 1,649,128          |
| Trade account receivable from Fresenius Finance Jersey Limited | -                  | 626                |
|                                                                | <b>364,590,976</b> | <b>624,944,926</b> |

The receivables from affiliated companies as at 31 December 2011 comprise receivables from *Fresenius SE & Co. KGaA* with a principal amount of EUR 227,768,320 (31 December 2010: EUR 572,966,468) containing the following receivables

EUR 200,000,000 at 5.70%

EUR 16,910,779 at 5.70 %

EUR 10,857,541 at 5.60 %

*Fresenius Kabi Italia* with a principal amount of EUR 15,000,000 (31 December 2010: EUR 0) at 5.60%.

*Fresenius Kabi France* with a principal amount of EUR 76,000,000 (31 December 2010: EUR 0) at 5.60%.

*Fresenius Kabi AG* with a principal amount of EUR 7,400,000 (31 December 2010: EUR 0) at 5.60%.

The loan from Fresenius Kabi Poland with a principal amount of EUR 2,187,422 due this year has been repaid by Fresenius Kabi Poland as expected.

All receivables from affiliated companies are due within 1 year and have not been pledged.

The carrying amount of the total loans portfolio does not significantly differ from the fair value of the total loans portfolio.

## 4 Other receivables

|                                                        | 2011<br>EUR    | 2010<br>EUR    |
|--------------------------------------------------------|----------------|----------------|
| Corporate Income Tax including withholding tax credits | 113,487        | 755,946        |
| Other                                                  | 42,410         | 13,652         |
|                                                        | <u>155,897</u> | <u>769,598</u> |

Reference is made to note 12 for further details on withholding taxes.

The other receivables include an amount of EUR 42,410 (2010: EUR 13,652) not due within one year.

## 5 Cash and cash equivalents

Cash at bank and in hand are stated at nominal value and are at free disposal.

## 6 Shareholders' equity

|                                                                 | Issued<br>capital | Share<br>premium<br>reserve | Hedging<br>reserve | Retained<br>earnings | Unappro-<br>priated<br>result | Total<br>2011 | Total 2010  |
|-----------------------------------------------------------------|-------------------|-----------------------------|--------------------|----------------------|-------------------------------|---------------|-------------|
|                                                                 | EUR               | EUR                         | EUR                | EUR                  | EUR                           | EUR           | EUR         |
| Balance as at 1 January                                         | 18,151            | 1,981,857                   | -14,661,975        | 2,722,547            | 1,846,611                     | -8,092,809    | -11,560,526 |
| Changes:                                                        |                   |                             |                    |                      |                               |               |             |
| Result for the year                                             |                   |                             |                    |                      | 912,866                       | 912,866       | 1,846,611   |
| Retained earnings                                               |                   |                             |                    | 1,846,611            | -1,846,611                    | -             | -           |
| Changes in fair value of<br>derivatives recognised<br>in equity |                   |                             | 5,257,840          |                      |                               | 5,257,840     | 1,621,106   |
| Balance as at<br>31 December                                    | 18,151            | 1,981,857                   | -9,404,135         | 4,569,158            | 912,866                       | -1,922,103    | -8,092,809  |

Referring to Article 178c sub 1, the authorized share capital of the company consists of 200 shares with a nominal value of EUR 453.78.

According to the Articles of Association, the shares are nominated in guilders NLG 1,000 per share. 40 shares are issued and fully paid. No changes occurred during the year.



The share premium reserve relates to income from the issuance of shares as far nominal value of the shares (income above par) is exceeded. No changes occurred during the year.

The hedging reserve comprises the effective portion of the cumulative net change in the fair value of cash flow hedging instruments related to hedged transactions that have not yet occurred, less deferred taxes.

## 7 Non-current liabilities

This note provides information about the contractual terms of the company's interest-bearing notes and bonds and borrowings. For more information about the company's exposure to interest rate and foreign currency risk, see note 8 - Financial Instruments.

The non-current liabilities can be specified as follows:

|                                                                        | <b>2011</b>          | <b>2010</b>   |
|------------------------------------------------------------------------|----------------------|---------------|
|                                                                        | <b>EUR</b>           | <b>EUR</b>    |
| Eurobonds                                                              | <b>1,136,209,661</b> | 1,131,799,211 |
| Euronotes – non-current portion                                        | <b>300,000,000</b>   | 600,000,000   |
| Derivatives – interest rate swaps related with non-current liabilities | <b>10,535,160</b>    | 19,669,363    |
|                                                                        | <b>1,446,744,821</b> | 1,751,468,574 |

### Eurobonds

The Eurobonds can be detailed as follows:

|                                | <b>Eurobond</b>    | <b>Eurobond</b>    | <b>Eurobond</b>    | <b>Total</b>         |
|--------------------------------|--------------------|--------------------|--------------------|----------------------|
|                                | <b>(2013)</b>      | <b>(2016)</b>      | <b>(2016)</b>      |                      |
|                                | <b>EUR</b>         | <b>EUR</b>         | <b>EUR</b>         | <b>EUR</b>           |
| Face value                     | <b>500,000,000</b> | <b>500,000,000</b> | <b>150,000,000</b> | <b>1,150,000,000</b> |
| Discount at issue              | <b>-2,295,000</b>  | <b>-3,430,000</b>  | <b>-12,000,000</b> | <b>-17,725,000</b>   |
| Issue costs                    | <b>-7,076,075</b>  | <b>-7,076,075</b>  | <b>-1,500,000</b>  | <b>-15,652,150</b>   |
| Accumulated amortisation       | <b>8,056,050</b>   | <b>6,320,940</b>   | <b>5,209,821</b>   | <b>19,586,811</b>    |
| Balance as at 31 December 2011 | <b>498,684,975</b> | <b>495,814,865</b> | <b>141,709,821</b> | <b>1,136,209,661</b> |

In January 2006, the company issued a bond with a total nominal value of EUR 1 billion. The new bond comprises one tranche with a nominal value of EUR 500 million, a maturity of 7 years and an annual interest rate of 5.0% and a second tranche with a nominal value of EUR 500 million, a maturity of 10 years and an annual interest rate of 5.5% as well as a call option for the issuer after five years. Fresenius SE & Co. KGaA, Fresenius Kabi AG and Fresenius ProServe GmbH are the guarantors for this issue.

In January 2009, Fresenius Finance B.V. issued a new Eurobond for a total amount of EUR 150,000,000. An aggregate principal amount of € 150 million was issued at a price of 92.0 % and a coupon of 5.5 %, resulting in a yield to maturity of 7.0 %. This Eurobond will mature in 2016 and is callable by the issuer from 2011.

The Eurobonds have been offered in a private placement to institutional investors only.

The fair values of the Fresenius Finance B.V. bonds at December 31, 2011 were as follows (in Mio EUR):

| Bond               | Nominal | Rate   | Fair Value |
|--------------------|---------|--------|------------|
| FFBV 2006/13 5.0 % | 500     | 1.0350 | 517.50     |
| FFBV 2006/16 5.5 % | 650     | 1.0450 | 679.25     |

## Euronotes

The long term Euronotes can be detailed as follows:

|                                | <b>LBBW<br/>(2014)<br/>EUR<br/>('000)</b> | <b>LBBW<br/>(2014)<br/>EUR<br/>('000)</b> | <b>LBBW<br/>(2014)<br/>EUR<br/>('000)</b> | <b>LBBW<br/>(2014)<br/>EUR<br/>('000)</b> | <b>Total<br/>EUR<br/>('000)</b> |
|--------------------------------|-------------------------------------------|-------------------------------------------|-------------------------------------------|-------------------------------------------|---------------------------------|
| Face value                     | 62,000                                    | 38,000                                    | 87,500                                    | 112,500                                   | 300,000                         |
| • Discount at issue            |                                           |                                           |                                           |                                           |                                 |
| • Accumulated amortisation     |                                           |                                           |                                           |                                           |                                 |
| • Redemption in 2011           |                                           |                                           |                                           |                                           |                                 |
| Balance as at 31 December 2011 | 62,000                                    | 38,000                                    | 87,500                                    | 112,500                                   | 300,000                         |

The interest rate on the remaining long term Euronotes with a principal amount of EUR 62 million is floating and is based on the 6 months Euribor rate with a surcharge of 0.90% . The company has entered into interest rate swaps to hedge the exposure of floating interest.

The interest rate on the remaining Euronotes with a principal amount of EUR 38 million is fixed at 5.753%.

The interest rate on the Euronotes of EUR 87.5 million is floating and is based on the 3 months Euribor rate with a surcharge of 1.90 %. The company has entered into interest rate swaps to hedge the exposure of floating interest.

The interest rate on the Euronotes EUR 112.5 million is fixed at 5.98%

The total fair value of the notes portfolio (non-current) amounts to EUR 310.62 million.

### Derivatives – non current liabilities

Derivatives, consisting of interest rate swaps are valued as follows. The fair value of interest rate swaps is calculated by discounting the future cash flows on the basis of the market interest rates applicable for the remaining term of the contract as of the date of the statement of financial position. To determine the fair value of foreign exchange forward contracts, the contracted forward is compared to the current forward rate for the remaining term of the contract as of the date of the statements of financial position. The result is then discounted on the basis of the market interest rates prevailing at the date of the statement of financial position for the respective currency.

The movement in derivatives can be detailed as follows:

|                                                                                                  | Interest rate<br>swaps<br>EUR |
|--------------------------------------------------------------------------------------------------|-------------------------------|
| <b>Fair value at 01.01.2011</b>                                                                  | <b>19,669,363</b>             |
| Derivatives linked with Euronotes that became current in 2011 reported under current liabilities | -8,157,237                    |
| Changes in fair value recognized in equity                                                       | -727,839                      |
| Changes in fair value recognized in profit and loss statement                                    | -                             |
| Tax effect of changes in fair value recognized in equity                                         | -249,127                      |
| <b>Fair value at 31.12.2011</b>                                                                  | <b>10,535,160</b>             |

The derivatives can be detailed as follows:

- Floating to fixed interest rate swaps

|                                        | EUR             |                            |
|----------------------------------------|-----------------|----------------------------|
|                                        | Notional amount | Fair value<br>(before tax) |
| Maturing 2 April 2014 fixed at 4.005 % | 87,500,000      | -5,174,684                 |
| Maturing 2 July 2014 fixed at 4.8800 % | 62,000,000      | -5,360,476                 |
|                                        |                 | <hr/> -10,535,160          |

## 8 Current liabilities

Current liabilities can be specified as follows:

|                                               | 2011<br>EUR | 2010<br>EUR |
|-----------------------------------------------|-------------|-------------|
| Trade creditors                               | 17,859      | 17,676      |
| Loan payable to affiliated company            | -           | 554,400,000 |
| Accounts payable to affiliated companies      | 521,860     | 431,795     |
| Derivatives – interest rate swaps             | 2,076,699   | -           |
| Derivatives –foreign exchange contracts       | -           | 28,094      |
| Accrued interest                              | 41,722,657  | 53,610,177  |
| Accrued issue costs                           | 4,781,476   | 6,714,239   |
| Euronotes - Current portion of long term debt | 300,000,000 | -           |
| Corporate income tax                          | 179,556     | -           |
| Other liabilities                             | 46,122      | 113,376     |
|                                               | <hr/>       | <hr/>       |
|                                               | 349,346,229 | 615,315,357 |
|                                               | <hr/>       | <hr/>       |

### Loan payable to affiliated company

The loan at 5.625 % payable to Fresenius Finance (Jersey) Limited has been repaid as planned in August 2011.

### Derivatives – current liabilities

Derivatives, consisting of interest rate swaps and foreign exchange forward contracts, are valued as follows. The fair value of interest rate swaps is calculated by discounting the future cash flows on the basis of the market interest rates applicable for the remaining term of the contract as of the date of the statement of financial position. To determine the fair value of foreign exchange forward contracts, the contracted forward is compared to the current forward rate for the remaining term of the contract as of the date of the statements of financial position. The result is then discounted on the basis of the market interest rates prevailing at the date of the statement of financial position for the respective currency.

The movement in derivatives can be detailed as follows:

|                                                                                                      | Interest rate<br>swaps | Foreign<br>exchange<br>contracts |
|------------------------------------------------------------------------------------------------------|------------------------|----------------------------------|
|                                                                                                      | EUR                    | EUR                              |
| <b>Fair value at 01.01.2011</b>                                                                      | -                      | 28,094                           |
| Derivatives linked with Euronotes that became current in 2011 which were still non-current last year | 8,157,237              | -                                |
| Changes in fair value recognized in equity                                                           | -4,530,001             | -                                |
| Changes in fair value recognized in profit and loss statement                                        | -                      | -28,094                          |
| Tax effect of changes in fair value recognized in equity                                             | -1,550,537             | -                                |
| <b>Fair value at 31.12.2011</b>                                                                      | 2,076,699              | -                                |

The derivatives can be detailed as follows:

- Floating to fixed interest rate swaps

|                                        | EUR             |                            |
|----------------------------------------|-----------------|----------------------------|
|                                        | Notional amount | Fair value<br>(before tax) |
| Maturing 2 April 2012 fixed at 3.895 % | 138,500,000     | -884,407                   |
| Maturing 2 July 2012 fixed at 4.8575 % | 74,000,000      | -1,192,292                 |
|                                        |                 | <hr/> -2,076,699           |

## Accrued interest

The accrued interest can be detailed as follows:

|                                             | <b>2011<br/>EUR</b>           | <b>2010<br/>EUR</b>    |
|---------------------------------------------|-------------------------------|------------------------|
| Eurobond EUR 500,000,000 (2013)             | <b>10,416,667</b>             | 10,416,667             |
| Eurobond EUR 500,000,000 (2016)             | <b>11,458,333</b>             | 11,458,333             |
| Eurobond EUR 150,000,000 (2016)             | <b>3,437,500</b>              | 3,437,500              |
| Euronotes                                   | <b>16,410,157</b>             | 16,421,746             |
| Loan MEB Fresenius Finance (Jersey) Limited | -                             | 11,875,931             |
|                                             | <hr/> <b>41,722,657</b> <hr/> | <hr/> 53,610,177 <hr/> |

## Accrued issue costs

This is related to issue costs of the Eurobonds that have been prepaid by Fresenius SE & Co. KGaA at issue date of the bonds.

The accrued issue costs of EUR 4,781,476 is the remaining liability at year end of which

- An amount of EUR 1,010,868 has a remaining term < 1 year.
- An amount of EUR 3,770,609 has a remaining term between 1 year and 5 years.

## Euronotes – current portion of long term debt

The short term portion of the Euronotes can be detailed as follows:

|                                | <b>LBBW<br/>(2012)<br/>EUR<br/>('000)</b> | <b>LBBW<br/>(2012)<br/>EUR<br/>('000)</b> | <b>LBBW<br/>(2012)<br/>EUR<br/>('000)</b> | <b>LBBW<br/>(2012)<br/>EUR<br/>('000)</b> | <b>Total<br/>EUR<br/>('000)</b> |
|--------------------------------|-------------------------------------------|-------------------------------------------|-------------------------------------------|-------------------------------------------|---------------------------------|
| Face value                     | <b>26,000</b>                             | <b>74,000</b>                             | <b>138,500</b>                            | <b>61,500</b>                             | <b>300,000</b>                  |
| • Discount at issue            |                                           |                                           |                                           |                                           |                                 |
| • Accumulated amortisation     |                                           |                                           |                                           |                                           |                                 |
| • Redemption in 2011           |                                           |                                           |                                           |                                           |                                 |
| Balance as at 31 December 2011 | <b>26,000</b>                             | <b>74,000</b>                             | <b>138,500</b>                            | <b>61,500</b>                             | <b>300,000</b>                  |

The interest rate on the remaining Euronotes with a principal amount of EUR 26 million is fixed and is 5.51%.

The interest rate on the remaining Euronotes with a principal amount of EUR 74 million is floating and is based on the 6 months Euribor rate with a surcharge of 0.70%. The company has entered into interest rate swaps to hedge the exposure of floating interest.

The interest rate on the remaining Euronotes with a principal amount of EUR 138.5 million is floating and is based on the 3 months Euribor rate with a surcharge of 1.60%. The company has entered into interest rate swaps to hedge the exposure of floating interest.

The interest rate on the remaining Euronotes with a principal amount of EUR 61.5 million is fixed and is 5.59%.

The total fair value of the notes portfolio amounts to EUR 300.92 million.

### **Corporate income tax**

Based on the 2011 taxable result and taking into consideration the corporate tax advances paid during 2011, the company has a corporate tax liability amounting to EUR 179,566.

## ***Financial instruments***

### **General**

During the normal course of business, Fresenius Finance B.V. makes use of several financial instruments such as bonds, notes, loans from and to affiliated companies and cash balances with banks. Due to the use of these financial instruments, the company is exposed to interest rate risk, foreign currency risk and credit risk. The company uses derivative financial instruments to hedge its exposure to foreign exchange and interest rate risks arising from financing activities. In accordance with its treasury policy, the company does not hold or issue derivative financial instruments for trading purposes.

Earnings of the company were not materially affected by hedge ineffectiveness in the reporting period since the critical terms of the interest and foreign exchange derivatives matched the critical terms of the underlying exposures.

### **Credit risk**

All financial instruments are concluded with either highly rated financial institutions or companies within the Fresenius SE & Co. KGaA group, which are expected to fully perform under the terms of the agreements. The company continuously monitors changes in credit ratings of counterparties. At the balance sheet date the credit risk concentrates on entities of the Fresenius SE & Co. KGaA group. The corporate credit rating of Fresenius SE & Co. KGaA at year end was for Standard & Poor's BB with positive outlook, for Moody's Baa1 with stable outlook and for Fitch's BB+ with stable outlook.

The company does not expect any counterparties to fail to meet their obligations. The maximum exposure to credit risk is represented by the carrying amount of each financial asset, including derivative financial instruments, in the balance sheet.

**Interest rate risk**

It is management's policy not to be exposed to significant open interest rate risk positions. Basically, lending's and borrowings are matched on an individual basis as much as possible. If this is not possible, the company enters into interest rate swaps to hedge interest rate risks.

Interest rate swaps, denominated in euro, have been entered into to achieve an appropriate mix of fixed and floating rate exposure within the company's policy. The swaps mature over the next 3.5 years following the maturity of the related loans and have fixed swap rates ranging from 5.495% to 5.905%. As from 31 December 2008 the variable interest on the long-term liabilities is 100% fixed by the interest rate swaps (effective hedge). The interest rate swaps are linked with Euronotes mentioned in note 7 and note 8.

The company classifies interest rate swaps as cash flow hedges and states them at fair value. These amounts are recognised in the balance sheet as derivatives.

**Foreign currency risk**

Until 1 September 2011, the company was exposed to foreign currency risk on loans to affiliated companies that are denominated in a currency other than the Euro. The company used forward exchange contracts to hedge its foreign currency risk. Most of the forward exchange contracts had maturities of less than one year after the balance sheet date. Where necessary, the forward exchange contracts were rolled over at maturity.

At balance sheet date the company has no foreign currency risk since the only loan in foreign currency since the loan between Fresenius Finance BV and Fresenius Kabi Poland issued in PLN was entirely settled on 1 September 2011.



## 9 Interest and similar income

Interest and similar income can be detailed as follows:

|                                                        | 2011<br>EUR        | 2010<br>EUR        |
|--------------------------------------------------------|--------------------|--------------------|
| Interest income Fresenius SE & Co. KGaA                | 56,088,942         | 67,610,521         |
| Interest income Fresenius Kabi Austria                 | 19,984,718         | 21,355,196         |
| Interest income Fresenius Kabi Sweden                  | 17,794,250         | 18,271,579         |
| Interest income Fresenius Kabi France                  | 4,412,300          | 5,047,072          |
| Interest income Fresenius Proserve GMBH                | 3,334,500          | 3,334,500          |
| Interest income Imm Isola della Scalla                 | 17,165             | 78,686             |
| Interest income Fresenius Kabi Spain                   | 2,329,330          | 2,411,171          |
| Interest income Fresenius Kabi Poland                  | 118,890            | 180,129            |
| Interest income Clinico Poland                         | 146,250            | 174,785            |
| Interest income Fresenius Kabi AG                      | 10,450,951         | 7,774,629          |
| Interest income Fresenius Kabi Italia                  | 5,453,603          | 5,566,817          |
| Interest income bank and third parties                 | 5,371              | 5,165              |
| Recharged loan fee Fresenius SE & Co. KGaA             | 108,814            | 144,878            |
| Recharged interest expenses to Fresenius SE & Co. KGaA | 1,932,761          | 1,932,761          |
| Fair value changes foreign exchange derivatives        | 63,052             | -                  |
| Other interest                                         | 789                | -                  |
| Foreign exchange differences                           | -                  | 42,468             |
|                                                        | <b>122,241,686</b> | <b>133,930,357</b> |

## 10 Interest and similar charges

Interest expenses and similar charges can be detailed as follows:

|                                                                                              | 2011<br>EUR        | 2010<br>EUR        |
|----------------------------------------------------------------------------------------------|--------------------|--------------------|
| Interest expense Eurobonds                                                                   | 65,160,451         | 65,160,451         |
| Interest expense long-term Euronotes                                                         | 34,357,670         | 34,326,503         |
| Interest expense loan MEB Fresenius Finance Jersey                                           | 19,309,068         | 31,185,000         |
| Commission on guarantee Fresenius SE & Co. KGaA -/Fresenius Proserve -<br>/Fresenius Kabi AG | 408,460            | 431,795            |
| Fair value changes foreign exchange derivatives                                              | 68,427             | 121,035            |
| Bank expenses                                                                                | 527                | 1,044              |
| Interest expense income taxes                                                                | 567                | 11                 |
|                                                                                              | <b>119,305,170</b> | <b>131,225,839</b> |

## **11 Costs of outsourced work and other external costs**

The costs of outsourced work and other external costs are detailed as follows:

|                                          | <b>2011</b>    | 2010    |
|------------------------------------------|----------------|---------|
|                                          | <b>EUR</b>     | EUR     |
| Salaries                                 | <b>9,004</b>   | 9,850   |
| Charged wages and salaries               | <b>47,700</b>  | 46,715  |
| Audit fees KPMG                          | <b>51,436</b>  | 73,698  |
| Tax advisory services KPMG Meijburg & Co | <b>9,282</b>   | 48,818  |
| Advisory fees                            | <b>61,191</b>  | 23,005  |
| Rent office building                     | <b>38,831</b>  | 22,303  |
| Other                                    | <b>20,528</b>  | 16,221  |
|                                          | <hr/>          | <hr/>   |
|                                          | <b>237,972</b> | 240,610 |
|                                          | <hr/>          | <hr/>   |

## **12 Taxation on result**

The applicable weighted average tax rate is 25.09% (2010: 25.05%). The tax liability in the profit and loss accounts over 2011 amounts to EUR 677,129 or 25.09% of the result before taxes. Based on the current tax structure of the company the utilization of the withholding tax credit stated on the balance sheet per 2011 is uncertain for the near future. Therefore this credit is valued at nil as of December 31, 2011.

## **13 Transactions with related parties**

It is normal course of business Fresenius Finance B.V. issues loans to affiliated companies. These transactions are conducted on a commercial basis under comparable conditions that apply to transactions with third parties.

## **14 Share in results from participating interests**

The share in results from participating interests was EUR 0 in 2011 (2010:0).

## **15 Employees**

During the year 1 part-time director (10% full time equivalent) was employed (2010: 0.10).

## **16        Emoluments of directors**

During 2011 the remuneration of the part time director (10% full time equivalent) who was on the pay roll amounted to EUR 9,004 (2010: EUR 9,850). The second director of the company received no emoluments during the financial year.

Zeist, 28 February 2012

The Board of Directors

J.M. Simons

B. Dierickx

## **Other information**

### **Independent auditor's report**

Reference is made to the last pages of this report.

### **Statutory stipulations concerning the appropriation of results**

Article 20 of the Articles of Association contains the following stipulations regarding the appropriation of results:

- Sub 1. The result is at the disposal of the General Meeting of Shareholders.
- Sub 2. Payments can only be made for at most the payable part of shareholder's equity.
- Sub 3. Payment of profit shall only be distributed after adoption of the financial statements proving that profit distribution is allowed.
- Sub 4. The company is allowed to make interim profit distributions provided this article's sub 2 is complied with.
- Sub 5. The General Meeting of Shareholders is allowed to make payments chargeable to retained earnings provided this article's sub 2 is complied with.
- Sub 6. The shareholder's claim on payment becomes barred by lapse of five years.

### **Proposal for the appropriation of the result 2011**

The following appropriation of the result after taxes for the year 2011 is proposed to the General Meeting of Shareholders: to include EUR 912,866 (100% of the net result after taxes) in the retained earnings within shareholder's equity.

# **Independent auditor's report**

To: the Shareholders of Fresenius Finance B.V.

## **Report on the financial statements**

We have audited the accompanying financial statements 2011 of Fresenius Finance B.V. ('s-Hertogenbosch), which comprise the balance sheet as at 31 December 2011, the profit and loss account for the year then ended and the notes, comprising a summary of the accounting policies and other explanatory information.

### ***Management's responsibility***

Management is responsible for the preparation and fair presentation of the financial statements and for the preparation of the Director's report, both in accordance with Part 9 of Book 2 of the Netherlands Civil Code. Furthermore, management is responsible for such internal control as it determines is necessary to enable the preparation of the financial statements that are free from material misstatement, whether due to fraud or error.

### ***Auditor's responsibility***

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with Dutch law, including the Dutch Standards on Auditing. This requires that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### ***Opinion***

In our opinion, the financial statements give a true and fair view of the financial position of Fresenius Finance B.V. as at 31 December 2011 and of its result for the year then ended in accordance with Part 9 of Book 2 of the Netherlands Civil Code.

## **Report on other legal and regulatory requirements**

Pursuant to the legal requirements under Section 2:393 sub 5 at e and f of the Netherlands Civil Code, we have no deficiencies to report as a result of our examination whether the Director's report,

to the extent we can assess, has been prepared in accordance with Part 9 of Book 2 of this Code, and if the information as required under Section 2:392 sub 1 at b - h has been annexed. Further, we report that the Director's report, to the extent we can assess, is consistent with the financial statements as required by Section 2:391 sub 4 of the Netherlands Civil Code.

Rotterdam, 28 February 2012

KPMG ACCOUNTANTS N.V.

A.A. Kuijpers RA

**Unconsolidated Financial Statements of Fresenius Finance B.V. for 2010 (Dutch-GAAP)**

**Fresenius Finance B.V.**

## **Director's report**

Management of Fresenius Finance B.V. ("the company") hereby presents its financial statements for the financial year ended on 31 December 2010.

## **General information**

The company is a financing company. The principal activities of the company consist of borrowing and lending activities to affiliated companies from Fresenius SE & Co. KGaA.

At balance sheet date the company has issued Eurobonds for EUR 1,150,000,000, the company has Euronotes for EUR 600,000,000, the company has a loan from an affiliated company for EUR 554,400,000 and the company has provided loans to affiliated companies for EUR 2,301,757,161.

The company, statutory seated in 's-Hertogenbosch, is a private limited company. The ultimate parent company is Fresenius SE & Co. KGaA, Bad Homburg, Germany.

The company has participating interest in Fresenius Finance (Jersey) Limited.

The company is managed by two directors and uses services provided by affiliated companies and external advisers.

The objective of the company is to act as the most appropriate financing company for Fresenius SE & Co. KGaA and affiliated companies.

The company has not experienced significant problems related with the worldwide financial and economical crisis.

## **Financial information**

During 2010, the company continued her role as financing company for the Fresenius group.

In 2008, the company obtained participating interest in Fresenius Finance (Jersey) Limited. The principal activity of Fresenius Finance (Jersey) Limited is the issue of EUR 554,400,000 5.625%, Mandatory Exchangeable Bonds due 2011. The bonds have been bought by Fresenius Finance B.V. who in turn has sold the bonds to Fresenius SE & Co. KGaA, who have then sold the bonds to institutional investors. The company obtained a sellers loan from Fresenius Jersey Finance (Jersey) and a back-to-back receivers loan from Fresenius SE & Co. KGaA. The terms of the seller loans match the terms of the Mandatory Exchangeable Bonds, including the conversion option. Upon redemption these bonds will be mandatory exchangeable into ordinary shares in Fresenius Medical Care AG & Co. KGaA. Since Fresenius Finance BV has entered the chain of transactions on a back to back basis, Fresenius Finance BV has no remaining conversion obligation. Management is of the intention and has the right to settle all transactions and associated positions in relation to the Mandatory Exchangeable Bonds on a net basis. Also taken into account the interrelatedness of these transactions and positions, the accounting is on a net basis.



## **Fresenius Finance B.V.**

The net result has increased from EUR 1,592,485 in 2009 to EUR 1,846,611 in 2010.

This improvement (on balance) compared with 2009 is the result of a higher financial result (increased with EUR 363,623 ) and slightly increased external costs (increased with EUR 9,694).

The balance sheet total has increased from EUR 2,355,083,963 at the end of 2009 to EUR 2,358,691,122 at the end of 2010.

The financial fixed assets decreased by EUR 560,298,784 (primary due to reclassification to receivables from affiliated companies).

The current assets increased with EUR 563,900,159 (primary due to reclassification from financial fixed assets).

The shareholder's equity increased by EUR 3,467,717 to a negative amount of EUR 8,092,809 (partly because of the change in hedging reserve of EUR 1,621,106 ). This negative hedging reserve will be offset against future interest receipts. Therefore, the company is considered as a going concern. On the other side the result of the current year of EUR 1,846,611 is added to the unappropriated result under the shareholder's equity.

The non-current liabilities decreased with EUR 554,989,549 (mainly because of the loan payable to Fresenius Finance (Jersey) Limited payable in August 2011 which is now reported under current liabilities).

The current liabilities increased with EUR 550,128,991 (mainly because of the loan payable to Fresenius Finance (Jersey) Limited payable in August 2011 which is now reported under current liabilities and was reported under non-current liabilities last year).

Significant risks and uncertainties depend on the risks and uncertainties in the affiliated companies that have outstanding loans from Fresenius Finance BV.

Cash flows and funding requirements of the company are driven by the cash flows and funding requirements of the affiliated companies.

## **Financial and non-financial performance indicators**

The net result improved with EUR 254,126 compared with 2009.

Incoming cash flow exceeded outgoing cash flows over the year and have resulted in a cash and cash equivalents net increase of EUR 1,199,130.

## **Personnel related information**

During 2010 the company had two directors. 1 part time director (10% full time equivalent) was on the pay roll during the full year. The second director of the company received no emoluments.

## **Information regarding financial instruments**

### **General**

During the normal course of business, Fresenius Finance B.V. makes use of several financial instruments such as bonds, loans from and to affiliated companies, bank loans and cash balances with banks. Due to the use of these financial instruments, the company is exposed to interest rate risk, foreign currency risk and credit risk. The company uses derivative financial instruments to hedge its exposure to foreign exchange and interest rate risks arising from financing activities. Consequently a major part of the risk is covered. In accordance with its treasury policy, the company does not hold or issue derivative financial instruments for trading purposes.

### **Credit risk**

All financial instruments are concluded with either highly rated financial institutions or companies within the Fresenius SE & Co. KGaA group, which are expected to fully perform under the terms of the agreements. The company continuously monitors changes in credit ratings of counterparties. At the balance sheet date the credit risk concentrates on entities of the Fresenius SE & Co. KGaA group. Fresenius' credit quality is assessed and regularly reviewed by the leading rating agencies Moody's, Standard & Poor's, and Fitch. Standard & Poor's rating for Fresenius SE & Co. KGaA is BB, Moody's rating is Ba1 and Fitch's rating is BB. All three rating agencies raised their rating outlook in 2010. In April Standard & Poor's raised its outlook from "stable" to "positive". In May Moody's raised its outlook from "negative" to "stable". Finally, Fitch raised its outlook from "stable" to "positive" in August.

The company does not except any counterparties to fail to meet their obligations. The maximum exposure to credit risk is represented by the carrying amount of each financial asset, including derivative financial instruments, in the balance sheet.

### **Interest rate risk**

It is management's policy not to be exposed to significant open interest rate risk positions. Basically, lendings and borrowings are matched on an individual basis as much as possible. If this is not possible, the company enters into interest rate swaps to hedge the remaining interest rate risks. Interest rate swaps, denominated in euro, have been entered into to achieve an appropriate mix of fixed and floating rate exposure within the company's policy. The swaps mature over the next 4.5 years following the maturity of the related loans and have fixed swap rates ranging from 5.495% to 5.905%. As from 31 December 2008 the variable interest on the long-term liabilities is 100% fixed by the interest rate swaps (effective hedge).

The company classifies interest rate swaps as cash flow hedges and states them at fair value. These amounts are recognised in the balance sheet as derivatives.

## **Fresenius Finance B.V.**

### **Foreign currency risk**

The company is exposed to foreign currency risk on loans to affiliated companies that are denominated in a currency other than the Euro. The company uses forward exchange contracts to hedge its foreign currency risk. Most of the forward exchange contracts have maturities of less than one year after the balance sheet date. Where necessary, the forward exchange contracts are rolled over at maturity.

The fair values of the forward exchange contracts are recognized in the balance sheet as derivatives.

### **Future developments**

No major investments are foreseen for the near future. Investments in financial fixed assets (such as loans to affiliated companies) will be done if necessary for the affiliated companies.

No major financing is foreseen for the near future. Extra financing will be done if necessary for the affiliated companies.

No future activities regarding research and development are expected.

The profitability will mainly depend on the amounts of the loans provided to affiliated companies and the corresponding interest spread.

Incoming and outgoing cash flows are expected to remain in balance.

### **Responsibility statements**

As far as we are aware the financial statements give a true and fair view of the assets, liabilities, financial position and the profit or the loss of the company. The financial statements give a true and fair view regarding the position on the balance sheet date, the state of affairs during the financial year of the company and its associated companies whose information is disclosed in the financial statements, and the principal risks confronting the company are discussed.

's-Hertogenbosch, 07 April 2011

The Board of Directors

Jos Simons  
Bernard Dierickx

## Balance sheet as at 31 December 2010

(before profit appropriation)

|                                       |   | 2010        |               | 2009          |
|---------------------------------------|---|-------------|---------------|---------------|
|                                       |   | EUR         | EUR           | EUR           |
| <b>Fixed assets</b>                   |   |             |               |               |
| Fixed assets                          | 1 |             | 9,808         | 4,024         |
| Financial fixed assets                | 2 |             | 1,731,610,783 | 2,291,909,567 |
| <b>Current assets</b>                 |   |             |               |               |
| Receivables from affiliated companies | 3 | 624,944,926 |               | 62,461,629    |
| Other receivables                     | 4 | 769,598     |               | 551,866       |
| Cash and cash equivalents             | 5 | 1,356,007   |               | 156,877       |
|                                       |   |             | 627,070,531   | 63,170,372    |
|                                       |   |             | 2,358,691,122 | 2,355,083,963 |
| <b>Shareholder's equity</b>           |   |             |               |               |
| Issued capital                        | 6 | 18,151      |               | 18,151        |
| Share premium reserve                 | 6 | 1,981,857   |               | 1,981,857     |
| Hedging reserve                       | 6 | -14,661,975 |               | -16,283,081   |
| Retained earnings                     | 6 | 2,722,547   |               | 1,130,062     |
| Unappropriated result                 | 6 | 1,846,611   |               | 1,592,485     |
|                                       |   |             | -8,092,809    | -11,560,526   |
| <b>Non-current liabilities</b>        | 7 |             | 1,731,799,211 | 2,281,788,760 |
| <b>Current liabilities</b>            | 8 |             | 634,984,720   | 84,855,729    |
|                                       |   |             | 2,358,691,122 | 2,355,083,963 |

## Profit and loss account for the year ended 31 December 2010

|                                                   |    | 2010        |           | 2009        |
|---------------------------------------------------|----|-------------|-----------|-------------|
|                                                   |    | EUR         | EUR       | EUR         |
| <b>Financial result</b>                           |    |             |           |             |
| Interest and similar income                       | 9  | 133,930,357 |           | 131,495,156 |
| Interest and similar charges                      | 10 | 131,225,839 |           | 129,154,261 |
|                                                   |    |             |           |             |
|                                                   |    |             | 2,704,518 | 2,340,895   |
| Costs of outsourced work and other external costs | 11 | 240,610     |           | 230,916     |
| <b>Operating result before taxation</b>           |    |             |           |             |
|                                                   |    |             | 2,463,908 | 2,109,979   |
| Taxation on result                                | 12 | 617,297     |           | 517,494     |
| <b>Net result</b>                                 |    |             |           |             |
|                                                   |    |             | 1,846,611 | 1,592,485   |

## Cash flow statement for the year 2010

|                                                                                                            | 2010        |            | 2009         |             |
|------------------------------------------------------------------------------------------------------------|-------------|------------|--------------|-------------|
|                                                                                                            | EUR         | EUR        | EUR          | EUR         |
| Result after taxation                                                                                      | 1,846,611   |            | 1,592,485    |             |
| Adjusted for:                                                                                              |             |            |              |             |
| • Changes in working capital<br>(excluding cash and cash<br>equivalents and short-term bank<br>overdrafts) | -3,701,585  |            | 2,871,426    |             |
| • Hedging reserve                                                                                          | 1,621,106   |            | -3,888,603   |             |
| • Exchange result                                                                                          | -43,434     |            | 8,127        |             |
| • Depreciation fixed assets                                                                                | 2,273       |            | 1,126        |             |
| • Amortisation discount at issue and<br>issue costs Eurobonds                                              | 4,410,451   |            | 3,577,415    |             |
| <b>Cash flow from operating<br/>activities</b>                                                             |             | 4,135,422  |              | 4,161,976   |
| Investments in:                                                                                            |             |            |              |             |
| • Fixed assets                                                                                             | -8,057      |            | -5,150       |             |
| • Financial fixed assets                                                                                   | -58,100,000 |            | -290,551,963 |             |
| Divestments in :                                                                                           |             |            |              |             |
| • Financial fixed assets                                                                                   | 61,299,921  |            | 184,648,979  |             |
| Loans to affiliated companies                                                                              | -6,128,156  |            | 63,674,980   |             |
| <b>Cash flow from investing<br/>activities</b>                                                             |             | -2,936,292 |              | -42,233,154 |
| Eurobonds and Euronotes                                                                                    | 0           |            | 138,000,000  |             |
| Short term bank loans                                                                                      | 0           |            | -100,000,000 |             |
| <b>Cash flow from financing</b>                                                                            |             | 0          |              | 38,000,000  |
| <b>Changes in cash equivalents</b>                                                                         |             | 1,199,130  |              | -71,178     |

## Statement of recognised income and expense for the year ended 31 December 2010

|                                                                    | 2010             | 2009              |
|--------------------------------------------------------------------|------------------|-------------------|
|                                                                    | EUR              | EUR               |
| <b>Net result after taxes attributable to the company</b>          | <b>1,846,611</b> | <b>1,592,485</b>  |
| Changes in the fair value of the derivatives recognised in equity  | <u>1,621,106</u> | <u>-3,888,603</u> |
| <b>Total of items recognised directly in equity of the company</b> | <b>1,621,106</b> | <b>-3,888,603</b> |
| <b>Total result of the legal entity</b>                            | <b>3,467,717</b> | <b>-2,296,118</b> |

**Fresenius Finance B.V.**

## **Notes to the 2010 financial statements**

### **General**

#### **Relationship with parent company and principal activities**

The company, statutory seated in 's-Hertogenbosch, the Netherlands, is a private limited company. The ultimate parent company is Fresenius SE & Co. KGaA, Bad Homburg, Germany.

The company is a financing company; the principal activities of the company consist of borrowing and lending activities.

#### **Basis of preparation**

The financial statements have been prepared in accordance with Title 9 of Book 2 of the Netherlands Civil Code.

#### **Solvency**

Given the objectives of the company, the company is economically interrelated with the ultimate holding company, Fresenius SE & Co. KGaA, Germany. In assessing the solvency and general risk profile of the company, the solvency of the Fresenius SE & Co. KGaA group as a whole needs to be considered.

### **Accounting policies**

The figures for 2009 in the cash flow statement have been reclassified to be conform with current year's presentation.

If not stated otherwise, assets and liabilities are shown at historical cost.

An asset is disclosed in the balance sheet when it is probable that the expected future economic benefits that are attributable to the asset will flow to the entity and the cost of the asset can be reliably measured. A liability is disclosed in the balance sheet when it is expected to result in an outflow from the entity of resources embodying economic benefits and the amount of the obligation can be measured with sufficient reliability.

If a transaction results in a transfer of future economic benefits and or when all risks relating to assets or liabilities transfer to a third party, the asset or liability is no longer included in the balance sheet. Assets and liabilities are not included in the balance sheet if economic benefits are not probable or cannot be measured with sufficient reliability.

The income and expenses are accounted for in the period to which they relate.



## **Fresenius Finance B.V.**

The preparation of the financial statements requires the management to form opinions and to make estimates and assumptions that influence the application of principles and the reported values of assets and liabilities and of income and expenditure. The actual results may differ from these estimates. The estimates and the underlying assumptions are constantly assessed. Revisions of estimates are recognised in the period in which the estimate is revised and in future periods for which the revision has consequences.

### **Application of Section 408, book 2 of the Netherlands Civil Code (BW)**

The company applies article 408 Book 2 of the Netherlands Civil Code, and is as such exempted from drawing up consolidated financial statements. The financial information of the company is consolidated in the consolidated financial statements of the ultimate parent company, Fresenius SE & Co. KGaA.

### **Principles for the translation of foreign currencies**

The reporting currency in the financial statements of Fresenius Finance B.V. is the euro (EUR), which is the company's functional currency.

Transactions in foreign currencies are translated at the foreign exchange rate ruling at the date of the transaction. Monetary assets and liabilities denominated in foreign currencies at the balance sheet date are translated to euro at the foreign exchange rate ruling at that date. Foreign exchange differences arising on translation are recognised in the income statement. Non-monetary assets and liabilities that are measured in terms of historical cost in a foreign currency are translated using the exchange rate at the date of the transaction. Non-monetary assets and liabilities denominated in foreign currencies that are stated at fair value are translated to euro at foreign exchange rates ruling at the dates the fair value was determined.

### **Financial instruments**

Financial instruments include investments in shares, trade and other receivables, cash and cash equivalents, loans and other financing commitments, trade and other payables.

Financial instruments also include derivative financial instruments (derivatives) embedded in contracts. These derivatives are not separated from the host contract by the company and are therefore recognised in accordance with the host contract.

Financial instruments are initially recognised at fair value. If instruments are not carried at fair value through profit and loss, then any directly attributable transaction costs are included in the initial measurement.

After initial recognition, financial instruments are valued in the manner described below.

## **Fresenius Finance B.V.**

### ***Derivatives***

Derivatives are measured at fair value with recognition of all changes in value in the profit and loss account, except where hedge accounting is used the hedge the variability of future cash flows affecting the profit and loss account (cash flow hedge accounting).

If cash flow hedge accounting is used, the effective portion of the fair value changes of the derivatives is initially recognised in the revaluation reserve. As soon as the expected future transactions lead to the recognition of gains or losses in the profit and loss account, the respective amounts are taken from the revaluation reserve to the profit and loss account. If a hedged position in respect of an expected future transaction leads to the recognition in the balance sheet of a non-financial asset, the company adjust the cost price of this asset in line with the hedging results that have not yet been recognised in the profit and loss account.

If a derivative no longer meets the conditions for hedge accounting, expires or is sold, or if the company has decided to no longer apply hedge accounting, the hedging relationship is terminated. The gains or losses recognised at the time of the termination of the hedging relationship remain in equity until the expected future transaction takes place. If the transaction is no longer expected to take place, the deferred gain or loss on the hedge recognised in equity is taken to the profit and loss account.

The company regularly assesses the effectiveness of its hedging relationships by comparing the cumulative value change of the hedged position with the cumulative value change of the derivatives.

The lower of the cumulative value change of the hedged position and the cumulative value change of the derivatives is recognised as a deferred gain or loss in the revaluation reserve.

If a derivative is a fair value hedge of a recognised asset or liability or an off-balance sheet commitment arising from a binding agreement, revaluation gains or losses on the derivative are recognised in profit or loss. These revaluation gains or losses are recognised simultaneously with any gains or losses on the hedged position that arise from the fair value change related to the specific risk of the hedged item or position.

The company documents its hedging relationships by means of specific hedging documentation.

The derivatives are recorded under the current liabilities.

### ***Purchased notes and bonds***

Purchased notes and bonds which the company intends to hold to maturity (and is capable of doing so), are measured at amortised cost using the effective interest method, less impairment losses.

### ***Loans granted and other receivables***

Loans granted and other receivables are carried at amortised cost using the effective interest method, less impairment losses.

## **Fresenius Finance B.V.**

### ***Other financial commitments***

Financial commitments that are not held for trading purposes are carried at amortised cost using the effective interest rate method.

### ***Hedge accounting***

The company uses forward exchange contracts to hedge exchange rate and interest risks resulting from operational financing transactions. The company may apply cash flow hedge accounting in order to simultaneously recognise both the results from changes in the value of the derivative instrument and the hedged cash flows in the profit and loss account.

### **Financial fixed assets**

Participating interests are valued at historic costs as the company applies section 408, book 2 BW.

The accounting policies for other financial fixed assets are included under the heading 'financial instruments'.

Dividends are recognised in the period in which they are declared. Interest income is recognised in the profit and loss account as it accrues, using the effective interest method. Any profit or loss is recognised in the profit or loss as accounted for under financial income or expenses.

### **Interest and similar income**

Interest and similar income comprise interest income on funds invested, foreign exchange gains and gains on hedging instruments that are recognised in the income statement. Interest income is recognised in the income statement as it accrues, using the effective interest method.

### **Interest and similar charges**

Interest and similar charges comprise interest charges on borrowings calculated using the effective interest rate method, foreign exchange losses and losses on hedging instruments that are recognised in the income statement.

### **Costs of outsourced work and other external costs**

This concerns costs that are directly attributable to the operations of the company.

### **Taxation on result**

The taxation on result comprises both current taxes payable and deferred taxes, taking account of tax facilities and non-deductible costs. No taxes are deducted from profits if and insofar as said profits can be offset against losses from previous years.

## **Fresenius Finance B.V.**

Taxes are deducted from losses if these can be offset against profits in previous years and results in a tax rebate. In addition, taxes may be deducted to the extent that it is probable that future taxable profits will be available against which the asset can be utilised.

Current tax is the expected tax payable on the taxable income for the year, using tax rates enacted or substantively enacted at the reporting date taking into account the tax facilities and any adjustment to tax payable in respect of previous years.

Deferred tax is provided using the balance sheet liability method, providing for temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for taxation purposes. The amount of deferred tax provided is based on the expected manner of realization or settlement of the carrying amount of assets and liabilities, using tax rates enacted or substantively enacted at the balance sheet date.

### **Share in the result from investments in participating interests**

The share in the result of participating interests consists of the share of the company in the result of these participating interests. The results of participating interests acquired or sold during the financial year are stated in the group result from the date of acquisition or until the date of sale respectively.

### **Cash flow statement**

The cash flow statement has been prepared using the indirect method. Cash flows in foreign currency are translated into euros at the average weighted exchange rates at the dates of the transactions.

Cash flows from financial derivatives that are stated as fair value hedges or cash flow hedges are attributed to the same category as the cash flows from the hedged balance sheet items. Cash flows from financial derivatives to which hedge accounting is no longer applied, are categorised in accordance with the nature of the instrument as from the date on which the hedge accounting is ended. The company uses the corporate treasury facilities offered by the parent company Fresenius SE & Co. KGaA. Consequently the cash movements need to be considered as cash movements in Fresenius SE & Co. KGaA on behalf of Fresenius Finance B.V.

### **Determination of fair value**

A number of accounting principles and disclosures require the determination of fair values, for both financial and non-financial assets and liabilities. For measurement and disclosure purposes, the fair value is determined on the basis of the following methods. If applicable, detailed information concerning the principles for determining the fair value is included in the section that specifically relates to the relevant asset or liability.

## **Fresenius Finance B.V.**

### ***Financial assets***

The fair value of financial assets is determined on the basis of the listed closing (bid) price as at reporting date. The fair value of investments held to maturity is only determined for the benefit of the disclosures.

### ***Trade and other receivables***

The fair value of trade and other receivables is estimated at the present value of future cash flows.

### ***Derivatives***

The fair value of derivative instruments is based on the quoted market price, if available. If there is no market price available, the fair value is estimated on the basis of the expected cash flows discounted at the current interest rates, including a margin for discounting the relevant risks.

### ***Non-derivative financial obligations***

The fair value of non-derivative financial commitments is only determined for disclosure purposes and is calculated on the basis of the net present value of future repayments and interest payments, discounted at the market interest rate, including a margin for the relevant risks as at the reporting date.

## **1 Fixed assets**

The fixed assets can be detailed as follows:

|                           | <b>Book value</b> | <b>Book value</b> |
|---------------------------|-------------------|-------------------|
|                           | <b>2010</b>       | <b>2009</b>       |
|                           | <b>EUR</b>        | <b>EUR</b>        |
| • Office equipment        | <b>1,795</b>      | 2,615             |
| • Hardware                | <b>8,013</b>      | 1,409             |
| Balance as at 31 December | <b>9,808</b>      | 4,024             |

Office equipment is depreciated over 5 years. The asset value of the office equipment was 3,015 euro at start date. The total write-off at 31/12/2010 amounts to EUR 1,220. The remaining book value will be depreciated till 2014.

Hardware is depreciated over 3 years. The asset value of the hardware was EUR 10,405 at start date. During the year there was a purchase of new hardware and an amount of EUR 8,057 was activated. The total write-off at 31/12/2010 amounts to EUR 2,392. The remaining book value will be depreciated till 2013.

## **2 Financial fixed assets**

Movements in the financial fixed assets can be detailed as follows:

|                                                                           | <b>Participating</b> | <b>Loans to affiliated</b> | <b>Deferred taxes</b> | <b>Total</b>         |
|---------------------------------------------------------------------------|----------------------|----------------------------|-----------------------|----------------------|
|                                                                           | <b>interests</b>     | <b>companies</b>           |                       |                      |
|                                                                           | <b>EUR</b>           | <b>EUR</b>                 | <b>EUR</b>            | <b>EUR</b>           |
| Balance as at 1 January 2010                                              | 125                  | 2,286,347,179              | 5,562,263             | 2,291,909,567        |
| • Loans provided                                                          |                      | <b>58,100,000</b>          |                       | <b>58,100,000</b>    |
| • Loans redemptions                                                       |                      | <b>-61,299,921</b>         |                       | <b>-61,299,921</b>   |
| • Reclassification to Receivables from affiliated companies               |                      | <b>-556,587,422</b>        |                       | <b>-556,587,422</b>  |
| • Exchange result                                                         |                      | <b>43,434</b>              |                       | <b>43,434</b>        |
| • Tax effect of changes in fair value of derivatives recognized in equity |                      |                            | <b>-554,875</b>       | <b>-554,875</b>      |
| Balance as at 31 December 2010                                            | <b>125</b>           | <b>1,726,603,270</b>       | <b>5,007,388</b>      | <b>1,731,610,783</b> |

## **Fresenius Finance B.V.**

### **Loans to affiliated companies:**

The loans to affiliated companies as at 31 December 2010 comprise long-term loans to

*Fresenius SE & Co. KGaA* with a principal amount of EUR 583,355,950 (31 December 2009: EUR 1,139,955,871) containing the following loans

EUR 200,000,000 at 5.70 % due in 2012

EUR 10,385,950 at 5.45 % due in 2013

EUR 50,700,000 at 6.10 % due in 2014

EUR 184,270,000 at 5.45 % due in 2016

EUR 138,000,000 at 7.40 % due in 2016

*Fresenius Kabi Spain* with a principal amount of EUR 42,740,000 (31 December 2009: EUR 48,040,000) at 5.45% due in 2013

*Fresenius Kabi Austria* with a principal amount of EUR 356,600,000 (31 December 2009: EUR 376,600,000) containing the following loans

EUR 90,000,000 at 5.45 % due in 2013

EUR 17,300,000 at 5.45 % due in 2013

EUR 149,300,000 at 6.10 % due in 2014

EUR 100,000,000 at 5.45 % due in 2015

*Fresenius Kabi Italia* with a principal amount of EUR 101,360,000 (31 December 2009: EUR 101,360,000) containing the following loans

EUR 15,000,000 at 5.60 % due in 2012

EUR 81,860,000 at 5.45 % due in 2013

EUR 4,500,000 at 5.85 % due in 2014

*Fresenius Kabi Sweden* with a principal amount of EUR 326,500,000 (31 December 2009: EUR 347,500,000) containing the following loans

EUR 258,000,000 at 5.45 % due in 2013

EUR 68,500,000 at 5.45 % due in 2013

*Fresenius Kabi France* with a principal amount of EUR 83,000,000 (31 December 2009: EUR 93,400,000) at 5.60% due in 2012

## **Fresenius Finance B.V.**

*Fresenius Kabi AG* with a principal amount of EUR 172,947,320 (31 December 2009: EUR 114,847,320) containing the following loans

EUR 136,547,320 at 5.45 % due in 2013

EUR 36,000,000 at 5.85 % due in 2014

EUR 400,000 at 5.60 % due in 2012

*Proserve GMBH* with a principal amount of EUR 57,000,000 (31 December 2009: EUR 57,000,000) at 5.85% due in 2014

*Clinico Poland* with a principal amount of EUR 2,500,000 (31 December 2009: EUR 3,500,000) at 5.85% due in 2014

*Immobiliare Della Scalla* with a principal amount of EUR 600,000 (31 December 2009: EUR 2,000,000) at 5.60% due in 2012

*Fresenius Kabi Polska Sp.* has no long term loans (31 December 2009: PLN 8,800,000 valued at EUR 2,152,115) since the long term loan became a short term loan.

The carrying amount of the loans does not significantly differ from the fair value of the loan.

## **Participating interest**

The company has a 100 % participating interest in Fresenius Finance (Jersey) Limited, registered office: 47 Esplanade, St. Helier, Jersey, JE01 OBD.

The principal activity of Fresenius Finance (Jersey) Limited is the issue of EUR 554,400,000 5.625%, Mandatory Exchangeable Bonds due 2011. The bonds have been bought by Fresenius Finance B.V. who in turn has sold the bonds to Fresenius SE & Co. KGaA, who has then sold the bonds to institutional investors. The company obtained a sellers-loan from Fresenius Jersey Finance (Jersey) and a back-to-back receivers-loan from Fresenius SE & Co. KGaA. The terms of the seller loans match the terms of the Mandatory Exchangeable Bonds. Upon redemption these bonds will be mandatory exchangeable into ordinary shares in Fresenius Medical Care AG & Co. KGaA. Since Fresenius Finance B.V. has entered the chain of transactions on a back to back basis, Fresenius Finance B.V. has no remaining conversion obligation. Management is of the intention and has the right to settle all transactions and associated positions in relation to the Mandatory Exchangeable Bonds on a net basis. Also taken into account the interrelatedness of these transactions and positions, the accounting is on a net basis.



## Fresenius Finance B.V.

### 3 Receivables from affiliated companies

|                                                                 | 2010<br>EUR        | 2009<br>EUR       |
|-----------------------------------------------------------------|--------------------|-------------------|
| Loans to Fresenius SE & Co. KGaA                                | 572,966,468        | 12,348,312        |
| Loan to Fresenius Kabi Poland                                   | 2,187,422          | 0                 |
| Accrued interest to receive from Fresenius SE & Co. KGaA        | 24,502,045         | 24,456,632        |
| Accrued interest to receive from Fresenius Kabi Austria         | 7,156,846          | 7,559,540         |
| Accrued interest to receive from Fresenius Kabi France          | 2,298,739          | 2,952,540         |
| Accrued interest to receive from Fresenius Kabi Poland          | 7,778              | 964               |
| Accrued interest to receive from Fresenius Kabi Sweden          | 7,448,787          | 8,321,000         |
| Accrued interest to receive from Fresenius Kabi Italia          | 1,846,512          | 2,255,386         |
| Accrued interest to receive from Fresenius Kabi Spain           | 970,554            | 1,090,908         |
| Accrued interest to receive from Immobiliare Isola della Scalla | 0                  | 74,841            |
| Accrued interest to receive from Clinico Poland                 | 85,922             | 101,262           |
| Accrued interest to receive from Fresenius Kabi AG              | 3,824,099          | 1,650,526         |
| Accrued interest to receive from Fresenius Proserve GMBH        | 1,649,128          | 1,649,128         |
| Trade account receivable from Fresenius Finance Jersey Limited  | 626                | 500               |
|                                                                 | <b>624,944,926</b> | <b>62,461,629</b> |

The receivables from affiliated companies as at 31 December 2010 comprise receivables from

*Fresenius SE & Co. KGaA* with a principal amount of EUR 572,966,468 (31 December 2009: EUR 12,348,312) containing the following receivables

EUR 554,400,000 at 5.625 %

EUR 10,802,158 at 5.70 %

EUR 7,764,310 at 5.60 %

*Fresenius Kabi Poland* with a principal amount of EUR 2,187,422 (31 December 2009: EUR 2,143,988 reported under financial fixed assets) containing the following receivables

EUR 2,187,422 at 8.0896 % (till 15/06/2010), at 8.1800 % (16/06/2010 till 15/12/2010, and at 8.0000 % (as from 16/12/2010).

All receivables from affiliated companies are due within 1 year and have not been pledged.

The carrying amount of the total loans portfolio does not significantly differ from the fair value of the total loans portfolio.

#### 4 Other receivables

|                      | 2010<br>EUR    | 2009<br>EUR    |
|----------------------|----------------|----------------|
| Corporate Income Tax | 755,946        | 546,266        |
| Other                | 13,652         | 5,600          |
|                      | <b>769,598</b> | <b>551,866</b> |

The other receivables include an amount of EUR 13,652 (2009: EUR 5,600) not due within one year.

#### 5 Cash and cash equivalents

Cash at bank and in hand are stated at nominal value and are at free disposal.

#### 6 Shareholders' equity

|                                                                 | Issued<br>capital | Share<br>premium<br>reserve | Hedging<br>reserve | Retained<br>earnings | Unappro-<br>priated<br>result | Total<br>2010 | Total<br>2009 |
|-----------------------------------------------------------------|-------------------|-----------------------------|--------------------|----------------------|-------------------------------|---------------|---------------|
|                                                                 | EUR               | EUR                         | EUR                | EUR                  | EUR                           | EUR           | EUR           |
| Balance as at 1 January                                         | 18,151            | 1,981,857                   | -16,283,081        | 1,130,062            | 1,592,485                     | -11,560,526   | -9,264,408    |
| Changes:                                                        |                   |                             |                    |                      |                               |               |               |
| Dividend payments                                               |                   |                             |                    |                      |                               |               |               |
| Result for the year                                             |                   |                             |                    |                      | 1,846,611                     | 1,846,611     | 1,592,485     |
| Retained earnings                                               |                   |                             |                    | 1,592,485            | -1,592,485                    | 0             | 0             |
| Dividend payments                                               |                   |                             |                    |                      |                               |               |               |
| Changes in fair value<br>of derivatives<br>recognised in equity |                   |                             | 1,621,106          |                      |                               | 1,621,106     | -3,888,603    |
| Balance as at<br>31 December                                    | 18,151            | 1,981,857                   | -14,661,975        | 2,722,547            | 1,846,611                     | -8,092,809    | -11,560,526   |

Referring to Article 178c sub 1, the authorized share capital of the company consists of 200 shares with a nominal value of EUR 453.78.

According to the Articles of Association, the shares are nominated in guilders NLG 1,000 per share. 40 shares are issued and fully paid. No changes occurred during the year.

## Fresenius Finance B.V.

The share premium reserve relates to income from the issuance of shares as far nominal value of the shares (income above par) is exceeded. No changes occurred during the year.

The hedging reserve comprises the effective portion of the cumulative net change in the fair value of cash flow hedging instruments related to hedged transactions that have not yet occurred, less deferred taxes.

## 7 Non-current liabilities

This note provides information about the contractual terms of the company's interest-bearing notes and bonds and borrowings. For more information about the company's exposure to interest rate and foreign currency risk, see note 8 - Financial Instruments.

The non-current liabilities can be specified as follows:

|                                 | <b>2010</b>          | <b>2009</b>   |
|---------------------------------|----------------------|---------------|
|                                 | <b>EUR</b>           | <b>EUR</b>    |
| Eurobonds                       | <b>1,131,799,211</b> | 1,127,388,760 |
| Euronotes                       | <b>600,000,000</b>   | 600,000,000   |
| Loans from affiliated companies | <b>0</b>             | 554,400,000   |
|                                 | <b>1,731,799,211</b> | 2,281,788,760 |

### Eurobonds

The Eurobonds can be detailed as follows:

|                                | <b>Eurobond</b>    | <b>Eurobond</b>    | <b>Eurobond</b>    | <b>Total</b>         |
|--------------------------------|--------------------|--------------------|--------------------|----------------------|
|                                | <b>(2013)</b>      | <b>(2016)</b>      | <b>(2016)</b>      |                      |
|                                | <b>EUR</b>         | <b>EUR</b>         | <b>EUR</b>         | <b>EUR</b>           |
| Face value                     | <b>500,000,000</b> | <b>500,000,000</b> | <b>150,000,000</b> | <b>1,150,000,000</b> |
| Discount at issue              | <b>-2,295,000</b>  | <b>-3,430,000</b>  | <b>-12,000,000</b> | <b>-17,725,000</b>   |
| Issue costs                    | <b>-7,076,075</b>  | <b>-7,076,075</b>  | <b>-1,500,000</b>  | <b>-15,652,150</b>   |
| Accumulated amortisation       | <b>6,713,375</b>   | <b>5,267,450</b>   | <b>3,195,536</b>   | <b>15,176,361</b>    |
| Balance as at 31 December 2010 | <b>497,342,300</b> | <b>494,761,375</b> | <b>139,695,536</b> | <b>1,131,799,211</b> |

In January 2006, the company issued a bond with a total nominal value of EUR 1 billion. The new bond comprises one tranche with a nominal value of EUR 500 million, a maturity of 7 years and an annual interest rate of 5.0% and a second tranche with a nominal value of EUR 500 million, a maturity of 10 years and an annual interest rate of 5.5% as well as a call option for the issuer after five years. Fresenius SE & Co. KGaA, Fresenius Kabi AG and Fresenius ProServe GmbH are the guarantors for this issue.

## Fresenius Finance B.V.

In January 2009, Fresenius Finance B.V. issued a new Eurobond for a total amount of EUR 150,000,000. An aggregate principal amount of € 150 million was issued at a price of 92.0 % and a coupon of 5.5 %, resulting in a yield to maturity of 7.0 %.

The Eurobonds will mature in 2016 and are callable by the issuer from 2011. The Eurobonds have been offered in an private placement to institutional investors only. The transaction was well received and substantially oversubscribed.

The fair values of the Fresenius Finance B.V. bonds of December 31, 2010 were as follows (in Mio EUR):

| Bond               | Nominal | Rate   | Fair Value |
|--------------------|---------|--------|------------|
| FFBV 2006/13 5.0 % | 500     | 1.0300 | 515.0      |
| FFBV 2006/16 5.5 % | 650     | 1.0100 | 656.5      |

## Euronotes

The Euronotes can be detailed as follows:

|                                  | LBBW<br>(2012)<br>EUR<br>('000) | LBBW<br>(2014)<br>EUR<br>('000) | LBBW<br>(2012)<br>EUR<br>('000) | LBBW<br>(2014)<br>EUR<br>('000) | LBBW<br>(2012)<br>EUR<br>('000) | LBBW<br>(2014)<br>EUR<br>('000) | LBBW<br>(2012)<br>EUR<br>('000) | LBBW<br>(2014)<br>EUR<br>('000) | Total<br>EUR<br>('000) |
|----------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|------------------------|
| Face value                       | 26,000                          | 62,000                          | 74,000                          | 38,000                          | 138,500                         | 87,500                          | 61,500                          | 112,500                         | 600,000                |
| • Discount at issue              |                                 |                                 |                                 |                                 |                                 |                                 |                                 |                                 |                        |
| • Accumulated amortisation       |                                 |                                 |                                 |                                 |                                 |                                 |                                 |                                 |                        |
| • Redemption in 2010             |                                 |                                 |                                 |                                 |                                 |                                 |                                 |                                 |                        |
| Balance as at 31 December 2010   | 26,000                          | 62,000                          | 74,000                          | 38,000                          | 138,500                         | 87,500                          | 61,500                          | 112,500                         | 600,000                |
| Long-term as at 31 December 2010 | 26,000                          | 62,000                          | 74,000                          | 38,000                          | 138,500                         | 87,500                          | 61,500                          | 112,500                         | 600,000                |

The interest rates on the remaining Euronotes with a principal amount of EUR 26 million and EUR 38 million are fixed and are 5.51% respectively 5.753%.

The interest rate on the remaining Euronotes with a principal amount of EUR 62 million and EUR 74 million is floating and is based on the 6 months Euribor rate with a surcharge of 0.90% respectively 0.70%. The company has entered into interest rate swaps to hedge the exposure of floating interest.

## **Fresenius Finance B.V.**

Euronotes were issued in total of EUR 400 million on 2 April 2008. This total consists of 4 loans of EUR 138.5 million, EUR 87.5 million, EUR 61.5 million and EUR 112.5 million. The interest rates on the loans of EUR 61.5 million and EUR 112.5 million are fixed and are respectively 5.59% and 5.98%.

The interest rate on the remaining Euronotes with a principal amount of EUR 138.5 million and EUR 87.5 million is floating and is based on the 3 months Euribor rate with a surcharge of respectively 1.60% and 1.90%. The company has entered into interest rate swaps to hedge the exposure of floating interest.

The total fair value of the notes portfolio amounts to EUR 614.5 million.

## **8 Current liabilities**

Current liabilities can be specified as follows:

|                                          | <b>2010</b>        | 2009       |
|------------------------------------------|--------------------|------------|
|                                          | <b>EUR</b>         | EUR        |
| Trade creditors                          | <b>17,676</b>      | 3,129      |
| Loan payable to affiliated company       | <b>554,400,000</b> | 0          |
| Accounts payable to affiliated companies | <b>431,795</b>     | 594,316    |
| Derivatives – interest rate swaps        | <b>19,669,363</b>  | 21,845,344 |
| Derivatives –foreign exchange contracts  | <b>28,094</b>      | 37,447     |
| Accrued interest                         | <b>53,610,177</b>  | 53,680,993 |
| Accrued issue costs                      | <b>6,714,239</b>   | 8,647,000  |
| Other liabilities                        | <b>113,376</b>     | 47,500     |
|                                          | <b>634,984,720</b> | 84,855,729 |

### **Loan payable to affiliated company**

This is a loan at 5.625 % payable in August 2011 to Fresenius Finance (Jersey) Limited.

### **Derivatives**

Derivatives, consisting of interest rate swaps and foreign exchange forward contracts, are valued as follows. The fair value of interest rate swaps is calculated by discounting the future cash flows on the basis of the market interest rates applicable for the remaining term of the contract as of the date of the statement of financial position. To determine the fair value of foreign

## Fresenius Finance B.V.

exchange forward contracts, the contracted forward is compared to the current forward rate for the remaining term of the contract as of the date of the statements of financial position. The result is then discounted on the basis of the market interest rates prevailing at the date of the statement of financial position for the respective currency.

The movement in derivatives can be detailed as follows:

|                                                               | Interest rate<br>swaps | Foreign<br>exchange<br>contracts |
|---------------------------------------------------------------|------------------------|----------------------------------|
|                                                               | EUR                    | EUR                              |
| <b>Fair value at 01.01.2010</b>                               | <b>21,845,344</b>      | <b>37,447</b>                    |
| Changes in fair value recognized in equity                    | -1,621,106             | 0                                |
| Changes in fair value recognized in profit and loss statement | 0                      | -9,353                           |
| Tax effect of changes in fair value recognized in equity      | -554,875               | 0                                |
| <b>Fair value at 31.12.2010</b>                               | <b>19,669,363</b>      | <b>28,094</b>                    |

The derivatives can be detailed as follows:

- Floating to fixed swaps

|                                        | EUR             |            |
|----------------------------------------|-----------------|------------|
|                                        | Notional amount | Fair value |
| Maturing 2 April 2012 fixed at 3.895 % | 138,500,000     | -4,371,379 |
| Maturing 2 April 2014 fixed at 4.005 % | 87,500,000      | -5,602,138 |
| Maturing 2 July 2012 fixed at 4.8575 % | 74,000,000      | -3,785,858 |
| Maturing 2 July 2014 fixed at 4.8800 % | 62,000,000      | -5,909,988 |
|                                        |                 | <hr/>      |
|                                        |                 | 19,669,363 |

## **Fresenius Finance B.V.**

- Foreign exchange derivate

This derivative has a maturity date of 15 June 2011 and a nominal amount of PLN 8,800,000 / EUR 2,161,072.

### **Accrued interest**

The accrued interest can be detailed as follows:

|                                             | <b>2010</b>       | 2009       |
|---------------------------------------------|-------------------|------------|
|                                             | <b>EUR</b>        | EUR        |
| Eurobond EUR 500,000,000 (2013)             | <b>10,416,667</b> | 10,416,667 |
| Eurobond EUR 500,000,000 (2016)             | <b>11,458,333</b> | 11,458,333 |
| Eurobond EUR 150,000,000 (2016)             | <b>3,437,500</b>  | 3,437,500  |
| Euronotes                                   | <b>16,421,746</b> | 16,492,562 |
| Loan MEB Fresenius Finance (Jersey) Limited | <b>11,875,931</b> | 11,875,931 |
|                                             | <hr/>             | <hr/>      |
|                                             | <b>53,610,177</b> | 53,680,993 |
|                                             | <hr/>             | <hr/>      |

### **Accrued issue costs**

This is related to issue costs of the Eurobonds that have been prepaid by Fresenius SE & Co. KGaA at issue date of the bonds.

The accrued issue costs of EUR 6,714,239 is the remaining liability at year end of which

- An amount of EUR 1,932,761 has a remaining term < 1 year.
- An amount of EUR 4,698,521 has a remaining term between 1 year and 5 years.
- An amount of EUR 82,957 has a remaining term > 5 years.

## ***Financial instruments***

### **General**

During the normal course of business, Fresenius Finance B.V. makes use of several financial instruments such as bonds, notes, loans from and to affiliated companies and cash balances with banks. Due to the use of these financial instruments, the company is exposed to interest rate risk, foreign currency risk and credit risk. The company uses derivative financial instruments to hedge its exposure to foreign exchange and interest rate risks arising from financing activities.

## **Fresenius Finance B.V.**

In accordance with its treasury policy, the company does not hold or issue derivative financial instruments for trading purposes.

Earnings of the company were not materially affected by hedge ineffectiveness in the reporting period since the critical terms of the interest and foreign exchange derivatives matched the critical terms of the underlying exposures.

### **Credit risk**

All financial instruments are concluded with either highly rated financial institutions or companies within the Fresenius SE & Co. KGaA group, which are expected to fully perform under the terms of the agreements. The company continuously monitors changes in credit ratings of counterparties. At the balance sheet date the credit risk concentrates on entities of the Fresenius SE & Co. KGaA group. The corporate credit rating of Fresenius SE & Co. KGaA at year end was BB (Standard & Poor's) or Ba1 (Moody's). The company does not except any counterparties to fail to meet their obligations. The maximum exposure to credit risk is represented by the carrying amount of each financial asset, including derivative financial instruments, in the balance sheet.

### **Interest rate risk**

It is management's policy not to be exposed to significant open interest rate risk positions. Basically, lending's and borrowings are matched on an individual basis as much as possible. If this is not possible, the company enters into interest rate swaps to hedge interest rate risks.

Interest rate swaps, denominated in euro, have been entered into to achieve an appropriate mix of fixed and floating rate exposure within the company's policy. The swaps mature over the next 4.5 years following the maturity of the related loans and have fixed swap rates ranging from 5.495% to 5.905%. As from 31 December 2008 the variable interest on the long-term liabilities is 100% fixed by the interest rate swaps (effective hedge). The interest rate swaps are linked with Euronotes mentioned in note 7.

The company classifies interest rate swaps as cash flow hedges and states them at fair value. These amounts are recognised in the balance sheet as derivatives.

### **Foreign currency risk**

The company is exposed to foreign currency risk on loans to affiliated companies that are denominated in a currency other than the euro. The company uses forward exchange contracts to hedge its foreign currency risk. Most of the forward exchange contracts have maturities of less than one year after the balance sheet date. Where necessary, the forward exchange contracts are rolled over at maturity. The company has a forward exchange contract linked with the loan to Fresenius Kabi Poland mentioned in note 3.

The fair values of the forward exchange contracts are recognized in the balance sheet as derivatives.



## Fresenius Finance B.V.

### 9 Interest and similar income

Interest and similar income can be detailed as follows:

|                                                        | 2010<br>EUR        | 2009<br>EUR        |
|--------------------------------------------------------|--------------------|--------------------|
| Interest income Fresenius SE & Co. KGaA                | 67,610,521         | 63,016,167         |
| Interest income Fresenius Kabi Austria                 | 21,355,196         | 22,418,099         |
| Interest income Fresenius Kabi Sweden                  | 18,271,579         | 20,876,528         |
| Interest income Fresenius Kabi France                  | 5,047,072          | 6,416,333          |
| Interest income Fresenius Proserve GMBH                | 3,334,500          | 3,334,500          |
| Interest income Imm Isola della Scalla                 | 78,686             | 135,641            |
| Interest income Fresenius Kabi Spain                   | 2,411,171          | 2,719,513          |
| Interest income Fresenius Kabi Grupo Spain             | 0                  | 910,481            |
| Interest income Fresenius Kabi Poland                  | 180,129            | 176,306            |
| Interest income Clinico Poland                         | 174,785            | 204,750            |
| Interest income Fresenius Kabi AG                      | 7,774,629          | 3,633,103          |
| Interest income Fresenius Kabi Italia                  | 5,566,817          | 5,784,810          |
| Interest income bank and third parties                 | 5,165              | 7,625              |
| Recharged loan fee Fresenius SE & Co. KGaA             | 144,878            | 142,825            |
| Recharged interest expenses to Fresenius SE & Co. KGaA | 1,932,761          | 1,718,475          |
| Foreign exchange differences                           | 42,468             | 0                  |
|                                                        | <b>133,930,357</b> | <b>131,495,156</b> |

### 10 Interest and similar charges

Interest expenses and similar charges can be detailed as follows:

|                                                                                              | 2010<br>EUR        | 2009<br>EUR        |
|----------------------------------------------------------------------------------------------|--------------------|--------------------|
| Interest expense Eurobonds                                                                   | 65,160,451         | 63,075,331         |
| Interest expense long-term Euronotes                                                         | 34,326,503         | 34,326,503         |
| Interest expense loan MEB Fresenius Finance Jersey                                           | 31,185,000         | 31,185,000         |
| Commission on guarantee Fresenius SE & Co. KGaA -/Fresenius Proserve -<br>/Fresenius Kabi AG | 431,795            | 493,613            |
| Fair value changes foreign exchange derivatives                                              | 121,035            | 66,435             |
| Bank expenses                                                                                | 1,044              | 903                |
| Foreign exchange differences                                                                 | 0                  | 6,376              |
| Interest expense income taxes                                                                | 11                 | 100                |
|                                                                                              | <b>131,225,839</b> | <b>129,154,261</b> |

## **11 Costs of outsourced work and other external costs**

The costs of outsourced work and other external costs are detailed as follows:

|                                          | <b>2010</b>                | 2009                |
|------------------------------------------|----------------------------|---------------------|
|                                          | <b>EUR</b>                 | EUR                 |
| Salaries                                 | <b>9,850</b>               | 8,459               |
| Charged wages and salaries               | <b>46,715</b>              | 47,446              |
| Audit fees KPMG                          | <b>73,698</b>              | 76,464              |
| Tax advisory services KPMG Meijburg & Co | <b>48,818</b>              | 7,325               |
| Advisory fees                            | <b>23,005</b>              | 53,366              |
| Rent office building                     | <b>22,303</b>              | 25,454              |
| Other                                    | <b>16,221</b>              | 12,402              |
|                                          | <hr/> <b>240,610</b> <hr/> | <hr/> 230,916 <hr/> |

## **12 Taxation on result**

The applicable weighted average tax rate is 25.05% (2009: 24.53%). The tax liability in the profit and loss accounts over 2010 amounts to EUR 617,297 or 25.05% of the result before taxes.

## **13 Transactions with related parties**

It is normal course of business Fresenius Finance B.V. issues loans to affiliated companies. These transactions are conducted on a commercial basis under comparable conditions that apply to transactions with third parties.

## **14 Share in results from participating interests**

The share in results from participating interests was EUR 0 in 2010 (2009:0).

## **15 Employees**

During the year 1 part-time director (10% full time equivalent) was employed (2009: 0.10).

**Fresenius Finance B.V.**

## **16 Emoluments of directors**

During 2010 the remuneration of the part time director (10% full time equivalent) who was on the pay roll amounted to EUR 9,850 (2009: EUR 8,459). The second director of the company received no emoluments during the financial year.

's-Hertogenbosch, 07 April 2011

The Board of Directors

J.M. Simons

B. Dierickx

## **Other information**

### **Independent auditor's report**

Reference is made to the last page of this report.

### **Statutory stipulations concerning the appropriation of results**

Article 20 of the Articles of Association contains the following stipulations regarding the appropriation of results:

- Sub 1. The result is at the disposal of the General Meeting of Shareholders.
- Sub 2. Payments can only be made for at most the payable part of shareholder's equity.
- Sub 3. Payment of profit shall only be distributed after adoption of the financial statements proving that profit distribution is allowed.
- Sub 4. The company is allowed to make interim profit distributions provided this article's sub 2 is complied with.
- Sub 5. The General Meeting of Shareholders is allowed to make payments chargeable to retained earnings provided this article's sub 2 is complied with.
- Sub 6. The shareholder's claim on payment becomes barred by lapse of five years.

### **Proposal for the appropriation of the result 2010**

The following appropriation of the result after taxes for the year 2010 is proposed to the General Meeting of Shareholders: to include EUR 1,846,611 (100% of the net result after taxes) in the retained earnings within shareholder's equity.

**Fresenius Finance B.V.**

## **Independent auditor's report**

To: the Shareholders of Fresenius Finance B.V.

### **Report on the financial statements**

We have audited the accompanying financial statements 2010 of Fresenius Finance B.V., 's-Hertogenbosch, which comprise the balance sheet as at 31 December 2010, the profit and loss account for the year then ended and the notes, comprising a summary of the accounting policies and other explanatory information.

### **Management's responsibility**

Management is responsible for the preparation and fair presentation of the financial statements and for the preparation of the Director's report, both in accordance with Part 9 of Book 2 of the Netherlands Civil Code. Furthermore, management is responsible for such internal control as it determines is necessary to enable the preparation of the financial statements that are free from material misstatement, whether due to fraud or error.

### **Auditor's responsibility**

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with Dutch law, including the Dutch Standards on Auditing. This requires that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### **Opinion**

In our opinion, the financial statements give a true and fair view of the financial position of Fresenius Finance B.V. as at 31 December 2010 and of its result for the year then ended in accordance with Part 9 of Book 2 of the Netherlands Civil Code.

**Fresenius Finance B.V.**

### **Report on other legal and regulatory requirements**

Pursuant to the legal requirements under Section 2:393 sub 5 at e and f of the Netherlands Civil Code, we have no deficiencies to report as a result of our examination whether the Director's report, to the extent we can assess, has been prepared in accordance with part 9 of Book 2 of this Code, and whether the information as required under Section 2:392 sub 1 at b - h has been annexed. Further, we report that the Director's report, to the extent we can assess, is consistent with the financial statements as required by Section 2:391 sub 4 of the Netherlands Civil Code.

Rotterdam, 7 April 2011

KPMG ACCOUNTANTS N.V.

A.A. Kuijpers RA

**Unconsolidated Financial Statements of Fresenius Kabi AG for 2011  
(German-GAAP)**

# Fresenius Kabi Aktiengesellschaft, Bad Homburg v. d. Höhe

## Balance sheet as of December 31, 2011

### Assets

|                                             | Note | Dec. 31, 2011 |           | Dec. 31, 2010 |           |
|---------------------------------------------|------|---------------|-----------|---------------|-----------|
|                                             |      | '000 €        | '000 €    | '000 €        | '000 €    |
| <b>A. Fixed assets</b>                      | 4    |               |           |               |           |
| I. Intangible assets                        |      |               | 10,919    |               | 16,008    |
| II. Property, plant and equipment           |      |               | 405       |               | 126       |
| III. Financial assets                       |      |               | 1,570,885 |               | 2,007,627 |
|                                             |      |               | 1,582,209 |               | 2,023,761 |
| <b>B. Current assets</b>                    |      |               |           |               |           |
| I. Accounts receivable and other assets     | 5    |               |           |               |           |
| 1. Accounts receivable from related parties |      | 460,008       |           | 709,778       |           |
| 2. Other assets                             |      | 915           | 460,923   | 4,532         | 714,310   |
| II. Cash and cash equivalents               |      |               | 1,042     |               | 134       |
|                                             |      |               | 461,965   |               | 714,444   |
| <b>C. Deferred expense</b>                  |      |               | 81        |               | 3         |
|                                             |      |               | 2,044,255 |               | 2,738,208 |



## Liabilities and shareholders' equity

|                                              | Note | Dec. 31, 2011<br>'000 € | Dec. 31, 2010<br>'000 € |
|----------------------------------------------|------|-------------------------|-------------------------|
| <b>A. Shareholders' equity</b>               |      |                         |                         |
| <b>I. Subscribed capital</b>                 | 6    |                         |                         |
| Ordinary shares                              |      | 66,000                  | 66,000                  |
| <b>II. Capital reserve</b>                   | 7    | 1,204,936               | 1,204,936               |
| <b>III. Unappropriated retained earnings</b> | 8    | 217,401                 | 217,401                 |
|                                              |      | <u>1,488,337</u>        | <u>1,488,337</u>        |
| <b>B. Accrued expenses</b>                   | 9    |                         |                         |
| 1. Pension obligation                        |      | 4,935                   | 4,483                   |
| 2. Other accruals                            |      | 20,815                  | 25,829                  |
|                                              |      | <u>25,750</u>           | <u>30,312</u>           |
| <b>C. Liabilities</b>                        | 10   |                         |                         |
| 1. Trade accounts payable                    |      | 573                     | 1,196                   |
| 2. Accounts payable to related parties       |      | 529,433                 | 1,217,987               |
| 3. Other liabilities                         |      | 162                     | 376                     |
|                                              |      | <u>530,168</u>          | <u>1,219,559</u>        |
|                                              |      | <u>2,044,255</u>        | <u>2,738,208</u>        |

# Fresenius Kabi Aktiengesellschaft, Bad Homburg v. d. Höhe

## Income statement for the year ended December 31, 2011

|                                                                                            | Note | 2011<br>'000 € | 2010<br>'000 € |
|--------------------------------------------------------------------------------------------|------|----------------|----------------|
| 1. Income from participations                                                              | 13   | 301,981        | 264,473        |
| 2. Other operating income                                                                  | 14   | 147,934        | 157,575        |
| 3. Personnel expenses                                                                      | 15   | -15,968        | -16,950        |
| 4. Depreciation and amortization of intangible assets and<br>property, plant and equipment | 16   | -5,127         | -5,101         |
| 5. Other operating expenses                                                                | 17   | -235,819       | -188,222       |
| 6. Income from other securities and<br>long-term loans                                     | 18   | 36,554         | 36,913         |
| 7. Other interest and similar income                                                       | 18   | 21,763         | 23,224         |
| 8. Write-downs on financial assets                                                         | 19   | -35,476        | 0              |
| 9. Interest and similar expenses                                                           | 18   | -67,765        | -53,966        |
| 10. Result from ordinary operations                                                        | 20   | 148,077        | 217,946        |
| 11. Extraordinary income                                                                   |      | 0              | 1,806          |
| 12. Extraordinary expenses                                                                 |      | -1,577         | -113           |
| 13. Extraordinary result                                                                   | 21   | -1,577         | 1,693          |
| 14. Income taxes (intercompany apportionments)                                             | 22   | -24,541        | -31,111        |
| 15. Other taxes                                                                            |      | -12            | -25            |
| 16. Net income transferred under a profit and loss<br>pooling agreement                    | 24   | -121,947       | -188,503       |
| 17. Net income for the year                                                                |      | 0              | 0              |
| 18. Unappropriated retained earnings brought forward                                       |      | 217,401        | 217,401        |
| 19. Unappropriated retained earnings carried forward                                       | 8    | 217,401        | 217,401        |

## **Notes to the financial statements of Fresenius Kabi AG**

### **(1) General**

Fresenius Kabi Aktiengesellschaft, Bad Homburg v.d.H., hereinafter referred to as "Fresenius Kabi AG", was founded on August 21, 1998 and entered on October 2, 1998 in the Commercial Register at the Local Court in Frankfurt am Main. With effect from May 10, 2010, the Annual General Meeting of Fresenius Kabi AG resolved the change in the Statutes in § 1 (domicile) and, with this, the transfer of its registered office from Frankfurt am Main to Bad Homburg v. d. Höhe. The entry in the Commercial Register of the Local Court of Bad Homburg v. d. Höhe (previously the Frankfurt am Main Local Court) was made on June 22, 2010.

Fresenius Kabi AG acts as the holding company for the worldwide business of supplying products and services for enteral and parenteral nutrition, as well as for infusion therapy, medical devices and transfusion therapy and intravenously administered drugs.

A profit and loss transfer agreement has existed since January 1, 2001 between Fresenius Kabi AG and its 100 per cent shareholder, Fresenius SE & Co. KGaA.

Fresenius Kabi AG is exempt from preparing consolidated financial statements and a group management report, as Fresenius SE & Co. KGaA, Bad Homburg v. d. Höhe, as the parent company, prepares exempting consolidated financial statements under Section 291 HGB [German Commercial Code] and a Group Management Report in accordance with Section 315a HGB under International Financial Reporting Standards (IFRS), as adopted by the EU, for the smallest number of companies that have to be included. The consolidated financial statements of Fresenius SE & Co. KGaA group are published in the electronic Federal Gazette. The consolidated financial statements for the largest number of companies that have to be included are prepared by Fresenius Management S.E., Bad Homburg v. d. Höhe. The consolidated financial statements of Fresenius Management SE group are published in the electronic Federal Gazette. Fresenius Kabi AG and its subsidiaries are included in the aforementioned consolidated financial statements.

## **(2) Accounting and valuation principles**

The accounting policies have very largely been retained compared with the previous year.

Deviations from the accounting policies arise in 2011 exclusively due to the utilization of the option available under Article 67 (1) Sentence 1 EGHGB [Introductory Law to the HGB], as a result of which 14/15 of the difference that arose was allocated to the pension obligation. This allocation corresponds with the shortfall as of December 31, 2010. The expense from this allocation is reported in the caption in the income statement called "Extraordinary result".

**Intangible assets** acquired for a consideration are valued at their acquisition cost less systematic straight-line amortization. The estimated useful life is normally between two and five years. The useful life of PC utility programs is two years, and the useful life of know-how is up to five years. The valuation of the utilization right for the Company name "Kabi" is based on a useful life of fifteen years.

**Property, plant and equipment** are valued at their acquisition cost less regular linear or degressive depreciation.

The following useful lives mainly apply for calculating the depreciation charge:

Office and factory buildings      10 - 25 years

Technical equipment and  
machinery                              5 - 15 years

Other fixtures and fittings,  
tools and equipment                3 - 10 years

Depreciable movable non-current assets with a value of more than € 150.00 and less than € 1,000.00 are grouped into a collective item which is dissolved through profit and loss by one fifth in the year of capitalization and the following four years each.

Impairment losses are recorded on assets when a lower value can be attributed to them as of the balance sheet date on account of sustained impairment. A lower carrying amount is not retained if the reasons for the earlier impairment loss no longer exist.

**Financial assets** are recognised at cost or their lower attributable value.

**Accounts receivable and other assets** are recognised at their nominal value less any necessary specific bad debt provisions.

**Securities** are recognised at their nominal amount or at their lower attributable value.

The employee credit balances of partial retirement agreements are secured against insolvency in compliance with the relevant legal regulations. To fulfil this purpose the company buys shares of a money-market-similar investment fund in the amount of the cumulated credit balances. The securitization is done via pledging the investment fund shares to a trustee, hence the securities have the sole purpose of fulfilling the obligations derived from the partial retirement agreements and are not available to other creditors. They have been netted with their matching obligations following Section 246 (2) sentence 2 HGB. The fair value of these securities has been derived from the stock exchange price at the balance sheet date.

|                                                     |                |
|-----------------------------------------------------|----------------|
| Amount to be paid for partial retirement agreements | € 123 thousand |
|-----------------------------------------------------|----------------|

|                              |               |
|------------------------------|---------------|
| Fair value of the securities | € 79 thousand |
|------------------------------|---------------|

|                                            |               |
|--------------------------------------------|---------------|
| Surplus of the obligations over the assets | € 44 thousand |
|--------------------------------------------|---------------|

|                                    |               |
|------------------------------------|---------------|
| Acquisition cost of the securities | € 78 thousand |
|------------------------------------|---------------|

In the income statement, net losses and gains on the valuation of the securities and the accrual of € 769 are offset in the interest result.

**Pension obligation** is determined actuarially based on the biometrical probabilities (Heubeck 2005 G Mortality Tables) by the projected unit credit method. Salary and pension increases expected in the future are taken into account in the calculation of the obligation. At present, annual adjustments of 3 % to 4 % are expected for the remuneration and of 1.75 % for the pensions. The staff fluctuation rate specific to the Company that has also been taken into account was between 0 % and 18 %. The interest rate used to discount the pension obligation amounts to 5.13 %; this is the average market interest rate for the past seven years determined and published by the Deutsche Bundesbank for an assumed residual term of 15 years (as of October 31, 2011).

The value of accruals in connection with employee-financed working life time accounts (demographic funds) is determined on the basis of the development of the asset value of the corresponding plan reinsurance in accordance with Section 253 (1) Sentence 3 HGB (security-linked pensions).

The asset values offset against the accruals are recognised at fair values.

On the basis of a Works Council Agreement from November 2009 and starting on January 1, 2010, employees can participate in a demography fund (Demografiefonds) by contributing part of their compensation or working time to an account run by Fresenius SE & Co. KGaA in exchange of time-off in the future. The credit balances of the employees are invested in an insurance product via a trust agreement so that Fresenius SE & Co. KGaA and its creditors do not have access to the funds. This construction is a security-based pension obligation in the sense of Section 253 (1) sentence 3 HGB. The amount provisioned for the time balances of the employees corresponds to the fair value of the insurance product. The fair value results from the forecasted actuarial reserves of the insurance company plus the present profit sharing on the surplus.

|                                                            |               |
|------------------------------------------------------------|---------------|
| Amount to be paid for obligations from the demography fund | € 23 thousand |
|------------------------------------------------------------|---------------|

|                                    |               |
|------------------------------------|---------------|
| Fair value of the insurance policy | € 23 thousand |
|------------------------------------|---------------|

|                                            |   |
|--------------------------------------------|---|
| Surplus of the assets over the obligations | 0 |
|--------------------------------------------|---|

Acquisition cost of the insurance policy € 20 thousand

Losses and gains of € 3,804 on the valuation of the insurance policy and the accrual are reported net in the income statement.

**Tax accruals and other accruals** are built for recognizable risks and uncertain liabilities at the amounts to be paid and calculated on the basis of a reasonable commercial assessment. Long term accruals are accounted for taking into account future price and cost increases and are discounted with the last-seven-year-average discount rate that corresponds to the remaining life of the accrual.

**Liabilities** are recognised at their settlement amounts.

**Foreign currency items** are translated with the foreign exchange rate at the time of origin or the hedging rate for hedging transactions.

In accordance with Section 256a HGB, assets and liabilities denominated in foreign currency with residual terms of up to a year are translated at the average closing spot rate as of the reporting date.

Assets and liabilities with a remaining life of over one year and carried at foreign currencies are basically translated at inception at the foreign currency exchange rate, while at the balance sheet date the lowest closing spot rate is used for translating assets and the highest closing spot rate is used for translating liabilities. If the conditions to apply hedge accounting are met, the hedging financial instruments and the underlying transactions are combined in a hedge and valued using the exchange rate at inception (Einfrierungsmethode). Changes in the value of the hedged risks are not recognized in the balance sheet or statement of income.

Gains and losses on the translation of foreign currency items to Euros are recognized in profit or loss and recorded in the income statement under the captions "other operating income" or "other operating expenses".

**Derivative financial instruments** are only used in order to hedge risks. Interest rate and foreign currency derivatives are contracted for hedging purposes.

In addition to hedging transactions for foreign currency loans which group companies have taken up from the Company or which the Company has taken up at group companies and banks, the Company concludes hedging transactions with banks, which are matched by contracts in the opposite direction between Fresenius Kabi AG and its subsidiaries with more or less the same conditions. The subsidiaries use the contracts to hedge their operating business against foreign currency risks.

Furthermore, the Company concludes hedges in the form of foreign currency forward contracts for future foreign currency risks (from purchase and/or sales transactions in foreign currency) that represent anticipatory valuation units.

Derivatives are valued at their fair value on the balance sheet date. In accordance with the valuation principles under German commercial law, a negative valuation result is recorded in income for the year. Positive valuation results are however ignored. If the criteria for hedge accounting are fulfilled, the hedges and the hedged items are combined, so that the impact on profit or loss both of the hedge and the hedged item is only recognized in profit or loss on settlement of the hedged item.

In accordance with the Company's holding function, the caption "income from participations" is reported in the income statement instead of the caption in accordance with Section 275 (2) No. 1 HGB (sales). This comprises income from profit and loss transfer agreements, income from participations and expenses in connection with the absorption of losses.

### **(3) Derivatives**

Fresenius Kabi AG employs derivatives in order to hedge interest rate and currency risks or risks that already exist or which can be expected with sufficient probability. Derivatives are used exclusively for hedging purposes. As the critical terms of the underlying transactions basically match those of the derivative financial instruments it can be assumed that hedges are highly effective. The Company has defined guidelines for the assessment of the risks and the control of the use of financial instruments. They include a clear segregation of responsibilities with regard to execution on the one hand and settlement, accounting and control on the other hand. The objective of the utilisation of derivatives is to reduce fluctuations in earnings and cash flows resulting from changes in exchange and interest rates.

#### **Exchange rate risks**

The Company uses foreign exchange forward contracts to hedge foreign currency risks.

Fresenius Kabi AG entered into foreign exchange forward contracts with external contractual partners to hedge the foreign currency risks on accounts receivable and liabilities and transactions of the Company and its group companies that are expected with a high degree of probability. As of the balance sheet date, the Company mainly had US-\$ and € currency derivatives with a nominal volume of €649,414 thousand, a fair value of € -19,852 thousand and a maximum term of 17 months in its portfolio.



For foreign exchange forward contracts contracted with banks that were closed to hedge the foreign exchange risk of Fresenius Kabi AG Group companies' and that were passed down to the affected Group companies via Group internal transactions, hedges were build for the forward contracts and the underlying transactions with an offsetting fair value. The Company does not revalue these hedges for financial reporting purposes until maturity (Einfrierungsmethode). The net fair value of internal and external hedges was € - 3,010 thousand as of the balance sheet date. This net balance results from the prolongation of currency contracts, which were carried out externally on the basis of the current exchange rate and internally on the basis of the exchange rate of the original initial transaction. The nominal volume of these transactions amounted as of December 31, 2011 to € 676,646 thousand. A contingent loss accrual of € 3,258 thousand was recorded under the other accruals.

Further hedges were set up for loans in foreign currency, which group companies have taken up from the Company or which the Company has taken up from group companies and banks, and the foreign exchange forward contracts in the opposite direction in order to hedge them. These hedged loan receivables and liabilities that are fully hedged against foreign currency risks had a net carrying amount at the reporting date of € 140,275 thousand. The external currency contracts to hedge individual loan receivables and liabilities has a net fair value of € - 5,198 thousand.

The changes in value of both the loan receivables and payment obligations and the foreign currency hedging contracts have been recognized as income (Durchbuchungsmethode). The offsetting cash flows will be almost fully compensated at the latest in 12 months.

A contingent loss accrual of € -675 thousand was set up as of the balance sheet date for the remaining currency derivatives with a net negative fair value of € -460 thousand as of the balance sheet date.

The Company had no interest rate derivatives on the balance sheet date.

### **Valuation methods**

The fair values of the derivatives are determined applying customary market valuation methods, taking into account the market information (market value). The following basic principles apply:

The fair value is based on the market value at which a derivative could be traded in a voluntary transaction between independent parties, whereby compulsory sales or liquidation sales have to be disregarded. To determine the market values of foreign exchange forward contracts, the contracted forward rate is compared with the forward rate as of the balance sheet date for the residual term of the respective contract. The resultant amount is discounted to the balance sheet date, taking into account current market interest rates. In the case of interest rate swaps, the valuation is carried out by discounting the future cash flows on the basis of the market interest rates on the balance sheet date applicable for the residual term of the contracts.

The effectiveness of hedging relationships is measured with the Critical Term Match- Method and the Dollar Offset-Method for foreign exchange forward contracts and with the Dollar Offset-Method for interest rate swaps.

## Notes to the balance sheet

### (4) Fixed assets

The composition of the summarized items of fixed assets and their movements is shown below:

| Cost                                                                                                       | Balance at<br>Jan. 1, 2011<br>'000 € | Additions<br>'000 €   | Disposals<br>'000 €   | Balance at<br>Dec. 31, 2011<br>'000 € |
|------------------------------------------------------------------------------------------------------------|--------------------------------------|-----------------------|-----------------------|---------------------------------------|
| <u>Intangible assets</u>                                                                                   |                                      |                       |                       |                                       |
| Concessions, industrial and similar rights<br>and assets as well as licenses acquired<br>for consideration | 82,282                               | 0                     | 62                    | 82,220                                |
|                                                                                                            | <b>82,282</b>                        | <b>0</b>              | <b>62</b>             | <b>82,220</b>                         |
| <u>Property, plant and equipment</u>                                                                       |                                      |                       |                       |                                       |
| Other fixtures and fittings, tools and<br>equipment                                                        | 431                                  | 356                   | 46                    | 741                                   |
|                                                                                                            | <b>431</b>                           | <b>356</b>            | <b>46</b>             | <b>741</b>                            |
| <u>Financial assets</u>                                                                                    |                                      |                       |                       |                                       |
| Shares in related parties                                                                                  | 1,488,656                            | 124,154               | 0                     | 1,612,810                             |
| Other investments                                                                                          | 2                                    | 0                     | 0                     | 2                                     |
| Loans to related parties                                                                                   | 529,031                              | 0                     | 525,420               | 3,611                                 |
|                                                                                                            | <b>2,017,689</b>                     | <b>124,154</b>        | <b>525,420</b>        | <b>1,616,420</b>                      |
| <b>Fixed assets</b>                                                                                        | <b><u>2,100,402</u></b>              | <b><u>124,510</u></b> | <b><u>525,528</u></b> | <b><u>1,699,384</u></b>               |

| Accumulated depreciation,<br>amortization and<br>write-downs                                                     | Accumulated<br>depreciation,<br>amortization<br>and write-<br>downs as of<br>Jan. 1, 2011 | Additions            | Disposals        | Accumulated<br>depreciation,<br>amortization<br>and write-<br>downs as of<br>Dec. 31, 2011 | Carrying<br>amount<br>Dec. 31, 2011 | Carrying<br>amount<br>Dec. 31, 2010 |
|------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|----------------------|------------------|--------------------------------------------------------------------------------------------|-------------------------------------|-------------------------------------|
|                                                                                                                  | '000 €                                                                                    | '000 €               | '000 €           | '000 €                                                                                     | '000 €                              | '000 €                              |
| <b>Intangible assets</b>                                                                                         |                                                                                           |                      |                  |                                                                                            |                                     |                                     |
| Concessions, industrial<br>and similar rights<br>and assets as well as<br>licenses acquired<br>for consideration | 66,274                                                                                    | 5,051                | 24               | 71,301                                                                                     | 10,919                              | 16,008                              |
|                                                                                                                  | <b>66,274</b>                                                                             | <b>5,051</b>         | <b>24</b>        | <b>71,301</b>                                                                              | <b>10,919</b>                       | <b>16,008</b>                       |
| <b>Property, plant and<br/>equipment</b>                                                                         |                                                                                           |                      |                  |                                                                                            |                                     |                                     |
| Other fixtures and<br>fittings, tools and<br>equipment                                                           | 305                                                                                       | 76                   | 45               | 336                                                                                        | 405                                 | 126                                 |
|                                                                                                                  | <b>305</b>                                                                                | <b>76</b>            | <b>45</b>        | <b>336</b>                                                                                 | <b>405</b>                          | <b>126</b>                          |
| <b>Financial assets</b>                                                                                          |                                                                                           |                      |                  |                                                                                            |                                     |                                     |
| Shares in related parties                                                                                        | 10,062                                                                                    | 35,476               | 0                | 45,538                                                                                     | 1,567,272                           | 1,478,594                           |
| Other investments                                                                                                | 0                                                                                         | 0                    | 0                | 0                                                                                          | 2                                   | 2                                   |
| Loans to related parties                                                                                         | 0                                                                                         | 0                    | 0                | 0                                                                                          | 3,611                               | 529,031                             |
|                                                                                                                  | <b>10,062</b>                                                                             | <b>35,476</b>        | <b>0</b>         | <b>45,538</b>                                                                              | <b>1,570,885</b>                    | <b>2,007,627</b>                    |
| <b>Fixed assets</b>                                                                                              | <b><u>76,641</u></b>                                                                      | <b><u>40,603</u></b> | <b><u>69</u></b> | <b><u>117,175</u></b>                                                                      | <b><u>1,582,209</u></b>             | <b><u>2,023,761</u></b>             |

## Financial assets

The reduction is mainly due to the rescheduling of the loans to APP Pharmaceuticals Inc., Wilmington/Delaware (USA) and Fresenius Kabi Pharmaceuticals Holding Inc., Wilmington/ Delaware (USA).

Increases in capital took place at Fresenius Kabi Deutschland GmbH, Bad Homburg v. d. Höhe (Germany), PT. Fresenius Kabi Indonesia, Jakarta (Indonesia), Fresenius Kabi Asiaco GmbH, Bad Homburg v. d. Höhe (Germany) and Fresenius Kabi o.o.o., Moscow (Russia).

The Company purchased the interests in Fresenius Kabi Oncology Plc., London (U.K.). Later, a loan receivable was converted to equity. In connection with this restructuring measure, the investment was written down at the end of the year to the lower fair value.

Further interests in Fresenius Kabi Bidiphar Joint Stock Company, Quy Nhon (Vietnam) were acquired.

Interests were acquired from IG Center S.R.L., Buenos Aires (Argentina). The remaining interests were purchased by another Kabi company.

DOM Medica Sp. Z o.o., Warsaw (Poland) was newly established.

A list of all participations in related and associated companies of Fresenius Kabi AG is contained in the list of participations in related and associated companies of Fresenius SE & Co. KGaA which will be published by Fresenius SE & Co. KGaA in the electronic Bundesanzeiger (German Federal Gazette).

**(5) Accounts receivable and other assets**

|                                                                                                | Dec. 31,<br>2010 | Dec. 31,<br>2011 |
|------------------------------------------------------------------------------------------------|------------------|------------------|
|                                                                                                | '000 €           | '000 €           |
| Accounts receivable from related parties<br>(thereof with a residual term of more than 1 year) | 709,778<br>(-)   | 460,008          |
| Other assets<br>(thereof with a residual term of more than 1 year)                             | 4,532<br>(-)     | 915              |
|                                                                                                | 714,310          | 460,923          |

Accounts receivable from related parties include short-term loans of € 228,808 thousand (Dec. 31, 2010: € 470,104 thousand) and otherwise mainly current accounts.

**(6) Subscribed capital**

The nominal capital amounts to € 66,000,000 and consists of 25,781,250 bearer shares.

Fresenius SE & Co. KGaA has notified Fresenius Kabi AG that it holds 100 % of the voting rights and 100 % of the ordinary shares.

**(7) Capital reserve**

The capital reserve amounts unchanged to € 1,204,936 thousand.

**(8) Unappropriated retained earnings**

On account of the transfer of the net income of € 121,947 thousand (Dec. 31, 2010; €188,503 thousand) to the sole shareholder, Fresenius SE & Co. KGaA, the unappropriated retained earnings carried forward are unchanged in the past business year at € 217,401 thousand; the unappropriated retained earnings carried forward as of December 31, 2011

consist entirely of the retained earnings brought forward prior to the conclusion of the profit and loss transfer agreement.

## (9) Accrued expenses

The **pension obligation** has been set up in accordance with the procedures described in Note (2) "Accounting and valuation principles". The Company is exercising the option available under Article 67 (1) Sentence 1 EGHGB in 2011 and has allocated to the obligation 14/15 of the difference or € 1,577 thousand. This difference represents the shortfall as of December 31, 2010. The expenses from this allocation are reported in the income statement in the caption "Extraordinary result".

**Other accruals** mainly include accruals for liability side derivatives (€ 7,258 thousand; Dec. 31, 2010: € 12,668 thousand), personnel accruals (€ 5,862 thousand; Dec. 31, 2010: € 5,050 thousand), accruals for contingent losses on pending transactions (€ 3,934 thousand; Dec. 31, 2010: € 5,195 thousand) and accruals for outstanding invoices (€ 2,597 thousand; Dec. 31, 2010: € 2,355 thousand).

The transfers not affecting profit or loss relate to staff transfers within the Fresenius Group.

The accrued expenses developed as follows:

|                                                            | Balance at<br>Jan. 1, 2011<br>'000 € | Transfers not<br>affecting profit<br>or loss<br>'000 € | Change in<br>covering<br>securities<br>'000 € | Used<br>'000 € | Released<br>'000 € | Allocated<br>'000 € | Balance at<br>Dec. 31,<br>2011<br>'000 € |
|------------------------------------------------------------|--------------------------------------|--------------------------------------------------------|-----------------------------------------------|----------------|--------------------|---------------------|------------------------------------------|
| <b>Pension obligation</b>                                  | <b>4,483</b>                         | <b>-1,125</b>                                          | <b>0</b>                                      | <b>0</b>       | <b>0</b>           | <b>1,577</b>        | <b>4,935</b>                             |
| Commissions, bonuses<br>and other variable<br>compensation | 4,612                                | 0                                                      | 0                                             | -2,131         | -2,536             | 5,256               | 5,201                                    |
| Termination benefits                                       | 0                                    | 0                                                      | 0                                             | 0              | 0                  | 300                 | 300                                      |
| Residual vacation                                          | 216                                  | 0                                                      | 0                                             | -216           | 0                  | 236                 | 236                                      |
| Staff anniversary<br>payments                              | 60                                   | 0                                                      | 0                                             | 0              | -28                | 0                   | 32                                       |
| Other personnel accruals                                   | 162                                  | 0                                                      | -39                                           | -106           | -2                 | 78                  | 93                                       |
| <b>Personnel accruals</b>                                  | <b>5,050</b>                         | <b>0</b>                                               | <b>-39</b>                                    | <b>-2,453</b>  | <b>-2,566</b>      | <b>5,870</b>        | <b>5,862</b>                             |
| Outstanding invoices                                       | 2,355                                | 0                                                      | 0                                             | -1,700         | -808               | 2,750               | 2,597                                    |
| Other short-term<br>accruals                               | 18,424                               | 0                                                      | 0                                             | -19,238        | -229               | 13,399              | 12,356                                   |
| <b>Other accruals</b>                                      | <b>20,779</b>                        | <b>0</b>                                               | <b>0</b>                                      | <b>-20,938</b> | <b>-1,037</b>      | <b>16,149</b>       | <b>14,953</b>                            |
| <b>Total accrued expenses</b>                              | <b>30,312</b>                        | <b>-1,125</b>                                          | <b>-39</b>                                    | <b>-23,391</b> | <b>-3,603</b>      | <b>23,596</b>       | <b>25,750</b>                            |

## (10) Liabilities

|                                     | Dec. 31, 2010 |                                                           | Dec. 31, 2011 |                        |                 |                         |
|-------------------------------------|---------------|-----------------------------------------------------------|---------------|------------------------|-----------------|-------------------------|
|                                     | Total         | thereof with<br>a residual<br>term of less<br>than 1 year | Total         | less<br>than 1<br>year | 1 to 5<br>years | more<br>than 5<br>years |
|                                     | '000 €        | '000 €                                                    | '000 €        | '000 €                 | '000 €          | '000 €                  |
| Trade accounts payable              | 1,196         | 1,196                                                     | 573           | 573                    | -               | -                       |
| Accounts payable to related parties | 1,217,987     | 880,317                                                   | 529,433       | 529,433                | -               | -                       |
| Other liabilities                   | 376           | 376                                                       | 162           | 162                    | -               | -                       |
|                                     | 1,219,559     | 881,889                                                   | 530,168       | 530,168                | -               | -                       |

Accounts payable to related parties mainly relate with € 206,495 thousand (Dec. 31, 2010: € 176,642 thousand) to Fresenius Finance B.V. and with € 165,743 thousand (Dec. 31, 2010: € 932,422 thousand) to Fresenius SE & Co. KGaA.

This item includes, in addition to trade accounts payable and liabilities from the transfer of the profits, primarily loan liabilities.

The reduction in the balance sheet caption mainly results from the rescheduling of the long-term loan liabilities to Fresenius SE & Co. KGaA and the related long-term loans to Fresenius Kabi Pharmaceuticals Inc. and APP Pharmaceuticals Inc.

The other liabilities mainly comprise wage tax liabilities (€ 138 thousand; Dec. 31, 2010: € 363 thousand).

## (11) Contingent liabilities

On August 20, 2008, in connection with the acquisition of APP Pharmaceuticals, Inc. (APP), the Fresenius Group entered into a syndicated credit agreement (2008 Senior Credit Agreement) in an original amount of US\$ 2.45 billion.

Since that date, amendments and voluntary prepayments were made which resulted in a change of the total amount available under this facility. In March 2011, after negotiations with the lenders, Fresenius SE & Co. KGaA again improved the conditions of the 2008 Senior Credit Agreement. The amendments led to a reduction of the interest rate of Term Loan C (new: Term Loan D). The new interest rate is a rate equal to the money market interest rate (LIBOR and

EURIBOR) with a minimum of 1.00% (previously: 1.50%) and a current margin of 2.50% (previously: 3.00%). An earlier amendment in March 2010 led to a replacement of Term Loan B by Term Loan C and an improvement of the applicable interest rate.

The following tables show the available and outstanding amounts under the 2008 Senior Credit Agreement as of December 31:

| <b>2011</b>                 |                          |              |                     |
|-----------------------------|--------------------------|--------------|---------------------|
|                             | Maximum amount available |              | Balance outstanding |
|                             | € in million             |              | € in million        |
| Revolving Credit Facilities | US\$550 million          | 425          | US\$0 million 0     |
| Loan A                      | US\$537 million          | 415          | US\$537 million 415 |
| Loan D (in US\$)            | US\$971 million          | 751          | US\$971 million 751 |
| Loan D (in €)               | €160 million             | 160          | €160 million 160    |
|                             |                          | <b>1,751</b> | <b>1,326</b>        |
| <b>2010</b>                 |                          |              |                     |
|                             | Maximum amount available |              | Balance outstanding |
|                             | € in million             |              | € in million        |
| Revolving Credit Facilities | US\$550 million          | 411          | US\$0 million 0     |
| Loan A                      | US\$782 million          | 586          | US\$782 million 586 |
| Loan C (in US\$)            | US\$984 million          | 736          | US\$984 million 736 |
| Loan C (in €)               | €162 million             | 162          | €162 million 162    |
|                             |                          | <b>1,895</b> | <b>1,484</b>        |

As of December 31, 2011, the 2008 Senior Credit Agreement consisted of:

- Revolving Credit Facilities in the aggregate principal amount of US\$ 550 million (of which US\$ 150 million is available to APP Pharmaceuticals, LLC and US\$ 400 million is available as multicurrency facility to Fresenius Finance I S.A., a wholly-owned subsidiary of Fresenius SE & Co. KGaA) which will be due and payable on September 10, 2013.
- Term Loan Facilities (Term Loan A) in the aggregate principal amount of US\$ 537 million (of which equal shares are available to Fresenius US Finance I, Inc., a wholly-owned subsidiary of Fresenius SE & Co. KGaA, and to APP Pharmaceuticals, LLC). Term Loan A amortizes and is repayable in unequal semi-annual instalments with a final maturity date on September 10, 2013.
- Term Loan Facilities (Term Loan D) in the aggregate principal amount of US\$ 971.4 million and € 160.5 million (of which US\$ 572.2 million and € 160.5 million are available to Fresenius US Finance I, Inc. and US\$ 399.2 million is available to APP Pharmaceuticals, LLC). Term Loan D amortizes and is



repayable in equal semi-annual instalments with a final bullet payment on September 10, 2014.

The interest rate on each borrowing under the 2008 Senior Credit Agreement is a rate equal to the aggregate of (a) the applicable margin (as described below) and (b) LIBOR or, in relation to any loan in Euros, EURIBOR for the relevant interest period. The applicable margin is variable and depends on the Leverage Ratio as defined in the 2008 Senior Credit Agreement. In the case of Term Loan D, a minimum LIBOR or EURIBOR was set for 1.00%.

To hedge large parts of the interest rate risk connected with the floating rate borrowings under the 2008 Senior Credit Agreement, the Fresenius Group entered into interest rate hedges.

In addition to scheduled principal payments, indebtedness outstanding under the 2008 Senior Credit Agreement will be reduced by mandatory prepayments in the case of certain sales of assets, incurrence of additional indebtedness, equity issuances and certain intercompany loan repayments, with the amount to be prepaid depending on the proceeds which are generated by the respective transaction.

The 2008 Senior Credit Agreement is guaranteed by Fresenius SE & Co. KGaA, Fresenius ProServe GmbH and Fresenius Kabi AG. The obligations of APP Pharmaceuticals, LLC under the 2008 Senior Credit Agreement that refinanced indebtedness under the former APP credit facility are secured by the assets of APP and its subsidiaries and guaranteed by APP's subsidiaries on the same basis as the former APP credit facility. All lenders also benefit from indirect security through pledges over the shares of certain subsidiaries of Fresenius Kabi AG and pledges over certain intercompany loans.

The 2008 Senior Credit Agreement contains a number of customary affirmative and negative covenants and other payment restrictions. These covenants include limitations on liens, sale of assets, incurrence of debt, investments and acquisitions and restrictions on the payment of dividends, among other items. The 2008 Senior Credit Agreement also includes financial covenants – as defined in the agreement – that require Fresenius SE & Co. KGaA and its subsidiaries (other than Fresenius Medical Care and its subsidiaries) to maintain a maximum leverage ratio, a minimum fixed charge coverage

ratio, a minimum interest coverage ratio and limits amounts spent on capital expenditure. As of December 31, 2011, the Fresenius Group was in compliance with all covenants under the 2008 Senior Credit Agreement.

In addition, Fresenius SE & Co. KGaA together with Fresenius Kabi AG is guaranteeing a loan of € 24.1 million taken up by Fresenius Immobilien-Verwaltungs-GmbH & Co. Objekt Friedberg KG in 2010, of which € 23.4 million was outstanding as of December 31, 2011.

A comfort letter was furthermore issued to Fresenius HemoCare Netherlands B.V., the Netherlands in connection with social plan obligations; the liabilities reported by that company in this connection amounted as of December 31, 2011 to € 185 thousand (Dec. 31, 2010: € 317 thousand).

With a letter dated January 29, 2008 the Company issued a declaration to its subsidiary, Fresenius Kabi AB, Sweden, that the equity of that company corresponds at least with the registered share capital.

With a letter dated December 22, 2011, the Company issued a guarantee declaration to Fresenius Kabi Austria GmbH, Austria, in which it promised, subject to a condition precedent, for a period initially limited to the next 5 years, to pay Fresenius Kabi Austria GmbH a compensating subsidy, by which possible sales proceeds remain below the cost or an adapted purchase price, in the event that investment in Fresenius Kabi (Singapore) Pte. Ltd., Singapore, that is held directly by Fresenius Kabi Austria GmbH or Fresenius Kabi Oncology Ltd., India, that was acquired by the former, is sold.

The adaption of the purchase price will be necessary to the extent that capital measures (increases in capital) or subsidies increase the cost or reductions in capital, repayments of capital contributions or dividends in excess of the annual earnings could have decreased it.

Similarly with a letter dated December 22, 2011, the Company issued a guarantee declaration to Fresenius Kabi Austria GmbH, Austria, in which it promised, subject to a condition precedent, for a period initially limited to the next 5 years, that on a possible sale of FHC (Holdings) Ltd., U.K., which is owned by it, to pay a compensating subsidy, if the sales proceeds remain below the cost or an adapted purchase price.

The adaption of the purchase price will be necessary to the extent that capital measures (increases in capital) or subsidies increase the cost or reductions in capital, repayments of capital contributions or dividends in excess of the annual earnings could have decreased the cost.

Fresenius Kabi AG together with Fresenius ProServe GmbH and Fresenius SE & Co. KGaA has guaranteed repayment of two bonds of Fresenius SE & Co. KGaA of € 1,150 million, which were issued in 2006 through Fresenius Finance B.V., the Netherlands, or increased in 2009, including accumulated interest. As of December 31, 2011 these guarantees including accumulated interest amounted to € 1,180 million.

Fresenius Kabi AG together with Fresenius ProServe GmbH and Fresenius SE & Co. KGaA has also guaranteed the repayment including accumulated interest for a bond issued in 2009 through Fresenius Finance II, Inc. USA. The bond was issued in two tranches of US\$ 500 million and € 275 million. The guarantee amounted as of December 31, 2011 including accumulated interest to US\$ 523 million (€ 404 million) and € 287 million.

Together with Fresenius ProServe GmbH, Fresenius Kabi AG guarantees repayment of a loan of € 100 million plus accumulated interest taken up by Fresenius SE & Co. KGaA from the European Investment Bank; the loan amounted as of December 31, 2011 including accumulated interest to € 100 million.

As far as we are aware, the underlying obligations can be fulfilled in all cases by the companies affected; a claim on us is not currently expected.

**(12) Other financial  
commitments**

|                                                               | Dec. 31,<br>2011 |
|---------------------------------------------------------------|------------------|
|                                                               | '000 €           |
| Obligations under leasehold, rental<br>and leasing agreements |                  |
| due in 2012                                                   | 678              |
| due from 2013 – 2016                                          | 153              |
| due after 2016                                                | 0                |
|                                                               | <u>831</u>       |
| (thereof to related<br>parties)                               | (578)            |
| Order commitment ongoing capital<br>expenditures              | 34               |
| Other commitments                                             | <u>167,417</u>   |
|                                                               | <u>168,282</u>   |

## Notes to the income statement

### (13) Income from participations

|                                                 | 2010      | 2011     |
|-------------------------------------------------|-----------|----------|
|                                                 | '000 €    | '000 €   |
| Income from profit and loss transfer agreements | 154,342   | 212,860  |
| Income from participations                      | 111,708   | 89,121   |
| (thereof from related parties)                  | (111,708) | (89,121) |
| Expenses from loss transfer agreements          | -1,577    | 0        |
|                                                 | 264,473   | 301,981  |

Profit and loss transfer agreements have been concluded with Fresenius Kabi Deutschland GmbH, Bad Homburg v. d. Höhe, V. Krütten Medizinische Einmalgeräte GmbH, Idstein, HOSPED GmbH Lieferservice für Klinik, Handel und Patienten, Friedberg, and Fresenius HemoCare Beteiligungs GmbH, Bad Homburg v. d. Höhe.

### (14) Other operating income

Other operating income mainly includes exchange gains of € 138,000 thousand (Dec. 31, 2010: € 143.239 thousand), cost reimbursements of € 5,890 thousand (2010: € 6,165 thousand) from related parties based on service agreements and proceeds from the reversal of other accruals of € 3,603 thousand (2010: € 1,077 thousand).

### (15) Personnel expenses

|                                                     | 2010   | 2011   |
|-----------------------------------------------------|--------|--------|
|                                                     | '000 € | '000 € |
| Wages and salaries                                  | 16,047 | 15,703 |
| Social security, pension and other benefit expenses | 903    | 265    |
| (thereof for pensions)                              | (363)  | (200)  |
|                                                     | 16,950 | 15,968 |

|                                             | 2010 | 2011 |
|---------------------------------------------|------|------|
| Average number of employees during the year |      |      |
| (average full-time employees)               |      |      |
| Employee groups                             |      |      |
| Wage-earners                                | 0    | 0    |
| Salaried staff                              | 50   | 32   |
| Apprentices                                 | 0    | 0    |
|                                             | 50   | 32   |

**(16) Depreciation and amortization of intangible assets and property, plant and equipment**

The depreciation and amortization of € 5,127 thousand (2010: € 5,101 thousand) mainly comprises systematic amortization on the rights to use the name "Kabi" acquired in 1999 (€ 5,000 thousand).

**(17) Other operating expenses**

The other operating expenses mainly comprise exchange losses (€ 140,968 thousand; 2010: € 153,204 thousand), other operating expenses in connection with the restructuring measure in the financial assets (€ 54,462 thousand, 2010: € 0), expenses for services by related parties (€ 12,693 thousand; 2010: € 10,893 thousand), insurance and consultancy expenses (€ 12,347 thousand; 2010: € 14,527 thousand), IT related expenses (€ 5,362 thousand; 2010: € 4,059 thousand), staff hiring costs (€ 2,554 thousand; 2010: € 500 thousand), travelling and entertaining expenses (€ 2,104 thousand; 2010: € 2,134 thousand), expenses for third party services (€ 821 thousand; 2010: € 281 thousand), leasing and rental expenses (€ 737 thousand; 2010: € 685 thousand), advertising expenses (€ 418 thousand; 2010: € 287 thousand), voluntary social expenses (€ 361 thousand; 2010: € 182 thousand), allocations to accruals (€ 231 thousand; 2010: € 121 thousand), donations (€ 92 thousand; 2010: € 177 thousand) and research and development expenses (€ 88 thousand; 2010: € 195 thousand).

The fees recorded for the auditors include the following components:

|                               | 2010<br>'000 € | 2011<br>'000 € |
|-------------------------------|----------------|----------------|
| Audit of financial statements | 353            | 327            |
| Tax advisory services         | 27             | 0              |
| Other assurance services      | 0              | 0              |
| Other services                | 0              | 0              |
|                               | <u>380</u>     | <u>327</u>     |

#### **(18) Interest result**

|                                                                                                                   | 2010<br>'000 €                 | 2011<br>'000 €                 |
|-------------------------------------------------------------------------------------------------------------------|--------------------------------|--------------------------------|
| Income from other securities and long-term loans<br>(thereof from related parties)                                | 36,913<br>(36,913)             | 36,554<br>(36,554)             |
| Other interest and similar income<br>(thereof from related parties)<br>(thereof from the discounting of accruals) | 23,224<br>(22,629)<br>0        | 21,763<br>(19,852)<br>(12)     |
| Interest and similar expenses<br>(thereof to related parties)<br>(thereof from discounting of accruals)           | -53,966<br>(-51,404)<br>(-934) | -67,765<br>(-65,430)<br>(-310) |
|                                                                                                                   | <u>6,171</u>                   | <u>-9,448</u>                  |

The income from other securities and long-term loans and the increase in interest expense in the intercompany area result from the restructuring of the loans in 2009 and 2010 in the Fresenius Group.

#### **(19) Write-downs on financial assets**

The write-downs on financial assets (€ 35,476 thousand, 2010: € 0) entirely comprise the write-down of the investment in Fresenius Kabi Oncology Plc., London (U.K.) that was acquired in 2011 to the lower fair value.

#### **(20) Result from ordinary operations**

The result from ordinary operations amounts to € 148,077 thousand (2010: € 217,946 thousand).

#### **(21) Extraordinary result**

The extraordinary result comprises the amount from the allocation of 14/15 of the difference in accordance with Article 67 (1) Sentence 1 EGHGB (€ 1,577 thousand, 2010: € 113 thousand).

**(22) Income taxes**

Income taxes primarily comprise levies for trade tax on income (€ 11,211 thousand; 2010: € 13,271 thousand), corporate income tax (€ 11,461 thousand; 2010: € 14,205 thousand) and expenses from the solidarity surcharge (€ 631 thousand; 2010: € 781 thousand) and non-imputable source tax (€ 1,238 thousand; 2010: € 2,854 thousand).

**(23) Total compensation of the management board**

The total remuneration for active members of the management board amounted to € 3,947 thousand and for former members of the management board to € 6 thousand (2010: € 3,248 thousand € for active and € 6 thousand for former members of the management board). The pension obligation for active members of the management board amounted to € 2,312 thousand (Dec. 31, 2010: € 1,796 thousand) and for former members of the management board to € 606 thousand (Dec. 31, 2010: € 571 thousand).

**(24) Appropriation of the earnings**

The net income earned in the past financial year has been transferred to Fresenius SE & Co. KGaA.

Please refer with regard to the disclosures in accordance with Section 285 No. 10 HGB to Appendix 1 to the notes to the financial statements.

Bad Homburg v. d. Höhe, February 21, 2012

R. Baule

M. Crouton

J. Ducker

M. Henriksson

M. Köhler

Dr. M. Schönhofen

G. Steen



**Fresenius Kabi AG****Disclosures in accordance with Section 285 No. 10 HGB****Supervisory Board**

Dr. Ulf M. Schneider

Chairman of the supervisory board

Chairman of the management board of Fresenius Management SE (personally liable partner in Fresenius SE & Co. KGaA)

Stephan Sturm

Chief Financial Officer of Fresenius Management SE (personally liable partner in Fresenius SE & Co. KGaA)

Christian Fischer

Divisional Manager Group Controlling Fresenius SE & Co. KGaA

## **Fresenius Kabi AG**

### **Disclosures in accordance with Section 285 No. 10 HGB**

#### **Management Board**

Rainer Baule

Member of the management board of Fresenius SE & Co. KGaA Kabi Division

Chairman of the management board of Fresenius Kabi AG

Marc Crouton

Member of the management board of Fresenius Kabi AG Western and Southern Europe, Latin America, Africa Region

John Ducker

Member of the management board of Fresenius Kabi AG North America Region

Mats Henriksson

Member of the management board of Fresenius Kabi AG Asia-Pacific Region

Manfred Köhler

Member of the management board of Fresenius Kabi AG Central European, Eastern and Northern Europe and the Middle East Region

Dr. Michael Schönhofen

Member of the management board of Fresenius Kabi AG Science, Production & Technology Division

Gerrit Steen

Chief Financial Officer of Fresenius Kabi AG

# Auditor's report

To Fresenius Kabi Aktiengesellschaft

We have audited the annual financial statements, comprising the balance sheet, the income statement and the notes to the financial statements, together with the bookkeeping system, of Fresenius Kabi Aktiengesellschaft, Bad Homburg v. d. Höhe for the business year from January 1 to December 31, 2011. The maintenance of the books and records and the preparation of the annual financial statements in accordance with German commercial law are the responsibility of the Company's management. Our responsibility is to express an opinion on the annual financial statements, together with the bookkeeping system, based on our audit.

We conducted our audit of the annual financial statements in accordance with Art. 317 HGB [“Handelsgesetzbuch”: German Commercial Code] and German generally accepted standards for the audit of financial statements promulgated by the Institut der Wirtschaftsprüfer [Institute of Public Auditors in Germany] (IDW). Those standards require that we plan and perform the audit such that misstatements materially affecting the presentation of the net assets, financial position and results of operations in the annual financial statements in accordance with German principles of proper accounting are detected with reasonable assurance. Knowledge of the business activities and the economic and legal environment of the Company and expectations as to possible misstatements are taken into account in the determination of audit procedures. The effectiveness of the accounting-related internal control system and the evidence supporting the disclosures in the books and records and the annual financial statements are examined primarily on a test basis within the framework of the audit. The audit includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the annual financial statements. We believe that our audit provides a reasonable basis for our opinion.

Our audit has not led to any reservations.

In our opinion, based on the findings of our audit, the annual financial statements comply with the legal requirements and give a true and fair view of the net assets, financial position and results of operations of Fresenius Kabi Aktiengesellschaft in accordance with German principles of proper accounting.

Frankfurt am Main, February 21, 2012

KPMG AG  
Wirtschaftsprüfungsgesellschaft

A handwritten signature in blue ink, appearing to read 'Hommel'.

Hommel  
Wirtschaftsprüferin

A handwritten signature in blue ink, appearing to read 'Dolibasic'.

Dolibasic  
Wirtschaftsprüferin

**Unconsolidated Financial Statements of Fresenius Kabi AG for 2010 (German-GAAP)**

Fresenius Kabi Aktiengesellschaft, Bad Homburg v. d. Höhe  
until June 22, 2010: Frankfurt am Main

Balance sheet as of December 31, 2010

**A s s e t s**

|                                                | Note  | 12/31/2010 |           | 12/31/2009 |           |
|------------------------------------------------|-------|------------|-----------|------------|-----------|
|                                                | (No.) | TEUR       | TEUR      | TEUR       | TEUR      |
| <b>A. Fixed assets</b>                         | 4     |            |           |            |           |
| <b>I. Intangible assets</b>                    |       |            | 16,008    |            | 21,001    |
| <b>II. Property, plant and equipment</b>       |       |            | 126       |            | 165       |
| <b>III. Financial assets</b>                   |       |            | 2,007,627 |            | 1,850,214 |
|                                                |       |            | 2,023,761 |            | 1,871,380 |
| <b>B. Current assets</b>                       |       |            |           |            |           |
| <b>I. Accounts receivable and other assets</b> | 5     |            |           |            |           |
| 1. Amounts owed by affiliated companies        |       | 709,778    |           | 669,430    |           |
| 2. Other assets                                |       | 4,532      | 714,310   | 1,808      | 671,238   |
| <b>II. Cash in hand and at banks</b>           |       |            | 134       |            | 126       |
|                                                |       |            | 714,444   |            | 671,364   |
| <b>C. Prepaid expenses</b>                     |       |            | 3         |            | 0         |
|                                                |       |            | 2,738,208 |            | 2,542,744 |

## Equity and Liabilities

|                                                    | Note  | 12/31/2010 | 12/31/2009 |
|----------------------------------------------------|-------|------------|------------|
|                                                    | (No.) | TEUR       | TEUR       |
| <b>A. Stockholder's equity</b>                     |       |            |            |
| <b>I. Subscribed capital</b>                       | 6     |            |            |
| Common stock                                       |       | 66,000     | 66,000     |
| <b>II. Capital reserve</b>                         | 7     | 1,204,936  | 1,204,936  |
| <b>III. Unappropriated retained earnings</b>       | 8     | 217,401    | 217,401    |
|                                                    |       | 1,488,337  | 1,488,337  |
| <b>B. Provisions</b>                               | 9     |            |            |
| 1. Provisions for pensions and similar obligations |       | 4,483      | 3,133      |
| 2. Other provisions                                |       | 25,829     | 7,315      |
|                                                    |       | 30,312     | 10,448     |
| <b>C. Liabilities</b>                              | 10    |            |            |
| 1. Trade accounts payable                          |       | 1,196      | 85         |
| 2. Amounts owed to affiliated companies            |       | 1,217,987  | 1,037,745  |
| 3. Other liabilities                               |       | 376        | 6,129      |
|                                                    |       | 1,219,559  | 1,043,959  |
|                                                    |       | 2,738,208  | 2,542,744  |

Fresenius Kabi Aktiengesellschaft, Bad Homburg v. d. Höhe  
until June 22, 2010: Frankfurt am Main

Income statement  
for the year ended December 31, 2010

|                                                                                           | Note  | 2010     | 2009    |
|-------------------------------------------------------------------------------------------|-------|----------|---------|
|                                                                                           | (No.) | TEUR     | TEUR    |
| 1. Net income from equity investments                                                     | 13    | 264,473  | 142,271 |
| 2. Other operating income                                                                 | 14    | 157,575  | 60,500  |
| 3. Personnel expenses                                                                     | 15    | -16,950  | -13,069 |
| 4. Amortization of intangible assets and depreciation<br>of property, plant and equipment | 16    | -5,101   | -5,099  |
| 5. Other operating expenses                                                               | 17    | -188,222 | -77,198 |
| 6. Income from other securities and<br>financial asset loans                              | 18    | 36,913   | 40,583  |
| 7. Other interest and similar income                                                      | 18    | 23,224   | 14,002  |
| 8. Interest and similar expenses                                                          | 18    | -53,966  | -54,091 |
| 9. Income from ordinary trading activities                                                | 19    | 217,946  | 107,899 |
| 10. Extraordinary income                                                                  |       | 1,806    | 0       |
| 11. Extraordinary expenses                                                                |       | -113     | 0       |
| 12. Extraordinary result                                                                  | 20    | 1,693    | 0       |
| 13. Taxes on income (intercompany apportionments)                                         | 21    | -31,111  | -24,230 |
| 14. Miscellaneous taxes                                                                   |       | -25      | -27     |
| 15. Net income transferred under a profit and loss<br>transfer agreement                  | 23    | -188,503 | -83,642 |
| 16. Net income for the year                                                               |       | 0        | 0       |
| 17. Unappropriated retained earnings brought forward                                      |       | 217,401  | 217,401 |
| 18. Unappropriated retained earnings carried forward                                      | 8     | 217,401  | 217,401 |



## **Notes to the financial statements of Fresenius Kabi AG**

### **(1) General**

Fresenius Kabi Aktiengesellschaft, Frankfurt am Main, abbreviated below to "Fresenius Kabi AG", was founded on August 21, 1998 and registered on October 2, 1998 in the trade register of the Court Office at Frankfurt am Main. With effect from May 10, 2010, the Annual General Meeting of Fresenius Kabi AG resolved the change in the Statutes in § 1 (domicile) and, with the aforesaid, the transfer of its legal venue from Frankfurt am Main to Bad Homburg v. d. Höhe. The entry in the Commercial Register of the Local Court of Bad Homburg v. d. Höhe (previously the Frankfurt am Main Local Court) was made on June 22, 2010.

Fresenius Kabi AG acts as the holding company for the worldwide business of supplying products and services for enteral and parenteral nutrition, as well as for infusion therapy and intravenously administered drugs.

A profit or loss transfer agreement has existed since January 1, 2001 between Fresenius Kabi AG and its 100 percent shareholder, Fresenius SE & Co. KGaA (until January 28, 2011: Fresenius SE).

With the entry in the Commercial Register on January 28, 2011, the change in the legal form of Fresenius SE into a partnership limited by shares operating under the name of Fresenius SE & Co. KGaA in conjunction with the conversion of the preference shares into ordinary shares of the Company became valid.

Fresenius Kabi AG is exempt from preparing consolidated financial statements and a group management report, as Fresenius SE & Co. KGaA, Bad Homburg v. d. Höhe, the parent company, prepares exempting consolidated financial statements under Section 291 HGB [German Commercial Code] and a Group Management Report in accordance with Section 315a HGB under International Financial Reporting Standards (IFRS), as adopted by the EU, at the highest level for companies in the group, and Fresenius Kabi AG and its subsidiaries are included in the aforesaid consolidated financial statements. The consolidated financial statements of Fresenius SE & Co. KGaA are disseminated in the electronic Federal Gazette.

### **(2) Accounting and valuation principles**

As a result of the inclusion of the provisions of the HGB in the new version (German Accounting Law

Modernization Act – BilMoG), the accounting and valuation methods applied in the previous year have not been continued in full. § 252, para. 1, no. 6 HGB in the new version is not applicable therefore. § 265, para. 1 HGB in the new version re disclosure consistency and § 284, para. 2, no. 3 HGB in the new version for explaining deviations from accounting and valuation methods on account of the initial application of the regulations amended by BilMoG do not apply. The changeover to the new commercial law regulations mainly gives rise to the following changes:

- Pension provisions are actuarially determined on the basis of biometrical probabilities (mortality tables of Heubeck 2005 G) based on the expectancy cash value procedure (Projected-Unit-Credit-Method). Future anticipated compensation and pension increases are taken into account when calculating the obligations. For discounting pension obligations, use is made of the average market interest rates calculated and published by the German Bundesbank and average market interest rates for an assumed residual term of 15 years.
- According to § 256a HGB in the new version, assets and liabilities denominated in a foreign currency with a residual term of up to one year are converted at the spot exchange mid-rate rate on the closing date. Contrary to the previous approach, the realisation and imparity principles are not observed.
- The new ruling on valuation units in the new version of § 254 HGB gives rise to an extension of the Company's existing accounting practice in the form that hedging transactions for securing future payment flows with the relevant basic transactions are combined and valued in a so-called anticipative valuation unit. The new rulings gave rise to no accounting effects in the report year.
- For the valuation of pre-retirement part-time employment, the investment fund shares acquired to secure the relevant value are set off against the provision for pre-retirement part-time employment in accordance with § 246, para. 2, clause 2 HGB.
- The new ruling in § 253 HGB results in the provisions for employee-financed life working time accounts (demographic fund) in accordance with § 253, para. 1, clause 3 HGB in the amount of the capitalized value of the congruent recourse insurance. The capitalized value set off against the provision is applied as the current market value.

- Future price and cost increases are included in the valuation of provisions. In addition, if relevant, provisions with a residual term of more than one year are discounted at an average market rate of the last seven years corresponding with the residual term as published by the German Bundesbank.

The previous year's comparative figures have not been adjusted commensurate with Art. 67, para. 8, clause 2.1, half-sentence of the EGHGB (Introductory Act to the Commercial Code).

**Intangible assets** acquired for a consideration are valued at their acquisition cost less standard straight-line amortization. The estimated useful life is normally between two and five years. With PC assistance programs, the usage period is equivalent to two years and know-how up to five years. The valuation of the usage right for the Company name "Kabi" is based on a useful life of fifteen years.

**Fixed assets** – property, plant and equipment -are valued at their acquisition cost less standard straight-line or reducing balance depreciation.

The following usage periods mainly apply for calculating the depreciation charge:

Office and factory buildings      10 - 25 years

Technical plant  
and machinery                              5- 15 years

Other equipment, works and  
office equipment                              3 - 10 years

For depreciable and moveable fixed assets, the value of which exceeds € 150 but with a maximum of € 1,000, a collective item is established which is released against profits in the year of its formation and in the following four years with a fifth charge against profits.

Accelerated depreciation has been charged when necessary in order to reduce assets to fair values on the balance sheet date. A lower valuation is not retained if the reasons for the previous depreciation applied no longer exist.

**Financial assets** are stated at their acquisition cost or at their attributable lower value in the event of a permanent reduction in value.

**Trade accounts receivable and other assets** are stated at their nominal value less specific bad debt provisions as required.

**Securities** are stated at their nominal amount or, in the event of a permanent value reduction, at their lower attributable value.

In the case of pre-retirement part-time employment circumstances, the credit balance attributable to employees is secured against insolvency in compliance with the relevant legal regulations. For the aforesaid purpose, the Company acquires shares in a money-market investment fund in the amount of the accumulated value credit. Security is provided by way of a pledge of the investment fund shares to a trustee. The invested securities are therefore exclusively used to settle the obligations under the pre-retirement scheme in the event of insolvency and are not subject to access by other creditors. They were set off for the first time in the financial year against the relevant obligations in accordance with § 246, para. 2, clause 2 HGB in the new version. The attributable current market values of these securities were derived from their stock exchange rate on the balance sheet date.

|                                                                          |          |
|--------------------------------------------------------------------------|----------|
| Settlement amount of the pre-retirement part-time employment obligations | € 95,000 |
|--------------------------------------------------------------------------|----------|

|                                              |          |
|----------------------------------------------|----------|
| Attributable current value of the securities | € 40,000 |
|----------------------------------------------|----------|

|                                                     |          |
|-----------------------------------------------------|----------|
| Surplus of the obligations over the relevant assets | € 55,000 |
|-----------------------------------------------------|----------|

|                                     |          |
|-------------------------------------|----------|
| Acquisition costs of the securities | € 41,000 |
|-------------------------------------|----------|

In the income statement, expenses and income in the interest statement arising from the value of securities and the provision of € 91 were set off in the interest income.

**Pension provisions** are determined actuarially based on the biometrical likelihood (Heubeck 2005 G mortality tables) based on the Projected-Unit-Credit-Method). In future, anticipated compensation and

pension increases are taken into account by calculating the relevant obligations. At present, annual adjustments of 5.25% are assumed for earnings and 5.34% for pensions. The likewise integrated specific business fluctuation rate ranged between 0 % and 18%. The interest rate used for discounting pension obligations is equivalent to 5.16% For discounting the pension obligations, use is made of the average market interest rate for the last seven financial years for an assumed residual term of 15 years calculated and published by the German Bundesbank.

The value of provisions in connection with employee-financed working life time accounts (demographic funds) is determined on the basis of development of the asset value of the congruent recourse insurance in accordance with § 253, para. 1, clause 3 HGB in the new version (security-related pensions).

On the strength of a Company Agreement concluded in November 2009, employees are entitled to contribute to a working time and salary component account operated by the Company with effect from January 1, 2010 in order to claim the aforesaid in the form of free-time at a later date (demographic fund). The credit balances attributable to employees are invested in an insurance product which, by means of a trust, excludes any access by the Company and its creditors. It is therefore a so-called security-related pension promise within the meaning of § 253, para. 1, clause 3 HGB (new version). The provision for the time credits of employees is therefore stated in the amount of the current value of the insurance product. The aforesaid current value is based on the business plan covering the capital fund of the insurance company plus any available profit sharing.

|                                                                  |         |
|------------------------------------------------------------------|---------|
| Performance amount of the obligations under the demographic fund | € 7,000 |
| Current value of the insurance fund to be contributed            | € 7,000 |
| Surplus of assets over obligations                               | 0       |
| Insurance acquisition costs                                      | € 7,000 |

In the income statement, expenses and income attributable to the insurance and provision have been set off in the amount of € 169.

**Taxation and other provisions** are formed for identifiable risks and contingent liabilities and are stated at the settlement amount which is necessary on the strength of a reasonable commercial assessment. Long-term provisions are discounted at their term-related average market interest rate of the last seven years.

**Liabilities** are stated at their anticipated settlement amount.

**Security loans** are stated at their anticipated repayment value.

The conversion of **foreign currency items** is basically made in the initial stage at the spot mid rate or, in the event of a corresponding security transaction or, if a corresponding hedging transaction is involved, at the respective spot rate.

In accordance with the new version of § 256a HGB, assets and liabilities denominated in foreign currencies with a residual term of less than one year are converted at the average foreign exchange rate on the balance sheet date and, contrary to the previous approach, the realization principle is not taken into account. Unrealized gains on foreign currency conversions were recorded for the first time on January 1, 2010 in the amount of T€ 1,806 and are shown as extraordinary income.

The conversion of assets and liabilities denominated in foreign currencies with a residual term of more than one year is basically made at the foreign exchange conversion rate on the date of their origin and, in the case of assets, at their lower, and in the case of liabilities, at the higher foreign exchange rate on the balance sheet date. If the prerequisites for the establishment of valuation units are met, hedging and underlying transactions are grouped together into one valuation unit. If freezing methods are applied, these are valued at the rate when they are transacted with value changes in the light of the secured risk not being included in the balance sheet and the ensuing results no longer being recorded.

Profits and losses arising from the conversion of foreign exchange items into Euros are recorded as such and are taken up in the income statement under "Other operating income" or "Other operating expenses".

**Derivative financial instruments** are only used in order to secure risks. Interest, currency and raw material derivatives are included.

In addition to hedging transactions for foreign currency loans which group companies have raised for the company or which the Company has taken up with group companies and banks, the Company concludes hedging transactions with banks with almost identical conditions applying in contracts between Fresenius Kabi AG and their subsidiaries. Subsidiaries use the contracts to hedge their operating business against foreign currency risks.

In addition, the Company concludes hedging transactions in the form of foreign exchange transactions for future foreign currency risks (arising from purchasing transactions and/or sale transactions denominated in foreign currencies) and which constitute anticipative valuation units.

Derivative financial instruments are valued at their attributable current market value on the balance sheet date. Based on commercial valuation principles, a negative valuation is recorded as a loss. Positive valuations are not taken into account, however. If the prerequisites for establishing a valuation unit are met, the forwarding and basic transaction constitute a valuation unit with the result that the economic effects both of the basic and hedging transaction are only taken into account as income when the underlying transaction has been concluded.

In accordance with the holding function of the Company, the **profit and loss** is shown as "investment income" and not under the item under § 275, para. 2, No. 1 HGB (sales revenues). This includes income from profit and loss transfer agreements, investment income and expenses in connection with the assumption of losses.

### **(3) Financial derivatives**

Fresenius Kabi AG uses derivative financial instruments in order to hedge against existing interest and currency risks or risks which are to be anticipated in all probability. The use of derivative financial instruments is exclusively attributable to hedging purposes. Derivative financial instruments are basically concluded on the strength of the intrinsic features of the underlying business with the result that greater efficiency of the hedging transaction can be anticipated as a result. The Company has internal guidelines for assessing risks and for controlling the use of financial instruments. They include a clear and

conclusive separation of responsibilities with regard to the execution on the one hand and the processing, accounting and control on the other. The aim of the use of derivative financial instruments is to reduce fluctuations with regard to the relevant results and payment flows and which are attributable to exchange rate and interest rate fluctuations.

### **Exchange rate risks**

The Company applies forward exchange transactions in order to secure against foreign currency risks.

Fresenius Kabi AG has concluded foreign exchange forward transactions with external contracting parties in order to hedge against foreign exchange rate risks in connections with receivables and payable and also in connection with transactions of the Company and its subsidiaries. On the balance sheet date, the Company mainly had US-\$ or € currency derivatives with a nominal value of € 710,152 thousand, an attributable current market value of € -2,675 thousand and a maximum term of 22 months in its portfolio.

Where currency hedging transactions concerning intra-group transactions concluded with banks for the purpose of hedging foreign currency risks of group companies of Fresenius Kabi AG have been transferred, a summary per measurement unit was prepared of the market value of the contrary movements of the hedging transactions. The accounting presentation of the valuation units is based on the "suspension" method. Within the aforesaid valuation units, there was a net attributable current value of € -2,675 thousand in connection with the external and internal transactions on the balance sheet date. The aforesaid balance resulted from the prolongation of foreign exchange contracts which were carried out externally on a current rate basis and externally carried out on the current rate basis and internally on the rate basis of the original exchange transaction. The nominal volume of the aforesaid transactions amounted to € 496,193 thousand at December 31, 2010. A provision for pending losses equivalent to € -4,195 thousand has been made under miscellaneous provisions.



Additional valuation units have been established for foreign currency loans which Group companies and banks have taken up from the Company and which constitute mutual foreign exchange transactions concluded for their mutual security. The aforesaid loans claims and liabilities which are fully secured against foreign currency risks had a net book value of € 544,241 thousand on the balance sheet date. The external foreign exchange contracts for securing the individual loan claims and liabilities show an attributable current market value of € -8,549 thousand. Both the loan claims and liabilities effected the current results, i.e. they were recorded accounting-wise on the basis of the throughput recording method. The almost complete settlement of the contra payment flows was made at the latest after 11 months.

For the other foreign currency derivatives with a negative attributable current value € -778 thousand, a provision for pending losses was made on the balance sheet date in the amount of € 1,000 thousand.

There were no interest derivatives on the balance sheet date.

### **Valuation methods**

The attributable current values of derivative financial instruments are determined on the basis of customary market valuation methods taking due account market data (market values) available on the valuation date. The following basic principles apply in the aforesaid respect:

The current attributable current value based on the market value at which a derivative financial instrument can be conducted between independent parties, whereby compulsory sales or liquidation sales have to be disregarded. For determining the market values of forward exchange transactions, a comparison is made between the contracted forward rate and the closing rate on the balance sheet date. The resulting value is discounted by taking account of the current market interest rates of the corresponding currency on the balance sheet date. In the case of interest swaps, the valuation is made by discounting the future payment flows on the basis of the market interest rate applying on the balance sheet date for the residual value of the contracts.

In order to measure the effectiveness of hedging relationships, the Critical-Match-Method and the Dollar

Offset Method is used for forward exchange transactions and Dollar-Offset-Method in the case of interest swaps.

## Notes to the balance sheet

### (4) Fixed assets

The classification of the summarized items of fixed assets and their movements is shown below:

| Acquisition costs                                                                                            | Balance at<br>1/1/2010<br>€ 000 | Additions<br>€ 000    | Disposals<br>€ 000   | Foreign currency<br>valuation<br>€ 000 | Balance at<br>12/31/2010<br>€ 000 |
|--------------------------------------------------------------------------------------------------------------|---------------------------------|-----------------------|----------------------|----------------------------------------|-----------------------------------|
| <u>Intangible assets</u>                                                                                     |                                 |                       |                      |                                        |                                   |
| Concessions, industrial property rights and similar rights and assets and licenses to such rights and assets | 82,225                          | 57                    | 0                    | 0                                      | 82,282                            |
|                                                                                                              | <b>82,225</b>                   | <b>57</b>             | <b>0</b>             | <b>0</b>                               | <b>82,282</b>                     |
| <u>Property, plant and equipment</u>                                                                         |                                 |                       |                      |                                        |                                   |
| Miscellaneous equipment, operational and office equipment                                                    | 419                             | 12                    | 0                    | 0                                      | 431                               |
|                                                                                                              | <b>419</b>                      | <b>12</b>             | <b>0</b>             | <b>0</b>                               | <b>431</b>                        |
| <u>Financial assets</u>                                                                                      |                                 |                       |                      |                                        |                                   |
| Shares in affiliated companies                                                                               | 1,461,038                       | 33,287                | -5,669               | 0                                      | 1,488,656                         |
| Investments                                                                                                  | 2                               | 0                     | 0                    | 0                                      | 2                                 |
| Loans to affiliated companies                                                                                | 403,005                         | 116,491               | 0                    | 9,535                                  | 529,031                           |
|                                                                                                              | <b>1,864,045</b>                | <b>149,778</b>        | <b>-5,669</b>        | <b>9,535</b>                           | <b>2,017,689</b>                  |
| <b>Total fixed assets</b>                                                                                    | <b><u>1,946,689</u></b>         | <b><u>149,847</u></b> | <b><u>-5,669</u></b> | <b><u>9,535</u></b>                    | <b><u>2,100,402</u></b>           |

| Cumulative depreciation and amortization                                                                     | Cumulative depreciation and amortization as at 1/1/2010<br>€ 000 | Additions<br>€ 000 | Disposals<br>€ 000 | Cumulative depreciation and amortization as at 12/31/2010<br>€ 000 | book value 12/31/2010<br>€ 000 | book value 12/31/2009<br>€ 000 |
|--------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|--------------------|--------------------|--------------------------------------------------------------------|--------------------------------|--------------------------------|
| <u>Intangible assets</u>                                                                                     |                                                                  |                    |                    |                                                                    |                                |                                |
| Concessions, industrial property rights and similar rights and assets and licenses to such rights and assets | 61,224                                                           | 5,050              | 0                  | 66,274                                                             | 16,008                         | 21,001                         |
|                                                                                                              | <b>61,224</b>                                                    | <b>5,050</b>       | <b>0</b>           | <b>66,274</b>                                                      | <b>16,008</b>                  | <b>21,001</b>                  |
| <u>Property, plant and equipment</u>                                                                         |                                                                  |                    |                    |                                                                    |                                |                                |
| Miscellaneous equipment, operational and office equipment                                                    | 254                                                              | 51                 | 0                  | 305                                                                | 126                            | 165                            |
|                                                                                                              | <b>254</b>                                                       | <b>51</b>          | <b>0</b>           | <b>305</b>                                                         | <b>126</b>                     | <b>165</b>                     |
| <u>Financial assets</u>                                                                                      |                                                                  |                    |                    |                                                                    |                                |                                |
| Shares in affiliated companies                                                                               | 13,831                                                           | 0                  | -3,769             | 10,062                                                             | 1,478,594                      | 1,447,207                      |
| Investments                                                                                                  | 0                                                                | 0                  | 0                  | 0                                                                  | 2                              | 2                              |
| Loans to affiliated companies                                                                                | 0                                                                | 0                  | 0                  | 0                                                                  | 529,031                        | 403,005                        |
|                                                                                                              | <b>13,831</b>                                                    | <b>0</b>           | <b>-3,769</b>      | <b>10,062</b>                                                      | <b>2,007,627</b>               | <b>1,850,214</b>               |
| <b>Total fixed assets</b>                                                                                    | <b>75,309</b>                                                    | <b>5,101</b>       | <b>3,769</b>       | <b>76,641</b>                                                      | <b>2,023,761</b>               | <b>1,871,380</b>               |

## Financial assets

The increase in financial assets is mainly attributable to the increase in the loan for APP Pharmaceuticals Inc., Schaumburg (USA) and the sale of Fresenius HemoCare Holding B.V, Amsterdam (The Netherlands) to Fresenius Kabi AG associated with the reorganization of Fresenius HemoCare Nederland B.V., Emmen (The Netherlands).

The only capital increase was made with Clinico GmbH, Bad Hersfeld (Deutschland).

The sale of the no longer operative Calea Nederland N.V., 's-Hertogenbosch (The Netherlands) to Fresenius SE & Co. KGaA, Bad Homburg v. d. Höhe (Deutschland) had a contra-effect.

**(5) Accounts receivable and other assets**

|                                                    | Dec.31,<br>2009 | Dec. 31,<br>2010 |
|----------------------------------------------------|-----------------|------------------|
|                                                    | € 000           | € 000            |
| Amounts due from affiliated companies              | 669,430         | 709,778          |
| (thereof with a residual term of more than 1 year) | (-)             | (-)              |
| Other assets                                       | 1,808           | 4,532            |
| (thereof with a residual term of more than 1 year) | (-)             | (-)              |
|                                                    | 671,238         | 714,310          |

Amounts due from affiliated companies include short-term loans from affiliated companies in the amount of € 470,104 thousand (2009: € 456,578 thousand) and also mainly current accounts.

**(6) Subscribed capital**

The nominal capital amounts to € 66,000,000 and consists of 25,781,250 bearer shares.

Fresenius SE & Co. KGaA has informed Fresenius Kabi AG that it holds 100 percent of the voting rights and 100 % of the common stock.

**(7) Capital reserve**

The capital reserve amounts unchanged to € 1,204,936 thousand.

**(8) Unappropriated retained earnings**

On account of the transfer of the net income of € 188,503 thousand (2009: € 83,642 thousand) to the sole shareholder Fresenius SE & Co. KGaA, the unappropriated retained earnings remained unchanged in the financial year at € 217,401 thousand; the unappropriated retained earnings at December 31, 2010 consist exclusively of the retained earnings brought forward from the pre-affiliation earnings.

**(9) Provisions**

**Pension provisions** have been established in accordance with the "Accounting and Valuation Principles" referred to in Note (2). On the strength of the new assessment of the pension provisions at January 1, 2010, there was an undercover of € 1,690 thousand. The Company exercised its option right under Article 67, para. 1, clause 1 EGHGB in 2010 and transferred 1/15<sup>th</sup> of the difference (€ 113 thousand) to the provision. The expense for the aforesaid allocation is being transferred to the income statement under "Extraordinary expenses". The undercover of the pension provisions amounted to € 1,577 thousand on December 31, 2010.

**Other provisions** mainly include provisions for liability derivatives (€ 12,668 thousand; 2009: € 0 thousand), provisions for contingent losses (€ 5,195; 2009: € 0 thousand), personnel provisions (€ 5,050 thousand; 2009: € 2,783) and provisions for outstanding invoices (€ 2,355 thousand; 2009: € 574 thousand).

The necessary transfers relate to employee changes within the Fresenius Group.

Provision movements have been as follows:

|                                                            | Balance<br>1/1/2010<br>€ 000 | Neutral<br>transfers<br>€ 000 | Utilization<br>€ 000 | Release<br>€ 000 | Allocation<br>€ 000 | Balance<br>12/31/2010<br>€ 000 |
|------------------------------------------------------------|------------------------------|-------------------------------|----------------------|------------------|---------------------|--------------------------------|
| <b>Pension provisions</b>                                  | <b>3,133</b>                 | <b>37</b>                     | <b>0</b>             | <b>0</b>         | <b>1,313</b>        | <b>4,483</b>                   |
| Commissions, bonuses and<br>other variable<br>compensation | 2,380                        | 0                             | -1,970               | -475             | 4,677               | 4,612                          |
| Residual vacation                                          | 163                          | 0                             | -147                 | 0                | 200                 | 216                            |
| Anniversary payments                                       | 59                           | 0                             | 0                    | 0                | 1                   | 60                             |
| Other personnel provisions                                 | 181                          | -47                           | -96                  | 0                | 124                 | 162                            |
| <b>Personnel provisions</b>                                | <b>2,783</b>                 | <b>47</b>                     | <b>-2,213</b>        | <b>-475</b>      | <b>5,002</b>        | <b>5,050</b>                   |
| Outstanding invoices                                       | 574                          | 0                             | -347                 | -283             | 2,411               | 2,355                          |
| Other short-term provisions                                | 3,958                        | 0                             | -7,529               | -319             | 22,314              | 18,424                         |
| <b>Other provisions</b>                                    | <b>4,532</b>                 | <b>0</b>                      | <b>-7,876</b>        | <b>-602</b>      | <b>24,725</b>       | <b>20,779</b>                  |
| <b>Total provisions</b>                                    | <b>10,448</b>                | <b>-10</b>                    | <b>-10,089</b>       | <b>-1,077</b>    | <b>31,040</b>       | <b>30,312</b>                  |

## (10) Liabilities

|                                     | Dec. 31, 2009 |                                                                 | Dec. 31, 2010 |                        |                 |                         |
|-------------------------------------|---------------|-----------------------------------------------------------------|---------------|------------------------|-----------------|-------------------------|
|                                     | Total         | thereof<br>with a<br>residual<br>term of<br>less than<br>1 year | Total         | less<br>than 1<br>year | 1 to 5<br>years | more<br>than 5<br>years |
|                                     | € 000         | € 000                                                           | € 000         | € 000                  | € 000           | € 000                   |
| Trade accounts payable              | 85            | 85                                                              | 1,196         | 1,196                  | -               | -                       |
| Amounts due to affiliated companies | 1,037,745     | 701,705                                                         | 1,217,987     | 880,317                | -               | 337,670                 |
| Other liabilities                   | 6,129         | 6,129                                                           | 376           | 376                    | -               | -                       |
|                                     | 1,043,959     | 707,919                                                         | 1,219,559     | 881,889                | -               | 337,670                 |

Amounts due to affiliated companies mainly relate to Fresenius SE & Co. KGaA (€ 932,422 thousand; 2009: € 800,615 thousand). Apart from trade accounts payable and payables from the transfer of profits, this item mainly consists of loan liabilities. The increase in this balance sheet item mainly results from additional profit-transfer liabilities and long-term loan liabilities to Fresenius SE & Co. KGaA which originated from the assigned financing.

Other liabilities mainly consist of wage tax deductions (€ 363 thousand; 2009: € 0 thousand) and reduced obligations booked in the previous year in connection with business purchases.

## (11) Contingent liabilities

In connection with the acquisition of APP Pharmaceuticals, the Fresenius Group concluded a syndicated bank loan agreement on August 20, 2008 (hereinafter referred to as the "2008 Loan Agreement") in the amount of US \$ 2.45 billion.

Since the conclusion of the aforesaid loan agreement, both contract adjustments and also voluntary premature repayments have been made which gave rise to a change in the loan framework. The voluntary repayments of Loan B in December 2009 and February 2010 amounted to US \$ 199.7 million and € 33 million. The contract adjustments related, inter alia, to the financial key ratios defined in the contract and committed to due compliance. The contract adjustment carried out in March 2010 also gave rise to a replacement of Loan B by Loan C. Both loans are only different as far as the interest rate is concerned,

whereby for LIBOR and EURIBOR, a new lower limit of 1.50% was specified (originally Loan B: 3.25 %).

The following tables show the facilities which are available and the claims on the 2008 Loan Agreement as at December 31:

| <b>2010</b>      |                   |              |                  |              |
|------------------|-------------------|--------------|------------------|--------------|
|                  | Credit facilities |              | Amounts utilized |              |
|                  | in € million      |              | in € million     |              |
| Revolving loans  | 550 m. US\$       | 411          | 0 m US\$         | 0            |
| Loan A           | 782 m. US\$       | 586          | 782 m US\$       | 586          |
| Loan C (in US\$) | 984 m. US\$       | 736          | 984 m US\$       | 736          |
| Loan C (in €)    | 162 m. €          | 162          | 162 m €          | 162          |
|                  |                   | <b>1,895</b> |                  | <b>1,484</b> |

| <b>2009</b>      |                   |              |                  |              |
|------------------|-------------------|--------------|------------------|--------------|
|                  | Credit Facilities |              | Amounts Utilized |              |
|                  | in € million      |              | in € million     |              |
| Revolving loans  | 550 m US\$        | 382          | 0 m US\$         | 0            |
| Loan A           | 925 m US\$        | 642          | 925 m US\$       | 642          |
| Loan B (in US\$) | 1.117 m US\$      | 775          | 1.117 m US\$     | 775          |
| Loan B (in €)    | 185 m €           | 185          | 185 m €          | 185          |
|                  |                   | <b>1,984</b> |                  | <b>1,602</b> |

The 2008 Loan Agreement consisted of the following at December 31, 2010:

- Revolving credit facilities amounting to US\$ 550 million which are due on September 10, 2013. These facilities are available to APP Pharmaceuticals, LLC in the amount of US\$ 150 million and US \$ 400 million to Fresenius Finance I S.A., a wholly-owned subsidiary of Fresenius SE & Co. KGaA. The credit line usable by Fresenius Finance I S.A. may be drawn in various currencies.
- Loan facilities (Loan A) in the total amount of US\$ 782 million. These loans are available in equal parts to Fresenius US Finance I, Inc., a wholly-owned subsidiary of Fresenius SE & Co. KGaA, and to APP Pharmaceuticals, LLC. Loan A is being gradually repaid in unequal half-yearly repayment obligations which end on September 10, 2013.



- Loan facilities (Loan C) in the total amount of US\$ 983.5 million and US\$ 162.5 million. These loans are available in the amount of US\$ 579.3 million and US\$ 162.5 million from Fresenius US Finance I, Inc. and, in the amount of US \$ 404.2 million from APP Pharmaceuticals, LLC. Loan C is being gradually repaid in equal half-yearly repayment instalments. The last repayment is due on September 10, 2014.

The interest rate for the funds taken up as part of the 2008 loan agreement consist of (a) the applicable margin (as described below) and (b) the respective LIBOR or for drawings in Euros the respective EURIBOR for the corresponding interest periods. The applicable margin is variable and is changed depending on the indebtedness ratio as per the definitions of the 2008 Loan Agreement. In the case of Loan C, a lower limit of 1.50% was fixed for LIBOR and EURIBOR.

Fixed interest rates were concluded for most of the variable interest-free loans under the 2008 loan agreement.

In addition to the bindingly specified repayment instalments, liabilities in connection with the 2008 loan agreement have to be repaid in accordance with specified repayment clauses relating to certain transactions (e.g. in the case of the sale of certain assets, an increase in liabilities, equity capital measures and repayments of certain group loans). In doing so, the amount of the premature repayment depends upon the premature repayment of the income generated by the aforesaid transactions.

The loan agreement for 2008 is guaranteed by Fresenius SE & Co. KGaA, Fresenius ProServe GmbH and Fresenius Kabi AG. The liabilities taken up by APP Pharmaceuticals, LLC as part of the 2008 loan agreement and which were used to refinance liabilities under APP's former loan agreement are secured with asset values of APP and its subsidiaries and are guaranteed by APP's subsidiary companies. All loan lenders are also benefiting from indirect securities by pledging shares in certain subsidiaries of Fresenius Kabi AG and by pledging certain group loans.

The 2008 loan agreement includes a whole range of customary performance and forbearance obligations and other payment restrictions. The aforesaid obligations include limitations with regard to the grant of security rights, the sale of assets, the assumption of additional liabilities, investments and acquisitions as well as limitations with regard to the payment of dividends. The 2008 loan agreement also commits Fresenius SE & Co. KGaA and its subsidiaries (with the exclusion of Fresenius Medical Care and its subsidiaries) to comply with financial ratios such as the level of liabilities, the fixed cost cover level and the interest cover level and sets limits for investment expenditure. As at December 31, 2010, the Fresenius group had complied with all the obligations and commitments specified in the 2008 loan agreement.

In addition, Fresenius SE & Co. KGaA together with Fresenius Kabi AG guarantees a loan of € 24.1 million taken up by Fresenius Immobilien-Verwaltungs-GmbH & Co. Objekt Friedberg KG in 2010 which is also stated at the aforesaid amount on December 31, 2010.

A letter of awareness was also submitted to Fresenius HemoCare Netherlands B.V., The Netherlands in connection with social plan obligations which the aforesaid had capitalized as at December 31, 2010 in the amount of € 317 thousand (2009: € 441 thousand).

With its letter of January 29, 2008, the Company issued a declaration to its subsidiary Fresenius Kabi AB, Sweden in the form that its equity had to correspond at least with the registered share capital.

For two bonds of Fresenius SE & Co. KGaA in the amount of € 1,150 million which were issued in 2006 through Fresenius Finance B.V., The Netherlands and were increased in 2009, Fresenius Kabi AG together with Fresenius ProServe GmbH and Fresenius SE & Co. KGaA has guaranteed repayment of the aforesaid bonds, including accumulated interest in the amount of € 1,180 million.

Fresenius Kabi AG together with Fresenius ProServe GmbH and Fresenius SE & Co. KGaA has also guaranteed the repayment including accumulated interest for a bond issued in 2009 through Fresenius Finance II, Inc. USA. The bond was issued in two tranches of US\$ 500 million and € 275 million. The guarantee is dated December 31, 2010, including

accumulated interest of US\$ 523 million (€ 391 million) and € 287 million.

Together with Fresenius ProServe GmbH, Fresenius Kabi AG guarantees repayment of a loan of € 100 million plus accumulated interest taken up by Fresenius SE & Co. KGaA from the European Investment Bank. The loan, including accumulated interest, is equivalent to € 100 million at December 31, 2010.

Based on our knowledge, the relevant obligations can be performed in all cases. No availment is to be anticipated at the present point of time.

**(12) Other financial obligations**

|                                                               | Dec. 31,<br>2010  |
|---------------------------------------------------------------|-------------------|
|                                                               | € 000             |
| Obligations under leasehold, rental<br>and leasing agreements |                   |
| due in 2011                                                   | 546               |
| due from 2012 – 2015                                          | 24                |
| due after 2016                                                | 0                 |
|                                                               | <u>570</u>        |
| (thereof to affiliated companies)                             | (517)             |
| Order commitment re investments<br>in progress                | 2                 |
| Other obligations                                             | 6                 |
|                                                               | <u><u>578</u></u> |

## Notes to the income statement

### (13) Net income from equity investments

|                                                 | 2009     | 2010      |
|-------------------------------------------------|----------|-----------|
|                                                 | € 000    | € 000     |
| Income from profit and loss transfer agreements | 112,253  | 154,342   |
| Investment income                               | 31,023   | 111,708   |
| (thereof from affiliated companies)             | (31,023) | (111,708) |
| Expenses from the assumption of losses          | -1,005   | -1,577    |
|                                                 | 142,271  | 264,473   |

There are profit and loss transfer agreements with Fresenius Kabi Deutschland GmbH, Bad Homburg v. d. Höhe, V. Krütten Medizinische Einmalgeräte GmbH, Idstein, HOSPED GmbH Lieferservice für Klinik, Handel und Patienten, Friedberg and Fresenius HemoCare Beteiligungs GmbH, Bad Homburg v. d. Höhe.

### (14) Other operating income

Other operating income items mainly include foreign exchange gains in the amount of € 143,239 thousand (2009: € 51,259 thousand), service contracts based on cost refunds by associated companies in the amount of € 6,165 thousand (2009: € 5,891 thousand), income from damage compensation claims in the amount of € 5,793 thousand (2009: € 2 thousand), income from investment disposals in the amount of € 1,200 thousand (2009: € 0 thousand) and income from the release of other provisions in the amount of € 1,077 thousand (2009: € 3,215 thousand).

### (15) Personnel expenses

|                                                    | 2009   | 2010   |
|----------------------------------------------------|--------|--------|
|                                                    | € 000  | € 000  |
| Wages and salaries                                 | 12,075 | 16,047 |
| Social charges and pension and benevolent expenses | 994    | 903    |
| (thereof pensions)                                 | (507)  | (363)  |
|                                                    | 13,069 | 16,950 |

|                                 | 2009 | 2010 |
|---------------------------------|------|------|
| Annual average no. of employees |      |      |
| (average full-time employees)   |      |      |
| Employee groups                 |      |      |
| Wage earners                    | 0    | 0    |
| Salaried staff                  | 44   | 50   |
| Trainees                        | 0    | 0    |
|                                 | 44   | 50   |

**(16) Amortization of intangible assets and property, plant and equipment**

The amortization of € 5,101 thousand (2009: € 5,099 thousand) mainly consists of standard amortization of the rights to use the name "Kabi" acquired in 1999 (€ 5,000).

**(17) Other operating expenses**

Other operating expenses particularly include exchange losses (€ 153,204 thousand; 2009: € 50,610 thousand, insurance and consultancy expenses (€ 14,527 thousand; 2009: € 8,388 thousand), expenses for services of affiliated companies (€ 10,893 thousand; 2009: € 11,141 thousand), EDP expenses (€ 4,059 thousand; 2009: € 2,325 thousand), travelling and entertaining expenses (€ 2,134 thousand; 2009: € 996 thousand), leasing and rental expenses (€ 685 thousand; 2009: € 691 thousand), personnel acquisition expenses (€ 500 thousand; 2009: € 2 thousand), advertising costs (€ 287 thousand; 2009: € 169 thousand); expenses for third party services (€ 281 thousand; 2009: € 215 thousand), research and development expenses (€ 195 thousand; 2009: € 71 thousand); voluntary social expenses (€ 182 thousand; 2009: € 224 thousand), donations (€ 177 thousand; 2009: € 53 thousand) and allocations to provisions (€ 121 thousand; 2009: € 420 thousand).

The fee recorded for the year-end auditor includes the following components:

|                             | 2009<br>€ 000 | 2010<br>€ 000 |
|-----------------------------|---------------|---------------|
| Year-end audit              | 303           | 353           |
| Tax consultancy expenses    | 0             | 27            |
| Other confirmation services | 0             | 0             |
| Other services              | 24            | 5             |
|                             | 327           | 385           |

## **(18) Interest income**

|                                                  | 2009      | 2010      |
|--------------------------------------------------|-----------|-----------|
|                                                  | € 000     | € 000     |
| Income from other financial securities and loans | 40,583    | 36,913    |
| (thereof from affiliated companies)              | (40,583)  | (36,913)  |
| Other interest and similar income                | 14,002    | 23,224    |
| (thereof from affiliated companies)              | (13,624)  | (22,629)  |
| Interest and similar expenses                    | -54,091   | -53,966   |
| (thereof to affiliated companies)                | (-50,957) | (-51,404) |
| (thereof interest on provisions)                 | (0)       | (-934)    |
|                                                  | 494       | 6,171     |

Income from other securities and financial asset loans and the increase in interest expenses within the Group result from the restructuring of loans in the Fresenius Group in 2009 and 2010.

## **(19) Income from ordinary trading activities**

Income from ordinary trading activities amounts to € 217,946 (2009: € 107,899) thousand.

## **(20) Extraordinary income**

Extraordinary income includes on the one hand the allocation to provisions on account of the initial application of € 253 HGB in the new version (€ 113 thousand) and, on the other hand, the Market Regulating Law (BilMOG) opening balance sheet effects in connection with the revaluation of assets and liabilities denominated in foreign currencies with a residual term of less than one year (income in the amount of € 1,806 thousand). Assets and liabilities have been converted at the spot exchange mid-rate as at December 31, 2009. Contrary to the previous approach, the realization and imparity principle and the acquisition cost principle and the acquisition cost principle have not been observed.

## **(21) Taxes on income**

Taxes on income mainly include allocations for trade tax on income (€ 13,271 thousand; 2009: € 10,941 thousand), corporation tax (€ 14,205 thousand; 2009: € 12,132 thousand) and expenses re the solidarity surcharge (€ 781 thousand; 2009: 667 thousand) and non-imputable source tax (€ 2,854 thousand; 2009: € 490 thousand).

**(22) Total remuneration of the management board**

The total remuneration for active members of the management board amounted to € 3,248 thousand and for the former members of the management board € 6 thousand (2009: € 2,810 thousand for active and € 7 thousand for former members of the management board). The pension provision for active members of the management board amounted to € 1,796 thousand (2009: € 863 thousand) and € 571 thousand for former members of the management board (2009: € 548 thousand).

**(23) Net income appropriation**

The net income attributable to the financial year has been transferred to Fresenius SE & Co. KGaA.

Reference is made to Appendix 1 of the Notes for details under § 285 No. 10 of the German Commercial Code (HGB).

Bad Homburg v. d. Höhe, February 23, 2011

R. Baule

M. Crouton

J. Ducker

M. Henriksson

M. Köhler

Dr. M. Schönhofen

G. Steen

**Supervisory board**

Dr. Ulf M. Schneider

Chairman of the supervisory board

Chairman of the management board of Fresenius Management SE (personally liable shareholder of Fresenius SE & Co. KGaA)

Stephan Sturm

Commercial Director of Fresenius Management SE (personally liable shareholder of Fresenius SE & Co. KGaA)

Christian Fischer

Divisional Manager Group Controlling Fresenius SE & Co. KGaA



## **Management board**

Rainer Baule

Chairman of Fresenius SE & Co. KGaA, Kabi Division

Chairman of the management board of Fresenius Kabi AG

Kabi Innovation Center Division (KIC) – until December 31, 2010 --

Marc Crouton

Member of the management board of Fresenius Kabi AG - ELAMA Region – Europe, Latin America, Africa & The Middle East -- until December 31, 2010 --

Member of the management board of Fresenius Kabi AG Region Western and Southern Europe, Latin America, Africa -- as from January 1, 2011 --

John Ducker

Member of the management board of Fresenius Kabi AG, North American Region

Mats Henriksson

Member of the management board of Fresenius Kabi AG, Asia-Pacific Region

Manfred Köhler

Member of the management board of Fresenius Kabi AG, Central European Region -- until December 31, 2010 --

Member of the management board of Fresenius Kabi AG, Central European Region, Eastern and Northern Europe and the Middle East -- as from January 1, 2011 --

Dr. Michael Schönhofen

Member of the management board of Fresenius Kabi AG, Science, Production & Technology Division

Gerrit Steen

Commercial Director of Fresenius Kabi AG

## Auditor's report

We have issued the following unqualified auditor's report:

"Auditor's report

To Fresenius Kabi Aktiengesellschaft

We have audited the annual financial statements, comprising the balance sheet, the income statement and the notes to the financial statements, together with the bookkeeping system, of Fresenius Kabi Aktiengesellschaft, Bad Homburg v.d. Höhe (until June 22, 2010: Frankfurt am Main) for the financial year from January 1 to December 31, 2010. The maintenance of the books and records and the preparation of the annual financial statements in accordance with German commercial law are the responsibility of the Company's management. Our responsibility is to express an opinion on the annual financial statements, together with the bookkeeping system, based on our audit.

We conducted our audit of the annual financial statements in accordance with Art. 317 HGB [“Handelsgesetzbuch”: German Commercial Code] and German generally accepted standards for the audit of financial statements promulgated by the Institut der Wirtschaftsprüfer [Institute of Public Auditors in Germany] (IDW). Those standards require that we plan and perform the audit such that misstatements materially affecting the presentation of the net assets, financial position and results of operations in the annual financial statements in accordance with German principles of proper accounting are detected with reasonable assurance. Knowledge of the business activities and the economic and legal environment of the Company and expectations as to possible misstatements are taken into account in the determination of audit procedures. The effectiveness of the accounting-related internal control system and the evidence supporting the disclosures in the books and records and the annual financial statements are examined primarily on a test basis within the framework of the audit. The audit includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the annual financial statements. We believe that our audit provides a reasonable basis for our opinion.

Our audit has not led to any reservations.

In our opinion, based on the findings of our audit, the annual financial statements comply with the legal requirements and give a true and fair view of the net assets, financial position and results of operations of Fresenius Kabi Aktiengesellschaft in accordance with German principles of proper accounting."

Frankfurt am Main, February 23, 2011

KPMG AG  
Wirtschaftsprüfungsgesellschaft

A handwritten signature in blue ink, appearing to read 'Hommel'.

Hommel  
Wirtschaftsprüferin

A handwritten signature in blue ink, appearing to read 'Herold'.

Dr. Herold  
Wirtschaftsprüfer

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**Unconsolidated cash flow statements of Fresenius Kabi AG for 2011 and 2010  
(German-GAAP)**

To Fresenius Kabi Aktiengesellschaft

We have audited the cash flow statements for the financial years 2010 and 2011 derived by Fresenius Kabi Aktiengesellschaft from the financial statements for the financial years 2010 and 2011 and from the underlying bookkeeping system. The cash flow statements supplement the financial statements of Fresenius Kabi Aktiengesellschaft for the financial years 2010 and 2011 that have been prepared on the basis of the provisions of German commercial law.

The preparation of the cash flow statements for the financial years 2010 and 2011 in accordance with the provisions of German commercial law is the responsibility of the company's management.

Our responsibility is to express an opinion, based on our audit, as to whether the cash flow statements for the financial years 2010 and 2011 have been properly derived from the financial statements for financial years 2010 and 2011 and from the underlying bookkeeping system in accordance with the provisions of German commercial law. The subject matter of this engagement does not include either the audit of the underlying financial statements or of the underlying bookkeeping system.

We have planned and performed our audit in accordance with the IDW Auditing Practice Statement: Audit of Additional Elements of Financial Statements (IDW AuPS 9.960.2) in such a way that material errors in the derivation of the cash flow statements from the financial statements and from the underlying bookkeeping system are detected with reasonable assurance.

In our opinion, based on the findings of our audit, the cash flow statements for the financial years 2010 and 2011 have been properly derived from the financial statements for the financial years 2010 and 2011 and from the underlying bookkeeping system in accordance with the provisions of German commercial law.

Frankfurt am Main, February 28, 2012

KPMG AG  
Wirtschaftsprüfungsgesellschaft



Hommel  
Wirtschaftsprüferin



Dolibasic  
Wirtschaftsprüferin

**Statement of Cash Flow for the Fiscal Year 2011 and 2010**
**Fresenius Kabi AG**

|                                                                    | 2011           | 2010            |
|--------------------------------------------------------------------|----------------|-----------------|
|                                                                    | kEUR           | kEUR            |
| Net Income before profit and loss transfer                         | 121,947        | 188,503         |
| Depreciation and amortization of non-current assets                | 40,603         | 5,101           |
| Increase in pension liabilities                                    | 452            | 1,350           |
| <b>Cashflow</b>                                                    | <b>163,002</b> | <b>194,954</b>  |
| Change in other operating assets                                   | 3,539          | -2,727          |
| Change in other accrued expenses                                   | -5,014         | 18,514          |
| Decrease in other operating liabilities                            | -837           | -4,642          |
| <b>Change in working capital</b>                                   | <b>-2,312</b>  | <b>11,145</b>   |
| <b>Operating cash flow (cash provided by operating activities)</b> | <b>160,690</b> | <b>206,099</b>  |
| Purchase of property, plants and equipment and intangible assets   | -356           | -70             |
| Proceeds from disposals of intangible assets                       | 38             | 0               |
| Proceeds on disposals of non-current financial assets              | 0              | 1,900           |
| Acquisition of non-current financial assets                        | -96,299        | -159,313        |
| <b>Cash used for financing activities<sup>1</sup></b>              | <b>-96,617</b> | <b>-157,483</b> |
| Profit-transfer to shareholder                                     | -121,947       | -188,503        |
| Change in financing activities with related parties                | 430,840        | 224,752         |
| <b>Cash provided by financing activities</b>                       | <b>308,893</b> | <b>36,249</b>   |
| <b>Change of cash and cash equivalents</b>                         | <b>372,966</b> | <b>84,865</b>   |
| Cash and cash equivalents at the beginning of the year             | -93,834        | -178,699        |
| Cash and cash equivalents at the end of the year <sup>2</sup>      | <b>279,132</b> | <b>-93,834</b>  |

<sup>1</sup> Essential non cashrelevant transactions in 2011: "APP Debt Simplification" kEUR 520.149, capital increase against contribution in kind into Fresenius Kabi Oncology plc. kEUR 27.854

<sup>2</sup> Consists of InHouse-/Cash pool accounts with Fresenius SE & Co. KGaA, cash and bank accounts

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**Unconsolidated Financial Statements of Fresenius ProServe GmbH for 2011 (German-GAAP)**

# Fresenius ProServe GmbH, Bad Homburg v. d. Höhe

## Balance Sheet as of December 31, 2011

### Assets

|                                                 | December 31, 2011 |                  | December 31, 2010 |                  |
|-------------------------------------------------|-------------------|------------------|-------------------|------------------|
|                                                 | EUR               | EUR              | EUR               | EUR              |
| <b>A. Fixed assets</b>                          |                   |                  |                   |                  |
| <b>I. Tangible assets</b>                       |                   |                  |                   |                  |
| 1. Land, leasehold and buildings                | 8,585,757.91      |                  | 8,811,488.91      |                  |
| 2. Plant and machinery                          | 0.00              | 8,585,757.91     | 706.00            | 8,812,194.91     |
| <b>II. Financial assets</b>                     |                   |                  |                   |                  |
| 1. Shares in related parties                    | 1,727,742,117.76  |                  | 1,673,580,013.18  |                  |
| 2. Loans to related parties                     | 172,867,383.99    |                  | 172,838,994.05    |                  |
| 3. Participations                               | 0.71              | 1,900,609,502.46 | 0.71              | 1,846,419,007.94 |
|                                                 |                   | 1,909,195,260.37 |                   | 1,855,231,202.85 |
| <b>B. Current assets</b>                        |                   |                  |                   |                  |
| <b>Accounts receivable and other assets</b>     |                   |                  |                   |                  |
| 1. Accounts receivable due from related parties | 147,706,190.26    |                  | 119,567,784.70    |                  |
| 2. Other assets                                 | 0.00              | 147,706,190.26   | 21,827.90         | 119,589,612.60   |
|                                                 |                   | 2,056,901,450.63 |                   | 1,974,820,815.45 |

|                                        | December 31, 2011 | December 31, 2010 |
|----------------------------------------|-------------------|-------------------|
|                                        | EUR               | EUR               |
| <b>A. Shareholders' equity</b>         |                   |                   |
| <b>I. Subscribed capital</b>           | 40,000,000.00     | 40,000,000.00     |
| <b>II. Capital reserves</b>            | 1,546,794,525.48  | 1,546,794,525.48  |
|                                        | 1,586,794,525.48  | 1,586,794,525.48  |
| <b>B. Accrued expense</b>              |                   |                   |
| 1. Pensions and similar obligations    | 6,737,817.00      | 5,430,459.00      |
| 2. Other accruals                      | 892,953.66        | 895,280.41        |
|                                        | 7,630,770.66      | 6,325,739.41      |
| <b>C. Liabilities</b>                  |                   |                   |
| 1. Trade accounts payable              | 84,831.61         | 84,690.77         |
| 2. Liabilities to affiliated companies | 462,390,394.91    | 381,572,100.03    |
| 3. Other liabilities                   | 927.97            | 43,759.76         |
|                                        | 462,476,154.49    | 381,700,550.56    |
|                                        | 2,056,901,450.63  | 1,974,820,815.45  |

# Fresenius ProServe GmbH, Bad Homburg v. d. Höhe

## Profit and Loss Statement January 1 to December 31, 2011

|                                                                                             | 2011          |                | 2010          |                |
|---------------------------------------------------------------------------------------------|---------------|----------------|---------------|----------------|
|                                                                                             | EUR           | EUR            | EUR           | EUR            |
| 1. Income from participations                                                               |               | 154,082,535.85 |               | 125,475,323.28 |
| 2. Other operating income                                                                   |               | 4,690,738.51   |               | 8,503,126.51   |
| 3. Personnel expenses                                                                       |               |                |               |                |
| a) Salaries and wages                                                                       | 11,904.00     |                | 12,288.00     |                |
| b) Social security and costs of retirement pensions and social assistance                   |               |                |               |                |
| --thereof amount of retirement pensions EUR 146,390.78 (prev. yr. EUR 141,216.39)--         | 146,390.78    | 158,294.78     | 141,216.39    | 153,504.39     |
| 4. Depreciation on property, plant and equipment                                            |               | 226,437.00     |               | 227,339.00     |
| 5. Other operating expenses                                                                 |               | 3,059,508.96   |               | 6,988,732.71   |
| 6. Income from financial assets                                                             |               | 9,934,434.00   |               | 9,943,490.84   |
| 7. Other interest and similar income                                                        |               | 134,213.27     |               | 178,356.85     |
| --thereof amount from affiliated companies EUR 134,213.27 (prev. yr. EUR 178,356.85)--      |               |                |               |                |
| 8. Interest and similiar expenses                                                           |               | 12,088,085.92  |               | 7,398,585.41   |
| --thereof amount from affiliated companies EUR 11,728.401.73 (prev. yr. EUR 7,038.469.02)-- |               |                |               |                |
| 9. Profit from ordinary operations                                                          |               | 153,309,594.97 |               | 129,332,135.97 |
| 10. Extraordinary expenses/<br>Extraordinary result                                         |               | 1,395,990.00   |               | 100,000.00     |
| 11. Income taxes                                                                            | 26,169,178.00 |                | 22,738,171.00 |                |
| 12. Other tax                                                                               | 101.00        | 26,169,279.00  | 21,178.84     | 22,759,349.84  |
| 13. Net income before profit transfer                                                       |               | 125,744,325.97 |               | 106,472,786.13 |
| 14. Profit transfer due to profit and loss transfer agreement                               |               | 125,744,325.97 |               | 106,472,786.13 |
| 15. Retained earnings                                                                       |               | 0.00           |               | 0.00           |

## **Fresenius ProServe GmbH, Bad Homburg v.d.Höhe**

**NOTES** for fiscal year 2011

### **GENERAL NOTES**

(1) Preliminary note

Fresenius ProServe GmbH, Bad Homburg v.d.Höhe, is a wholly-owned subsidiary of Fresenius SE & Co. KGaA, Bad Homburg v.d.Höhe.

There is a profit transfer agreement between the Company and Fresenius SE & Co. KGaA.

The financial statements of Fresenius ProServe GmbH are included in the consolidated financial statements of Fresenius SE & Co. KGaA. The latter are published in the electronic Bundesanzeiger (German Federal Gazette).

Moreover as of December 31, 2011 a direct control and profit transfer agreement between Fresenius ProServe GmbH and its subsidiary HELIOS Kliniken GmbH, Berlin, is in place.

(2) Accounting principles and standards of valuation

The financial statements of Fresenius ProServe GmbH for 2011 are prepared according to the regulations in the German Commercial Code (HGB) as well as complementing regulations for limited liability companies. Fresenius ProServe GmbH is a small corporation according to Section 267 (1) HGB. The nature of cost method according to Section 275 (2) HGB has been elected for preparing the profit and loss statement. The size related exemptions in Section 274 a HGB and Section 288 HGB are used in part.

The value of investments in property, plant and equipment is stated at the cost of the assets less regular linear or degressive depreciation as far as the assets are depreciable.

The following useful lives were used for calculating amortization:

|                     |            |
|---------------------|------------|
| Intangible assets   | 3-5 years  |
| Office buildings    | 40 years   |
| Tools and equipment | 3-10 years |

Low value fixed assets with purchase or manufacturing cost of up to € 150.00 are fully written off in the year of addition.

Depreciable movable non-current assets with a value of more than € 150.00 and less than € 1,000.00 are grouped into a collective item which is dissolved through profit and loss by one fifth in the year of capitalization and the following four years each.

Financial assets are valued at purchase price or, if the asset is other than temporarily impaired the lower market value.

The lower value of non-current assets resulting from write-downs to fair value has to be reversed if the reasons for the extraordinary write-down no longer apply (Section 253 (5) HGB).

Accounts receivable and other assets are stated at nominal value reduced by individual allowance if necessary.

The pension obligation is determined according to actuarial principles on the basis of biometric probabilities as in the reference tables by Dr. Klaus Heubeck 2005 (RT 2005 G) using the Projected Unit Credit-Method. Future expected remuneration and pension increases are taken into account in calculating the obligation. Remuneration is currently adjusted by between 3% and 4% and pensions by 1.75%. The company specific fluctuation rate that is also taken into consideration for the calculation has been between 0% and 18%. The actuarial interest rate applicable to the pension obligation was 5.13%. This is the last-seven-year-average discount rate for an estimated remaining life of 15 years as determined and published by the German Federal Bank (Deutsche Bundesbank) (reference date: October 31, 2011).

Other accruals are built for recognizable risks and uncertain liabilities at the amounts to be paid calculated on the basis of a reasonable commercial assessment. Long term accruals are discounted with the last-seven-year-average discount rate that corresponds to the remaining life of the accrual.

Liabilities are valued at their settlement amounts.

Foreign currency items are translated with the average foreign exchange rate at the time of origin or the hedging rate for hedging transactions.

Assets and liabilities with a remaining life of up to a year and carried at foreign currencies are translated at the average closing spot rate according to section 256a HGB.

Assets and liabilities with a remaining life of over one year and carried at foreign currencies are basically translated at inception at the foreign currency exchange rate, while at the balance sheet date the lowest closing spot rate is used for translating assets and the highest closing spot rate is used for translating liabilities. If the conditions to apply hedge accounting are met, the hedging financial instruments and the underlying transactions are combined in a hedge and valued using the exchange rate at inception (Einfrierungsmethode). Changes in the value of the hedged risks are not recognized in the balance sheet or statement of income.

Earnings and losses from translation to euro of items carried at foreign currencies are recognized in the statement of income under "Other operating income" or "Other operating expenses".

Derivative financial instruments are contracted for hedging purposes only whereby foreign currency derivatives are used.

The Company acquires hedging instruments from banks, that are mirrored by agreements between Fresenius ProServe GmbH and its affiliated companies at nearly the same conditions. The affiliated companies use these agreements to hedge their operating businesses against foreign currency risks.

Derivative financial instruments are measured at fair value at balance sheet date. According to German Commercial Law accounting principles and standards of valuation any remeasurement losses are recognized in earnings while remeasurement gains are not taken into account. When the conditions for hedge accounting are met, the underlying asset and the hedging instrument are considered together so that effects of the hedge are only recognized in earnings when the underlying transaction takes place.

Income from profit transfer agreements is recorded in the same reporting period in which it arises given that earnings from affiliated companies are precise enough at the time of preparing the financial statements and is assured according to reasonable commercial assessment.

## NOTES ON THE BALANCE SHEET

### (3) Fixed assets

The breakdown of fixed assets and their development is presented in Exhibit 1 to the Notes.

A list of all participations in affiliated and associated companies of Fresenius ProServe GmbH is contained in the list of participations in affiliated and associated companies of Fresenius SE & Co. KGaA which will be published by Fresenius SE & Co. KGaA in the electronic Bundesanzeiger (German Federal Gazette).

### (4) Accounts receivable from related parties

Accounts receivable from related parties mainly consist of items against HELIOS Kliniken GmbH (€ 146,989 thousand) and hospitalia activHealth gmbh (€ 420 thousand). The receivables from related parties mainly relate to profit transfers, loans and clearing accounts. All accounts receivable have a remaining term of up to one year.

### (5) Other assets

The previous year item consists of other tax claims.

### (6) Subscribed capital

The capital stock at December 31, 2011 has a nominal value of € 40,000,000 and is divided into three parts with nominal values of € 25,000, € 14,975,000 and € 25,000,000. Fresenius SE & Co. KGaA is the sole stockholder.

### (7) Pension obligation

With notarized deed of December 12, 2006 and an effective date of January 1, 2007, all shares in hospitalia international gmbh, Oberursel, were sold and transferred to VAMED Engineering GmbH & Co. KG, Vienna, Austria.

In the context of this sale, Fresenius ProServe GmbH and hospitalia international gmbh agreed in a collateral promise from December 12, 2006, that the Company will assume via the collateral promise with contractual undertaking the compensation payments to be made resulting from the pension obligation of hospitalia international gmbh against beneficiaries and former employees with vested pension rights. The value of this obligation is € 6,711 thousand on December 31, 2011.

The pension obligation has been determined according to the method described under Note (2) "Accounting principles and standards of valuation". The new calculation of pension provisions required by BilMoG as of January 1, 2010 resulted in an underfunded status of € 1,496 thousand. According to Art. 67 (1) sentence 1 EGHGB (Act Introducing the German Commercial Code), 1/15 (€ 100 thousand)



was recognized in 2010 and 14/15 (€ 1,396 thousand) has been recognized in 2011. The expense related to this increase was included in extraordinary result in the statement of income.

(8) Other accruals

Other accruals mainly relate to risks from the sale of Pharmaplan GmbH.

(9) Liabilities

The summary of remaining terms of liabilities looks as follows:

|                                     | 2011           |                                           |                                                   |                                           | 2010           |                                           |                                                   |                                           |
|-------------------------------------|----------------|-------------------------------------------|---------------------------------------------------|-------------------------------------------|----------------|-------------------------------------------|---------------------------------------------------|-------------------------------------------|
|                                     | Total          | Remain-<br>ing term<br>of up to<br>1 year | Remain-<br>ing term<br>of 1 year<br>to 5<br>years | Remain-<br>ing term of<br>over 5<br>years | Total          | Remain-<br>ing term<br>of up to<br>1 year | Remain-<br>ing term<br>of 1 year<br>to 5<br>years | Remain-<br>ing term<br>of over 5<br>years |
| <i>In thousand €</i>                |                |                                           |                                                   |                                           |                |                                           |                                                   |                                           |
| Trade accounts payable              | 85             | 85                                        | 0                                                 | 0                                         | 85             | 85                                        | 0                                                 | 0                                         |
| Accounts payable to related parties | 462,390        | 335,390                                   | 127,000                                           | 0                                         | 381,572        | 324,572                                   | 57,000                                            | 0                                         |
| Other liabilities                   | 1              | 1                                         | 0                                                 | 0                                         | 44             | 44                                        | 0                                                 | 0                                         |
|                                     | <u>462,476</u> | <u>335,476</u>                            | <u>127,000</u>                                    | <u>0</u>                                  | <u>381,701</u> | <u>324,701</u>                            | <u>57,000</u>                                     | <u>0</u>                                  |

The liabilities displayed are not secured by charges on property or other similar rights. Accounts payable to related companies include liabilities against the shareholder Fresenius SE & Co. KGaA of € 375,288 thousand (previous year € 215,298 thousand). Accounts payable to related companies mainly consist of loans and clearing accounts.

(10) Other liabilities

Other liabilities relate to obligations against tax authorities.

## NOTES ON THE PROFIT AND LOSS STATEMENT

The structure of the profit and loss statement has been adapted to the holding nature of Fresenius ProServe GmbH and begins with income from participations.

### (11) Income from participations

Income from participations comprises income of the profit transfer agreement with HELIOS Kliniken GmbH of € 146,989 thousand (previous year € 118,748 thousand) and income from participations in related companies of € 7,094 thousand (previous year € 6,727 thousand).

### (12) Other operating income

Other operating income mainly includes income from foreign currency translations of € 3,179 thousand and from rental of office space to related companies.

Income from other accounting periods was € 241 thousand in 2011 (previous year € 2,100 thousand) and mainly related to compensation for non exercised preemption rights.

### (13) Personnel expenses

|                                                                        | <u>2011</u>       | <u>2010</u>       |
|------------------------------------------------------------------------|-------------------|-------------------|
|                                                                        | <i>Thousand €</i> | <i>Thousand €</i> |
| Salaries                                                               | 12                | 12                |
| Social security and costs of retirement pensions and social assistance | 146               | 141               |
| (thereof retirement pensions)                                          | <u>(146)</u>      | <u>(141)</u>      |
|                                                                        | <b>158</b>        | <b>153</b>        |

Annual average number of employees:

|                    |   |   |
|--------------------|---|---|
| Salaried employees | 0 | 1 |
|--------------------|---|---|

### (14) Other operating expenses

Other operating expenses of € 1,956 thousand were primarily foreign currency translation losses, but also expenses from cost allocation and service level agreements and audit and maintenance cost.

### (15) Income from financial assets

Income in this item includes interest from long term loans to related companies.

(16) Other interest and similar income

This item primarily includes interest income from related companies of € 134 thousand (previous year € 178 thousand).

(17) Interest and similar expenses

This item mainly includes € 11,728 thousand (previous year € 7,038 thousand) of interests paid to related companies. Moreover expenses for interests accrued for accrued expenses of € 352 thousand are also included.

(18) Extraordinary expenses

Extraordinary expenses include expenses from contributions to pension obligations of € 1,396 thousand (previous year € 100 thousand).

(19) Income taxes

This item includes expenses from cost transfers for corporate income tax (€ 23,179 thousand, previous year € 18,608 thousand), trade tax (€ 1,715 thousand, previous year € 3,107 thousand), and solidarity surcharge (€ 1,275 thousand, previous year € 1,023 thousand).

The company is part of a consolidated tax group with Fresenius SE & Co. KGaA (fiscal unity parent) for income, trade and corporate income tax.

(20) Other tax

This item includes motor vehicle tax.

## OTHER DISCLOSURES

### (21) Management

In 2011 following persons were appointed managing directors of Fresenius ProServe GmbH, Bad Homburg v.d. Höhe:

Dr. Jürgen Götz, Lawyer, Bad Soden,  
Dr. Francesco De Meo, Lawyer, Petersberg,  
Joachim Weith, Dipl.-Sociologist and Dipl.-Business Administration, Wintzenbach.

The managing directors are simultaneously managing directors, members of the management board or senior executives in other Group companies and receive their compensation from these companies.

### (22) Contingent liabilities

#### Contingencies from indemnity agreements

Fresenius ProServe GmbH guarantees together with Fresenius Kabi AG and Fresenius SE & Co. KGaA the repayment including interests accrued of two Senior Notes of Fresenius SE & Co. KGaA amounting to € 1,150 million. The Senior Notes were issued through Fresenius Finance B.V., Netherlands in 2006 and increased in 2009. On December 31, 2011, the value of these guarantees including interests accrued was € 1,180 million.

Moreover Fresenius ProServe GmbH together with Fresenius Kabi AG and Fresenius SE & Co. KGaA guarantee the repayment including accrued interest for the Senior Note issued by Fresenius Finance II, Inc, USA in 2009. The Senior Note comprises two tranches of \$ 500 million and € 275 million. On December 31, 2011, the value of the guarantees including interests accrued was \$ 523 million (€ 404 million) and € 287 million.

Further guarantee commitments of Fresenius ProServe GmbH together with Fresenius SE & Co. KGaA and Fresenius Kabi AG exist in relation to the repayment of several long term bank loans taken through financing companies of the Fresenius Group in relation to one acquisition in 2008. These commitments are for a maximum of \$ 2,266 million (€ 1,751 million) and € 161 million and the related accrued interest. On December 31, 2011, the value of the loans including interests was \$ 1,716 million (€ 1,326 million) and € 161 million.

Moreover Fresenius ProServe GmbH guarantees together with Fresenius Kabi AG the repayment of a credit facility of € 100 million borrowed by Fresenius SE & Co. KGaA from the European Investment Bank, as well as the related accrued expenses. On December 31, 2011, the value of the credit facility including accrued interests was € 101 million.

According to our judgment the affected companies can meet the underlying obligations in any case and assertion of the claim is currently not expected.

### Statement of subordination

On December 31, 2011, the subsidiaries Wittgensteiner Kliniken GmbH and hospitalia activHealth gmbh are over-leveraged by about € 37 million and € 6.7 million respectively. To avoid legal accounting insolvency, Fresenius ProServe GmbH issued a statement of subordination for € 40 million and € 8.7 million respectively. On December 31, 2011 receivables of € 170 million against Wittgensteiner Kliniken GmbH and of € 7.0 million (of which € 6.6 million have been written-down) against hospitalia activHealth gmbh are outstanding.

### Option contracts

There are two put and call option contracts with the current share owners of VAMED AG to acquire 10% and 13% of the shares in VAMED AG which expire on December 31, 2015 and June 30, 2017 respectively. These contracts are pending transactions that are not shown in the financial statement of Fresenius ProServe GmbH.

## (23) Derivatives

Fresenius ProServe GmbH uses derivative financial instruments to hedge against existing or highly probable future currency risks. Derivative financial instruments are contracted exclusively for hedging purposes. As the critical terms of the underlying transactions basically match those of the derivative financial instruments it can be assumed that hedges are highly effective. The Company has approved guidelines for assessing risks and to control the use of financial instruments. The guidelines require a clear separation between the execution function on the one side and the clearing, accounting and control on the other hand. Derivative financial instruments are used to reduce fluctuations in earnings and cash flows caused by changes in foreign currency exchange rates.

### Foreign exchange risk

The company uses foreign exchange forward contracts to hedge foreign exchange risk.

Fresenius ProServe GmbH entered into foreign exchange forward contracts with external partners to hedge foreign currency risks from accounts receivable and liabilities as well as highly probable forecasted transactions from the Company and its affiliates. On the balance sheet date, the Company had currency derivatives with a nominal value of € 392 thousand and fair value of € 0 thousand with a maximum maturity of one month.

#### Standards of valuation

The fair values of derivative financial instruments are valued according to customary standards that take market information (market values) on the balance sheet date into account. In detail following principles are used:

The fair value is based on the market value of a derivative that could be reached in voluntary transactions by independent parties without taking forced or liquidation sales into account. To determine the market value of foreign exchange forward contracts, the contracted forward rate is compared to the current forward rate for the remaining term of the contract as of the date of the balance sheet. The result is then discounted on the basis of the market interest rates prevailing at the date of the statement of financial position for the respective currency.

The effectiveness of hedging relationships is measured with the Critical Term Match-Method.

#### (24) Parent company

Fresenius SE & Co. KGaA, Bad Homburg v.d.Höhe is the sole shareholder of Fresenius ProServe GmbH.

Fresenius ProServe GmbH is exempt from publishing consolidated financial statements and management report in accordance with Section 291 HGB given that Fresenius SE & Co. KGaA, Bad Homburg v.d. Höhe, as parent company publishes consolidated financial statements and management report in accordance with International Financial Reporting Standards (IFRS) which are binding to be applied in the EU applying Section 315a HGB for the smallest group of consolidated companies. The consolidated financial statements of Fresenius SE & Co. KGaA are published in the electronic Bundesanzeiger (German Federal Gazette). Fresenius Management SE, Bad Homburg v.d.Höhe, prepares and publishes the consolidated financial statements for the largest group of consolidated companies which is also published in the electronic Bundesanzeiger (German Federal Gazette).

Fresenius ProServe GmbH will use the exemptions in Section 264 (3) HGB and will not make its financial statements for the year 2011 public.

Bad Homburg v.d.Höhe, February 28, 2012

Fresenius ProServe GmbH

Dr. Jürgen Götz

Dr. Francesco De Meo

Joachim Weith

Exhibit to notes

Fresenius ProServe GmbH, Bad Homburg v. d. Höhe

Development of fixed assets during the fiscal year 2011

|                                                     | Acquisition costs              |                   |                                |
|-----------------------------------------------------|--------------------------------|-------------------|--------------------------------|
|                                                     | As of<br>Jan. 01, 2011<br>kEUR | Additions<br>kEUR | As of<br>Dec. 31, 2011<br>kEUR |
| <b>I. Intangible assets</b>                         | 4                              | 0                 | 4                              |
| <b>II. Tangible assets</b>                          |                                |                   |                                |
| 1. Land, leasehold and buildings                    | 10,947                         | 0                 | 10,947                         |
| 2. Plant and machinery                              | 21                             | 0                 | 21                             |
| 3. Other fixtures and fittings, tools and equipment | 20                             | 0                 | 20                             |
|                                                     | 10,988                         | 0                 | 10,988                         |
| <b>III. Financial assets</b>                        |                                |                   |                                |
| 1. Shares in related parties                        | 1,678,680                      | 54,162            | 1,732,842                      |
| 2. Loans to related parties                         | 172,839                        | 28                | 172,867                        |
| 3. Participations                                   | 0                              | 0                 | 0                              |
|                                                     | 1,851,519                      | 54,190            | 1,905,709                      |
|                                                     | 1,862,511                      | 54,190            | 1,916,701                      |



Exhibit to notes

## Fresenius ProServe GmbH, Bad Homburg v. d. Höhe

### Development of fixed assets during the fiscal year 2011

|                                                     | Depreciation           |                                   | Carrying amount        |               |
|-----------------------------------------------------|------------------------|-----------------------------------|------------------------|---------------|
|                                                     | As of<br>Jan. 01, 2011 | Depreciation of<br>financial year | As of<br>Dec. 31, 2011 | Dec. 31, 2011 |
|                                                     | kEUR                   | kEUR                              | kEUR                   | kEUR          |
| <b>I. Intangible assets</b>                         | 4                      | 0                                 | 4                      | 0             |
| <b>II. Tangible assets</b>                          |                        |                                   |                        |               |
| 1. Land, leasehold and buildings                    | 2,136                  | 225                               | 2,361                  | 8,586         |
| 2. Plant and machinery                              | 20                     | 1                                 | 21                     | 0             |
| 3. Other fixtures and fittings, tools and equipment | 20                     | 0                                 | 20                     | 0             |
|                                                     | 2,176                  | 226                               | 2,402                  | 8,586         |
| <b>III. Financial assets</b>                        |                        |                                   |                        |               |
| 1. Shares in related parties                        | 5,100                  | 0                                 | 5,100                  | 1,727,742     |
| 2. Loans to related parties                         | 0                      | 0                                 | 0                      | 172,867       |
| 3. Participations                                   | 0                      | 0                                 | 0                      | 0             |
|                                                     | 5,100                  | 0                                 | 5,100                  | 1,900,609     |
|                                                     | 7,280                  | 226                               | 7,506                  | 1,909,195     |

# Auditor's report

To Fresenius ProServe GmbH

We have audited the annual financial statements, comprising the balance sheet, the income statement and the notes to the financial statements, together with the bookkeeping system, of Fresenius ProServe GmbH, Bad Homburg v.d. Höhe, for the business year from January 1 to December 31, 2011. The maintenance of the books and records and the preparation of the annual financial statements in accordance with German commercial law are the responsibility of the Company's management. Our responsibility is to express an opinion on the annual financial statements, together with the bookkeeping system, based on our audit.

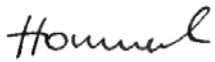
We conducted our audit of the annual financial statements in accordance with Art. 317 HGB [“Handelsgesetzbuch”: German Commercial Code] and German generally accepted standards for the audit of financial statements promulgated by the Institut der Wirtschaftsprüfer [Institute of Public Auditors in Germany] (IDW). Those standards require that we plan and perform the audit such that misstatements materially affecting the presentation of the net assets, financial position and results of operations in the annual financial statements in accordance with German principles of proper accounting are detected with reasonable assurance. Knowledge of the business activities and the economic and legal environment of the Company and expectations as to possible misstatements are taken into account in the determination of audit procedures. The effectiveness of the accounting-related internal control system and the evidence supporting the disclosures in the books and records and the annual financial statements are examined primarily on a test basis within the framework of the audit. The audit includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the annual financial statements. We believe that our audit provides a reasonable basis for our opinion.

Our audit has not led to any reservations.

In our opinion, based on the findings of our audit, the annual financial statements comply with the legal requirements and give a true and fair view of the net assets, financial position and results of operations of Fresenius ProServe GmbH in accordance with German principles of proper accounting.

Frankfurt am Main, February 28, 2012

KPMG AG  
Wirtschaftsprüfungsgesellschaft



Hommel  
Wirtschaftsprüferin



Dr. Herold  
Wirtschaftsprüfer

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**Unconsolidated Financial Statements of Fresenius ProServe GmbH for 2010 (German-GAAP)**

# Fresenius ProServe GmbH, Bad Homburg v. d. Höhe

## Balance Sheet as of December 31, 2010

### Assets

|                                                     | December 31, 2010 |                         | December 31, 2009 |                         |
|-----------------------------------------------------|-------------------|-------------------------|-------------------|-------------------------|
|                                                     | EUR               | EUR                     | EUR               | EUR                     |
| <b>A. Fixed assets</b>                              |                   |                         |                   |                         |
| <b>I. Tangible assets</b>                           |                   |                         |                   |                         |
| 1. Land, leasehold and buildings                    | 8,811,488.91      |                         | 9,037,220.91      |                         |
| 2. Plant and machinery                              | 706.00            |                         | 2,119.00          |                         |
| 3. Other fixtures and fittings, tools and equipment | 0.00              | 8,812,194.91            | 194.00            | 9,039,533.91            |
| <b>II. Financial assets</b>                         |                   |                         |                   |                         |
| 1. Shares in related parties                        | 1,673,580,013.18  |                         | 1,673,580,013.18  |                         |
| 2. Loans to related parties                         | 172,838,994.05    |                         | 172,805,946.23    |                         |
| 3. Participations                                   | 0.71              | 1,846,419,007.94        | 0.71              | 1,846,385,960.12        |
|                                                     |                   | <u>1,855,231,202.85</u> |                   | <u>1,855,425,494.03</u> |
| <b>B. Current assets</b>                            |                   |                         |                   |                         |
| <b>Accounts receivable and other assets</b>         |                   |                         |                   |                         |
| 1. Accounts receivable due from related parties     | 119,567,784.70    |                         | 126,459,537.47    |                         |
| 2. Other assets                                     | 21,827.90         | 119,589,612.60          | 21,781.55         | 126,481,319.02          |
|                                                     |                   | <u>1,974,820,815.45</u> |                   | <u>1,981,906,813.05</u> |

[illegible]

# Fresenius ProServe GmbH, Bad Homburg v. d. Höhe

## Profit and Loss Statement January 1 to December 31, 2010

|                                                                                            | 2010          |                | 2009          |                |
|--------------------------------------------------------------------------------------------|---------------|----------------|---------------|----------------|
|                                                                                            | EUR           | EUR            | EUR           | EUR            |
| 1. Income from participations                                                              |               | 125,475,323.28 |               | 125,440,730.12 |
| 2. Other operating income                                                                  |               | 8,503,126.51   |               | 8,051,576.79   |
| 3. Personnel expenses                                                                      |               |                |               |                |
| a) Salaries and wages                                                                      | 12,288.00     |                | 13,132.00     |                |
| b) Social security and costs of retirement pensions and social assistance                  |               |                |               |                |
| --thereof amount of retirement pensions EUR 141,216.39 (prev. yr. EUR 474,155.58)--        | 141,216.39    | 153,504.39     | 474,155.58    | 487,287.58     |
| 4. Depreciation on property, plant and equipment                                           |               | 227,339.00     |               | 228,330.00     |
| 5. Other operating expenses                                                                |               | 6,988,732.71   |               | 2,168,951.47   |
| 6. Income from financial assets                                                            |               | 9,943,490.84   |               | 10,043,915.73  |
| 7. Other interest and similar income                                                       |               | 178,356.85     |               | 734,638.78     |
| --thereof amount from affiliated companies EUR 178,356.85 (prev. yr. EUR 731,680.23)--     |               |                |               |                |
| 8. Depreciation on financial assets                                                        |               | 0.00           |               | 1,781,727.49   |
| 9. Interest and similar expenses                                                           |               | 7,398,585.41   |               | 9,221,823.42   |
| --thereof amount from affiliated companies EUR 7,038,469.02 (prev. yr. EUR 9,187,407.51)-- |               |                |               |                |
| 10. Profit from ordinary operations                                                        |               | 129,332,135.97 |               | 130,382,741.46 |
| 11. Extraordinary expenses/<br>Extraordinary result                                        |               | 100,000.00     |               | 197,145.54     |
| 12. Income taxes                                                                           | 22,738,171.00 |                | 23,054,541.00 |                |
| 13. Other tax                                                                              | 21,178.84     | 22,759,349.84  | 21,178.84     | 23,075,719.84  |
| 14. Net income before profit transfer                                                      |               | 106,472,786.13 |               | 107,109,876.08 |
| 15. Profit transfer due to profit and loss transfer agreement                              |               | 106,472,786.13 |               | 107,109,876.08 |
| 16. Retained earnings                                                                      |               | 0.00           |               | 0.00           |



## **Fresenius ProServe GmbH, Bad Homburg v. d. Höhe**

**NOTES** for fiscal year 2010

### **GENERAL NOTES**

(1) Preliminary note

Fresenius ProServe GmbH, Bad Homburg v.d.Höhe, is a wholly-owned subsidiary of Fresenius SE & Co. KGaA (until January 28, 2011: Fresenius SE), Bad Homburg v. d. Höhe.

There is a profit transfer agreement between the Company and Fresenius SE & Co. KGaA.

The financial statements of Fresenius ProServe GmbH are included in the consolidated financial statements of Fresenius SE & Co. KGaA. The latter are published in the electronic Bundesanzeiger (German Federal Gazette).

Moreover as of December 31, 2010 a direct control and profit transfer agreement between Fresenius ProServe GmbH and its subsidiary HELIOS Kliniken GmbH, Berlin, is in place.

The 100% owned subsidiaries Fresenius ProServe Beteiligungsgesellschaft mbH, Bad Homburg v. d. Höhe, and CellTis GmbH, Bad Homburg v. d. Höhe were merged with Fresenius ProServe GmbH in 2009 with retroactive effect as of January 1, 2009. The mergers were realized by carrying forward the book value. A merger loss of € 197 thousand was recognized within extraordinary expenses in the profit and loss as a result of the merger.

(2) Accounting principles and standards of valuation

The financial statements of Fresenius ProServe GmbH for 2010 are prepared according to the regulations in the German Commercial Code new version (German Accounting Law Modernization Act BilMoG) as well as complementing regulations for limited liability companies.

Fresenius ProServe GmbH is a small corporation according to Section 267 (1) of the German Commercial Code (HGB).

The nature of cost method according to Section 275 (2) HGB has been elected for preparing the profit and loss statement.

The size related exemptions in Section 288 HGB are used in part.

Due to the inclusion of the provisions introduced in the German Commercial Code (HGB) by the German Accounting Law Modernization Act (BilMoG), the account-

ing principles and standards of valuation used in previous years have not been followed to their full extent. Section 252 (1) No. 6 HGB new version is in so far not applicable. Section 265 (1) HGB new version on consistency in recognition and presentation and Section 284 (2) No. 3 HGB new version about the clarification of differences in accounting and valuation methods are, due to the first time implementation of the provisions changed by BilMoG not applicable, either. The main changes from implementing the new accounting provisions are the following:

- Pension obligation is determined using the Projected Unit Credit-Method. Future expected remuneration and pension increases are taken into account in calculating the obligation. The discount rate used to calculate the pension obligation is the last-seven-year-average discount rate for an estimated remaining life of 15 years as determined and published by the German Federal Bank (Deutsche Bundesbank).
- The valuation of the rest of accruals takes future price and cost increases into account. Accruals with a remaining life over one year shall be discounted with the last-seven-year-average discount rate that reflects the remaining life of the accruals. This discount rate is published by the German Federal Bank (Deutsche Bundesbank).
- According to section 256a HGB new version assets and liabilities with a remaining life of up to a year and carried at foreign currencies will be translated at the average closing spot rate, which goes against prior realization, parity and historical cost principles.

Pursuant to Art. 67 (8) sentence 2 1st half sentence of the Act Introducing the German Commercial Code (EGHGB) prior-year figures have not been adjusted.

Additions to accruals from the first time implementation of Section 253 HGB new version are accounted for under "Extraordinary Expenses".

The value of investments in **property, plant and equipment** is stated at the cost of the assets less regular linear or degressive depreciation as far as the assets are depreciable.

The following useful lives were used for calculating amortization:

|                     |            |
|---------------------|------------|
| Intangible assets   | 3-5 years  |
| Office buildings    | 40 years   |
| Tools and equipment | 3-10 years |

Low value fixed assets as defined in Section 6 (2) of the German Income Tax Act (EStG) with purchase or manufacturing cost of up to € 150.00 are fully written off in the year of addition.

Depreciable movable non-current assets with a value of more than € 150.00 and less than € 1,000.00 are grouped into a collective item which is dissolved through profit and loss by one fifth in the year of capitalization and the following four years each.

**Financial assets** are valued at purchase price or, if the asset is other than temporarily impaired the lower market value.

The lower value of non-current assets resulting from write-downs to fair value has to be reversed if the reasons for the extraordinary write-down no longer apply (Section 253 (5) HGB new version).

**Accounts receivable and other assets** are stated at nominal value reduced by individual allowance if necessary.

**Subscribed capital** is accounted for at its nominal amount.

The **pension obligation** is determined according to actuarial principles on the basis of biometric probabilities as in the reference tables by Dr. Klaus Heubeck 2005 (RT 2005 G) using the Projected Unit Credit-Method. Future expected remuneration and pension increases are taken into account in calculating the obligation. Remuneration is currently adjusted by between 3% and 4% and pensions by 1.75%. The company specific fluctuation rate that is also taken into consideration for the calculation has been between 0% and 18%. The actuarial interest rate applicable to the pension obligation was 5.16%. This is the last-seven-year-average discount rate for an estimated remaining life of 15 years as determined and published by the German Federal Bank (Deutsche Bundesbank) (reference date: October 31, 2010).

**Other accruals** are built for recognizable risks and uncertain liabilities at the amounts to be paid calculated on the basis of a reasonable commercial assessment. Long term accruals are discounted with the last-seven-year-average discount rate that corresponds to the remaining life of the accrual.

**Liabilities** are valued at their settlement amounts.

**Foreign currency** items are translated with the average foreign exchange rate at the time of origin or the hedging rate for hedging transactions.

Assets and liabilities with a remaining life of up to a year and carried at foreign currencies are translated at the average closing spot rate according to section 256a HGB disregarding, against past practice, the realization principle.

Assets and liabilities with a remaining life of over one year and carried at foreign currencies are basically translated at inception at the foreign currency exchange rate, while at the balance sheet date the lowest closing spot rate is used for translating assets and the highest closing spot rate is used for translating liabilities. If the conditions to apply hedge accounting are met, the hedging financial instruments and the underlying transactions are combined in a hedge.

Earnings and losses from translation to euro of items carried at foreign currencies are recognized in the statement of income under "Other operating income" or "Other operating expenses".

**Derivative financial instruments** are contracted for hedging purposes only whereby foreign currency derivatives are used.

The Company acquires hedging instruments from banks that are mirrored by agreements between Fresenius ProServe GmbH and its affiliated companies at

nearly the same conditions. The affiliated companies use these agreements to hedge their operating businesses against foreign currency risks.

Derivative financial instruments are measured at fair value at balance sheet date. According to German Commercial Law accounting principles and standards of valuation any remeasurement losses are recognized in earnings while remeasurement gains are not taken into account. When the conditions for hedge accounting are met, the underlying asset and the hedging instrument are considered together so that effects of the hedge are only recognized in earnings when the underlying transaction takes place.

## NOTES ON THE BALANCE SHEET

### (3) Fixed assets

The breakdown of fixed assets and their development is presented in Exhibit 1 to the Notes.

A list of all participations in affiliated and associated companies of Fresenius ProServe GmbH is contained in the list of participations in affiliated and associated companies of Fresenius SE & Co. KGaA which will be published by Fresenius SE & Co. KGaA in the electronic Bundesanzeiger (German Federal Gazette).

### (4) Accounts receivable from related parties

Accounts receivable from related parties mainly consist of items against HELIOS Kliniken GmbH (€ 118,748 thousand) and hospitalia activHealth gmbh (€ 595 thousand). The receivables from related parties mainly relate to profit transfers, loans and clearing accounts. All accounts receivable have a remaining term of up to one year.

### (5) Other assets

In 2010 as well as in the previous year this item consists of other tax claims.

### (6) Subscribed capital

The capital stock at December 31, 2010 has a nominal value of € 40,000,000 and is divided into three parts with nominal values of € 25,000, € 14,975,000 and € 25,000,000. Fresenius SE & Co. KGaA is the sole stockholder.

### (7) Pension obligation

With notarized deed of December 12, 2006 and an effective date of January 1, 2007, all shares in hospitalia international gmbh, Oberursel, were sold and transferred to VAMED Engineering GmbH & Co. KG, Vienna, Austria.

In the context of this sale, Fresenius ProServe GmbH and hospitalia international gmbh agreed in a collateral promise from December 12, 2006, that the Company will assume via the collateral promise with contractual undertaking the compensation payments to be made resulting from the pension obligation of hospitalia international gmbh against beneficiaries and former employees with vested pension rights. The value of this obligation is € 6,794 thousand on December 31, 2010.

The pension obligation has been determined according to the method described under Note (2) "Accounting principles and standards of valuation". The new calculation of pension provisions required by BilMoG as of January 1, 2010 resulted in an underfunded status of € 1,496 thousand. The Company elects to recognize

1/15 (€ 100 thousand) in 2010 according to Art. 67 (1) sentence 1 EGHGB (Act Introducing the German Commercial Code). The expense related to this increase is included in extraordinary result in the statement of income.

(8) Other accruals

Other accruals mainly relate to risks from the sale of Pharmaplan GmbH. The decrease in accruals is mainly due to the dissolution of accruals because of the following transactions: pending legal actions in relation with the cessation of operations of the subsidiary hospitalia activhealth gmbh could be settled in an arbitration procedure in 2010. Moreover in 2010 the warranty period for the purchase of Pharmatec GmbH expired and subsequent events related to the Pharmaplan GmbH purchase could be closed without any claims being made against the accruals that were built therefore.

(9) Liabilities

The summary of remaining terms of liabilities looks as follows:

|                                     | 2010           |                                           |                                                   |                                           | 2009           |                                           |                                                   |                                           |
|-------------------------------------|----------------|-------------------------------------------|---------------------------------------------------|-------------------------------------------|----------------|-------------------------------------------|---------------------------------------------------|-------------------------------------------|
|                                     | Total          | Remain-<br>ing term<br>of up to<br>1 year | Remain-<br>ing term<br>of 1 year<br>to 5<br>years | Remain-<br>ing term of<br>over 5<br>years | Total          | Remain-<br>ing term<br>of up to<br>1 year | Remain-<br>ing term<br>of 1 year<br>to 5<br>years | Remain-<br>ing term<br>of over 5<br>years |
| <i>In thousand €</i>                |                |                                           |                                                   |                                           |                |                                           |                                                   |                                           |
| Trade accounts payable              | 85             | 85                                        | 0                                                 | 0                                         | 96             | 96                                        | 0                                                 | 0                                         |
| Accounts payable to related parties | 381,572        | 324,572                                   | 57,000                                            | 0                                         | 386,359        | 329,359                                   | 57,000                                            | 0                                         |
| Other liabilities                   | 44             | 44                                        | 0                                                 | 0                                         | 22             | 22                                        | 0                                                 | 0                                         |
|                                     | <u>381,701</u> | <u>324,701</u>                            | <u>57,000</u>                                     | <u>0</u>                                  | <u>386,477</u> | <u>329,477</u>                            | <u>57,000</u>                                     | <u>0</u>                                  |

The liabilities displayed are not secured by charges on property or other similar rights.

Accounts payable to related companies include liabilities against the shareholder Fresenius SE & Co. KGaA of € 215,298 thousand (previous year € 231,975 thousand). Accounts payable to related companies mainly consist of loans and clearing accounts.

(10) Other liabilities

Other liabilities include minimum dividend payments to the minority shareholders of HELIOS Kliniken GmbH due to the profit transfer agreement between Fresenius ProServe GmbH and HELIOS Kliniken GmbH.

## NOTES ON THE PROFIT AND LOSS STATEMENT

The structure of the profit and loss statement has been adapted to the holding nature of Fresenius ProServe GmbH and begins with income from participations.

### (11) Income from participations

Income from participations comprises income of the profit transfer agreement with HELIOS Kliniken GmbH of € 118,748 thousand (previous year € 118,917 thousand) and income from participations in related companies of € 6,727 thousand (previous year € 6,524 thousand).

### (12) Other operating income

Other operating income mainly includes income from dissolution of accruals of € 2,100 thousand and from rental of office space to related companies of € 1,557 thousand as well as from foreign currency translations of € 4,602 thousand.

Income from other accounting periods was € 2,100 thousand in 2010 (previous year € 3,486 thousand) and relates to the dissolution of accruals.

### (13) Personnel expenses

|                                                                        | 2010              | 2009              |
|------------------------------------------------------------------------|-------------------|-------------------|
|                                                                        | <i>Thousand €</i> | <i>Thousand €</i> |
| Salaries                                                               | 12                | 13                |
| Social security and costs of retirement pensions and social assistance | 141               | 474               |
| (thereof retirement pensions)                                          | (141)             | (474)             |
|                                                                        | <b>153</b>        | <b>487</b>        |
| Annual average number of employees:                                    |                   |                   |
| Salaried employees                                                     | 1                 | 2                 |

### (14) Other operating expenses

Other operating expenses of € 5,899 thousand were primarily foreign currency translation losses, but also expenses from cost allocation and service level agreements and consulting and maintenance cost.

### (15) Income from financial assets

Income in this item includes interest from long term loans to related companies.

(16) Other interest and similar income

This item primarily includes interest income from related companies of € 178 thousand (previous year € 732 thousand).

(17) Write-downs of financial assets

This item included in the previous year the write-down of a participation in a Malaysian company that was sold in 2009.

(18) Interest and similar expenses

This item mainly includes € 7,038 thousand (previous year € 9,187 thousand) of interests paid to related companies. Moreover expenses for interests accrued for accrued expenses of € 360 thousand are also included.

(19) Extraordinary expenses

Extraordinary expenses in 2010 result from the effects of the first time implementation of the new German accounting legislation (BilMoG). It include expenses from contributions to pension obligations of € 100 thousand.

Extraordinary expense in the previous year comprised the expenses related to the merger of Fresenius ProServe Beteiligungsgesellschaft mbH and CellTis GmbH into Fresenius ProServe GmbH.

(20) Income taxes

This item includes expenses from cost transfers for corporate income tax (€ 18,608 thousand, previous year € 19,199 thousand), trade tax (€ 3,107 thousand, previous year € 2,799 thousand), and solidarity surcharge (€ 1,023 thousand, previous year € 1,056 thousand).

The company is part of a consolidated tax group with Fresenius SE & Co. KGaA (fiscal unity parent) for income, trade and corporate income tax.

(21) Other tax

This item mainly includes property tax.



## OTHER DISCLOSURES

### (22) Management

In 2010 following persons were appointed managing directors of Fresenius ProServe GmbH, Bad Homburg v.d. Höhe:

Dr. Jürgen Götz, Lawyer, Bad Soden,  
Dr. Francesco De Meo, Lawyer, Petersberg,  
Joachim Weith, Dipl.-Sociologist and Dipl.-Business Administration, Wintzenbach  
(since April 7, 2010).

In 2010 the managing directors are simultaneously managing directors, members of the management board or senior executives in other Group companies and receive their compensation from these companies.

### (23) Contingent liabilities

#### Contingencies from indemnity agreements

Fresenius ProServe GmbH guarantees together with Fresenius Kabi AG and Fresenius SE & Co. KGaA the repayment including interests accrued of two Senior Notes of Fresenius SE & Co. KGaA amounting to € 1,150 million. The Senior Notes were issued through Fresenius Finance B.V., Netherlands in 2006 and increased in 2009. On December 31, 2010, the value of these guarantees including interests accrued was € 1,180 million.

Moreover Fresenius ProServe GmbH together with Fresenius Kabi AG and Fresenius SE & Co. KGaA guarantee the repayment including accrued interest for the Senior Note issued by Fresenius Finance II, Inc, USA in 2009. The Senior Note comprises two tranches of \$ 500 million and € 275 million. On December 31, 2010, the value of the guarantees including interests accrued was \$ 523 million (€ 391 million) and € 287 million.

Further guarantee commitments of Fresenius ProServe GmbH together with Fresenius SE & Co. KGaA and Fresenius Kabi AG exist in relation to the repayment of several long term bank loans taken through financing companies of the Fresenius Group in relation to one acquisition in 2008. These commitments are for a maximum of \$ 2,533 million (€ 1,895 million) and € 163 million and the related accrued interest. On December 31, 2010, the value of the loans including interests was \$ 1,983 million (€ 1,484 million) and € 163 million.

Moreover Fresenius ProServe GmbH guarantees together with Fresenius Kabi AG the repayment of a credit facility of € 100 million borrowed by Fresenius SE & Co. KGaA from the European Investment Bank, as well as the related accrued expenses. On December 31, 2010, the value of the credit facility including accrued interests was € 100 million.

According to our judgment the affected companies can meet the underlying obligations in any case and assertion of the claim is currently not expected.

### Statement of subordination

On December 31, 2010, the subsidiaries Wittgensteiner Kliniken GmbH and hospitalia activHealth gmbh are over-leveraged by € 33,2 million and € 6.5 million respectively. To avoid legal accounting insolvency, Fresenius ProServe GmbH issued a statement of subordination for € 40 million and € 8.7 million respectively. On December 31, 2010 receivables of € 170 million against Wittgensteiner Kliniken GmbH and of € 7.0 million (of which € 6.4 million have been written-down) against hospitalia activHealth gmbh are outstanding.

### Option contracts

There are two put and call option contracts with the current share owners of VAMED AG to acquire 10% and 13% of the shares in VAMED AG which expire on December 31, 2015 and June 30, 2017 respectively. These contracts are pending transactions that are not shown in the financial statement of Fresenius ProServe GmbH.

## (24) Derivatives

Fresenius ProServe GmbH uses derivative financial instruments to hedge against existing or highly probable future currency risks. Derivative financial instruments are contracted exclusively for hedging purposes. As the critical terms of the underlying transactions basically match those of the derivative financial instruments it can be assumed that hedges are highly effective. The Company has approved guidelines for assessing risks and to control the use of financial instruments. The guidelines require a clear separation between the execution function on the one side and the clearing, accounting and control on the other hand. Derivative financial instruments are used to reduce fluctuations in earnings and cash flows caused by changes in foreign currency exchange rates.

### **Foreign exchange risk**

The company uses foreign exchange forward contracts to hedge foreign exchange risk.

Fresenius ProServe GmbH entered into foreign exchange forward contracts with external partners to hedge foreign currency risks from accounts receivable and liabilities as well as highly probable forecasted transactions from the Company and its affiliates. On the balance sheet date, the Company had US-\$ and € currency derivatives with a nominal value of € 39,336 thousand and fair value of € 1,310 thousand with a maximum maturity of six months.

Hedges were build for foreign exchange forward contracts with banks closed to hedge the foreign exchange risk of Fresenius SE & Co. KGaA Group companies' and the underlying transactions with an offsetting fair value, as far as the contracts were passed down to the affected Group companies via Group internal transactions. The net fair value of internal and external hedges was € 1,314 thousand on the balance sheet date. As of December 31, 2010, the notional amount of these transactions totalled € 39,086 thousand. The positive fair value of the hedge has not been recognized. The offsetting cash flows will level after six months the latest.

Further hedges were built for loans in foreign currencies that the Company has borrowed from Group Companies, and their offsetting foreign exchange forward contracts closed for hedging purposes. The payment obligations fully hedged against currency risk had a net book value of € 251 thousand. External foreign currency hedging contracts for payment obligations had a net fair value of € -4 thousand. The changes in value of both payment obligations and the foreign currency hedging contracts have been recognized as income (Durchbuchungsmethode). The offsetting cash flows will nearly level after one month the latest.

### **Standards of valuation**

The fair values of derivative financial instruments are valued according to customary standards that take market information (market values) on the balance sheet date into account. In detail following principles are used:

- The fair value is based on the market value of a derivative that could be reached in voluntary transactions by independent parties without taking forced or liquidation sales into account.
- To determine the market value of foreign exchange forward contracts, the contracted forward rate is compared to the current forward rate for the remaining term of the contract as of the date of the balance sheet. The result is then discounted on the basis of the market interest rates prevailing at the date of the statement of financial position for the respective currency.

The effectiveness of hedging relationships is measured with the Critical Term Match-Method.

### **(25) Parent company**

Fresenius SE & Co. KGaA, Bad Homburg v.d.Höhe is the sole shareholder of Fresenius ProServe GmbH.

Fresenius ProServe GmbH is exempt from publishing consolidated financial statements and management report in accordance with Section 291 HGB given that Fresenius SE & Co. KGaA as parent company publishes consolidated financial statements and management report in accordance with International Financial Reporting Standards (IFRS) which are binding to be applied in the EU applying Section 315a HGB for the largest group of consolidated companies. The consolidated financial statements of Fresenius SE & Co. KGaA are published in the electronic Bundesanzeiger (German Federal Gazette).

Fresenius ProServe will use the exemptions in Section 264 (3) HGB and will not make its financial statements for the year 2010 public.

Bad Homburg v.d.Höhe, March 25, 2011

Fresenius ProServe GmbH

Dr. Jürgen Götz

Dr. Francesco De Meo

Joachim Weith

Exhibit to notes

Fresenius ProServe GmbH, Bad Homburg v. d. Höhe

Development of fixed assets during the fiscal year 2010

|                                                     | Acquisition costs |           |               |
|-----------------------------------------------------|-------------------|-----------|---------------|
|                                                     | As of             |           | As of         |
|                                                     | Jan. 01, 2010     | Additions | Dec. 31, 2010 |
|                                                     | TEUR              | TEUR      | TEUR          |
| <b>I. Intangible assets</b>                         | 4                 | 0         | 4             |
| <b>II. Tangible assets</b>                          |                   |           |               |
| 1. Land, leasehold and buildings                    | 10,947            | 0         | 10,947        |
| 2. Plant and machinery                              | 21                | 0         | 21            |
| 3. Other fixtures and fittings, tools and equipment | 20                | 0         | 20            |
|                                                     | 10,988            | 0         | 10,988        |
| <b>III. Financial assets</b>                        |                   |           |               |
| 1. Shares in related parties                        | 1,678,680         | 0         | 1,678,680     |
| 2. Loans to related parties                         | 172,806           | 33        | 172,839       |
| 3. Participations                                   | 0                 | 0         | 0             |
|                                                     | 1,851,486         | 33        | 1,851,519     |
|                                                     | 1,862,478         | 33        | 1,862,511     |

Exhibit to notes

Fresenius ProServe GmbH, Bad Homburg v. d. Höhe

Development of fixed assets during the fiscal year 2010

|                                                     | Depreciation           |                                | Carrying amount        |               |               |
|-----------------------------------------------------|------------------------|--------------------------------|------------------------|---------------|---------------|
|                                                     | As of<br>Jan. 01, 2010 | Depreciation of<br>fiscal year | As of<br>Dec. 31, 2010 | Dec. 31, 2010 | Dec. 31, 2009 |
|                                                     | TEUR                   | TEUR                           | TEUR                   | TEUR          | TEUR          |
| <b>I. Intangible assets</b>                         | 4                      | 0                              | 4                      | 0             | 0             |
| <b>II. Tangible assets</b>                          |                        |                                |                        |               |               |
| 1. Land, leasehold and buildings                    | 1,910                  | 226                            | 2,136                  | 8,811         | 9,037         |
| 2. Plant and machinery                              | 19                     | 1                              | 20                     | 1             | 2             |
| 3. Other fixtures and fittings, tools and equipment | 19                     | 1                              | 20                     | 0             | 1             |
|                                                     | 1,948                  | 228                            | 2,176                  | 8,812         | 9,040         |
| <b>III. Financial assets</b>                        |                        |                                |                        |               |               |
| 1. Shares in related parties                        | 5,100                  | 0                              | 5,100                  | 1,673,580     | 1,673,580     |
| 2. Loans to related parties                         | 0                      | 0                              | 0                      | 172,839       | 172,806       |
| 3. Participations                                   | 0                      | 0                              | 0                      | 0             | 0             |
|                                                     | 5,100                  | 0                              | 5,100                  | 1,846,419     | 1,846,386     |
|                                                     | 7,052                  | 228                            | 7,280                  | 1,855,231     | 1,855,426     |

## Auditor's report

To Fresenius ProServe GmbH

We have audited the annual financial statements, comprising the balance sheet, the income statement and the notes to the financial statements, together with the bookkeeping system, of Fresenius ProServe GmbH, Bad Homburg v.d. Höhe, for the business year from January 1 to December 31, 2010. The maintenance of the books and records and the preparation of the annual financial statements in accordance with German commercial law are the responsibility of the Company's management. Our responsibility is to express an opinion on the annual financial statements, together with the bookkeeping system, based on our audit.

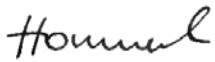
We conducted our audit of the annual financial statements in accordance with Art. 317 HGB [“Handelsgesetzbuch”: German Commercial Code] and German generally accepted standards for the audit of financial statements promulgated by the Institut der Wirtschaftsprüfer [Institute of Public Auditors in Germany] (IDW). Those standards require that we plan and perform the audit such that misstatements materially affecting the presentation of the net assets, financial position and results of operations in the annual financial statements in accordance with German principles of proper accounting are detected with reasonable assurance. Knowledge of the business activities and the economic and legal environment of the Company and expectations as to possible misstatements are taken into account in the determination of audit procedures. The effectiveness of the accounting-related internal control system and the evidence supporting the disclosures in the books and records and the annual financial statements are examined primarily on a test basis within the framework of the audit. The audit includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the annual financial statements. We believe that our audit provides a reasonable basis for our opinion.

Our audit has not led to any reservations.

In our opinion, based on the findings of our audit, the annual financial statements comply with the legal requirements and give a true and fair view of the net assets, financial position and results of operations of Fresenius ProServe GmbH in accordance with German principles of proper accounting.

Frankfurt am Main, March 25, 2011

KPMG AG  
Wirtschaftsprüfungsgesellschaft



Hommel  
Wirtschaftsprüferin



Pebler  
Wirtschaftsprüfer



**Unconsolidated cash flow statements of Fresenius ProServe GmbH for 2011 and 2010  
(German-GAAP)**

To Fresenius ProServe GmbH

We have audited the cash flow statements for the financial years 2010 and 2011 derived by Fresenius ProServe GmbH from the financial statements for the financial years 2010 and 2011 and from the underlying bookkeeping system. The cash flow statements supplement the financial statements of Fresenius ProServe GmbH for the financial years 2010 and 2011 that have been prepared on the basis of the provisions of German commercial law.

The preparation of the cash flow statements for the financial years 2010 and 2011 in accordance with the provisions of German commercial law is the responsibility of the company's management.

Our responsibility is to express an opinion, based on our audit, as to whether the cash flow statements for the financial years 2010 and 2011 have been properly derived from the financial statements for financial years 2010 and 2011 and from the underlying bookkeeping system in accordance with the provisions of German commercial law. The subject matter of this engagement does not include the audit either of the underlying financial statements or of the underlying bookkeeping system.

We have planned and performed our audit in accordance with the IDW Auditing Practice Statement: Audit of Additional Elements of Financial Statements (IDW AuPS 9.960.2) in such a way that material errors in the derivation of the cash flow statements from the financial statements and from the underlying bookkeeping system are detected with reasonable assurance.

In our opinion, based on the findings of our audit, the cash flow statements for the financial years 2010 and 2011 have been properly derived from the financial statements for the financial years 2010 and 2011 and from the underlying bookkeeping system in accordance with the provisions of German commercial law.

Frankfurt am Main, February 28, 2012

KPMG AG  
Wirtschaftsprüfungsgesellschaft



Hommel

Wirtschaftsprüferin



Dr. Herold

Wirtschaftsprüfer

**Fresenius ProServe GmbH, Bad Homburg v. d. Höhe**

**Statement of Cash Flows for the fiscal years 2011 and 2010**

|                                                                    | 2011            | 2010            |
|--------------------------------------------------------------------|-----------------|-----------------|
|                                                                    | KEUR            | KEUR            |
| Net Income before profit and loss transfer                         | 151.914         | 129.211         |
| Depreciation and amortization of non-current assets                | 226             | 227             |
| Increase in pension liabilities                                    | 1.307           | 70              |
| <b>Cash flow</b>                                                   | <b>153.447</b>  | <b>129.508</b>  |
| Increase in other operating assets                                 | 22              | 0               |
| Decrease in other accrued expenses                                 | -2              | -2.380          |
| Increase/decrease in other operating liabilities                   | -43             | 11              |
| <b>Decrease in working capital</b>                                 | <b>-23</b>      | <b>-2.369</b>   |
| <b>Operating cash flow (cash provided by operating activities)</b> | <b>153.424</b>  | <b>127.139</b>  |
| Payments for investments in financial assets                       | -28             | -33             |
| Payments for purchasing shares of affiliated companies             | -54.162         | 0               |
| <b>Cash used for investing activities</b>                          | <b>-54.190</b>  | <b>-33</b>      |
| Profit-transfer to shareholder                                     | -151.914        | -129.211        |
| Change in financing activities with related parties                | 46.323          | -10.404         |
| <b>Cash used for financing activities</b>                          | <b>-105.591</b> | <b>-139.615</b> |
| <b>Change of cash and cash equivalents</b>                         | <b>-6.357</b>   | <b>-12.509</b>  |
| Cash and cash equivalents at the beginning of the year             | -18.089         | -5.580          |
| Cash and cash equivalents at the end of the year <sup>1</sup>      | -24.446         | -18.089         |

<sup>1</sup>Cash and Cash equivalents consist of Cash Pool-accounts with Fresenius SE & Co. KGaA

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## **GERMAN TRANSLATION OF THE SUMMARY OF THE PROSPECTUS/OFFERING MEMORANDUM ZUSAMMENFASSUNG**

*Der folgende Abschnitt ist eine Zusammenfassung bestimmter Merkmale, die auf den Emittenten, die Garantiegeber und die Schuldverschreibungen zutreffen. Diese Zusammenfassung ist als Einleitung zum Prospekt/Offering Memorandum zu lesen. Sie erhebt keinen Anspruch auf Vollständigkeit, beruht auf den Angaben des übrigen Prospekts/Offering Memorandums, dem sie entnommen wurde, und ist im Zusammenhang mit diesem zu lesen. Anleger sollten den gesamten Prospekt/das gesamte Offering Memorandum (einschließlich der Abschnitte „Risk Factors“, „Management’s Discussion and Analysis of Financial Condition and Results of Operations“ und „Business“) sowie die Abschlüsse und die zugehörigen Erläuterungen sorgfältig lesen. Jede Entscheidung eines Anlegers zum Kauf der Schuldverschreibungen sollte sich auf die Prüfung des gesamten Prospekts/Offering Memorandums stützen. Für den Fall, dass vor einem Gericht Ansprüche aufgrund der in diesem Prospekt/Offering Memorandum enthaltenen Informationen geltend gemacht werden, könnte der klagende Anleger nach den jeweils anwendbaren einzelstaatlichen Rechtsvorschriften dazu verpflichtet sein, vor Prozessbeginn die Kosten für die Übersetzung des Prospekts/Offering Memorandums zu tragen. Der Emittent und die Garantiegeber, die diese Zusammenfassung einschließlich ihrer Übersetzung erstellt und deren Veröffentlichung beantragt haben, können zivilrechtlich nur in dem Fall haftbar gemacht werden, dass die Zusammenfassung irreführend, unrichtig oder widersprüchlich ist, wenn sie zusammen mit den anderen Teilen dieses Prospekts/Offering Memorandums gelesen wird.*

*In der nachfolgenden Zusammenfassung bezieht sich der Begriff „Gesellschaft“ nur auf die Fresenius SE & Co. KGaA (und, soweit der Kontext dies erfordert, auch auf deren Vorgängergesellschaften: die Fresenius SE (bis zum 28. Januar 2011) und die Fresenius AG (bis zum 13. Juli 2007)) als die garantiegebende Muttergesellschaft in Bezug auf die Schuldverschreibungen, die Gegenstand dieses Prospekts/Offering Memorandums sind, und auf keine ihrer Tochtergesellschaften. Die Begriffe „wir“, „uns“, „unser“, der „Fresenius-Konzern“, der „Konzern“ und „Fresenius“ beziehen sich auf die Fresenius SE & Co. KGaA und ihre konsolidierten Tochtergesellschaften.*

### **ZUSAMMENFASSUNG IN BEZUG AUF DIE GESELLSCHAFT UND DEN KONZERN**

#### **Überblick**

Fresenius ist ein internationaler Gesundheitskonzern mit Produkten und Dienstleistungen für die Dialyse, das Krankenhaus und die ambulante medizinische Versorgung von Patienten. Weitere Arbeitsfelder sind das Betreiben von Krankenhäusern sowie Engineering- und Dienstleistungen für Krankenhäuser und andere Gesundheitseinrichtungen. Wir sind in etwa 170 Ländern tätig und verfügen über ein internationales Vertriebs- und Produktionsnetz mit mehr als 80 Produktionsstätten weltweit. Unsere vier Unternehmensbereiche sind Fresenius Medical Care, Fresenius Kabi, Fresenius Helios und Fresenius Vamed. Im Jahr 2011 erzielten wir einen Umsatz von 16.522 Mio. € und ein EBITDA von 3.237 Mio. €. Zum 29. Februar 2012 hatte die Gesellschaft eine Marktkapitalisierung von 12.673 Mio. €.

*Fresenius Medical Care.* Fresenius Medical Care ist auf dem Gebiet der Dialyseprodukte und -dienstleistungen tätig. Auf Basis der veröffentlichten Umsatz- und Patientenzahlen ist Fresenius Medical Care der weltweit größte Anbieter von Dialyseprodukten und -dienstleistungen für Patienten mit chronischem Nierenversagen. Das Dialysegeschäft von Fresenius Medical Care ist vertikal integriert. Das Unternehmen bietet Dienstleistungen in eigenen Dialysekliniken an und versorgt diese Kliniken darüber hinaus mit einer breiten Palette an Produkten. Ferner verkauft Fresenius Medical Care Produkte an andere Anbieter von Dialysedienstleistungen. Im Jahr 2011 erzielte Fresenius Medical Care etwa 64% seines Umsatzes in Nordamerika, etwa 21% in Europa und etwa 15% im Rest der Welt. Fresenius Medical Care vertreibt seine Produkte in mehr als 120 Ländern. Zum 31. Dezember 2011 betreute Fresenius Medical Care 233.156 Patienten in 2.898 Dialysekliniken in rund 40 Ländern (234.516 Patienten unter Berücksichtigung der Patienten in 21 US-Kliniken, die zwar von Fresenius Medical Care gemanagt werden, aber nicht konsolidiert werden) und führte 2011 rund 34,4 Millionen Behandlungen durch. Umsatz und EBITDA von Fresenius Medical Care beliefen sich

im Jahr 2011 auf 12.795 Mio. US\$ (9.192 Mio. €) bzw. 2.632 Mio. US\$ (1.891 Mio. €) und machten etwa 56% des Konzernumsatzes sowie 58% des Konzern-EBITDA aus. Zum 29. Februar 2012 hatte die FMC AG & Co. KGaA eine Marktkapitalisierung von 15.962 Mio. €.

*Fresenius Kabi.* Fresenius Kabi ist auf die Behandlung und Versorgung schwer und chronisch kranker Patienten im Krankenhaus und im ambulanten Bereich spezialisiert. Fresenius Kabi verfügt über vier Produktbereiche: Infusionstherapien, I.V.-Arzneimittel, Klinische Ernährung und Medizintechnische Produkte/Transfusionstechnologie. Auf dem Gebiet der Infusionstherapien bietet Fresenius Kabi Infusionslösungen und Blutvolumenersatzstoffe an. Auf dem Gebiet der I.V. Arzneimittel bietet Fresenius Kabi ein umfangreiches Sortiment an intravenös zu verabreichenden Arzneimitteln für die Bereiche Anästhesie, Analgesie, Infektionskrankheiten, Onkologie und kritische Erkrankungen an. Im Bereich der klinischen Ernährung bietet Fresenius Kabi parenterale (intravenös verabreichte) und enterale (über den Magen-Darm-Trakt verabreichte) Ernährungstherapien an. Der Produktbereich Medizintechnische Produkte/Transfusionstechnologie umfasst Infusionspumpen, Ernährungspumpen, Einmalartikel und Infusionsmanagementsysteme sowie Produkte, die von Blutbanken und Blutspendezentren zur Herstellung von Blutprodukten verwendet werden. Im Jahr 2011 generierte Fresenius Kabi 46% seines Umsatzes in Europa, 25% in Nordamerika, 18% im Raum Asien-Pazifik, und 11% in Lateinamerika/Afrika. Im Jahr 2011 beliefen sich Umsatz und EBITDA von Fresenius Kabi auf 3.964 Mio. € bzw. 955 Mio. € und stellten ungefähr 24% des Konzernumsatzes und 30% des Konzern-EBITDA dar.

*Fresenius Helios.* Fresenius Helios ist einer der größten privaten Krankenhausbetreiber in Deutschland. Die HELIOS-Gruppe betreibt 65 eigene Kliniken (Stand: 31. Dezember 2011), und zwar nahezu ausschließlich in Deutschland, darunter sechs Maximalversorger in Berlin-Buch, Duisburg, Erfurt, Krefeld, Schwerin und Wuppertal, sowie Rehabilitationskliniken. Fresenius Helios verfügt über Kompetenz in allen medizinischen Bereichen (außer Transplantationsmedizin) und auf allen Versorgungsstufen der klinischen Pflege. Zum 31. Dezember 2011 verfügte Fresenius Helios über mehr als 20.000 Betten und hatte im Jahr 2011 mehr als zwei Millionen Patienten in Behandlung — einschließlich etwa 700.000 stationär behandelter Patienten. Umsatz und EBITDA von Fresenius Helios im Jahr 2011 beliefen sich auf 2.665 Mio. € bzw. 369 Mio. € und machten etwa 16% des Konzernumsatzes und 11% des Konzern-EBITDA aus.

*Fresenius Vamed.* Fresenius Vamed gehört zu den führenden Unternehmen im Markt für Engineering- und andere Dienstleistungen für die Projektentwicklung, die Planung, den Bau und den technischen Betrieb von Krankenhäusern und anderen Gesundheitseinrichtungen weltweit sowie das allgemeine Management von Gesundheitseinrichtungen in ausgewählten Schlüsselmärkten. VAMED hat bereits etwa 600 Gesundheitsprojekte in mehr als 60 Ländern erfolgreich realisiert. Dazu gehören Krankenhäuser, Universitätskliniken, Gesundheits- und Rehabilitationszentren, Thermen und medizinische Wellnesszentren, Labore und Forschungseinrichtungen und sonstige Gesundheitseinrichtungen in Europa, Afrika, Nahost, Asien und Lateinamerika. Fresenius Vamed ist außerdem Pionier in der Entwicklung von Modellen für öffentlich-private Partnerschaften (*public-private partnerships*) („PPP“) für den Gesundheitssektor und hat bereits mehrere PPP-Modelle in Mitteleuropa entwickelt und umgesetzt. Umsatz und EBITDA von Fresenius Vamed beliefen sich im Jahr 2011 auf 737 Mio. € bzw. 51 Mio. € und machten etwa 4% des Konzernumsatzes und 2% des Konzern-EBITDA aus.

## **Zusammenfassung unserer wichtigsten Stärken**

Unser Unternehmen profitiert von einer Vielzahl von Stärken, dazu zählen u. a.:

**Führende Marktpositionen.** Wir gehören zu den Marktführern in jedem der Schlüsselmärkte, in denen wir geschäftlich aktiv sind. Auf Basis der veröffentlichten Umsätze und Patientenzahlen ist Fresenius Medical Care der weltweit größte Anbieter von Dialyseprodukten und -dienstleistungen für Patienten mit chronischem Nierenversagen. Wir sind der Auffassung, dass Fresenius Kabi Marktführer im Bereich der klinischen Ernährung und Infusionstherapien in Europa ist und über starke Marktstellungen in den Wachstumsregionen Asien-Pazifik, Lateinamerika und Südafrika verfügt. Zudem ist das Unternehmen ein führender Anbieter von generischen I.V.-Arzneimitteln in

den Vereinigten Staaten. Fresenius Helios ist einer der drei größten privaten Krankenhausbetreiber in Deutschland. Fresenius Vamed gehört zu den führenden Unternehmen im Markt für Engineering- und andere Dienstleistungen für die Projektentwicklung, die Planung, den Bau und den technischen Betrieb von Krankenhäusern und anderen Gesundheitseinrichtungen weltweit sowie das allgemeine Management von Gesundheitseinrichtungen in ausgewählten Schlüsselmärkten. Wir sind der Auffassung, dass unsere führende Position sowie der Umfang und das Wachstum unserer Aktivitäten unsere Verhandlungsmacht gegenüber Lieferanten stärken und uns deutliche Kostenvorteile gegenüber kleineren Wettbewerbern verschaffen.

**Lokale Präsenz in wachsenden, nicht-zyklischen Märkten weltweit.** Aufgrund der zentralen Bedeutung unserer lebensrettenden und lebenserhaltenden Produkte und Therapien sind unsere Märkte vergleichsweise unabhängig von Konjunkturzyklen. Darüber hinaus wachsen unsere Märkte aufgrund demografischer Trends, der steigenden Nachfrage nach innovativen Therapien in den Industrieländern und dem wachsenden Zugang zu hochwertigen Gesundheitsleistungen in Entwicklungs- und Schwellenländern. Als eines der wenigen weltweit tätigen Unternehmen in unseren Geschäftsfeldern verfügen wir über Tochtergesellschaften in etwa 80 Ländern und somit über die erforderliche lokale Präsenz, um uns an die unterschiedlichen Anforderungen der nationalen Gesundheitssysteme anzupassen. Fresenius Medical Care verkauft seine Dialyseprodukte sowohl an seine eigenen Kliniken als auch an externe Dialyseanbieter. Fresenius Medical Care vertreibt seine Produkte in mehr als 120 Ländern, und Fresenius Kabi verkauft seine Produkte an Krankenhäuser und andere Kunden in mehr als 160 Ländern. Wir verfügen über ein Vertriebs- und Produktionsnetz mit mehr als 80 Produktionsstätten weltweit. Unsere wichtigsten Produktionsstätten befinden sich in den Vereinigten Staaten, Deutschland, Schweden, China, Japan und Indien. Wir verfügen außerdem über Produktionsanlagen in anderen europäischen Ländern, und weiteren Ländern in Asien-Pazifik, Lateinamerika und Südafrika.

**Umfassendes Produktangebot.** Dank unseres umfangreichen Produktportfolios sind wir als eines der wenigen Unternehmen in der Lage, das Bedürfnis unser Kunden nach einem breiten Angebot an Therapien zu erfüllen. Fresenius Medical Care bietet ein umfassendes Sortiment an Produkten sowohl für die Hämodialyse (d. h. die Reinigung des Blutes von Verunreinigungen und Abfallprodukten durch einen Dialysator außerhalb des Körpers) und die Peritonealdialyse (d. h. die Entfernung von Toxinen aus dem Blut unter Nutzung des Bauchfells) an. Fresenius Kabi ist eines der wenigen Gesundheitsunternehmen, das ein umfassendes Angebot sowohl an enteralen als auch an parenteralen Ernährungstherapien anbietet. Fresenius Kabi verfügt außerdem über ein breit angelegtes Sortiment an Infusionslösungen und Blutvolumenersatzstoffen sowie über ein umfassendes Portfolio an I.V.-Arzneimitteln und hat für viele Arzneimittel die Zulassung beantragt.

**Hohe Markteintrittsbarrieren.** Der überwiegende Teil unseres Produkt- und Dienstleistungsportfolios zeichnet sich durch hohe Eintrittsbarrieren aus. Hohe regulatorische Standards und Qualitätsanforderungen sowie die Notwendigkeit eines internationalen Produktions- und Vertriebsnetzes und etablierter Lieferanten- und Kundenbeziehungen erschweren anderen Unternehmen den Markteintritt und die Wettbewerbsfähigkeit auf unseren Märkten. Eine bestehende Plattform von Krankenhäusern, umfangreiche Erfahrung und eine nachgewiesene Erfolgsbilanz sind die Voraussetzung, um erfolgreich an der Privatisierung des deutschen Krankenhausmarkts teilzunehmen und erworbene Krankenhäuser erfolgreich sanieren zu können.

**Integrierte Unternehmensbereiche.** Im Rahmen unseres vertikal integrierten Geschäftsmodells agieren unsere Unternehmensbereiche auf unterschiedlichen Ebenen der Wertschöpfungskette. Fresenius Medical Care beliefert seine Kunden und Patienten mit Dialyseprodukten und -dienstleistungen. Durch die Verknüpfung von Entwicklung und Herstellung von Dialyseprodukten mit Dialysedienstleistungen für Patienten gewinnt Fresenius Medical Care wertvolle medizinische Erkenntnisse, die zur Verbesserung der Therapie- und Produktqualität genutzt werden. Fresenius Kabi verfolgt ebenfalls eine integrierte Produktstrategie in den Bereichen Infusionstherapien und Klinische Ernährung. Zusätzlich zu Infusionslösungen, I.V.-Arzneimitteln und Klinischer Ernährung bietet Fresenius Kabi auch die entsprechenden Applikationssysteme für die Verabreichung dieser Produkte an die Patienten an. Wir sind der Ansicht, dass Fresenius Kabi als vertikal integrierter Lieferant generischer I.V.-Arzneimittel über eine starke Marktposition und eine

verlässliche Versorgung mit aktiven pharmazeutischen Wirkstoffen zur Herstellung von Antibiotika und Krebsmedikamenten verfügt.

**Starker und stabiler Cashflow sowie eine nachgewiesene Erfolgsbilanz bei der Rückführung der Fremdfinanzierung.** Unsere Unternehmensbereiche verfügen über starke, nachhaltige Cashflows, die durch die mit lebensrettenden und lebenserhaltenden Produkten und Dienstleistungen erzielten Umsatzerlöse entstehen. Unser operativer Cashflow für das zum 31. Dezember 2011 endende Geschäftsjahr belief sich auf 1.689 Mio. € (im Vergleich zu 1.911 Mio. € im Jahr 2010 und 1.553 Mio. € im Jahr 2009). Aufgrund unseres starken Cashflows und EBITDA-Wachstums konnten wir das Verhältnis der Netto-Finanzverbindlichkeiten zum EBITDA nach Übernahme der APP Pharmaceuticals von 3,6 am 31. Dezember 2008 auf 2,8 am 31. Dezember 2011 reduzieren und trotz verstärkter Akquisitionsaktivitäten im Jahr 2011 innerhalb des Zielkorridors von 2,5 bis 3,0 halten. Auf Grundlage vergleichbarer Wechselkurse (unter Zugrundelegung eines durchschnittlichen Wechselkurses für die letzten zwölf Monate zur Berechnung des Nominalbetrags der Verbindlichkeiten, flüssigen Mittel und Zahlungsmitteläquivalente sowie des EBITDA) belief sich unser Verhältnis von Netto-Finanzverbindlichkeiten zum EBITDA am 31. Dezember 2011 auf 2,7.

**Erfahrenes Managementteam.** Fresenius verfügt über eines der erfahrensten Managementteams der Branche mit einer nachgewiesenen Erfolgsbilanz im Hinblick auf organisches Wachstum, sowie den Erwerb und die erfolgreiche Integration von Akquisitionen. Dazu gehören der Erwerb der HELIOS Kliniken GmbH für 1,5 Mrd. € im Jahr 2005, der Erwerb der Renal Care Group (RCG) für 4,2 Mrd. US\$ im Jahr 2006 und der Erwerb von APP Pharmaceuticals für 4,7 Mrd. US\$ im Jahr 2008. Die Mitglieder des Managements der Fresenius Medical Care verfügen zusammen über eine Erfahrung von über 150 Jahren im Dialysesektor. Die Mitglieder des Managements der Fresenius Kabi verfügen zusammen über eine gemeinsame Erfahrung von ca. 185 Jahren im Gesundheitswesen. Die Mitglieder des Managements der Fresenius Helios haben zusammen eine Erfahrung von über 85 Jahren im Krankenhausmanagement. Die Mitglieder des Managements der Fresenius Vamed verfügen insgesamt über mehr als 65 Jahre Erfahrung in der Erbringung von Dienstleistungen im Gesundheitssektor.

## **Zusammenfassung unserer Strategie**

Im Folgenden findet sich eine Zusammenfassung der wichtigsten Bestandteile unserer Geschäftsstrategie:

**Ausbau unserer Marktposition.** Ziel von Fresenius ist es, die langfristige Zukunft des Unternehmens als einer der führenden internationalen Anbieter von Produkten und Dienstleistungen für den Gesundheitssektor zu wahren und seine Marktposition weiter auszubauen. Perspektiven in der Dialyse bieten sich künftig sowohl im Bereich der Dialyседienstleistungen und -produkte durch die weitere internationale Expansion als auch durch den Ausbau des Bereichs Dialysemedikamente. Um seine Marktposition weiter zu stärken, plant Fresenius Kabi weitere Produkte aus seinem Portfolio in den Wachstumsmärkten einzuführen. Der Marktanteil soll auch durch die Einführung neuer Produkte im Bereich der I.V.-Arzneimittel und in der Medizintechnik für Infusions- und Ernährungstherapien weiter ausgebaut werden. Zudem sollen Produkte aus dem bestehenden Portfolio auf dem U.S.-Markt eingeführt werden. Fresenius Helios ist aufgrund seiner starken Marktposition in der Lage, die künftigen Wachstumschancen zu nutzen, die sich aus der fortschreitenden Privatisierung des deutschen Krankenhausmarkts ergeben. Grundlage für die Akquisitionsentscheidungen bilden die Bestandssicherheit und das langfristige Potenzial der zu erwerbenden Kliniken. Fresenius Vamed wird seine Position als weltweit tätiger Spezialist für Engineering- und Dienstleistungen für Krankenhäuser und andere Gesundheitseinrichtungen weiter stärken.

**Ausbau der weltweiten Präsenz.** Neben einem nachhaltigen organischen Wachstum in den Märkten, in denen Fresenius bereits etabliert ist, verfolgen wir das Ziel, weltweit neue Wachstumsmärkte, vor allem in der Region Asien-Pazifik und in Lateinamerika, zu erschließen. In diesem Zusammenhang wollen wir uns mit unserem Markennamen, Produktportfolio und



bestehender Infrastruktur auf diejenigen Märkte konzentrieren, die ein attraktives Wachstumspotential aufweisen. Neben dem organischen Wachstum plant Fresenius, selektiv weitere Zukäufe kleinerer und mittlerer Größe zu tätigen, um dadurch die Marktposition des Konzerns zu verbessern und sein Geschäft geografisch weiter zu erweitern.

**Stärkung der Innovationskraft.** Fresenius verfolgt die Strategie, die starke Position im Bereich der Technologie, Kompetenz und Qualität in der Behandlung von Patienten sowie seine kosteneffektiven Herstellprozesse weiter auszubauen. Wir wollen unsere Kompetenz in Forschung und Entwicklung dazu nutzen, Produkte und Systeme zu entwickeln, die sich durch eine höhere Sicherheit und Benutzerfreundlichkeit auszeichnen und eine individuelle Anpassung an die Bedürfnisse der Patienten ermöglichen. Mit noch wirksameren Produkten und Behandlungsmethoden wollen wir auch weiterhin dem Anspruch gerecht werden, Spitzenmedizin für schwer und chronisch kranke Menschen zu entwickeln und herzustellen. Das Ziel von Fresenius Helios ist es, die Gesundheitsleistungen und innovativen Therapien als Markenprodukte zu etablieren und den Wiedererkennungswert zu steigern. Ziel von Fresenius Vamed ist es, weitere Projekte zur integrierten Gesundheitsversorgung zu realisieren und somit patientenorientierte Gesundheitssysteme noch wirksamer zu unterstützen.

**Steigerung der Ertragskraft.** Es ist unser Ziel, die Ertragskraft des Konzerns weiter zu erhöhen. Um die Kosten zu reduzieren, konzentrieren wir uns insbesondere darauf, die Effizienz unserer Produktionsstätten zu erhöhen, Skaleneffekte auszuschöpfen, die bestehende Marketing- und Vertriebsinfrastruktur intensiver zu nutzen, und eine strikte Kostendisziplin zu üben. Wir haben uns ein ehrgeiziges Ertragsziel gesetzt, indem wir versuchen, bis 2014 ein Konzernnettoergebnis von mehr als 1 Mrd. € zu erreichen. Wir haben uns zudem als mittelfristiges Ziel gesetzt, ein durchschnittliches organisches Umsatzwachstum von 6% bis 9% pro Jahr für den Konzern zu erreichen. Durch Fokussierung auf unseren operativen Cashflow und den Einsatz eines effizienten Working-Capital-Managements werden wir unsere Flexibilität für Investments erhöhen und unsere Bilanzkennziffern verbessern. Darüber hinaus verfolgen wir das Ziel, unseren gewichteten durchschnittlichen Kapitalkostensatz (WACC) durch den gezielten Einsatz einer ausgewogenen Mischung aus Eigenkapital- und Fremdkapitalfinanzierung zu optimieren. Unter den aktuellen Kapitalmarktverhältnissen erreichen wir eine Optimierung unserer Kapitalkosten, wenn wir das Verhältnis unserer Netto-Finanzverbindlichkeiten zum EBITDA in einer Bandbreite zwischen 2,5 und 3,0 belassen. Es lag am 31. Dezember 2011 bei 2,8. Berechnet auf Basis vergleichbarer Wechselkurse (unter Verwendung eines durchschnittlichen Wechselkurses über die vorhergehenden zwölf Monate zur Berechnung des Nominalwertes der Verbindlichkeiten, flüssigen Mittel und des EBITDA) betrug das Verhältnis unserer Netto-Verbindlichen zum EBITDA am 31. Dezember 2011 2,7.

### ***Zusammenfassung jüngster Entwicklungen***

Im Oktober 2011 hat HELIOS einen Vertrag über den Erwerb von 94,7% der Anteile an der Damp Gruppe geschlossen. Zur Damp Gruppe gehören sieben Akut- und vier Rehabilitationskliniken mit insgesamt 4.112 Betten, davon 2.649 im Akutbereich. Damit zählt Damp zu den zehn größten privaten Krankenhausbetreibern in Deutschland. Darüber hinaus betreibt Damp acht Medizinische Versorgungszentren, zwei Pflege-/Heimeinrichtungen mit insgesamt 606 Plätzen sowie das Ostseebad Damp. Damp beschäftigt rund 6.000 Vollzeitmitarbeiter. Mit dem Erwerb von Damp erhöht HELIOS seine Präsenz in den Bundesländern Schleswig-Holstein, Mecklenburg-Vorpommern und Hamburg. Die Damp Gruppe erzielte im Geschäftsjahr 2010 einen Umsatz von 487 Mio € und ein operatives Ergebnis (EBIT) von 21 Mio €. Aufgrund der Nähe zu den HELIOS Kliniken Schwerin wird HELIOS die Damp Klinik Wismar mit 505 Betten und einem Umsatz von rund 60 Mio € veräußern, um die kartellrechtlichen Genehmigungen zu erhalten. HELIOS hat die Akquisition der Damp Gruppe am 19. März 2012 abgeschlossen. Damp wird zum 31. März 2012 konsolidiert.

Am 29. Februar 2012 schloss die Fresenius Medical Care die Akquisition der Liberty Dialysis Holding, Inc., der Holding-Gesellschaft von Liberty Dialysis und Renal Advantage ab. Dem Abschluss dieser Transaktion folgt die Erstellung des Abschlussberichts und die Einleitung des Zustimmungsbeschlusses durch die US-Kartellbehörde. Im Zusammenhang mit diesem

Zustimmungsbeschluss beabsichtigt Fresenius Medical Care den Verkauf von 62 Dialysekliniken. Es wird erwartet, dass die Akquisition von Liberty Dialysis Holdings, Inc. zu zusätzlichen Jahresumsatzerlösen in Höhe von ungefähr 700 Mio. US\$ (abzüglich der Verkäufe) führen wird. Dem Netzwerk von Fresenius Medical Care werden 201 Kliniken für eine Investition in Höhe von rund 1,5 Mrd. US\$ (abzüglich der Erlöse aus dem Verkauf bestimmter Kliniken, die im Zusammenhang mit der Erlangung des Zustimmungsbeschlusses verkauft wurden) hinzugefügt.

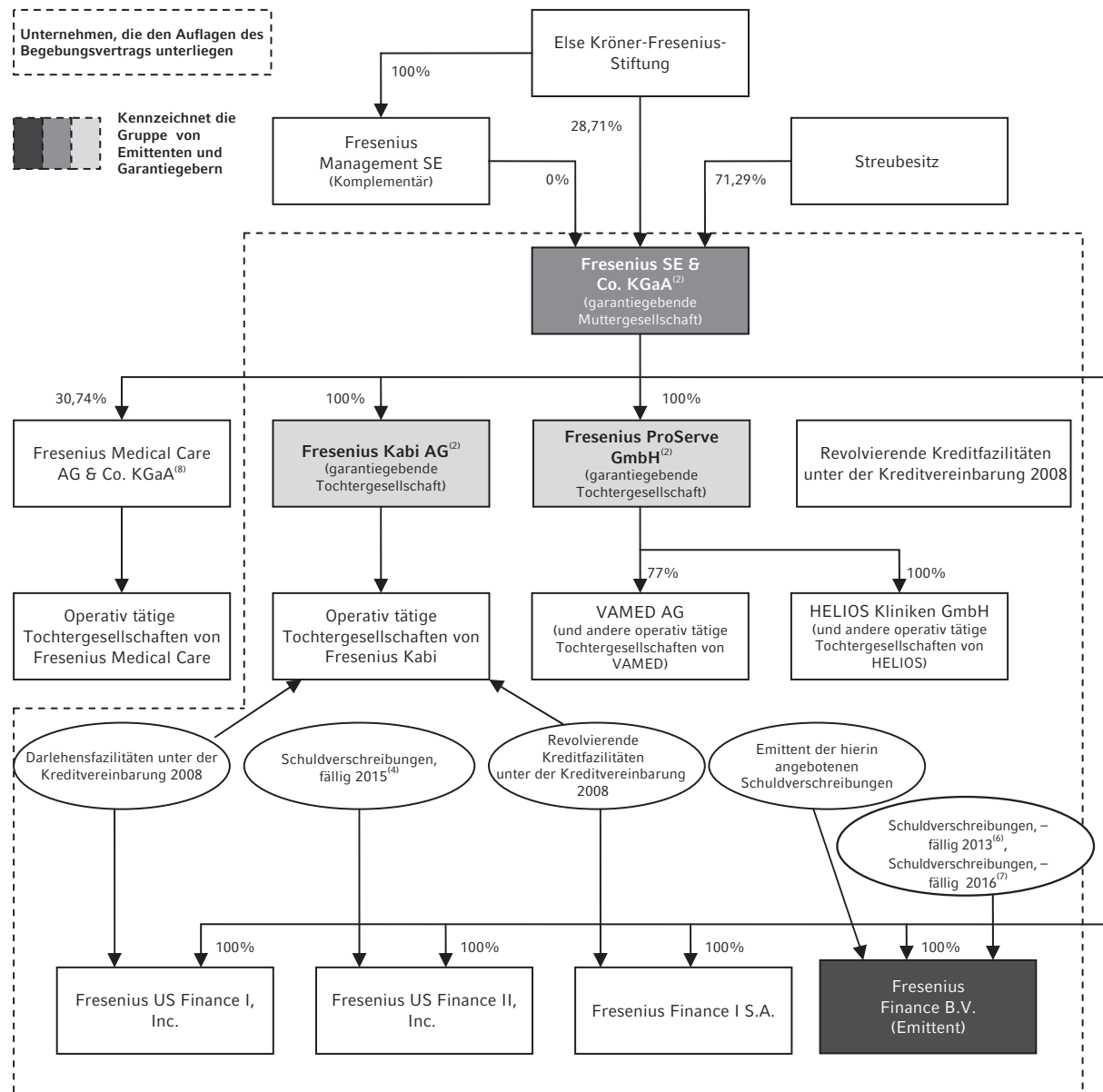
Am 27. Februar 2012 erhöhte die Standard & Poor's Credit Market Services Europe Limited ihr Rating für die Fresenius SE & Co. KGaA von BB auf BB+.

Am 8. März 2012, hat der Aufsichtsrat der Fresenius Management SE in seiner Sitzung personelle Veränderungen im Vorstand beschlossen. Zum 1. Januar 2013 werden Rice Powell (56) für den Unternehmensbereich Fresenius Medical Care und Mats Henriksson (44) für den Unternehmensbereich Fresenius Kabi neu in den Vorstand eintreten. Zum gleichen Zeitpunkt wird Rice Powell die Position des Vorstandsvorsitzenden von Fresenius Medical Care und Mats Henriksson die Position des Vorstandsvorsitzenden von Fresenius Kabi übernehmen. Dr. Ben Lipps (71), Vorstandsvorsitzender von Fresenius Medical Care, und Rainer Baule (63), Vorstandsvorsitzender von Fresenius Kabi, werden zum 31. Dezember 2012 planmäßig aus dem Vorstand von Fresenius ausscheiden. Rice Powell ist seit 1. Januar 2010 stellvertretender Vorstandsvorsitzender von Fresenius Medical Care sowie CEO von Fresenius Medical Care North America. Er ist seit 1997 im Unternehmen und wurde im Januar 2004 in den Vorstand von Fresenius Medical Care berufen. Rice Powell ist seit mehr als 30 Jahren im Bereich Gesundheitsdienstleistungen aktiv. Von 1978 bis 1996 bekleidete er verschiedene Positionen in den USA, unter anderem bei Baxter International Inc. und Biogen Inc. Mats Henriksson ist seit 1999 im Unternehmen und seither Mitglied des Vorstands. Seit 2001 verantwortet er die Region Asien-Pazifik. Mats Henriksson kommt von Pharmacia & Upjohn, wo er verschiedene Managementpositionen im Finanz- und Controllingbereich bekleidete.

Am 16. März 2012 emittierte Fresenius SE & Co. KGaA in Euro lautende Schuldscheindarlehen in Gesamthöhe von € 400 Millionen (die **„Neue Fresenius Euro Schuldscheindarlehen“**). Die Erträge aus den Neuen Fresenius Euro Schuldscheindarlehen werden der Fresenius Gruppe am 2. April 2012 zu fließen und zur Refinanzierung von zwei Tranchen von Schuldscheindarlehen, die von der Fresenius Finance B.V jeweils am 2. April 2008 mit einer Laufzeit bis zum 2. April 2012 in einer Gesamtsumme von € 200 Millionen emittiert wurden, sowie für allgemeine Unternehmenszwecke, verwendet.

## Überblick der Konzern- und Finanzierungsstruktur

Die nachfolgende Abbildung veranschaulicht in verkürzter Form unsere Konzernstruktur und den Stand bestimmter Finanzverbindlichkeiten am 31. Dezember 2011<sup>(1)</sup> unter Einbeziehung des Angebots der Schuldverschreibungen. Die Fresenius SE & Co. KGaA, die Fresenius Kabi AG und die Fresenius ProServe GmbH sowie bestimmte ihrer jeweiligen Tochtergesellschaften werden den Auflagen (*covenants*) des Begebungsvertrags (*Indenture*) unterliegen.



<sup>(1)</sup> Unsere Konzernstruktur zum Zeitpunkt der Veröffentlichung dieses Prospekts/Offering Memorandums unterscheidet sich nicht wesentlich von unserer Konzernstruktur am 31. Dezember 2011.

<sup>(2)</sup> Die Fresenius SE & Co. KGaA, die Fresenius Kabi AG und die Fresenius ProServe GmbH haben jeweils Garantien für die ausstehenden Schuldverschreibungen sowie die hierin angebotenen Schuldverschreibungen abgegeben. Außer wie unter „Description of the Notes — Certain Covenants“ vorgesehen, werden diese Schuldverschreibungen von keiner anderen Tochtergesellschaft der Fresenius SE & Co. KGaA garantiert. Siehe „Risk Factors — Risks Relating to the Notes and the Structure of the Offering — The Notes are subordinate to other creditors of non-guarantors and to our subsidiaries’ secured debt, and enforcement of guarantees by our subsidiaries may be limited“ und „Description of the Notes“. Die Fresenius SE & Co. KGaA ist die Holdinggesellschaft des Konzerns. Die Fresenius Kabi AG agiert als Holdinggesellschaft

für unseren Unternehmensbereich Fresenius Kabi, und die Fresenius ProServe GmbH agiert als Holdinggesellschaft für unsere Unternehmensbereiche Fresenius Helios und Fresenius Vamed.

- (3) Am 31. Dezember 2011 waren von den Darlehensfazilitäten unter der Kreditvereinbarung 2008 insgesamt 1.326 Mio. € in Anspruch genommen. Die Fresenius SE & Co. KGaA, die Fresenius Kabi AG und die Fresenius ProServe GmbH haben jeweils Garantien im Rahmen der Kreditvereinbarung 2008 abgegeben. Die Fresenius Finance I S.A. hat eine Garantie für die Verbindlichkeiten der Fresenius US Finance I, Inc. im Rahmen des 2008 Senior Credit Agreement abgegeben. Siehe „Description of Other Financing Arrangements“.
- (4) Am 21. Januar 2009 emittierte die Fresenius US Finance II, Inc. („**Fresenius US Finance II**“), eine 100-prozentige Tochtergesellschaft der Fresenius SE & Co. KGaA, 9,00% Schuldverschreibungen mit einem Nennbetrag von insgesamt 500 Mio. US\$ und 8,75% Schuldverschreibungen mit einem Nennbetrag von insgesamt 275 Mio. €. Siehe „Description of Other Financing Arrangements“.
- (5) Unter der Kreditvereinbarung 2008 sind revolving Kreditfazilitäten mit einem Volumen von insgesamt 550 Mio. US\$ verfügbar, die zum 31. Dezember 2011 nicht in Anspruch genommen worden waren. Die Fresenius US Finance I, Inc. hat eine Garantie für die Verbindlichkeiten der Fresenius Finance I S.A. im Rahmen der Kreditvereinbarung 2008 abgegeben. Eine Beschreibung der Kreditvereinbarung 2008 findet sich unter „Description of Other Financing Arrangements“.
- (6) Am 20. Januar 2006 emittierte die Fresenius Finance B.V. 5,00% Schuldverschreibungen mit einem Nennbetrag von insgesamt 500 Mio. € mit Fälligkeit im Jahr 2013. Siehe „Description of Other Financing Arrangements“.
- (7) Am 20. Januar 2006 emittierte Fresenius Finance B.V. 5,50% Schuldverschreibungen mit einem Nennbetrag von insgesamt 500 Mio. € mit Fälligkeit im Jahr 2016. Im Juni 2009 erhöhte Fresenius Finance B.V. den Betrag seiner 5,50% Schuldverschreibungen durch die Ausgabe weiterer Schuldverschreibungen mit einem Nennbetrag von insgesamt 150 Mio. €. Siehe „Description of Other Financing Arrangements“.
- (8) Die Fresenius SE & Co. KGaA hielt am 31. Dezember 2011 einen Anteil von 30,74% der stimmberechtigten Stammaktien der FMC AG & Co. KGaA bzw. einen Anteil von 30,34% des gesamten gezeichneten Kapitals der FMC AG & Co. KGaA (am 29. Februar 2012: 31,44% bzw. 31,03%). Die FMC AG & Co. KGaA ist eine deutsche Kommanditgesellschaft auf Aktien. Die Fresenius Medical Care Management AG, der voll haftende Komplementär der FMC AG & Co. KGaA, ist eine 100-prozentige Tochtergesellschaft der Fresenius SE & Co. KGaA. Da bei deutschen Kommanditgesellschaften auf Aktien die Unternehmensentscheidungen durch den Komplementär getroffen werden, übt die Fresenius SE & Co. KGaA gemäß der Satzung der FMC AG & Co. KGaA die faktische Kontrolle über die FMC AG & Co. KGaA aus, solange ihr Anteil am Aktienkapital der FMC AG & Co. KGaA über 25% beträgt. Da durch diese faktische Kontrolle die Konsolidierungsvoraussetzungen erfüllt sind, wird Fresenius Medical Care in den Konzernabschlüssen der Fresenius SE & Co. KGaA voll konsolidiert. Siehe „General Information on Group Structure, Issuer and Guarantors — Interest of the Company in Fresenius Medical Care AG & Co. KGaA“.

Obwohl Fresenius Medical Care aufgrund der Konzernstruktur in den Konzernabschlüssen der Fresenius SE & Co. KGaA vollkonsolidiert wird, ist die Finanzierung von Fresenius Medical Care vom restlichen Konzern getrennt. Es gibt weder gemeinsam genutzte externe Finanzierungsfazilitäten noch gegenseitige Garantien. Die Unternehmensbereiche Fresenius Kabi, Fresenius Helios und Fresenius Vamed werden vorwiegend durch die Fresenius SE & Co. KGaA finanziert, um strukturelle Nachrangigkeit zu vermeiden. Fresenius Medical Care hat keine Garantien in Bezug auf die Kreditvereinbarung 2008 oder die von den Finanzierungsgesellschaften der Fresenius SE & Co. KGaA ausgegebenen Schuldverschreibungen, einschließlich der hierin angebotenen Schuldverschreibungen, abgegeben. Daher wird weder Fresenius Medical Care an die Bedingungen der hierunter ausgegebenen Schuldverschreibungen gebunden sein noch werden ihre Tochtergesellschaften den Auflagen des Begebungsvertrags oder den Bedingungen der noch ausstehenden Schuldverschreibungen unterliegen.

## **ZUSAMMENFASSUNG DER FINANZINFORMATIONEN**

### **Zusammenfassung ausgewählter Konzernfinanzdaten**

*Die folgende Zusammenfassung der Konzernfinanzinformationen (einschließlich der Kennzahlen) spiegelt die Vollkonsolidierung der Fresenius Medical Care in unseren Abschlüssen wider. Die Fresenius Medical Care Management AG, eine 100-prozentige Tochtergesellschaft des Unternehmens in der Rechtsform einer Aktiengesellschaft nach deutschem Recht, ist der Komplementär der FMC AG & Co. KGaA. Die Fresenius Medical Care Management AG, handelnd durch ihren Vorstand, ist für die Leitung der FMC AG & Co. KGaA verantwortlich. Da die Unternehmensentscheidungen bei einer KGaA nach deutschem Recht vom Komplementär getroffen werden, übt die Gesellschaft, solange sie Eigentümer der Fresenius Medical Care Management AG ist und mehr als 25% des Aktienkapitals der FMC AG & Co. KGaA hält, gemäß der Satzung der FMC AG & Co. KGaA Kontrolle über die FMC AG & Co. KGaA aus. Da diese Kontrolle die Kontrollkriterien für Zwecke der Konsolidierung gemäß U.S. GAAP erfüllt, nimmt die Gesellschaft in ihren Konzernabschlüssen eine Vollkonsolidierung der Fresenius Medical Care gemäß U.S. GAAP vor. Der Anteil anderer Gesellschafter und die anderen Anteilsinhaber der FMC AG & Co. KGaA zuzurechnenden Vermögenswerte werden eliminiert und in Konzernbilanz und Gewinn- und Verlustrechnung unter dem Anteil anderer Gesellschafter an der Gesellschaft ausgewiesen. Die Gesellschaft erhält jedoch von der Fresenius Medical Care generierte Cashflows nur, sofern sie als Dividenden an die Gesellschaft ausgeschüttet werden oder im Rahmen bestehender Verträge, wie zum Beispiel Miet- und Serviceverträge, gezahlt werden. Die Gesellschaft erhält Dividenden nur in dem ihrem wirtschaftlichen Anteil an der Fresenius Medical Care entsprechenden Verhältnis und ist beschränkt durch die Auflagen bestimmter Finanzierungsinstrumente der Fresenius Medical Care. Am 31. Dezember 2011 war die Gesellschaft Eigentümerin von 30,74% der stimmberechtigten Stammaktien der FMC AG & Co. KGaA. Dies entspricht 30,34% des gesamten gezeichneten Kapitals. Siehe auch „Management’s Discussion and Analysis of Financial Condition and Results of Operations — Key Factors Affecting Our Results of Operations and Financial Condition“ und „General Information on Group Structure, Issuer and Guarantors — Interest of the Company in Fresenius Medical Care AG & Co. KGaA“.*

*Die Zusammenfassung der folgenden Finanz- und Geschäftsinformationen sollte nur als Einführung betrachtet werden. Jede Anlageentscheidung sollte sich auf die Prüfung des gesamten Prospekts/Offering Memorandums stützen.*

### **U.S. GAAP**

*Die folgenden Tabellen enthalten eine Zusammenfassung der Konzernfinanzinformationen und Daten aus den Geschäftssegmenten unseres Konzerns für die zum 31. Dezember 2011, 2010 und 2009 endenden Geschäftsjahre. Wir haben diese Zusammenfassung der Finanzdaten aus unseren gemäß U.S. GAAP erstellten Konzernabschlüssen abgeleitet. Die Daten aus den Geschäftssegmenten sind in den Tabellen eindeutig als solche gekennzeichnet. KPMG AG Wirtschaftsprüfungsgesellschaft, The Squaire, Am Flughafen, 60549 Frankfurt am Main, hat jeden dieser Konzernabschlüsse geprüft und mit einem Bestätigungsvermerk versehen. Die Bestätigungsvermerke sind an anderer Stelle in diesem Prospekt/Offering Memorandum enthalten.*

## Zusammenfassung ausgewählter Konzernfinanzdaten

### Zusammenfassung ausgewählter Daten der konsolidierten Gewinn- und Verlustrechnung

|                                                                                                              | 1. Januar -<br>31. Dezember |          |         |
|--------------------------------------------------------------------------------------------------------------|-----------------------------|----------|---------|
|                                                                                                              | 2011                        | 2010     | 2009    |
|                                                                                                              | (Mio. €)                    |          |         |
| Umsatz . . . . .                                                                                             | 16.522                      | 15.972   | 14.164  |
| Umsatzkosten . . . . .                                                                                       | (10.883)                    | (10.646) | (9.528) |
| Bruttoergebnis vom Umsatz . . . . .                                                                          | 5.639                       | 5.326    | 4.636   |
| Vertriebs- und allgemeine Verwaltungskosten . . . . .                                                        | (2.809)                     | (2.664)  | (2.342) |
| Forschungs- und Entwicklungsaufwendungen . . . . .                                                           | (267)                       | (244)    | (240)   |
| EBIT (Operatives Ergebnis) . . . . .                                                                         | 2.563                       | 2.418    | 2.054   |
| Zinsergebnis . . . . .                                                                                       | (531)                       | (566)    | (580)   |
| Sonstiges Finanzergebnis <sup>(1)</sup> . . . . .                                                            | (100)                       | (66)     | (31)    |
| Steuern vom Einkommen und vom Ertrag . . . . .                                                               | (604)                       | (581)    | (452)   |
| Auf andere Gesellschafter entfallender Gewinn <sup>(2)</sup> . . . . .                                       | (638)                       | (583)    | (497)   |
| Ergebnis, das auf die Anteilseigner der Fresenius SE & Co. KGaA entfällt . . . . .                           | 690                         | 622      | 494     |
| Ergebnis, das auf die Anteilseigner der Fresenius SE & Co. KGaA entfällt, bereinigt <sup>(3)</sup> . . . . . | 770                         | 660      | 514     |

### Zusammenfassung ausgewählter Daten der Konzernbilanz

|                                                                      | 31. Dezember    |                 |                 |
|----------------------------------------------------------------------|-----------------|-----------------|-----------------|
|                                                                      | 2011            | 2010            | 2009            |
|                                                                      | (Mio. €)        |                 |                 |
| Flüssige Mittel . . . . .                                            | 635             | 769             | 420             |
| Kurzfristige Vermögenswerte . . . . .                                | 7.151           | 6.435           | 5.363           |
| Langfristige Vermögenswerte . . . . .                                | 19.170          | 17.142          | 15.519          |
| <b>Bilanzsumme Aktiva</b> . . . . .                                  | <b>26.321</b>   | <b>23.577</b>   | <b>20.882</b>   |
| Kurzfristige Verbindlichkeiten . . . . .                             | (5.988)         | (5.711)         | (3.528)         |
| Langfristige Verbindlichkeiten . . . . .                             | (9.439)         | (8.813)         | (9.702)         |
| Anteile anderer Gesellschafter mit Put-Optionen . . . . .            | (317)           | (209)           | (161)           |
| Anteile anderer Gesellschafter ohne Put-Optionen . . . . .           | (4.606)         | (3.879)         | (3.257)         |
| Eigenkapital der Anteilseigner der Fresenius SE & Co. KGaA . . . . . | (5.971)         | (4.965)         | (4.234)         |
| <b>Bilanzsumme Passiva</b> . . . . .                                 | <b>(26.321)</b> | <b>(23.577)</b> | <b>(20.882)</b> |

### Zusammenfassung ausgewählter Daten der Konzernkapitalflussrechnung

|                                                             | 1. Januar -<br>31. Dezember |         |       |
|-------------------------------------------------------------|-----------------------------|---------|-------|
|                                                             | 2011                        | 2010    | 2009  |
|                                                             | (Mio. €)                    |         |       |
| Operativer Cashflow . . . . .                               | 1.689                       | 1.911   | 1.553 |
| Mittelabfluss aus Investitionstätigkeit . . . . .           | (2.072)                     | (1.237) | (889) |
| Mittelabfluss/-zufluss aus Finanzierungstätigkeit . . . . . | 242                         | (352)   | (611) |

### Zusammenfassung ausgewählter sonstiger Konzernfinanzinformationen

|                                                               | 1. Januar -<br>31. Dezember |       |       |
|---------------------------------------------------------------|-----------------------------|-------|-------|
|                                                               | 2011                        | 2010  | 2009  |
|                                                               | (Mio. €, außer Margen)      |       |       |
| EBITDA <sup>(4)(5)(6)</sup> . . . . .                         | 3.237                       | 3.057 | 2.616 |
| Netto-Finanzverbindlichkeiten <sup>(7)</sup> . . . . .        | 9.164                       | 8.015 | 7.879 |
| Zinsergebnis . . . . .                                        | (531)                       | (566) | (580) |
| Erwerb von Sachanlagen . . . . .                              | (783)                       | (758) | (671) |
| Akquisitionen . . . . .                                       | (1.612)                     | (644) | (260) |
| EBITDA/Zinsergebnis . . . . .                                 | 6,1                         | 5,4   | 4,5   |
| Netto-Finanzverbindlichkeiten/EBITDA <sup>(8)</sup> . . . . . | 2,8                         | 2,6   | 3,0   |

## Zusammenfassung ausgewählter konsolidierter Daten aus den Geschäftssegmenten

### Fresenius Medical Care

|                                                                                                | 1. Januar -<br>31. Dezember |        |        |
|------------------------------------------------------------------------------------------------|-----------------------------|--------|--------|
|                                                                                                | 2011                        | 2010   | 2009   |
|                                                                                                | (Mio. €, außer Mitarbeiter) |        |        |
| Umsatz .....                                                                                   | 9.192                       | 9.091  | 8.064  |
| EBITDA <sup>(4)(5)</sup> .....                                                                 | 1.891                       | 1.830  | 1.586  |
| EBIT .....                                                                                     | 1.491                       | 1.451  | 1.259  |
| Zinsergebnis .....                                                                             | (213)                       | (211)  | (215)  |
| Ergebnis, das auf die Anteilseigner der Fresenius Medical Care AG &<br>Co. KGaA entfällt. .... | 770                         | 738    | 639    |
| Operativer Cashflow .....                                                                      | 1.039                       | 1.032  | 960    |
| Erwerb von Sachanlagen. ....                                                                   | (429)                       | (395)  | (411)  |
| Akquisitionen .....                                                                            | (1.429)                     | (596)  | (138)  |
| Forschungs- und Entwicklungsaufwendungen .....                                                 | (80)                        | (73)   | (67)   |
| Mitarbeiter (Köpfe zum Stichtag) .....                                                         | 83.476                      | 77.442 | 71.617 |
| Dividendenzahlungen .....                                                                      | 197                         | 183    | 173    |
| hiervon an Fresenius SE & Co. KGaA .....                                                       | 69                          | 65     | 62     |

### Fresenius Kabi

|                                                                      | 1. Januar -<br>31. Dezember |        |        |
|----------------------------------------------------------------------|-----------------------------|--------|--------|
|                                                                      | 2011                        | 2010   | 2009   |
|                                                                      | (Mio. €, außer Mitarbeiter) |        |        |
| Umsatz .....                                                         | 3.964                       | 3.672  | 3.086  |
| EBITDA <sup>(4)(5)</sup> .....                                       | 955                         | 893    | 742    |
| EBIT .....                                                           | 803                         | 737    | 607    |
| Zinsergebnis .....                                                   | (278)                       | (279)  | (302)  |
| Ergebnis, das auf Anteilseigner der Fresenius Kabi AG entfällt. .... | 354                         | 294    | 200    |
| Operativer Cashflow .....                                            | 462                         | 567    | 397    |
| Erwerb von Sachanlagen. ....                                         | (177)                       | (174)  | (125)  |
| Akquisitionen .....                                                  | (11)                        | (31)   | (32)   |
| Forschungs- und Entwicklungsaufwendungen .....                       | (162)                       | (143)  | (129)  |
| Mitarbeiter (Köpfe zum 31. Dezember) .....                           | 24.106                      | 22.851 | 21.872 |

### Fresenius Helios

|                                                                       | 1. Januar -<br>31. Dezember |        |        |
|-----------------------------------------------------------------------|-----------------------------|--------|--------|
|                                                                       | 2011                        | 2010   | 2009   |
|                                                                       | (Mio. €, außer Mitarbeiter) |        |        |
| Umsatz .....                                                          | 2.665                       | 2.520  | 2.416  |
| EBITDA <sup>(4)(5)</sup> .....                                        | 369                         | 318    | 286    |
| EBIT .....                                                            | 270                         | 235    | 205    |
| Zinsergebnis .....                                                    | (51)                        | (55)   | (55)   |
| Ergebnis, das auf Anteilseigner der HELIOS Kliniken GmbH entfällt ... | 163                         | 131    | 107    |
| Operativer Cashflow .....                                             | 294                         | 311    | 219    |
| Erwerb von Sachanlagen. ....                                          | (157)                       | (166)  | (124)  |
| Akquisitionen .....                                                   | (45)                        | (13)   | (79)   |
| Forschungs- und Entwicklungsaufwendungen .....                        | —                           | —      | —      |
| Mitarbeiter (Köpfe zum 31. Dezember) .....                            | 37.198                      | 33.321 | 33.364 |



|                                                             | 1. Januar -<br>31. Dezember |       |       |
|-------------------------------------------------------------|-----------------------------|-------|-------|
|                                                             | 2011                        | 2010  | 2009  |
|                                                             | (Mio. €, außer Mitarbeiter) |       |       |
| Umsatz .....                                                | 737                         | 713   | 618   |
| EBITDA <sup>(4)(5)</sup> .....                              | 51                          | 49    | 42    |
| EBIT .....                                                  | 44                          | 41    | 36    |
| Zinsergebnis .....                                          | 2                           | 2     | 3     |
| Ergebnis, das auf Anteilseigner der VAMED AG entfällt ..... | 34                          | 30    | 27    |
| Operativer Cashflow .....                                   | (83)                        | 47    | 29    |
| Erwerb von Sachanlagen .....                                | (7)                         | (9)   | (5)   |
| Akquisitionen .....                                         | (3)                         | (5)   | (2)   |
| Forschungs- und Entwicklungsaufwendungen .....              | 0                           | 0     | 0     |
| Mitarbeiter (Köpfe zum 31. Dezember) .....                  | 3.724                       | 3.110 | 2.849 |

- (1) Im Sonstigen Finanzergebnis wurden die Sondereinflüsse aus den Marktwertveränderungen der Pflichtumtauschleihe („MEB“) und des Besserungsscheins („CVR“) im Zusammenhang mit dem Erwerb von APP Pharmaceuticals berücksichtigt. Beide Einflüsse sind nicht liquiditätswirksam. Die Börsennotierung des CVR wurde im März 2011 eingestellt. Die MEB wurde am 14. August 2011 fällig.

Die folgende Tabelle zeigt, wie sich die Position „Sonstiges Finanzergebnis“ für die Jahre 2011, 2010 und 2009 aus den Sondereinflüssen aus den Marktwertveränderungen der MEB und des CVR zusammensetzt:

|                                       | 1. Januar -<br>31. Dezember |             |             |
|---------------------------------------|-----------------------------|-------------|-------------|
|                                       | 2011                        | 2010        | 2009        |
|                                       | (Mio. €)                    |             |             |
| MEB .....                             | (105)                       | (98)        | (37)        |
| CVR .....                             | 5                           | 32          | 6           |
| <b>Sonstiges Finanzergebnis</b> ..... | <b>(100)</b>                | <b>(66)</b> | <b>(31)</b> |

- (2) Der Anteil anderer Gesellschafter beinhaltet die Dritten zuzurechnenden Nettoerträge. Im Jahre 2011 entfielen 92% des Anteils anderer Gesellschafter auf den Anteil anderer Gesellschafter der Fresenius Medical Care.
- (3) 2011, 2010 und 2009 bereinigt um die Sondereinflüsse aus den Marktwertveränderungen der MEB und des CVR im Zusammenhang mit der Akquisition von APP Pharmaceuticals. Diese Einflüsse sind nicht liquiditätswirksam.

In der folgenden Tabelle werden die Anpassungen des Jahresüberschusses in Bezug auf die MEB und den CVR für die Jahre 2011, 2010 und 2009 dargestellt:

|                                               | 1. Januar -<br>31. Dezember |           |           |
|-----------------------------------------------|-----------------------------|-----------|-----------|
|                                               | 2011                        | 2010      | 2009      |
|                                               | (Mio. €)                    |           |           |
| MEB .....                                     | 85                          | 70        | 26        |
| CVR .....                                     | (5)                         | (32)      | (6)       |
| <b>Anpassung des Jahresüberschusses</b> ..... | <b>80</b>                   | <b>38</b> | <b>20</b> |

- (4) EBITDA ist das Betriebsergebnis plus Abschreibungen und wird von unserem nach U.S. GAAP ermittelten operativen Ergebnis (EBIT) abgeleitet.
- (5) Wir geben diese Kennzahl an, weil sie von den Anlegern möglicherweise als hilfreiche Kennzahl für unsere Leistungsfähigkeit betrachtet wird. Diese Zahl wird weder nach U.S. GAAP noch nach IFRS als Kennzahl anerkannt und sollte weder als Ersatz für die nach U.S. GAAP oder IFRS erstellte Gewinn- und Verlustrechnung oder Kapitalflussrechnung noch als Kennzahl für die Wirtschaftlichkeit oder Liquidität herangezogen werden. Sie gibt weder an, ob der Cashflow unseren Liquiditätsbedarf deckt oder für diesen frei verfügbar ist, noch lässt sie Rückschlüsse auf unser Betriebsergebnis in der Vergangenheit oder Zukunft zu. Da nicht alle Unternehmen diese Kennzahl auf dieselbe Art und Weise bestimmen, ist unsere Darstellung nur bedingt mit ähnlich bezeichneten Kennzahlen, die von anderen Unternehmen verwendet werden, vergleichbar.
- (6) Sie sollten EBITDA nicht als eine Alternative für den nach U.S. GAAP oder IFRS ermittelten Bilanzgewinn oder den Cashflow aus laufender Geschäftstätigkeit, Investitionstätigkeit oder Finanzierungstätigkeit betrachten.



Der EBITDA des Konzerns kann für die Geschäftsjahre 2011, 2010 und 2009 wie folgt auf das Betriebsergebnis übergeleitet werden:

|                          | 1. Januar -<br>31. Dezember |              |              |
|--------------------------|-----------------------------|--------------|--------------|
|                          | 2011                        | 2010         | 2009         |
|                          | (Mio. €)                    |              |              |
| EBIT . . . . .           | 2.563                       | 2.418        | 2.054        |
| Abschreibungen . . . . . | 674                         | 639          | 562          |
| <b>EBITDA . . . . .</b>  | <b>3.237</b>                | <b>3.057</b> | <b>2.616</b> |

Der EBITDA, der verwendet wird, um die Einhaltung bestimmter Auflagen aus unserer Kreditvereinbarung 2008 und unseren anderen Finanzierungsvereinbarungen zu bestimmen, unterliegt einer Reihe von Anpassungen im Einklang mit den Bestimmungen dieser Verträge und unterscheidet sich daher von den hier dargelegten Zahlen für den EBITDA.

Da wir die FMC AG & Co. KGaA voll konsolidieren, ist im EBITDA der EBITDA der Fresenius Medical Care enthalten.

- (7) Die Netto-Finanzverbindlichkeiten umfassen kurzfristige Kreditaufnahmen (einschließlich des Forderungsverkaufsprogramms von Fresenius Medical Care), kurzfristige Kreditaufnahmen von verbundenen Unternehmen, langfristige Verbindlichkeiten (einschließlich des kurzfristig fälligen Anteils) und genusscheinähnliche Wertpapiere von Fresenius Medical Care (bis zum 15. Juni 2011) abzüglich flüssiger Mittel.

Die Kennzahl zum Nettoverschuldungsgrad, die verwendet wird, um die Einhaltung bestimmter Auflagen aus unserer Kreditvereinbarung 2008 und unseren anderen Finanzierungsvereinbarungen zu bestimmen, unterliegt einer Reihe von Anpassungen im Einklang mit den Bestimmungen dieser Verträge und unterscheidet sich daher von den hier dargestellten Kennzahlen für die Netto-Finanzverbindlichkeiten.

Die Netto-Finanzverbindlichkeiten beinhalten nicht die MEB oder den CVR für diejenigen Zeiträume, in denen die MEB oder der CVR ausstehen.

Da wir die FMC AG & Co. KGaA voll konsolidieren, umfassen die Netto-Finanzverbindlichkeiten auch die Netto-Finanzverbindlichkeiten der Fresenius Medical Care.

- (8) Eine der Kennzahlen, die verwendet wird, um die Einhaltung bestimmter Auflagen aus unserer Kreditvereinbarung 2008 und unseren anderen Finanzierungsvereinbarungen zu bestimmen, ist das Verhältnis der Netto-Finanzverbindlichkeiten zu EBITDA. Diese Kennziffer unterscheidet sich aufgrund von bestimmten Anpassungen, die durch die jeweilig geltenden Verträge vorgeschrieben sind, von dem hier dargestellten Verhältnis der Netto-Finanzverbindlichkeiten zum EBITDA.

## IFRS

*Die Gesellschaft verwendet die vom International Accounting Standards Board (IASB) aufgestellten International Financial Reporting Standards, wie sie in der Europäischen Union anzuwenden sind („IFRS“), um den Berichtspflichten gemäß Handelsgesetzbuch und anderen deutschen Gesetzen nachzukommen. Die folgenden Tabellen enthalten eine Zusammenfassung der Konzernfinanzinformationen und Daten aus den Geschäftssegmenten des Konzerns nach IFRS für das jedes der zum 31. Dezember 2011, 2010 und 2009 endenden Geschäftsjahre. Für die dargestellten Jahre haben wir die ausgewählten Finanzinformationen aus unseren nach IFRS erstellten, geprüften Konzernabschlüssen entnommen. KPMG AG Wirtschaftsprüfungsgesellschaft, The Squire, Am Flughafen, 60549 Frankfurt am Main, hat jeden dieser Konzernabschlüsse geprüft und mit einem Bestätigungsvermerk versehen. Informationen zu dem Wechselkurs zwischen US-Dollar und Euro für ausgewählte Zeiträume vor dem Datum dieses Prospekts/Offering Memorandum finden sich unter „Exchange Rates“.*

*Zusammenfassung ausgewählter Daten der Gewinn- und Verlustrechnung*

|                                                                                                             | 1. Januar -<br>31. Dezember |        |        |
|-------------------------------------------------------------------------------------------------------------|-----------------------------|--------|--------|
|                                                                                                             | 2011                        | 2010   | 2009   |
|                                                                                                             | (Mio. €)                    |        |        |
| Umsatz . . . . .                                                                                            | 16.522                      | 15.972 | 14.165 |
| EBIT (Operatives Ergebnis) . . . . .                                                                        | 2.546                       | 2.410  | 2.004  |
| Ergebnis, das auf Anteilseigner der Fresenius SE & Co. KGaA entfällt . .                                    | 678                         | 619    | 476    |
| Ergebnis, das auf Anteilseigner der Fresenius SE & Co. KGaA entfällt,<br>bereinigt <sup>(1)</sup> . . . . . | 758                         | 657    | 496    |

## Zusammenfassung ausgewählter Sonstiger Finanzdaten

|                                                     | 1. Januar -<br>31. Dezember |       |       |
|-----------------------------------------------------|-----------------------------|-------|-------|
|                                                     | 2011                        | 2010  | 2009  |
|                                                     | (Mio. €, außer Margen)      |       |       |
| EBITDA <sup>(2)(3)</sup> .....                      | 3.263                       | 3.072 | 2.628 |
| Abschreibungen .....                                | (717)                       | (662) | (624) |
| Zinsergebnis .....                                  | (531)                       | (566) | (580) |
| Netto-Finanzverbindlichkeiten <sup>(4)</sup> .....  | 9.068                       | 7.908 | 7.776 |
| EBITDA/Zinsergebnis <sup>(3)</sup> .....            | 6,1                         | 5,4   | 4,5   |
| Finanzverbindlichkeiten/EBITDA <sup>(3)</sup> ..... | 2,8                         | 2,6   | 3,0   |
| Erwerb von Sachanlagen .....                        | (797)                       | (768) | (681) |
| Akquisitionen .....                                 | (1.608)                     | (643) | (259) |

## Zusammenfassung ausgewählter Bilanzdaten

|                                | 1. Januar -<br>31. Dezember |        |        |
|--------------------------------|-----------------------------|--------|--------|
|                                | 2011                        | 2010   | 2009   |
|                                | (in Mio. €)                 |        |        |
| Bilanzsumme Aktiva .....       | 26.510                      | 23.831 | 21.148 |
| Bilanzsumme Eigenkapital ..... | 11.031                      | 9.219  | 7.908  |

- (1) 2011, 2010 und 2009 bereinigt um die Sondereinflüsse aus den Marktwertveränderungen der MEB und des CVR im Zusammenhang mit dem Erwerb von APP Pharmaceuticals. Beide Einflüsse sind nicht liquiditätswirksam.

In der folgenden Tabelle werden die Anpassungen des Jahresüberschusses in Bezug auf die MEB und den CVR für die Jahre 2011, 2010 und 2009 dargestellt:

|                                               | 1. Januar -<br>31. Dezember |                  |                  |
|-----------------------------------------------|-----------------------------|------------------|------------------|
|                                               | 2011                        | 2010             | 2009             |
|                                               | (Mio. €)                    |                  |                  |
| MEB .....                                     | 85                          | 70               | 26               |
| CVR .....                                     | (5)                         | (32)             | (6)              |
| <b>Anpassung des Jahresüberschusses .....</b> | <b><u>80</u></b>            | <b><u>38</u></b> | <b><u>20</u></b> |

- (2) Wir geben diese Kennzahl zum Vergleich mit dem EBITDA der nach U.S. GAAP erstellten Finanzinformationen an. Sie sollten den EBITDA nicht als eine Alternative für das nach U.S. GAAP oder IFRS ermittelte Ergebnis oder den Cashflow aus laufender Geschäftstätigkeit, Investitionstätigkeit oder Finanzierungstätigkeit betrachten.

Da wir die FMC AG & Co. KGaA voll konsolidieren, ist im EBITDA der EBITDA der Fresenius Medical Care enthalten.

- (3) Wir geben diese Kennzahl an, weil sie von den Anlegern möglicherweise als hilfreiche Kennzahl für unsere Leistungsfähigkeit betrachtet wird. Diese Zahl wird weder nach U.S. GAAP noch nach IFRS als Kennzahl anerkannt und sollte weder als Ersatz für die nach U.S. GAAP oder IFRS erstellte Gewinn- und Verlustrechnung oder Kapitalflussrechnung noch als Kennzahl für die Wirtschaftlichkeit oder Liquidität herangezogen werden. Sie gibt weder an, ob der Cashflow unseren Liquiditätsbedarf deckt oder für diesen frei verfügbar ist, noch lässt sie Rückschlüsse auf unser Betriebsergebnis in der Vergangenheit oder Zukunft zu. Da nicht alle Unternehmen diese Kennzahl auf dieselbe Art und Weise bestimmen, ist unsere Darstellung nur bedingt mit ähnlich bezeichneten Kennzahlen, die von anderen Unternehmen verwendet werden, vergleichbar.

- (4) Die Netto-Finanzverbindlichkeiten umfassen kurzfristige Kreditaufnahmen (einschließlich des Forderungsverkaufsprogramms von Fresenius Medical Care), kurzfristige Kreditaufnahmen von verbundenen Unternehmen, langfristige Verbindlichkeiten (einschließlich des kurzfristig fälligen Anteils) und genussscheinähnliche Wertpapiere von Fresenius Medical Care (bis zum 15. Juni 2011) abzüglich flüssiger Mittel.

Die Netto-Finanzverbindlichkeiten beinhalten nicht die MEB oder den CVR für diejenigen Zeiträume, in denen die MEB oder der CVR ausstanden.

Da wir die FMC AG & Co. KGaA voll konsolidieren, umfassen die Netto-Finanzverbindlichkeiten auch die Netto-Finanzverbindlichkeiten der Fresenius Medical Care.

### **Zusammenfassende Informationen zum Wechselkurs**

Die oben unter „Summary Historical Consolidated Data and Other Data — U.S. GAAP“ dargestellte Zusammenfassung der historischen Konzernfinanzdaten wurden teilweise den Abschlüssen der Fresenius Medical Care entnommen, die nach U.S. GAAP erstellt wurden und deren Berichtswährung US-Dollar ist. Die oben unter „Summary Historical Consolidated Data and Other Data — IFRS“ dargestellte Zusammenfassung der historischen Konzernfinanzinformationen wurde unseren nach IFRS erstellten Konzernabschlüssen entnommen, deren Berichtswährung Euro ist. Weitere Informationen finden sich unter „Management’s Discussion and Analysis of Financial Condition and Results of Operations“.

### **Unterschiede zwischen den Finanzinformationen gemäß U.S. GAAP und IFRS**

Die nach U.S. GAAP erstellten Abschlüsse und sonstigen Finanzinformationen sind nicht mit den nach IFRS erstellten Abschlüssen und sonstigen Finanzinformationen vergleichbar und können sich von diesen unterscheiden. Siehe „Selected Consolidated Financial Information — Differences between U.S. GAAP and IFRS Financial Information“.

### **Zusammenfassung ausgewählter unkonsolidierter Finanzdaten des Emittenten**

Am 31. Dezember 2011 verfügte der Emittent gemäß Dutch GAAP über Vermögenswerte in Höhe von insgesamt 1.794 Mio. €, die hauptsächlich aus Finanzanlagevermögen in Höhe von 1.429 Mio. €, Forderungen gegenüber verbundenen Unternehmen in Höhe von 365 Mio. €, flüssigen Mitteln in Höhe von 86.278 € und einem negativen Eigenkapital in Höhe von 2 Mio. € bestanden.

|                                                    | 1. Januar -<br>31. Dezember |       |
|----------------------------------------------------|-----------------------------|-------|
|                                                    | 2011                        | 2010  |
|                                                    | (Mio. €)                    |       |
| Umsatz. ....                                       | 0                           | 0     |
| Ergebnis der gewöhnlichen Geschäftstätigkeit. .... | 3                           | 2     |
| Operativer Cashflow. ....                          | 4                           | 4     |
|                                                    |                             |       |
|                                                    | 31. Dezember                |       |
|                                                    | 2011                        | 2010  |
|                                                    | (Mio. €)                    |       |
| Bilanzsumme Aktiva. ....                           | 1.794                       | 2.359 |
| Eigenkapital. ....                                 | 2                           | 8     |

### **Zusammenfassung ausgewählter unkonsolidierter Finanzdaten von Fresenius Kabi AG und Fresenius ProServe GmbH**

#### **Fresenius Kabi AG**

Am 31. Dezember 2011 verfügte die Fresenius Kabi AG gemäß HGB über Vermögenswerte in Höhe von insgesamt 2.044 Mio. €, Verbindlichkeiten in Höhe von 530 Mio. € und für das am 31. Dezember 2011 endende Geschäftsjahr über ein Ergebnis nach Steuern in Höhe von 122 Mio. € (Inklusive Beteiligungsergebnis).

|                                                    | Geschäftsjahr<br>zum<br>31. Dezember |      |
|----------------------------------------------------|--------------------------------------|------|
|                                                    | 2011                                 | 2010 |
|                                                    | (Mio. €)                             |      |
| Umsatz. ....                                       | 0                                    | 0    |
| Ergebnis der gewöhnlichen Geschäftstätigkeit. .... | 148                                  | 218  |
| Operativer Cashflow. ....                          | 161                                  | 206  |

|                              | 31. Dezember |         |
|------------------------------|--------------|---------|
|                              | 2011         | 2010    |
|                              | (Mio. €)     |         |
| Bilanzsumme Aktiva . . . . . | 2.044        | 2.738   |
| Eigenkapital . . . . .       | (1.488)      | (1.488) |

*Fresenius ProServe GmbH*

Am 31. Dezember 2011 verfügte die Fresenius ProServe GmbH gemäß HGB über Vermögenswerte in Höhe von insgesamt 2.057 Mio. €, Verbindlichkeiten in Höhe von 462 Mio. € und für das am 31. Dezember 2011 endende Geschäftsjahr über ein Ergebnis nach Steuern in Höhe von 126 Mio. € (Inklusive Beteiligungsergebnis).

|                                                        | Geschäftsjahr zum<br>31. Dezember |      |
|--------------------------------------------------------|-----------------------------------|------|
|                                                        | 2011                              | 2010 |
|                                                        | (Mio. €)                          |      |
| Umsatz . . . . .                                       | 0                                 | 0    |
| Ergebnis der gewöhnlichen Geschäftstätigkeit . . . . . | 153                               | 129  |
| Operativer Cashflow . . . . .                          | 153                               | 127  |

|                              | 31. Dezember |         |
|------------------------------|--------------|---------|
|                              | 2011         | 2010    |
|                              | (Mio. €)     |         |
| Bilanzsumme Aktiva . . . . . | 2.057        | 1.975   |
| Eigenkapital . . . . .       | (1.587)      | (1.587) |

## ZUSAMMENFASSUNG DES ANGEBOTS

*Die nachfolgende Zusammenfassung beschreibt die wesentlichen Bedingungen der Schuldverschreibungen und der Garantien. Einige der nachstehend beschriebenen Bedingungen unterliegen wichtigen Einschränkungen und Ausnahmen. Der Abschnitt „Description of the Notes“ in diesem Prospekt/Offering Memorandum enthält eine ausführlichere Beschreibung der Bedingungen der Schuldverschreibungen und der Garantien, einschließlich der Definitionen einzelner, in dieser Zusammenfassung verwendeter Begriffe.*

|                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|---------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Emittent .....                              | Fresenius Finance B.V.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Garantiegebende Muttergesellschaft .....    | Fresenius SE & Co. KGaA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Garantiegebende Tochtergesellschaften ..... | Fresenius Kabi AG und Fresenius ProServe GmbH                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Angebotene Schuldverschreibungen .....      | 4,25% Schuldverschreibungen mit einem Gesamtnennbetrag von 500 Mio. €.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Emissionsdatum .....                        | 28. März 2012                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Stückelung der Schuldverschreibungen .....  | Jede Schuldverschreibung lautet auf 1.000 € und wird nur in einer Stückelung von 1.000 € angeboten.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Form der Schuldverschreibungen ...          | Die Schuldverschreibungen werden durch eine oder mehrere Globalurkunde(n) ohne Zinskupons verbrieft.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Lieferung der Schuldverschreibungen .....   | Die Lieferung der Schuldverschreibungen an die Anleger erfolgt im Rahmen der Girosammelverwahrung durch Euroclear und Clearstream, jeweils am oder um den 28. März 2012.                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Fälligkeitsdatum .....                      | 15. April 2019                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Zinssatz .....                              | Die Schuldverschreibungen werden mit 4,25% p. a. verzinst, zahlbar halbjährlich und nachträglich in bar.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Zinszahlungstermine .....                   | Jeweils zum 15. April und 15. Oktober eines jeden Jahres, beginnend am 15. Oktober 2012. Die Schuldverschreibungen werden ab dem Emissionsdatum der Schuldverschreibungen verzinst.                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Rendite .....                               | 4,25%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Status der Schuldverschreibungen ..         | Bei den Schuldverschreibungen wird es sich um unbesicherte vorrangige Verbindlichkeiten des Emittenten handeln, die: <ul style="list-style-type: none"><li>gleichrangig mit sämtlichen bestehenden und zukünftigen Verbindlichkeiten des Emittenten sind, die gegenüber den Schuldverschreibungen nicht nachrangig sind, einschließlich der ausstehenden vorrangigen Schuldverschreibungen, die vom Emittenten ausgegeben wurden;</li><li>gegenüber allen bestehenden und zukünftigen Verbindlichkeiten des Emittenten vorrangig sind, die gegenüber diesen Schuldverschreibungen nachrangig sind;</li></ul> |

|                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                  | <ul style="list-style-type: none"> <li>faktisch gegenüber allen bestehenden und zukünftigen Verbindlichkeiten des Emittenten nachrangig sind, die durch Sicherungsrechte an Vermögenswerten besichert werden, in dem Ausmaß wie diese Verbindlichkeiten durch Vermögenswerte besichert sind; und</li> <li>strukturell nachrangig gegenüber sämtlichen Verpflichtungen der Tochtergesellschaften der garantiegebenden Muttergesellschaft sind (sofern diese keine garantiegebenden Tochtergesellschaften sind).</li> </ul>                                                                                                                                                                                                                                                                                                            |
| Garantien .....                                                  | <p>Die Zahlung aller im Rahmen der Schuldverschreibungen fälligen Beträge einschließlich des Nennbetrags, der Zinsen und gegebenenfalls einer Prämie werden durch die Garantiegeber auf vorrangiger, unbesicherter Basis garantiert. Informationen zu den Einschränkungen der Vollstreckbarkeit dieser Garantien finden sich unter: „<i>Risk Factors — Risks Relating to the Notes — The Notes are subordinate to other creditors of non-guarantors and to our subsidiaries’ secured debt, and enforcement of guarantees by our subsidiaries may be limited</i>“ und „<i>Description of the Notes — Guarantees</i>“.</p>                                                                                                                                                                                                             |
| Rangfolge der Garantien .....                                    | <p>Die Garantien werden:</p> <ul style="list-style-type: none"> <li>gegenüber allen bestehenden und zukünftigen Verbindlichkeiten jedes Garantiegebers (einschließlich der Verpflichtungen aus der Kreditvereinbarung 2008 und den ausstehenden vorrangigen Schuldverschreibungen) gleichrangig sein, vorbehaltlich der gesetzlichen Einschränkungen in Bezug auf ihre Vollstreckbarkeit;</li> <li>gegenüber denjenigen bestehenden und zukünftigen Verbindlichkeiten der Garantiegeber Vorrang haben, die gegenüber den Garantien nachrangig sind; und</li> <li>faktisch nachrangig gegenüber allen bestehenden und zukünftigen Verbindlichkeiten der Garantiegeber sein, die durch Sicherungsrechte an Vermögenswerten besichert werden, in dem Ausmaß wie diese Verbindlichkeiten durch Vermögenswerte besichert sind.</li> </ul> |
| Optionale Rückzahlung .....                                      | <p>Der Emittent kann die Schuldverschreibungen jederzeit vollständig oder teilweise zu einem Rückzahlungspreis in Höhe von 100% des Nennbetrags der Schuldverschreibungen zurückzahlen, gegebenenfalls zuzüglich der bis zum Rückzahlungstag aufgelaufenen und nicht gezahlten Zinsen sowie einer „make whole“-Prämie nach Maßgabe dieses Prospekts/Offering Memorandums. Siehe „<i>Description of the Notes — Optional Redemption</i>“.</p>                                                                                                                                                                                                                                                                                                                                                                                         |
| Rückzahlbarkeit aufgrund von Änderungen in der Quellensteuer ... | <p>Treten bestimmte Änderungen im Recht einer steuerlich relevanten Rechtsordnung in Kraft, die zur Erhebung einer Quellensteuer oder anderen Abzügen von den Zahlungen für die Schuldverschreibungen oder die Garantien führen würden, kann der Emittent die Schuldverschreibungen jederzeit vollständig, jedoch nicht teilweise, zum</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

|                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|---------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                     | <p>Rückzahlungspreis in Höhe von 100% des Nennbetrags der Schuldverschreibungen zurückzahlen, zuzüglich der gegebenenfalls bis zum Rückzahlungsdatum aufgelaufenen und nicht gezahlten Zinsen sowie zusätzlicher Beträge. Siehe „<i>Description of the Notes — Redemption for Changes in Withholding Taxes</i>“.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Kontrollwechsel . . . . .                                           | <p>Bei einem „Kontrollwechsel“ (<i>Change of Control</i>) und einer „Herabstufung des Ratings“ (<i>Ratings Decline</i>) (beide wie hierin definiert) haben die Inhaber der Schuldverschreibungen das Recht, die vollständige oder teilweise Rückzahlung der Schuldverschreibungen zu einem Rückzahlungspreis in Höhe von 101% ihres Nennwerts in bar zu fordern, zuzüglich gegebenenfalls aufgelaufener und nicht gezahlten Zinsen. Siehe „<i>Description of the Notes — Change of Control</i>“.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Bestimmte Auflagen ( <i>covenants</i> ) . . . .                     | <p>Wir werden die Schuldverschreibungen im Rahmen eines auf oder um den 28. März 2012 datierten, gesonderten Begebungsvertrags mit der Deutsche Trustee Company Limited Winchester House, 1 Great Winchester Street, London EC2N 2DB, Vereinigtes Königreich, als Treuhänderin begeben. Der Begebungsvertrag enthält verschiedene Auflagen, die unsere Handlungsfreiheit und die unserer Tochtergesellschaften unter anderem im Hinblick auf die folgenden Handlungen einschränken:</p> <ul style="list-style-type: none"> <li>• das Eingehen von Finanzverbindlichkeiten;</li> <li>• die Gewährung von Sicherungsrechten;</li> <li>• das Eingehen von Sale- and Lease-Back-Transaktionen; und</li> <li>• die Verschmelzung oder der Zusammenschluss mit anderen Firmen oder der Verkauf von Vermögenswerten aus unserem Vermögen oder dem unserer Tochtergesellschaften.</li> </ul> <p>Außerdem sind wir unter dem Begebungsvertrag dazu verpflichtet, der Treuhänderin regelmäßig Finanzberichte zur Verfügung zu stellen.</p> <p>Die Auflagen enthalten wichtige Ausnahmen und Einschränkungen. Für genauere Informationen siehe „<i>Description of the Notes — Certain Covenants</i>“.</p> |
| Anwendbares Recht . . . . .                                         | <p>Die Schuldverschreibungen unterliegen New Yorker Recht mit Ausnahme einiger einschränkender Regelungen hinsichtlich der Garantien, die dem deutschen Recht unterliegen.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Börsennotierung und -zulassung;<br>kein vorheriger Handel . . . . . | <p>Für die Schuldverschreibungen wurde ein Antrag auf die Notierung an der Luxemburger Börse und Zulassung zum Handel am regulierten Markt der Luxemburger Börse gestellt. Vor Notierung und Zulassung der Schuldverschreibungen durch die Luxemburger Börse findet kein Handel der Schuldverschreibungen statt. Obwohl die Konsortialbanken (<i>Initial Purchasers</i>) dem Emittenten ihre</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

|                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                     | Absicht mitgeteilt haben, einen Handel für die Schuldverschreibungen einzurichten, sind sie dazu nicht verpflichtet und sie dürfen den Handel jederzeit fristlos einstellen. Dementsprechend kann der Emittent nicht gewährleisten, dass sich für die Schuldverschreibungen ein liquider Handel entwickeln wird oder bestehen bleibt.                                                                                                                                                                                                                                                     |
| Verkaufsbeschränkungen . . . . .    | Die Schuldverschreibungen wurden nicht und werden nicht nach dem U.S. Securities Act registriert und dürfen nur unter einer Befreiung von der Registrierungspflicht nach dem Securities Act oder im Rahmen einer Transaktion, die keinen Registrierungserfordernissen unterliegt, angeboten oder verkauft werden.                                                                                                                                                                                                                                                                         |
| Treuhänderin . . . . .              | Deutsche Trustee Company Limited, Winchester House, 1 Great Winchester Street, London EC2N 2DB, United Kingdom                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Zahl- und Transferstelle . . . . .  | Deutsche Bank AG Frankfurt, Grosse Gallusstrasse 10-14, 60262 Frankfurt am Main, Germany                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Luxembourg Listing Agent . . . . .  | BNP Paribas Securities Services, 33 rue de Gasperich, Howald-Hesperange, 2085 Luxembourg                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Verwendung des Emissionserlöses . . | <p>Der Nettoerlös aus dem Verkauf der Schuldverschreibungen mit einem Nennwert von 500 Mio. € wird sich auf ca. 492 Mio. € belaufen, nach dem Abzug von Gebühren und geschätzten Kosten in Höhe von insgesamt ca. 8 Mio. €.</p> <p>Der Emissionserlös soll für Akquisitionen, insbesondere zum Erwerb der Damp-Gruppe, zur Refinanzierung kurzfristiger Finanzverbindlichkeiten und für allgemeine Unternehmenszwecke verwendet werden. Informationen zu unseren ausstehenden Verbindlichkeiten finden sich unter „Description of Other Financing Arrangements“ und „Capitalization“.</p> |



## ZUSAMMENFASSUNG DER RISIKOFAKTOREN

*Investitionen in die Schuldverschreibungen bergen erhebliche Risiken. Wir sind einer Reihe von Risiken ausgesetzt, die einzeln oder gemeinsam erhebliche nachteilige Auswirkungen auf unsere Vermögens-, Finanz- und Ertragslage und auf unsere Fähigkeit haben können, unseren Verpflichtungen aus den Anleihebedingungen nachzukommen, oder zu einem Sinken des Preises der Schuldverschreibungen führen können. Die nachfolgende Zusammenfassung von Risiken sollte vor einer Investition in die Schuldverschreibungen berücksichtigt werden, da die Risiken sowohl den Emittenten als auch die Garantiegeber beeinträchtigen können.*

### Risiken im Zusammenhang mit unserer Geschäftstätigkeit

- Sollten wir den Vorschriften für das Gesundheitswesen oder anderen gesetzlichen Vorschriften, die auf unsere Geschäftstätigkeit anwendbar sind, nicht Folge leisten, könnten wir u. U. zivil- oder strafrechtlichen Strafmaßnahmen ausgesetzt sein und von den Erstattungsprogrammen des öffentlichen Gesundheitswesens in den USA und anderen Ländern ausgeschlossen werden. Zudem könnte uns möglicherweise die Erlaubnis zum Geschäftsbetrieb entzogen werden. In jedem dieser Fälle könnte ein erhebliches Einbrechen unserer Umsatzerlöse die Folge sein.
- Gesetzesverstöße durch unsere Joint Ventures könnten erhebliche nachteilige Auswirkungen auf unsere Geschäftstätigkeit haben.
- Eine Senkung der staatlichen Erstattungsbeträge für unsere Produkte oder Dienstleistungen, einschließlich der Dialysebehandlungen, ebenso wie Änderungen des Umfangs der von einer Krankenversicherung abgedeckten Leistungen könnte zu einem erheblichen Rückgang unserer Umsatzerlöse und unseres operativen Gewinns führen.
- Eine Änderung des Gebrauchs von Erythropoietin könnte zu einem erheblichen Rückgang unserer Umsatzerlöse und unseres operativen Gewinns führen. Lieferunterbrechungen oder unsere Unfähigkeit, Erythropoietin zu angemessenen Bedingungen zu beschaffen, könnte zu einem erheblichen Rückgang unserer Umsatzerlöse und unseres operativen Gewinns führen.
- Vorschläge für eine Gesundheitsreform oder in Bezug auf behördliche Genehmigungen könnten zu einem erheblichen Rückgang unserer Umsatzerlöse und unseres operativen Gewinns führen.
- Ein bedeutender Anteil der Gewinne von Fresenius Medical Care in Nordamerika hängt von Dienstleistungen ab, die für die Minderheit der privat versicherten Patienten erbracht werden.
- Ein verschärfter Wettbewerb könnte nachteilige Auswirkungen auf unsere Umsatzerlöse in unseren Unternehmensbereichen und unser Wachstumspotential haben.
- Sollten Ärzte und andere Stellen keine Patienten mehr an die Dialysekliniken von Fresenius Medical Care überweisen oder keine Erzeugnisse von Fresenius Medical Care mehr verschreiben, könnte dies einen Rückgang der Umsatzerlöse zur Folge haben.
- Die weltwirtschaftlichen Rahmenbedingungen könnten sich nachteilig auf unsere Geschäftstätigkeit auswirken.
- Marktentwicklungen und staatliche Maßnahmen in Bezug auf die staatliche Schuldenkrise in Europa könnten sich nachteilig auf unsere Vermögens-, Finanz- und Ertragslage sowie unsere Liquidität auswirken.
- Wir sind in vielen verschiedenen Rechtsordnungen tätig. Ein Verstoß gegen den U.S. Foreign Corrupt Practices Act und vergleichbare weltweit bestehende Anti-Korruptions-Gesetze könnte sich nachteilig auf unsere Geschäftstätigkeit auswirken.
- Wir sind besonderen Risiken durch internationale Geschäftstätigkeiten ausgesetzt.

- Wir sind in Bezug auf Schwellenländer Risiken und Unsicherheiten ausgesetzt.
- Schwankungen der internationalen Wechselkurse könnten nachteilige Auswirkungen auf unser Finanzergebnis und unsere Fähigkeit haben, Verbindlichkeiten zu bedienen; unsere Versuche, uns durch Sicherungsgeschäfte (*Hedging*) abzusichern, könnten fehlschlagen.
- Wir unterliegen Beschränkungen durch unsere Verschuldung.
- Unser Verschuldungsgrad könnte sich nachteilig auf unsere Finanzlage auswirken und uns an der Erfüllung unserer Finanzverbindlichkeiten oder an der Umsetzung bestimmter Elemente unserer Geschäftsstrategie hindern.
- Trotz unserer erheblichen Verschuldung könnten wir weiterhin in der Lage sein, uns in erheblichem Maße weiter zu verschulden; dies könnte zu einer Verschärfung der vorstehend beschriebenen Risiken führen.
- Wir könnten durch Akquisitionen finanziellen Belastungen ausgesetzt werden. In Bezug auf geeignete Akquisitionsziele stehen wir im Wettbewerb mit anderen Unternehmen. Unser Wachstum hängt zum Teil von unserer Fähigkeit ab, auch weiterhin Akquisitionen durchführen zu können.
- Die Integration abgeschlossener und künftiger Akquisitionen ist mit Ungewissheiten und Risiken behaftet.
- Unsere Bemühungen, erfolgreiche neue Produkte und Therapien zu entwickeln, könnten nicht die gewünschten Ergebnisse bringen oder verfehlen, nennenswerte Erträge zu generieren.
- Das geplante Wachstum von Fresenius Helios birgt gewisse Risiken. Außerdem sind wir von den Verträgen mit den öffentlichen Krankenkassen und Sozialversicherungsbehörden in Deutschland abhängig.
- Sollte es uns nicht gelingen, medizinisches, technisches und Entwicklungspersonal anzuwerben und zu halten, könnte dies unsere technologische Entwicklung und unser Wachstum beeinträchtigen.
- Die Lizenzierung, der Ankauf und die Vermarktung rechtlich geschützter oder sonstiger spezieller Produkte zur Injektion könnte möglicherweise erfolglos sein und wir könnten bei diesen Produktarten u. U. nie einen Gegenwert für unsere Investitionen erhalten.
- Wir sind Ansprüchen aus Produkthaftung und Patentverletzung sowie sonstigen Ansprüchen ausgesetzt, die erhebliche Haftungsfolgen haben könnten, die wir möglicherweise nicht zu angemessenen Bedingungen versichern können.
- Fresenius Medical Care könnte im Geschäft mit pharmazeutischen Erzeugnissen Umsatzanteile an Hersteller von Generika oder neuer Markenmedikamente verlieren.
- Sollte die Qualität unserer Produkte nicht die Erwartungen unserer Kunden erfüllen, könnte dies erhebliche nachteilige Auswirkungen auf unsere Geschäftstätigkeit und unsere Reputation haben.
- Die Haltung der Steuerbehörden könnte dazu führen, dass wir zusätzliche Steuern zahlen müssen.

#### **Risiken im Zusammenhang mit den Schuldverschreibungen**

- Die Schuldverschreibungen sind gegenüber Verbindlichkeiten von Nicht-Garantiegebern sowie den besicherten Verbindlichkeiten unserer Tochtergesellschaften nachrangig, und die Vollstreckbarkeit der Garantien durch unsere Tochtergesellschaften könnte begrenzt sein.
- Das deutsche Insolvenzrecht könnte die Erstattung von Zahlungen auf die Garantien ausschließen.

- Wir sind möglicherweise nicht in der Lage, die erforderlichen Mittel aufzubringen, um im Fall eines Kontrollwechsels (*Change of Control*) ein Angebot zu machen, wie es der Begebungsvertrag vorsieht.
- Der Emittent verfügt außer konzerninternen Forderungen gegen andere Konzerngesellschaften über keine weiteren Vermögenswerte oder Einnahmequellen. Die garantiegebende Muttergesellschaft ist auf die Ausschüttungen ihrer Tochtergesellschaften angewiesen, um ihren Zahlungsverpflichtungen nachzukommen.
- Es gibt keine Garantie für die Entwicklung eines Markts für den Handel mit den Schuldverschreibungen.
- Durch die Anlage in die Schuldverschreibungen könnten die Anleger Fremdwährungsrisiken ausgesetzt sein.
- Schuldverschreibungen, die vom Emittenten im Rahmen weiterer Angebote ausgegeben werden, könnten für die Zwecke der U.S.-Einkommenssteuer nicht durch die im ursprünglichen Angebot ausgegebenen Schuldverschreibungen ersetzbar sein.
- Markteinschätzungen, die die Instabilität des Euro, die mögliche Wiedereinführung einzelner Währungen innerhalb der Eurozone oder eine mögliche Auflösung des gesamten Euros betreffen, könnten erhebliche nachteilige Auswirkungen auf den Wert der Schuldverschreibungen haben.

#### **Risiken im Zusammenhang mit den Garantiegebern**

Da die Garantiegeber Gesellschaften unseres Konzerns sind, sind die vorstehend abschließend unter „ — *Risks Relating to Our Business*“ aufgeführten Risiken auch auf diese hinsichtlich ihres jeweiligen Geschäfts entsprechend anwendbar.

## Non-Binding German Translation of the Description of the Notes

### Unverbindliche deutsche Übersetzung

Dieses Dokument ist eine Übersetzung eines englischsprachigen Dokuments in die deutsche Sprache. Es wurde angemessene Sorgfalt aufgewandt, um die Richtigkeit der Übersetzung sicherzustellen. Es wird jedoch keine Gewähr für die Richtigkeit der Übersetzung übernommen. Insbesondere wird darauf hingewiesen, dass Begriffe und rechtliche Konzepte in einer Sprache nicht immer ihre genaue Entsprechung in der anderen Sprache finden. Verbindlich ist allein die englische Sprachfassung, die im Prospekt/Offering Memorandum im Abschnitt „Description of the Notes“ abgedruckt ist.

## BESCHREIBUNG DER SCHULDVERSCHREIBUNGEN

Der Emittent wird 4,25 % vorrangige Schuldverschreibungen fällig 2019 (die „**Schuldverschreibungen**“) im Gesamtnennbetrag von 500 Mio. € begeben. Die Schuldverschreibungen werden gemäß einem voraussichtlich am vom 28. März 2012 geschlossenen „**Begebungsvertrag**“ (*Indenture*) zwischen dem Emittenten, den Garantiegebern und der Deutsche Trustee Company Limited als Treuhänder begeben. Ein Exemplar des Musters des Begebungsvertrages ist auf Anfrage bei dem Emittenten erhältlich.

Sie finden die in diesem Abschnitt verwendeten Definitionen entweder im Hauptteil dieses Abschnitts oder am Ende des Abschnitts unter „— *Verschiedene Definitionen.*“ Für Zwecke dieser Beschreibung beziehen sich Verweise auf die „Gesellschaft“ ausschließlich auf die Fresenius SE & Co. KGaA, jedoch nicht auf ihre Tochtergesellschaften.

Wir haben einen Antrag auf Einbeziehung der Schuldverschreibungen in die offizielle Liste der Luxemburger Wertpapierbörse und auf Zulassung zum Handel im regulierten Markt der Luxemburger Wertpapierbörse gestellt.

Die Beschreibung der Schuldverschreibungen soll einen nützlichen Überblick über die wesentlichen Bestimmungen der Schuldverschreibungen und des Begebungsvertrages geben. Da es sich bei dieser Beschreibung nur um eine Zusammenfassung handelt, sollten Sie den Begebungsvertrag lesen, um eine vollständige Beschreibung des Emittenten und Ihrer Rechte zu erhalten. Der Begebungsvertrag ist nicht nach dem Trust Indenture Act der Vereinigten Staaten von 1939 in der jeweils gültigen Fassung qualifiziert. Die Bedingungen der Schuldverschreibungen werden die Bedingungen umfassen, die in dem Begebungsvertrag enthalten sind, sowie diejenigen, die durch Verweis auf den Trust Indenture Act in den Begebungsvertrag aufgenommen wurden.

## ALLGEMEINES

### Die Schuldverschreibungen

Die Schuldverschreibungen:

- sind generell unbesicherte vorrangige Verbindlichkeiten des Emittenten;
- sind am 15. April 2019 fällig;
- haben eine Rendite von 4,25 %;
- werden in einem Gesamtnennbetrag in Höhe von 500 Mio. € angeboten;
- werden in einer Mindeststückelung von 1.000 € und danach in ganzzahligen Vielfachen von 1.000 € begeben;
- werden durch eine oder mehrere auf den Namen lautende Globalurkunden verbrieft, können jedoch unter bestimmten Umständen durch auf den Namen lautende Einzelurkunden verbrieft werden. Siehe „*Book-Entry, Delivery, and Form*“;
- sind in Bezug auf Zahlungsansprüche gleichrangig mit allen bestehenden und zukünftigen vorrangigen Verbindlichkeiten des Emittenten; und
- werden bei Fälligkeit zum Nennbetrag in Euro zurückgezahlt und unterliegen keinen Verpflichtungen zur Tilgung in Teilbeträgen (*sinking fund provision*).

## Weitere Schuldverschreibungen

Der Emittent kann mit einem Nachtrag bezüglich weiterer Schuldverschreibungen zum Begebungsvertrag nach diesem Angebot weitere Schuldverschreibungen („**Weitere Schuldverschreibungen**“) vorbehaltlich der Bestimmungen des Begebungsvertrages wie nachstehend unter „— *Bestimmte Auflagen*“ beschrieben, unter anderem der unter „— *Bestimmte Auflagen — Beschränkungen in Bezug auf das Eingehen von Verschuldung*“ dargelegten Auflagen begeben. Die hierbei angebotenen Schuldverschreibungen und, soweit begeben, die Weiteren Schuldverschreibungen, die nachträglich unter dem Begebungsvertrag begeben werden, werden für jegliche Zwecke des Begebungsvertrages, unter anderem in Bezug auf Verzichtserklärungen, Anpassungen, Rückzahlungen und Kaufangebote als einheitliche Gattung behandelt (vorausgesetzt, dass — soweit irgendwelche Weiteren Schuldverschreibungen nicht mit den bestehenden Schuldverschreibungen derselben Gattung für Zwecke der U.S. Bundes-Einkommensteuer austauschbar sind — diese Weiteren Schuldverschreibungen eine gesonderte ISIN-Nummer erhalten). Dies hat unter anderem zur Folge, dass Inhaber jeder Serie von Schuldverschreibungen keine gesonderten und eigenständigen Rechte haben, einen Kündigungstatbestand mitzuteilen oder den Treuhänder anzuweisen, im Fall einer Pflichtverletzung Rechtsansprüche in Bezug auf die Schuldverschreibungen oder in anderer Weise geltend zu machen. Der Begriff „Schuldverschreibungen“ enthält, sofern nicht ausdrücklich anders angegeben, die Weiteren Schuldverschreibungen.

## Zinsen

Zinsen auf die Schuldverschreibungen fallen zu einem Zinssatz von 4,25 % pro Jahr an. Zinsen auf die Schuldverschreibungen fallen halbjährlich an und

- laufen vom Ausgabetag oder dem zuletzt vorausgegangenen Zinszahlungstag an auf;
- sind halbjährlich nachträglich am 15. April und am 15. Oktober in bar zu zahlen, erstmals am 15. Oktober 2012, wobei die erste Zinszahlung den Zeitraum vom Ausgabetag bis zum 15. Oktober 2012 abdeckt;
- sind an diejenigen Inhaber zu zahlen, die am 1. April und 1. Oktober vor dem jeweiligen Zinszahlungstag als solche registriert sind; und
- werden auf der Grundlage eines Jahres bestehend aus 360 Tagen mit 12 Monaten zu je 30 Tagen berechnet.

## Beschreibung der Garantien

Die Verpflichtungen des Emittenten aus den Schuldverschreibungen, einschließlich seiner Rückkaufverpflichtungen im Falle eines Kontrollwechsels, werden unbedingt und unwiderruflich gesamtschuldnerisch durch die Garantiegeber garantiert. Sobald (i) ein Garantiegeber (außer die Gesellschaft) nicht mehr Verpflichteter unter der Kreditvereinbarung 2008 ist, und (ii) die 2013 fälligen Schuldverschreibungen, die 2015 fälligen Schuldverschreibungen oder die 2016 fälligen Schuldverschreibungen (jeweils wie unten definiert) nicht mehr ausstehen, ist dieser Garantiegeber nicht mehr Garantiegeber der Schuldverschreibungen. Keine Schuldverschreibungsgarantie durch eine Tochtergesellschaft übersteigt den Betrag, für die betreffende garantiegebende Tochtergesellschaft garantieren kann, ohne dass die Garantie im Verhältnis zur garantiegebenden Tochtergesellschaft nach allgemein für Gläubigerrechte geltenden Bestimmungen unwirksam oder nicht durchsetzbar wird. Im Falle jeder garantiegebenden Tochtergesellschaft ist der Höchstbetrag ihrer Schuldverschreibungsgarantie und deren Durchsetzbarkeit möglicherweise eingeschränkt, wenn andernfalls eine persönliche Haftung der Vorstandsmitglieder oder Geschäftsführer der garantiegebenden Tochtergesellschaft nach deutschem Recht, einschließlich Entscheidungen des Bundesgerichtshofs, entstehen würde. In dieser Beschreibung wird die Garantie jedes Garantiegebers als „**Schuldverschreibungsgarantie**“ bezeichnet.

Gemäß dem Begebungsvertrag steht einem Garantiegeber das Recht zu, alle oder wesentliche Teile seiner Vermögenswerte wie unter „*Bestimmte Auflagen — Beschränkungen in Bezug auf*

*Zusammenschlüsse und die Veräußerung von Vermögenswerten*“ beschrieben, mit anderen Rechtsträgern zu verschmelzen oder an diese zu übertragen. Sofern ein solcher Rechtsträger nicht der Emittent oder ein Garantiegeber ist, ist er verpflichtet, die Verpflichtungen des betreffenden Garantiegebers aus den Schuldverschreibungsgarantien ausdrücklich zu übernehmen. Nach dem Verkauf oder einer sonstigen Veräußerung (einschließlich im Wege der Verschmelzung) eines Garantiegebers oder dem Verkauf oder der Veräußerung aller oder wesentlicher Teile der Vermögenswerte eines Garantiegebers (jeweils an andere Personen als den Emittenten oder, solange die 2013 fälligen Schuldverschreibungen, die 2015 fälligen Schuldverschreibungen oder die 2016 fälligen Schuldverschreibungen ausstehen, eine seiner Tochtergesellschaften) wird dieser Garantiegeber mit den unter „— *Bestimmte Auflagen — Beschränkungen in Bezug auf Zusammenschlüsse und die Veräußerung von Vermögenswerten*“ beschriebenen Einschränkungen von allen seinen Verpflichtungen aus seinen Schuldverschreibungsgarantien befreit und von diesen entbunden.

### **Status**

Die Schuldverschreibungen sind generell unbesicherte Verbindlichkeiten des Emittenten, die in Bezug auf Zahlungsansprüche allen bestehenden und zukünftigen Verschuldung, die gegenüber den Schuldverschreibungen in Bezug auf Zahlungsansprüche ausdrücklich nachrangig sind, im Rang vorgehen. Die Schuldverschreibungen sind in Bezug auf Zahlungsansprüche mit bestehender und zukünftiger Verschuldung des Emittenten, die nicht in dieser Weise nachrangig sind, gleichrangig. Die Schuldverschreibungen sind in Bezug auf Zahlungsansprüche gegenüber bestehender und zukünftiger Verschuldung des Emittenten, die durch Sicherungsrechte an Vermögenswerten besichert sind, im Umfang des Wertes dieser Sicherheiten, effektiv nachrangig und sind in Bezug auf Zahlungsansprüche gegenüber allen Verbindlichkeiten der Tochtergesellschaften der garantiegebenden Muttergesellschaft mit Ausnahme der garantiegebenden Tochtergesellschaften und der Finanzierungstochtergesellschaften strukturell nachrangig.

Die Schuldverschreibungen sind in Bezug auf Zahlungsansprüche untereinander und im Verhältnis zu den 2013 fällig werdenden 5,00 % Senior Notes der Fresenius Finance B.V. (die „**2013 fälligen Schuldverschreibungen**“) und den 2016 fällig werdenden 5,50 % Senior Notes der Fresenius Finance B.V. (die „**2016 fälligen Schuldverschreibungen**“) sowie den 2015 fällig werdenden 9 % Senior Dollar Notes der Fresenius US Finance II, Inc. (die „**2015 fälligen Dollar-Schuldverschreibungen**“) und den 2015 fällig werdenden 8¾ % Senior Euro Notes der Fresenius US Finance II, Inc. (die „**2015 fälligen Euro-Schuldverschreibungen**“) und zusammen mit den 2015 fälligen Dollar-Schuldverschreibungen die „**2015 fälligen Schuldverschreibungen**“) gleichrangig.

Die von den garantiegebenden Tochtergesellschaften gewährten Garantien für die Schuldverschreibungen sind in Bezug auf Zahlungsansprüche mit den Garantien, die für die vorher begebenen Schuldverschreibungen gewährt wurden, gleichrangig. Für weitere Informationen siehe „*Risk Factors — Risks Related to the Notes — The Notes are subordinate to other creditors or non-guarantors and to our subsidiaries’ secured debt, and enforcement of guarantees by our subsidiaries may be limited*“.

### **Form der Schuldverschreibungen**

Die Schuldverschreibungen werden anfänglich durch auf den Namen lautende Globalurkunden verbrieft. Schuldverschreibungen, die anfänglich in Übereinstimmung mit Rule 144A des Securities Act (wie nachstehend definiert) an qualifizierte institutionelle Anleger (*qualified institutional buyers*) angeboten und verkauft werden (die „**Rule 144A-Schuldverschreibungen**“) werden durch eine oder mehrere Globalurkunden ohne Zinsscheine (zusammen die „**Rule 144A-Globalurkunden**“) verbrieft. Schuldverschreibungen, die anfänglich in Übereinstimmung mit der Regulation S des Securities Act angeboten und verkauft werden, werden durch eine oder mehrere Globalurkunden ohne Zinsscheine (zusammen die „**Reg S-Globalurkunden**“) und zusammen mit den Rule 144A-Globalurkunden die „**Globalurkunden**“) verbrieft. Die Summe der Nennbeträge der Rule 144A-Globalurkunden und der

Reg S-Globalurkunden wird jederzeit dem ausstehenden Gesamtnennbetrag der durch diese Globalurkunden verbrieften Schuldverschreibungen entsprechen.

Inhabern von Miteigentumsanteilen an den Schuldverschreibungen steht im Austausch gegen ihren Miteigentumsanteil an den Schuldverschreibungen lediglich in den eingeschränkten, unter „*Book Entry, Delivery, and Form — Issuance of Definitive Registered Notes*“ beschriebenen Fällen ein Anspruch auf Einzelurkunden zu, die auf den Namen lauten („**auf den Namen lautende Einzelurkunden**“). Das Eigentum an den auf den Namen lautenden Einzelurkunden geht mit Registrierung der jeweiligen Übertragung in Übereinstimmung mit den Bestimmungen des Begebungsvertrags über. Es werden in keinem Fall auf den Inhaber lautende Einzelurkunden ausgegeben. Das Eigentum der auf den Namen lautenden Schuldverschreibungen entsteht durch einen Eintrag in das Schuldverschreibungsregister, das nach jedem Begebungsvertrag zu führen ist.

### **Zahlungen auf die Schuldverschreibungen**

Kapitalrückzahlungen und Zahlungen eines etwaigen Aufschlags (*premium*), von Zinsen und etwaiger Zusätzlicher Beträge auf die Schuldverschreibungen erfolgen bei der Geschäftsstelle der Zahlstelle und die Schuldverschreibungen können bei der Corporate Trust-Geschäftsstelle oder -Filiale des Treuhänders ausgetauscht oder übertragen werden. Kapitalrückzahlungen und Zahlungen eines etwaigen Aufschlags (*premium*), von Zinsen und etwaiger Zusätzlicher Beträge auf Schuldverschreibungen in Form einer Globalurkunde, die unter dem Namen der gemeinsamen Verwahrstelle (*common depository*) oder einer durch sie benannten Person registriert ist oder von ihr verwahrt wird, erfolgen in sofort verfügbaren Mitteln an die gemeinsame Verwahrstelle bzw. die durch sie benannte Person als registrierten Inhaber der Globalurkunde, wobei nach Wahl des Emittenten Zinszahlungen auf die Schuldverschreibungen durch die Zustellung von Schecks an die Inhaber der Schuldverschreibungen unter ihren jeweils im Schuldverschreibungsregister genannten Anschriften erfolgen können. Nach der Ausgabe von auf den Namen lautenden, verbrieften Einzelurkunden können die Inhaber der Schuldverschreibungen Kapitalrückzahlungen und Zinszahlungen auf die Schuldverschreibungen bei der Geschäftsstelle der jeweiligen Zahl- und Transferstelle erhalten, vorbehaltlich des Rechts des Emittenten, die Zahlungen in Übereinstimmung mit dem Begebungsvertrag durch Zustellung zu leisten. Der Emittent wird Zinsen auf die Schuldverschreibungen an Personen zahlen, die zum Geschäftsschluss (*close of business*) an dem Stichtag, der dem Zinszahlungstag für derartige Zinsen unmittelbar vorausgeht, als Inhaber registriert sind. Diese Inhaber müssen die Schuldverschreibungen der Zahlstelle aushändigen, um Kapitalrückzahlungen zu erhalten.

### **Zahl- und Registerstelle**

Die Deutsche Bank Aktiengesellschaft wird anfangs als Zahl- und Registerstelle (die „**Zahlstelle**“ bzw. „**Registerstelle**“) für die Schuldverschreibungen fungieren. Der Emittent kann die Zahlstelle oder Registerstelle für die Schuldverschreibungen wechseln und der Emittent kann als Registerstelle für die Schuldverschreibungen fungieren.

### **Übertragung und Umtausch**

Ein Inhaber von Schuldverschreibungen kann die Schuldverschreibungen in Übereinstimmung mit dem Begebungsvertrag übertragen oder umtauschen. Die Registerstelle und der Treuhänder können von dem Inhaber der Schuldverschreibungen unter anderem verlangen, geeignete Indossamente und Übertragungsdokumente beizubringen. Der Emittent kann von dem Inhaber außerdem verlangen, dass er die gesetzlich geforderten oder nach dem Begebungsvertrag vorgesehenen Steuern und Gebühren zahlt. Der Emittent ist nicht verpflichtet, eine zur Rückzahlung ausgewählte Schuldverschreibung zu übertragen und umzutauschen. Darüber hinaus ist der Emittent für einen Zeitraum von 15 Tagen vor einer Auswahl von Schuldverschreibungen zur Rückzahlung nicht verpflichtet, Schuldverschreibungen zu übertragen oder umzutauschen. Der registrierte Inhaber einer Schuldverschreibung wird für alle Zwecke als Eigentümer der Schuldverschreibung behandelt. Für die Registrierung einer Übertragung oder eines Umtauschs



wird keine Gebühr berechnet, der Emittent kann jedoch die Zahlung einer Summe verlangen, die sämtliche Steuern und vergleichbare staatliche Abgaben in diesem Zusammenhang abdeckt.

### **Optionale Rückzahlung**

Der Emittent kann alle oder von Zeit zu Zeit einen Teil der Schuldverschreibungen nach seiner Wahl zu einem Rückzahlungspreis zurückkaufen, der 100 % des Nennbetrags der zurückzukaufenden Schuldverschreibungen zuzüglich der gegebenenfalls bis zum Rückzahlungstag aufgelaufenen Zinsen entspricht, zuzüglich des Betrages, um den

- die durch die Berechnungsstelle (die anfänglich der Treuhänder sein soll) ermittelte Summe der Barwerte der verbleibenden planmäßigen Kapitalrückzahlungen und Zinszahlungen auf die zurückzukaufenden Schuldverschreibungen (nicht eingerechnet der am Rückzahlungstag aufgelaufene Teil dieser Zinszahlungen) vom Rückzahlungstag bis zum Fälligkeitstag, halbjährlich abgezinst auf den Rückzahlungstag (unter der Annahme eines Jahres mit 360 Tagen und zwölf Monaten mit jeweils 30 Tagen) auf Basis der Bund Rate zuzüglich 50 Basispunkten,
- 100 % des Nennbetrags der zurückzukaufenden Schuldverschreibungen übersteigt.

Sofern der Tag der optionalen Rückzahlung an oder nach einem Zinstag und an oder vor dem entsprechenden Zinszahlungstag liegt, werden die bis dahin gegebenenfalls aufgelaufenen und nicht gezahlten Zinsen an denjenigen Rechtsträger gezahlt, unter dessen Name die Schuldverschreibungen an diesem Tag zu Geschäftsschluss (*close of business*) registriert sind. Es werden keine weiteren Zinsen an wirtschaftliche Eigentümer gezahlt, deren Schuldverschreibungen der Rückzahlung durch den Emittenten unterliegen.

Im Falle einer teilweisen Rückzahlung wählt der Treuhänder die Schuldverschreibungen für die Rückzahlung in Übereinstimmung mit den Anforderungen der gegebenenfalls maßgeblichen Hauptwertpapierbörse aus, an der die Schuldverschreibungen zugelassen sind. Falls die Schuldverschreibungen nicht zugelassen sind, erfolgt die Auswahl auf einer pro rata Basis, durch Los oder durch eine andere Methode, die der Treuhänder nach alleinigem Ermessen als geeignet und angemessen erachtet, wobei jedoch keine Schuldverschreibung mit einem anfänglichen Nennbetrag von 1.000 € oder weniger in Teilen zurückgezahlt wird. Falls eine Schuldverschreibung ausschließlich in Teilen zurückgezahlt wird, wird die Bekanntmachung über die Rückzahlung dieser Schuldverschreibungen den zurückzuzahlenden Teilbetrag des Nennbetrags angeben. Eine neue Schuldverschreibung mit einem Nennbetrag, der dem nicht zurückgezahlten Teilbetrag entspricht, wird ausgestellt und an den Treuhänder geliefert, oder im Falle von auf den Namen lautenden Einzelurkunden, nach Kraftloserklärung der ursprünglichen Schuldverschreibung auf den Namen des Inhabers ausgestellt.

### **Rückzahlung aufgrund von Änderungen in der Quellensteuer**

Der Emittent ist berechtigt, die Schuldverschreibungen nach seiner Wahl insgesamt und nicht nur teilweise nach Mitteilung mit einer Frist von nicht weniger als 30 Tagen und nicht mehr als 60 Tagen zu 100 % des Nennbetrags der Schuldverschreibungen zuzüglich etwaiger bis zum Rückzahlungstag aufgelaufener und noch nicht gezahlter Zinsen (vorbehaltlich des Rechts der am jeweiligen Registrierungstag registrierten Inhaber auf Erhalt fälliger Zinsen am jeweiligen Zinszahlungstag) zurückzuzahlen, falls er zum nächsten Zeitpunkt, zu dem Zahlungen in Bezug auf die Schuldverschreibungen erfolgen würden, aus folgenden Gründen verpflichtet wäre, zusätzliche Beträge zu zahlen:

- (a) jeglicher Änderung oder einer Anpassung der Gesetze, Verträge oder Verordnungen jeder Maßgeblichen Steuerrechtsordnung (wie unten definiert); oder
- (b) jeder Änderung oder Anpassung amtlicher Auslegungen bezüglich der Anwendung, Ausführung oder Auslegung solcher Gesetze, Verträge oder Verordnungen oder Entscheidungen (einschließlich der Entscheidung, des Urteils oder Verfügung eines Gerichts einer zuständigen Rechtsordnung);



sofern die Änderung oder Anpassung dieser Gesetze, Verträge, Verordnungen oder der amtlichen Auslegungen an oder nach dem Tag der Begebung der Schuldverschreibungen bekannt gemacht wird und in Kraft tritt (oder, sofern die Maßgebliche Steuerrechtsordnung zu einem späteren Zeitpunkt eine Maßgebliche Steuerrechtsordnung wird, an oder nach diesem späteren Zeitpunkt); vorausgesetzt, dass der Emittent nach vernünftigem Ermessen feststellt, dass die Verpflichtung zur Zahlung solcher zusätzlicher Beträge nicht durch anwendbare angemessene Maßnahmen vermieden werden kann; weiterhin vorausgesetzt, dass zu dem Zeitpunkt, zu dem eine solche Mitteilung erfolgt, eine derartige Verpflichtung zur Zahlung Zusätzlicher Beträge (wie unten definiert) nach wie vor besteht.

Die Mitteilung über eine solche Rückzahlung hat innerhalb von 270 Tagen nach der Bekanntgabe oder dem Inkrafttreten einer solchen Änderung — je nachdem, welches Ereignis früher liegt — zu erfolgen.

### **Zusätzliche Beträge**

*Sämtliche Zahlungen aus bzw.* in Zusammenhang mit den Schuldverschreibungen, die gemäß dem Begebungsvertrag oder einer Schuldverschreibungsgarantie zu leisten sind, erfolgen frei und ohne Abzug oder Einbehalt von bzw. aufgrund von gegenwärtigen oder künftigen Steuern, Abgaben, Veranlagungen oder sonstigen staatlichen Gebühren (einschließlich Strafzahlungen, Zinsen und damit in Zusammenhang stehender sonstiger Verbindlichkeiten), die durch oder im Namen (1) der Vereinigten Staaten, Deutschlands, Luxemburgs, der Niederlande, des Vereinigten Königreichs oder einer Gebietskörperschaft oder staatlichen Behörde eines dieser Länder oder in einem dieser Länder mit der Befugnis zu Erhebung von Steuern, (2) einer Rechtsordnung, von der aus bzw. über die Zahlungen auf die Schuldverschreibungen oder eine der Schuldverschreibungsgarantien erfolgen, oder einer Gebietskörperschaft oder staatlichen Behörde dieser Rechtsordnung oder in dieser Rechtsordnung mit der Befugnis zur Erhebung von Steuern, (3) einer anderen Rechtsordnung, in der die zahlende Partei errichtet ist oder anderweitig als gebietsansässig gilt oder für Steuerzwecke geschäftlich tätig ist, oder von einer Gebietskörperschaft oder staatlichen Behörde dieser Rechtsordnung oder in dieser Rechtsordnung mit der Befugnis zur Erhebung von Steuern (jeweils eine „**Maßgebliche Steuerrechtsordnung**“) auferlegt oder erhoben werden (zusammen „**Steuern**“), es sei denn, der Emittent, der Garantiegeber oder die jeweilige sonstige einbehaltende Stelle ist gesetzlich oder aufgrund der Auslegung von Rechtsnormen durch die entsprechende staatliche Behörde oder Stelle oder deren diesbezügliche Verwaltungspraxis zum Einbehalt oder Abzug von Steuern verpflichtet. Falls der Emittent, der Garantiegeber oder die jeweilige sonstige einbehaltende Stelle zum Einbehalt oder Abzug eines Betrages von bzw. aufgrund von Steuern von einer unter den bzw. auf die Schuldverschreibungen oder eine der Schuldverschreibungsgarantien zu leistenden Zahlung verpflichtet ist, so muss der Emittent bzw. der betreffende Garantiegeber diesen Betrag — „**Zusätzliche Beträge**“ — in der erforderlichen Höhe zahlen, um sicherzustellen, dass der Nettobetrag, den jeder Inhaber nach dem Einbehalt oder Abzug (einschließlich etwaiger einbehaltener oder abgezogener Beträge in Bezug auf diese Zusätzlichen Beträge) erhält, nicht geringer als der Betrag ist, den der Inhaber ohne den Einbehalt oder Abzug dieser Steuern erhalten hätte. Dabei gilt jedoch, dass keine Zusätzlichen Beträge für oder aufgrund von Folgendem zu zahlen sind:

- (a) Steuern, die nicht erhoben worden wären, wenn nicht (i) eine gegenwärtige oder ehemalige Verbindung zwischen dem betreffenden Inhaber (oder einem Treuhänder, Treugeber, Begünstigten, Mitglied oder Gesellschafter dieses Inhabers oder einer Person, die eine Befugnis über diesen Inhaber verfügt) und einer Maßgeblichen Steuerrechtsordnung bestehen würde, unter anderem in der Form, dass der betreffende Inhaber (bzw. Treuhänder, Treugeber, Begünstigte, Mitglied, Gesellschafter oder befugte Person) Staatsbürger der Maßgeblichen Steuerrechtsordnung ist oder war oder dort ansässig ist oder war oder als dort ansässig behandelt wird oder dort ein Gewerbe oder eine Geschäftstätigkeit betreibt oder betrieben hat oder dort eine Betriebsstätte unterhält oder unterhalten hat, mit Ausnahme von Verbindungen, die allein dadurch entstehen, dass ein Inhaber eine Schuldverschreibung oder eine Schuldverschreibungsgarantie hält oder

veräußert bzw. eine Zahlung darunter oder in Bezug auf diese erhält oder darauf Ansprüche geltend macht;

- (b) Steuern, die nicht erhoben worden wären, wenn nicht der Inhaber die betreffende Schuldverschreibung an einem Datum zur Zahlung vorgelegt hätte, das mehr als 30 Tage nach dem Tag, an dem diese Zahlung fällig gewesen wäre oder an dem diese Zahlung ordnungsgemäß bereitgestellt wurde, je nachdem, welcher Tag später liegt;
- (c) jegliche Nachlass- oder Erbschaftsteuer, Schenkungsteuer, Umsatzsteuer, Übertragungssteuer, Steuer auf bewegliche Sachen, Vermögensteuer oder ähnliche Steuern;
- (d) Steuern, die auf andere Weise zahlbar sind als durch Einbehalt von Zahlungen auf oder in Bezug auf die betreffende Schuldverschreibung oder eine der Schuldverschreibungsgarantien;
- (e) Steuern, die nicht erhoben worden wären, wenn nicht versäumt worden wäre, Bescheinigungs-, Informations-, Dokumentations- oder sonstige Berichtspflichten bezüglich der Nationalität, der Ansässigkeit oder der Identität des Inhabers oder wirtschaftlichen Eigentümers der betreffenden Schuldverschreibung bzw. des Zinsscheins oder seiner Verbindung mit einer Maßgeblichen Steuerrechtsordnung einzuhalten, falls der Inhaber gesetzlich berechtigt ist, solche Pflichten einzuhalten, und eine solche Einhaltung aufgrund von Gesetzen oder Vorschriften oder gemäß einem anwendbaren Steuerabkommen als Voraussetzung für eine Entlastung oder Befreiung von solchen Steuern bzw. einer solchen Veranlagung oder sonstigen staatlichen Gebühr vorgeschrieben ist (u.a. die Vorlage eines vollständig und richtig ausgefüllten und unterzeichneten IRS-Formulars W-8 oder W-9 bzw. eines Nachfolgeformulars mit allen erforderlichen Anlagen vor dem Erhalt einer Zahlung auf oder in Bezug auf eine Schuldverschreibung);
- (f) Steuern, die von einem Inhaber zu zahlen sind, der nicht der wirtschaftliche Eigentümer der betreffenden Schuldverschreibung ist, jedoch nur soweit ein wirtschaftlicher Eigentümer keinen Anspruch auf Zahlung zusätzlicher Beträge gehabt hätte, wäre er unmittelbarer Inhaber der Schuldverschreibungen gewesen;
- (g) Einbehalten oder Abzügen von einer Zahlung gemäß (i) der Richtlinie des Rates der Europäischen Union 2003/48/EG oder einer anderen Richtlinie, welche die Ergebnisse der Sitzung des ECOFIN-Rates vom 26. bis 27. November 2000 zur Besteuerung von Zinserträgen umsetzt, oder gemäß einem Gesetz, das diese Richtlinie umsetzt oder befolgt oder erlassen wird, um diese Richtlinie zu befolgen, (ii) Sections 1471-1474 des Internal Revenue Code der Vereinigten Staaten von 1986 in der gültigen Fassung; oder
- (h) einer Kombination der vorstehenden Punkte (a) bis (g).

Der Emittent — oder der entsprechende Garantiegeber, falls dieser die für den Abzug der Quellensteuer zuständige Stelle ist — wird den jeden erforderlichen Einbehalt oder Abzug vornehmen und den abgezogenen oder einbehaltenen Betrag in voller Höhe in der Weise und Frist, in der dies nach anwendbarem Recht erforderlich ist, an die zuständige Behörde überweisen. Der Emittent wird dem Treuhänder innerhalb von 30 Tagen nach dem Datum, an dem eine Zahlung von Steuern nach anwendbarem Recht fällig ist, beglaubigte Kopien der Steuerbescheinigungen, die belegen, dass die betreffende Zahlung von dem Emittenten oder einem der Garantiegeber geleistet wurde, übersenden.

Verweise im Begebungsvertrag oder in den Schuldverschreibungen oder einer der Schuldverschreibungsgarantien — ganz gleich in welchem Zusammenhang — auf (1) die Kapitalrückzahlung, (2) Kaufpreise in Verbindung mit dem Erwerb von Schuldverschreibungen im Rahmen des Begebungsvertrags oder der Schuldverschreibungen, (3) Zinsen oder (4) sonstige in Zusammenhang mit den Schuldverschreibungen zu leistenden Zahlungen beziehen sich auch auf die in diesem Abschnitt beschriebene Zahlung Zusätzlicher Beträge, soweit in dem betreffenden

Zusammenhang Zusätzliche Beträge in Bezug auf die Schuldverschreibungen zu entrichten sind, waren oder wären.

Der Emittent trägt alle derzeit geltenden Stempel-, Gerichts- oder Urkundensteuern sowie etwaige sonstige Verbrauchs- oder Vermögenssteuern oder ähnliche Steuern, Gebühren oder Abgaben (einschließlich etwaiger Strafzahlungen, Zinsen und damit im Zusammenhang stehender sonstiger Verbindlichkeiten), die in den Niederlanden (oder einer Gebietskörperschaft der Niederlande oder in den Niederlanden mit der Befugnis Steuern zu erheben) in Verbindung mit der Ausfertigung, Lieferung und Registrierung der Schuldverschreibungen zum Zeitpunkt der Erstausgabe und des erstmaligen Weiterverkaufs der Schuldverschreibungen oder eines anderen darin genannten Dokuments oder einer anderen darin genannten Urkunde entstehen. Verlegt der Emittent seinen Sitz an einen Ort außerhalb der Niederlande oder liegt der Sitz eines neuen Emittenten außerhalb der Niederlande, so wird der Emittent bzw. neue Emittent sämtliche Stempel-, Gerichts- oder Urkundensteuern sowie etwaige sonstige Verbrauchs- oder Vermögenssteuern oder ähnliche Steuern, Gebühren oder Abgaben (einschließlich etwaiger Strafzahlungen, Zinsen oder damit in Zusammenhang stehender sonstiger Verbindlichkeiten) tragen, die in der Rechtsordnung, in der der Emittent bzw. neue Emittent seinen Sitz hat (oder in einer Gebietskörperschaft von oder in dieser Rechtsordnung, welche die Ermächtigung besitzt, Steuern zu erheben) anfallen und gemäß den zum Zeitpunkt dieser Verlegung geltenden Rechtsnormen von den Inhabern der Schuldverschreibungen in Verbindung mit den Schuldverschreibungen oder einer der Schuldverschreibungsgarantien oder einem anderen darin genannten Dokument oder einer anderen hierin genannten Urkunde oder im Zusammenhang mit der Geltendmachung von Ansprüchen aus den Schuldverschreibungen oder einer der Schuldverschreibungsgarantien oder einem solchen anderen Dokument bzw. einer solchen anderen Urkunde zu zahlen sind.

Die vorstehenden, in diesem Abschnitt enthaltenen Verpflichtungen behalten auch bei einer Beendigung oder Aufhebung des Begebungsvertrags oder der Erfüllung aller Verpflichtungen aus dem Begebungsvertrag ihre Gültigkeit. Bezugnahmen in diesem Abschnitt („— *Zusätzliche Beträge*“) auf den Emittenten oder einen Garantiegeber beziehen sich auch auf deren etwaige Rechtsnachfolger.

### **Kontrollwechsel**

Jeder Inhaber von Schuldverschreibungen hat im Falle des Eintritts eines Kontrollwechselereignisses das Recht, von dem Emittenten den Rückkauf der von ihm gehaltenen Schuldverschreibungen zu einem Kaufpreis in Höhe von 101 % des Nennbetrags zuzüglich etwaiger bis zum Tag des Rückkaufs aufgelaufener und noch nicht gezahlter Zinsen (vorbehaltlich des Rechts der am jeweiligen Registrierungstag registrierten Inhaber auf Erhalt fälliger Zinsen am jeweiligen Zinszahlungstag) zu verlangen.

Innerhalb von 30 Tagen nach dem Eintritt eines Kontrollwechselereignisses wird der Emittent jeden Inhaber sowie in Kopie den Treuhänder schriftlich über folgende Tatbestände in Kenntnis setzen:

- (a) dass ein Kontrollwechselereignis eingetreten ist, und dass damit der jeweilige Inhaber der Schuldverschreibungen das Recht hat, von dem Emittenten den Rückkauf der von ihm gehaltenen Schuldverschreibungen zu einem Kaufpreis von 101 % des Nennbetrags zuzüglich etwaiger bis zum Tag des Rückkaufs aufgelaufener und noch nicht gezahlter Zinsen (vorbehaltlich des Rechts der am jeweiligen Registrierungstag registrierten Inhaber auf Erhalt fälliger Zinsen am jeweiligen Zinszahlungstag) zu verlangen;
- (b) über die Umstände und relevanten Tatsachen betreffend das Kontrollwechselereignis;
- (c) über das Rückkaufdatum (welches nicht früher als 30 Tage und nicht später als 60 Tage nach dem Absenden der schriftlichen Mitteilung liegen darf);
- (d) dass jede Schuldverschreibung nur in einem ganzzahligen Vielfachen von 1.000 € zurückgekauft werden wird; und

- (e) über die durch den Emittenten im Einklang mit den nachfolgend beschriebenen Auflagen festgelegten Anweisungen, die ein Inhaber befolgen muss, damit seine Schuldverschreibungen zurückgekauft werden.

Der Emittent wird, soweit anwendbar, die Vorschriften von Section 14(e) des Exchange Act sowie aller sonstigen einschlägigen Wertpapiergesetze oder Regelungen des Wertpapierrechts im Zusammenhang mit dem Rückkauf von Schuldverschreibungen gemäß dieser Auflage einhalten. Soweit die Bestimmungen einschlägiger Wertpapiergesetze oder Regelungen des Wertpapierrechts oder einschlägige Börsenzulassungsvoraussetzungen im Widerspruch zu den Regelungen dieser Auflage stehen, wird der Emittent die einschlägigen Wertpapiergesetze oder Regelungen des Wertpapierrechts einhalten, wobei insoweit nicht geltend gemacht werden kann, dass er dadurch seine Verpflichtungen aus dieser Auflage verletzt.

Die Rückkaufmöglichkeit für den Fall des Eintritts eines Kontrollwechselereignisses ist das Ergebnis von Verhandlungen zwischen der Gesellschaft und den Konsortialbanken, die die Schuldverschreibungen zunächst übernehmen (*Initial Purchasers*). Wir haben derzeit nicht die Absicht, Transaktionen vorzunehmen, die zu einem Kontrollwechsel führen würden, obgleich es möglich ist, dass wir dies in Zukunft tun werden. Unter Beachtung der unten dargestellten Beschränkungen besteht die Möglichkeit, dass wir in Zukunft Transaktionen einschließlich Akquisitionen, Refinanzierungen und sonstige Neufinanzierungen vornehmen, die nach Maßgabe des Begebungsvertrages keinen Kontrollwechsel darstellen, jedoch die Höhe der dann ausstehenden Verschuldung oder in sonstiger Weise unsere Kapitalstruktur oder unsere Bonitätsratings beeinflussen könnten. Eine Beschreibung, in welcher Weise unsere Möglichkeit, zusätzliche Verschuldung einzugehen, beschränkt ist, ist in der Auflage unter der Überschrift „— *Bestimmte Auflagen — Beschränkungen in Bezug auf das Eingehen von Verschuldung*“ enthalten. Diese Beschränkungen können nur mit Zustimmung der Mehrheit des Nennbetrags der dann unter dem Begebungsvertrag ausstehenden Schuldverschreibungen abbedungen werden. Außer den in dieser Auflage enthaltenen Beschränkungen (solange diese Auflage wirksam ist) wird der Begebungsvertrag keine Auflagen oder Bestimmungen enthalten, die den Inhabern der Schuldverschreibungen im Fall einer durch hohen Fremdkapitaleinsatz finanzierten Transaktion Schutz gewähren.

Die Fähigkeit des Emittenten, Schuldverschreibungen im Falle des Eintritts eines Kontrollwechselereignisses zurückzukaufen, kann durch eine Reihe von Faktoren eingeschränkt sein. Der Eintritt bestimmter Ereignisse, die einen Kontrollwechsel darstellen, würde einen Kündigungstatbestand nach Maßgabe der Kreditvereinbarung 2008 sowie nach Maßgabe der Bestimmungen verschiedener sonstiger Verschuldung der Gesellschaft oder ihrer Tochtergesellschaften darstellen. Dies könnte es dem Emittenten erschweren, die Schuldverschreibungen zurückzukaufen. Die Bestimmungen unserer zukünftigen Verbindlichkeiten können Verbote bei Eintritt bestimmter Ereignisse enthalten, die Kontrollwechselereignisse darstellen, oder vorschreiben, dass derartige Verbindlichkeiten bei Auftreten eines Kontrollwechselereignisses zurückzuführen sind. Ferner könnte die Ausübung des Rechts der Inhaber, von dem Emittenten den Rückkauf der Schuldverschreibungen zu verlangen, selbst dann wegen der finanziellen Auswirkungen eines solchen Rückkaufs auf uns zum Vorliegen eines Kündigungstatbestandes nach Maßgabe der Bestimmungen dieser Verbindlichkeiten führen, wenn das Kontrollwechselereignis an sich nicht dazu führt. Schließlich kann die Fähigkeit des Emittenten, nach dem Eintritt eines Kontrollwechselereignisses den Inhabern der Schuldverschreibungen Zahlung zu leisten, aufgrund unserer dann tatsächlich bestehenden finanziellen Ressourcen eingeschränkt sein. Wir können Ihnen nicht garantieren, dass ausreichende finanzielle Mittel zur Verfügung stehen, wenn diese für die jeweiligen Rückkäufe benötigt werden. Die Bestimmungen des Begebungsvertrages, die sich auf die Pflicht des Emittenten beziehen, ein Angebot zum Rückkauf der Schuldverschreibungen aufgrund des Eintritts eines Kontrollwechselereignisses abgeben zu müssen, können mit schriftlichem Einverständnis der Mehrheit des Nennbetrags der unter dem Begebungsvertrag begebenen Schuldverschreibungen abbedungen oder geändert werden.

### **Bestimmte Auflagen**

Für die Zwecke des Begebungsvertrages werden die FMC AG & Co. KGaA und ihre Tochtergesellschaften nicht als Tochtergesellschaften der Gesellschaft behandelt. Daher gelten diese Auflagen nicht für die FMC AG & Co. KGaA und ihre Tochtergesellschaften und der Begriff „Tochtergesellschaft“ in diesen Auflagen, die Kündigungsgründe und die damit zusammenhängenden Definitionen umfassen nicht die FMC AG & Co. KGaA und ihre Tochtergesellschaften. Allerdings gilt es als Kündigungsgrund unter dem Begebungsvertrag, wenn zu einem Zeitpunkt, zu dem FMC AG & Co. KGaA eine Tochtergesellschaft der Gesellschaft ist (außer zu einem Zeitpunkt, zu dem die Schuldverschreibungen Investment Grade Status erreicht haben und diesen Status behalten) der Nennbetrag von Verschuldung der FMC AG & Co. KGaA oder ihrer Tochtergesellschaften, die vorzeitig fällig gestellt wurden oder welche bei Fälligkeit nicht geleistet wurden, 300 Mio. € übersteigt, und diese vorzeitige Fälligkeit nicht rückgängig gemacht wurde bzw. der Nennbetrag nicht innerhalb von 60 Tagen gezahlt wurde.

### **Beschränkungen in Bezug auf das Eingehen von Verschuldung**

- (a) Die Gesellschaft darf unmittelbar oder mittelbar keine Verschuldung eingehen und ihren Tochtergesellschaften nicht gestatten, unmittelbar oder mittelbar Verschuldung einzugehen. Dies gilt nicht (auch in Bezug auf Übernommene Verschuldung), sofern und soweit zu diesem Zeitpunkt
  - (1) der Konsolidierte Zinsdeckungsgrad der Gesellschaft wenigstens 2,0 zu 1,0 beträgt; und
  - (2) kein Kündigungstatbestand und kein Kündigungsgrund eingetreten ist und fortbesteht oder in Folge des Eingehens von Verschuldung eintreten würde.
- (b) Die in Absatz (a) enthaltenen Beschränkungen sind nicht auf das Eingehen von Verschuldung unter den nachfolgenden Tatbeständen anwendbar:
  - (1) Verschuldung, die gemäß der Kreditvereinbarung 2008 und den damit zusammenhängenden Garantien eingegangen wird, in einem Gesamtnennbetrag, der zu keinem Zeitpunkt US\$ 3,050 Mrd. überschreiten darf;
  - (2) Verschuldung, die zur Deckung des Betriebsmittelbedarfs und zu anderen allgemeinen Unternehmenszwecken im Rahmen von Bankverträgen, Commercial Paper-Programmen oder anderen Verträgen, Fazilitäten oder Programmen eingegangen wird, in einem jeweils ausstehenden Gesamtbetrag von 750 Mio. € ;
  - (3) Verschuldung der Gesellschaft gegenüber einer Tochtergesellschaft oder Verschuldung einer Tochtergesellschaft gegenüber der Gesellschaft, wobei jedoch jede spätere Ausgabe oder Übertragung von Capital Stock, die dazu führt, dass der Gläubiger dieser Verschuldung ein anderer Rechtsträger als die Gesellschaft oder eine andere Tochtergesellschaft ist, bzw. jede spätere Übertragung der Verschuldung (an eine andere Person als die Gesellschaft oder eine Tochtergesellschaft) jeweils so behandelt wird, als wäre die Verschuldung zu diesem Zeitpunkt durch die Gesellschaft bzw. die Tochtergesellschaft eingegangen worden;
  - (4) Verschuldung bedingt durch die Ausgabe der Schuldverschreibungen am Ausgabetag sowie bedingt durch die entsprechenden Schuldverschreibungsgarantien der Gesellschaft und der garantiegebenden Tochtergesellschaft;
  - (5) Finanzierungsleasing-Verpflichtungen bzw. eingegangene Verschuldung, sofern diese ganz oder teilweise zur Finanzierung des Kaufpreises oder zur Abdeckung von Herstellungskosten eines Vermögensgegenstandes oder, im Fall einer Sale- and Lease-back-Transaktion, zur Finanzierung des Werts des der Gesellschaft oder einer Tochtergesellschaft gehörenden Vermögensgegenstandes eingegangen werden;

- (6) Verschuldung (ausgenommen der in Ziffer (1) genannten Verschuldung), die zum Ausgabetag nach Verwendung des Erlöses aus den Schuldverschreibungen aussteht;
  - (7) Refinanzierungsverschuldung für nach Ziffer (4) oder (6) dieses Absatzes (b) eingegangene Verschuldung; oder
  - (8) Hedging-Verpflichtungen, die im Rahmen des gewöhnlichen Geschäftsbetriebs eingegangen werden und nicht spekulativer Natur sind, wobei dies nach Treu und Glauben durch die Gesellschaft zu beurteilen ist;
  - (9) Kundenguthaben und Vorauszahlungen von Kunden für im Rahmen des gewöhnlichen Geschäftsbetriebs erworbene Produkte;
  - (10) Verschuldung der Gesellschaft gegenüber der FMC AG & Co. KGaA oder gegenüber Tochtergesellschaften der FMC AG & Co. KGaA;
  - (11) Verschuldung resultierend aus den Cash Management-Vereinbarungen; und
  - (12) von der Gesellschaft oder einer Tochtergesellschaft der Gesellschaft eingegangene Verschuldung in einem Gesamtnennbetrag, der zusammen mit allen sonstigen Verschuldung der Gesellschaft und ihrer Tochtergesellschaften (mit Ausnahme der nach Absatz (a) oder Ziffer (1) bis (11) dieses Absatzes (b) gestatteten Verschuldung) zum Zeitpunkt des Eingehens der Verschuldung 750 Mio. € nicht überschreiten darf.
- (c) Für die Überprüfung der Einhaltung der zuvor genannten Auflage gilt das Folgende:
- (1) Für den Fall, dass eine Verschuldung unter mehr als einen der zuvor genannten Tatbestände von Verschuldung fällt, steht es der Gesellschaft frei, diese Verschuldung nach eigenem Ermessen zu klassifizieren und gegebenenfalls von Zeit zu Zeit neu zu klassifizieren., wobei es nur erforderlich ist, dass der Betrag und die Art dieser Verschuldung einer der oben genannten Ziffern zugeordnet werden;
  - (2) eine Verschuldung kann auf mehr als eine der vorstehend genannten Arten von Verschuldung aufgeteilt und jeweils unterschiedlich klassifiziert bzw. neu klassifiziert werden; und
  - (3) für den Fall, dass sich Verschuldung auf durch diese Auflage zulässige Garantien für Verschuldung durch Kabi oder Proserve (oder durch irgendeine Tochtergesellschaft, von der verlangt wird, die Verpflichtungen des Emittenten hinsichtlich der Schuldverschreibungen nach Maßgabe der Bestimmungen des Begebungsvertrags zu garantieren) bezieht, sollen derartige Garantien nicht als zusätzliches Eingehen von Verschuldung gewertet werden, vorausgesetzt, dass die entsprechenden Schuldverschreibungsgarantien seitens der Garantiegeber in Kraft bleiben.
- (d) Sofern die Schuldverschreibungen während irgendeines Zeitraums den Investment Grade Status erreicht haben und diesen Status behalten sowie kein Kündigungsgrund vorliegt und weiter besteht (dieser Zeitraum wird nachfolgend als „Investment Grade Status-Zeitraum“ bezeichnet), wird, nachdem die Gesellschaft den Treuhänder mittels eines Officers' Certificate davon in Kenntnis gesetzt hat, dass der Investment Grade Status erreicht wurde, diese Auflage und Ziffer (5) des Abschnitts „— *Kündigungsgründe*“ für die Gesellschaft und ihre Tochtergesellschaften außer Kraft gesetzt und bleibt für die Dauer des Investment Grade Status-Zeitraums außer Kraft und tritt erst wieder in Kraft, wenn der Investment Grade Status- Zeitraum endet.

In der Folge verlieren die Schuldverschreibungen während dieses Zeitraums den Schutz, der ihnen ursprünglich durch diese Auflage und Ziffer (5) des Abschnitts „— *Kündigungsgründe*“ zuteil wurde. Keine Handlung, die während eines Investment Grade Status-Zeitraums vorgenommen wurde oder vor dem Investment Grade Status-Zeitraum unter Einhaltung dieser Auflage erfolgte, muss rückgängig gemacht werden oder stellt einen Verstoß gegen die Schuldverschreibungen dar, sofern diese Auflage später wieder auflebt bzw. außer Kraft gesetzt wird. Der Investment Grade Status-Zeitraum beginnt erst, wenn die Gesellschaft das zuvor genannte Officers' Certificate



zugestellt hat, und endet sofort mit dem Zeitpunkt, zu dem die Schuldverschreibungen den Investment Grade Status verlieren oder ein Kündigungsgrund eintritt.

### **Beschränkungen in Bezug auf die Gewährung von Sicherheiten**

Die Gesellschaft wird unmittelbar oder mittelbar keine Sicherheiten (mit Ausnahme Zulässiger Sicherheiten) an Eigentum oder Vermögensgegenständen (einschließlich Capital Stock) zur Besicherung von Verschuldung bestellen oder eingehen bzw. deren Bestehen zulassen und nicht gestatten, dass eine ihrer Tochtergesellschaften unmittelbar oder mittelbar eine solche Sicherheit bestellt, eingeht oder deren Bestehen zulässt. Dies gilt unabhängig davon, ob die Sicherheiten zur Besicherung von Verschuldung bereits zum Zeitpunkt des Begebungsvertrages der Schuldverschreibungen in deren Eigentum standen oder erst danach erworben wurden. Dies gilt nicht, sofern gleichzeitig (oder vorhergehend) mit oder vor der Gewährung der Sicherheiten wirksame Vorkehrungen getroffen werden, um die Verschuldung aus dem Begebungsvertrag und den Schuldverschreibungen im Verhältnis zu der Besicherung der betreffenden Verschuldung anteilmäßig und gleichrangig und für den gleichen Zeitraum (oder vorhergehend im Fall von Sicherheiten für Nachrangige Verpflichtungen) zu besichern.

### **Beschränkungen in Bezug auf Zusammenschlüsse und die Veräußerung von Vermögensgegenständen**

Der Emittent und die Gesellschaft dürfen nicht mit oder auf einen anderen Rechtsträger verschmelzen und nicht gestatten, dass ein Garantiegeber mit einem bzw. auf einen anderen Rechtsträger verschmilzt (unabhängig davon, ob der Emittent oder der betreffende Garantiegeber der Fortbestehende Rechtsträger ist). Gleiches gilt für die Veräußerung, Abtretung, Übertragung, Vermietung sowie jede sonstige Form der Verfügung über das gesamte Vermögen oder wesentliche Teile des Vermögens im Rahmen einer oder mehrerer zusammenhängenden Transaktionen an einen anderen Rechtsträger. Es sei denn:

- (1) der Fortbestehende Rechtsträger ist eine Gesellschaft, die nach dem Recht Deutschlands, des Vereinigten Königreichs, eines anderen Mitgliedstaates der Europäischen Union (zum Stand vom 31. Dezember 2003), Luxemburgs, der Schweiz, der USA oder eines Bundesstaates der USA oder des District of Columbia oder des Gründungsstaates des Emittenten oder eines Garantiegebers gegründet ist und besteht; oder sofern der Fortbestehende Rechtsträger eine Gesellschaft ist, die nach dem Recht eines anderen Staates gegründet ist und besteht, und der Emittent dem Treuhänder ein Anwaltsgutachten vorlegt, aus dem sich ergibt, dass die Rechte der Inhaber der Schuldverschreibungen hierdurch nicht nachteilig beeinträchtigt werden, soweit als das Recht dieses Staates die Fähigkeit des Fortbestehenden Rechtsträgers betrifft, die mit den Schuldverschreibungen verbundenen Zahlungen und Pflichten zu erfüllen (sofern der Emittent an der Transaktion beteiligt ist) bzw. die mit der Schuldverschreibungsgarantie verbundenen Pflichten zu erfüllen, bzw. die Fähigkeit des Fortbestehenden Rechtsträgers betrifft, sich dazu zu verpflichten, diese Zahlungen zu leisten und Pflichten zu erfüllen, bzw. die Fähigkeit der Schuldverschreibungsinhaber betrifft, diese Verpflichtungen durchsetzen zu können;
- (2) der Fortbestehende Rechtsträger (sofern es sich nicht um den Emittenten oder einen Garantiegeber handelt) übernimmt ausdrücklich (A) im Rahmen einer oder mehrerer Transaktionen mit dem Emittenten durch Abschluss eines den Anforderungen des Treuhänders entsprechenden Nachtrags zum Begebungsvertrag alle Pflichten des Emittenten nach dem Begebungsvertrag, oder (B) im Rahmen einer oder mehrerer Transaktionen mit einer anderen Partei als den Emittenten durch eine den Anforderungen des Treuhänders entsprechende Garantievereinbarung sämtliche Verpflichtungen des betreffenden Garantiegebers nach der Schuldverschreibungsgarantie;
- (3) zum Zeitpunkt einer und unmittelbar nach einer solchen Transaktion ist kein Kündigungsstatbestand oder kein Kündigungsgrund eingetreten und besteht fort; und

- (4) der Emittent oder der betreffende Garantiegeber übermittelt dem Treuhänder ein Officers' Certificate und ein Anwaltsgutachten, aus denen sich jeweils ergibt, dass diese Verschmelzung, Übertragung, Abtretung, Veräußerung, Vermietung oder sonstige Form der Verfügung und der jeweilige Nachtrag zum Begebungsvertrag sowie gegebenenfalls die Garantievereinbarung im Einklang mit dem Begebungsvertrag stehen.

### ***Beschränkungen in Bezug auf Sale- and Lease-back-Transaktionen***

Der Emittent und die Gesellschaft dürfen keine Sale- and Leaseback-Transaktionen vornehmen und es auch keinem Garantiegeber und keiner Tochtergesellschaft gestatten, Sale- and Lease-back-Transaktionen vorzunehmen. Es sei denn:

- (1) der Emittent bzw. der jeweilige Garantiegeber bzw. die jeweilige Tochtergesellschaft erhält zum Zeitpunkt der Vornahme einer Sale- and Lease-back-Transaktion eine Gegenleistung, die mindestens dem Marktwert der von der Transaktion erfassten Vermögensgegenstände entspricht (nachgewiesen durch ein Officers' Certificate durch einen Zuständigen Officer oder bei einem Wert von über 50 Mio. € durch einen Beschluss des Board of Directors des Emittenten, des jeweiligen Garantiegebers oder der jeweiligen Tochtergesellschaft);
- (2) der Emittent bzw. der jeweilige Garantiegeber bzw. die jeweilige Tochtergesellschaft hätte eine Sicherheit an den von der Sale- and Lease-back-Transaktion erfassten Vermögensgegenständen bestellen können, wäre die Transaktion durch Verschuldung finanziert worden, ohne dass dabei die Schuldverschreibungen nach Maßgabe der im Abschnitt „— *Beschränkungen in Bezug auf die Gewährung von Sicherheiten*“ beschriebenen Auflage hätten besichert werden müssen; und
- (3) der Emittent bzw. der jeweilige Garantiegeber oder die jeweilige Tochtergesellschaft kann Verschuldung in Höhe der Zurechenbaren Verschuldung bezüglich der jeweiligen Sale- and Lease-back-Transaktion eingehen.

### **Zusätzliche Schuldverschreibungsgarantien von Tochtergesellschaft**

Falls eine der garantiegebenden Tochtergesellschaften Eigentum, in einer einzigen Transaktion oder eine Reihe verbundener Transaktionen, an eine Tochtergesellschaft der Gesellschaft überträgt, die keine garantiegebende Tochtergesellschaft ist, oder eine solche Übertragung veranlasst, muss die erwerbende Tochtergesellschaft, soweit nicht durch geltendes Recht verboten und nur so lange wie eine der 2013, 2015 oder 2016 fälligen Schuldverschreibungen ausstehen:

- (1) einen zusätzlichen Begebungsvertrag in einer für den Treuhänder angemessenen Form ausfertigen und an den Treuhänder aushändigen, indem die Tochtergesellschaft eine unbedingte Garantie für alle Verpflichtungen des Emittenten unter den Schuldverschreibungen und dem Begebungsvertrag nach Maßgabe der im Begebungsvertrag enthaltenen Bedingungen abgibt; und
- (2) dem Treuhänder eine entsprechende rechtliche Stellungnahme übergeben, dass der zusätzliche Begebungsvertrag von dieser Tochtergesellschaft ordnungsgemäß genehmigt, ausgefertigt und geliefert worden ist und eine rechtmäßige, gültige, verbindliche und durchsetzbare Verpflichtung dieser Tochtergesellschaft darstellt. Danach ist diese Tochtergesellschaft ein Garant für alle Zwecke des Begebungsvertrags.

Ungeachtet dessen kann jede garantiegebende Tochtergesellschaft Eigentum in einem Wert von nicht mehr als 5% ihres EBITDA, wie in ihrem Abschluss ausgewiesen, in einer einzigen Transaktion oder eine Reihe verbundener Transaktionen übertragen (oder die hierfür die Übertragung veranlassen).

Solange die Schuldverschreibungen in der offiziellen Liste der Luxemburger Wertpapierbörse gelistet sind und die Regeln dieser Börse es erfordern, wird die Mitteilung für jede weitere Tochtergesellschaft, die eine garantiegebende Tochtergesellschaft geworden ist, der Luxemburger Wertpapierbörse für die Veröffentlichung auf ihrer Internetseite ([www. bourse.lu](http://www.bourse.lu)) zur Verfügung



gestellt werden, und der Emittent wird einen Nachtrag in Bezug auf diese garantiegebende Tochtergesellschaft für die Luxemburger Wertpapierbörse vorbereiten.

## **Berichte**

Solange Schuldverschreibungen ausstehen, wird die Gesellschaft dem Treuhänder die folgenden Dokumente (in physischer oder elektronischer Form, wie zwischen der Gesellschaft und dem Treuhänder vereinbart) vorlegen:

- (1) ihren Konzernjahresabschluss und den dazugehörigen Anhang für die letzten zwei Geschäftsjahre, erstellt in Übereinstimmung mit GAAP (oder IFRS mit einer entsprechenden Überleitung auf GAAP, sofern die Gesellschaft nach geltendem Recht verpflichtet ist, ihren Jahresabschluss nach IFRS zu erstellen), einschließlich Segmentangaben einschließlich eines darüber erstellten Bestätigungsvermerks, zusammen mit einer Erläuterung der „Ertragslage“ und der „Liquidität“ für diese Geschäftsjahre in einer Form, die im Wesentlichen dem in diesem Dokument enthaltenen Abschnitt „Management’s Discussion and Analysis of Financial Condition and Results of Operation“ entspricht, sowie einen „Überblick über das Geschäftsjahr“ und eine Darstellung der „Unternehmensbereiche“ in einer Form, die ihrem Geschäftsbericht entspricht, eine Beschreibung der „Geschäftsbeziehungen mit nahe stehenden Personen“ sowie eine Beschreibung der Verschuldung, wobei diese Dokumente innerhalb von 90 Tagen nach Ende eines jeden Geschäftsjahres vorzulegen sind; und
- (2) Konzernquartalsberichte für den Zeitraum vom Beginn eines jeden Jahres bis zum Ende jedes Geschäftsquartals (ausgenommen das vierte Geschäftsquartal) zusammen mit vergleichbaren Informationen für das entsprechende Quartal des Vorjahres sowie eine Zusammenfassung in Form „Management’s Discussion and Analysis of Financial Conditions and Results of Operations“, die eine kurze Erläuterung der Ertragslage in dem Quartal enthält, wobei diese Dokumente innerhalb von 45 Tagen nach Ende des Geschäftsquartals vorzulegen sind.

Gleichzeitig mit der Vorlage jedes vorstehend genannten Berichts wird die Gesellschaft außerdem an geeignete international anerkannte Wirtschaftsinformationsdienste eine Pressemitteilung bezüglich des jeweiligen Berichts übermitteln und (i) die jeweiligen Berichte auf der zum jeweiligen Zeitpunkt von der Gesellschaft unterhaltenen Internetseite veröffentlichen oder (ii) diese Berichte in anderer im Wesentlichen vergleichbaren Weise öffentlich zugänglich machen.

Ferner wird die Gesellschaft, solange die Schuldverschreibungen ausstehen und während aller Zeiträume, in denen der Emittent oder die Gesellschaft nicht Section 13 oder 15(d) des Securities Exchange Act der Vereinigten Staaten von 1934 in seiner jeweils geltenden Fassung (der „**Exchange Act**“) unterliegt und nicht gemäß Rule 12g3-2(b) des Exchange Act eine Ausnahmeregelung auf sie anwendbar ist, an jeden Inhaber bzw. wirtschaftlichen Eigentümer von Schuldverschreibungen, die ursprünglich in den Vereinigten Staaten an „qualifizierte institutionelle Anleger“ (*qualified institutional buyer*) im Sinne von Rule 144A des Securities Act der Vereinigten Staaten von 1933 in seiner jeweils geltenden Fassung (der „**Securities Act**“) gemäß dieser Rules angeboten und verkauft wurden, sowie an jeden zukünftigen Kaufinteressenten der Schuldverschreibungen in den Vereinigten Staaten, der von dem Inhaber oder wirtschaftlichen Eigentümer benannt wird, auf Anfrage die gemäß Rule 144A(d)(4) des Securities Act bereitzustellenden Informationen übersenden.

## **Beteiligung an dem Emittenten**

Der Begebungsvertrag bestimmt, dass die Gesellschaft weiterhin unmittelbar oder mittelbar 100 % des Capital Stock des Emittenten bzw. eines zulässigen Rechtsnachfolgers des Emittenten halten wird, vorausgesetzt, dass ein nach dem Begebungsvertrag zulässiger Rechtsnachfolger der Gesellschaft in die Eigentümerstellung der Gesellschaft an dem Capital Stock eintreten kann.

*Die Gesellschaft wird den Emittenten bzw. ihren Rechtsnachfolger veranlassen, Handlungen vorzunehmen, die (i) für die Ausgabe und den Verkauf der Schuldverschreibungen und aller nach*

dem Begebungsvertrag zulässigen zusätzlichen Verschuldung und die Weiterleitung oder Ausschüttung der entsprechenden Erlöse an die Gesellschaft und ihre Tochtergesellschaften und die Erfüllung ihrer Verpflichtungen hinsichtlich der Schuldverschreibungen und dieser zusätzlichen Verschuldung nach Maßgabe der entsprechenden Bedingungen bzw. des Begebungsvertrages oder jedes sonstigen Begebungsvertrages erforderlich oder zweckdienlich sind oder damit verbunden sind und/oder (ii) für konzerninterne Finanzierungstransaktionen mit der Gesellschaft oder einer ihrer Tochtergesellschaften (einschließlich des Erwerbs, der Veräußerung oder eines sonstigen Erhalts oder einer sonstigen Übertragung von Finanzinstrumenten an die Gesellschaft bzw. eine ihrer Tochtergesellschaften) oder von der Gesellschaft oder einer ihrer Tochtergesellschaften gemäß dem Begebungsvertrag, erforderlich oder zweckdienlich sind oder damit verbunden sind.

### ***Ersetzung des Emittenten***

Die Gesellschaft, jeder sonstige Garantiegeber oder eine Finanzierungstochtergesellschaft (ein „**Rechtsnachfolger**“) kann die Verpflichtungen des Emittenten aus den Schuldverschreibungen durch Unterzeichnung und Übersendung folgender Dokumente an den Treuhänder übernehmen: (a) eines Nachtrags zum Begebungsvertrag, durch welchen der betreffende Rechtsträger den Bestimmungen des jeweiligen Begebungsvertrags unterworfen wird sowie (b) eines Anwaltsgutachtens, welches bestätigt, dass der Nachtrag zum Begebungsvertrag von dem Rechtsträger ordnungsgemäß genehmigt und unterzeichnet wurde und für den Rechtsträger eine gültige, rechtlich verpflichtende und durchsetzbare Verpflichtung begründet, vorbehaltlich der üblichen Ausnahmen. Dies gilt mit der Maßgabe, dass (i) der Rechtsnachfolger nach dem Recht der Vereinigten Staaten von Amerika oder eines Bundesstaates der Vereinigten Staaten oder des Districts of Columbia, Deutschlands, der Niederlande, des Vereinigten Königreichs oder eines anderen Mitgliedstaates der Europäischen Union (zum Stand vom 31. Dezember 2003) gegründet worden sein muss und (ii) keine Zusätzlichen Beträge hinsichtlich der Schuldverschreibungen zum Zeitpunkt der Übernahme bzw. aufgrund einer zu diesem Zeitpunkt nach vernünftigem Ermessen absehbaren Änderung der Gesetze des Gründungsstaates des Rechtsnachfolgers zu zahlen sind bzw. in der Zukunft zu zahlen wären. Der Rechtsnachfolger ersetzt den Emittenten und kann alle Rechte und Befugnisse des Emittenten gemäß dem Begebungsvertrag mit derselben Wirkung ausüben als wäre er der Emittent. Gleichzeitig wird der bisherige Emittent von allen Verpflichtungen und Auflagen gemäß dem Begebungsvertrag und den Schuldverschreibungen befreit.

### ***Kündigungsgründe***

Der Begebungsvertrag bestimmt, dass jedes einzelne oder mehrere der nachfolgenden Ereignisse, das eingetreten ist und noch anhält, einen „Kündigungsgrund“ für die auf Grundlage des jeweiligen Begebungsvertrags begebenen Schuldverschreibungen darstellt:

- (1) Nichtzahlung von Zinsen auf die Schuldverschreibungen innerhalb von 30 Tagen nach Fälligkeit, einschließlich etwaiger Zusätzlicher Beträge; oder
- (2) Nichtzahlung des Kapitalbetrags oder eines eventuellen Aufschlags (*premium*) der Schuldverschreibungen bei Fälligkeit, unabhängig davon, ob die Fälligkeit durch Laufzeitablauf, Rückzahlung, Erklärung oder auf sonstige Art und Weise eingetreten ist; oder
- (3) Nichtbeachtung oder Nichterfüllung jeglicher anderer in dem Begebungsvertrag enthaltener Auflagen über einen Zeitraum von 60 Tagen ab Kenntnis in Übereinstimmung mit den Vorschriften des Begebungsvertrags; oder
- (4) Vorliegen eines Kündigungstatbestandes unter einer Hypothek (*mortgage*), einem Begebungsvertrag oder einem sonstigen Instrument, mit der bzw. dem Verbindlichkeiten aus von uns oder einer unserer Tochtergesellschaften als Darlehen aufgenommenen Geldern begründet, besichert oder nachgewiesen werden (oder deren Zahlung durch die Gesellschaft garantiert worden ist), unabhängig davon, ob die Verschuldung oder Garantie gegenwärtig bestehen oder erst nach dem Ausgabetag eingegangen werden, wenn (A) durch den Kündigungstatbestand die Verschuldung vorzeitig — vor Ablauf des

festgelegten Fälligkeitsdatums — fällig gestellt werden oder ein Zahlungsverzug in Bezug auf diese Verschuldung begründet wird und (B) der Nennbetrag dieser Verschuldung, die vorzeitig fällig gestellt wurden oder welche bei Fälligkeit nicht geleistet wurden, wenn er zu dem Gesamtnennbetrag der gesamten sonstigen Verschuldung zu diesem Zeitpunkt hinzuaddiert wird, die vorzeitig fällig gestellt wurden oder welche bei Fälligkeit nicht geleistet wurden, 75 Mio. € übersteigt, oder

- (5) zu irgendeinem Zeitpunkt, zu dem FMC AG & Co. KGaA eine Tochtergesellschaft der Gesellschaft ist, wurde der Gesamtnennbetrag von Verschuldung der FMC AG & Co. KGaA oder ihrer Tochtergesellschaften in Höhe von mehr als 300 Mio. € vorzeitig fällig gestellt oder bei Fälligkeit nicht gezahlt, und diese vorzeitige Fälligestellung wurde nicht rückgängig gemacht bzw. der (der aufgrund vorzeitiger Fälligestellung oder Endfälligkeit) fällige Betrag wurde nicht innerhalb von mindestens 60 Tagen ab dem Tag der vorzeitigen Fälligestellung oder Endfälligkeit gezahlt; oder
- (6) jedes rechtskräftige Urteil (nicht durch eine Versicherung abgedeckt) auf Verurteilung zu einer Geldleistung in Höhe von mehr als 75 Mio. € gegen die Gesellschaft oder eine ihrer Tochtergesellschaften, deren Zahlung nicht innerhalb von 60 aufeinanderfolgenden Tagen, während derer kein Vollstreckungshindernis besteht, geleistet wird; oder
- (7) eine Schuldverschreibungsgarantie ist in Übereinstimmung mit den auf diese anwendbaren Regelungen aus irgendeinem Grund nicht mehr wirksam, es sei denn, dies beruht auf den Regelungen des Begebungsvertrags für die Entbindung von Schuldverschreibungsgarantien oder der vollständigen Erfüllung aller diesbezüglicher Verpflichtungen, oder die Schuldverschreibungsgarantie wird, aus anderen Gründen als in ihren Bedingungen festgelegt, für unwirksam oder undurchsetzbar erklärt oder einer der Garantiegeber weist die Verpflichtungen aus der Schuldverschreibungsgarantie oder aus dem Begebungsvertrag zurück, leugnet diese oder lehnt sie ab; oder
- (8) bestimmte Ereignisse im Rahmen einer Insolvenz oder Restrukturierung der Gesellschaft, des Emittenten oder einer Wesentlichen Tochtergesellschaft der Gesellschaft.

Ein Kündigungstatbestand im Sinne von (3) dieses Abschnitts stellt keinen Kündigungsgrund für den Begebungsvertrag dar, solange nicht der Treuhänder oder die Inhaber von 25 % des Nennbetrags der aufgrund des Begebungsvertrags begebenen Schuldverschreibungen dies dem Emittenten und der Gesellschaft anzeigen und dieser Kündigungstatbestand nicht innerhalb der in (3) festgelegten Frist geheilt wird. Während eines Zeitraums, in dem die Schuldverschreibungen Investment Grade Status erreicht haben, gilt das Eintreten oder Beibehalten eines Kündigungstatbestandes im Sinne von (5) dieses Abschnitts nicht als Kündigungsgrund für die Schuldverschreibungen.

Der Treuhänder und die Inhaber von mindestens 25 % des ausstehenden Gesamtnennbetrags der Schuldverschreibungen sind befugt, unmittelbar mit dem Eintritt eines Kündigungsgrundes gemäß dem Begebungsvertrag den Kapitalbetrag, einen etwaigen Aufschlag (*premium*) sowie aufgelaufene und noch nicht gezahlte Zinsen (einschließlich Zusätzlicher Beträge) auf die Schuldverschreibungen fällig zu stellen; vorausgesetzt, dass nach einer solchen vorzeitigen Fälligestellung die Inhaber einer Mehrheit des Gesamtnennbetrags der ausstehenden Schuldverschreibungen das Recht haben, unter bestimmten Voraussetzungen die vorgenannte vorzeitige Fälligestellung rückgängig zu machen und aufzuheben, sofern und soweit die Rückgängigmachung nicht im Widerspruch zu einem Urteil oder einem Beschluss eines zuständigen Gerichts steht und alle Kündigungsgründe gemäß dem Begebungsvertrag außer der Nichtzahlung des vorzeitig fällig gestellten Kapitalbetrags geheilt wurden oder diesbezüglich Verzicht erklärt wurde, wie in dem Begebungsvertrag vorgesehen.

Vorbehaltlich der Regelungen des Begebungsvertrages, die sich auf die Pflichten des Treuhänders beziehen, ist der Treuhänder für den Fall, dass ein Kündigungsgrund besteht und andauert, nicht verpflichtet, die ihm unter dem Begebungsvertrag zustehenden Rechte und Befugnisse auf Aufforderung oder Anweisung von Inhabern von unter dem Begebungsvertrag

begebenen Schuldverschreibungen hin auszuüben, sofern nicht diese Inhaber schriftlich zugestimmt haben, den Treuhänder in vollem Umfang freizustellen. Vorbehaltlich der Regelungen für die Freistellung des Treuhänders haben die Inhaber einer Mehrheit des Gesamtnennbetrags der auf der Grundlage des Begebungsvertrags begebenen und ausstehenden Schuldverschreibungen das Recht, die Zeit, den Ort und die Art und Weise der Durchführung eines Verfahrens zur Durchsetzung von Rechtsansprüchen des Treuhänders oder die Ausübung der dem Treuhänder übertragenen Rechte und Befugnisse zu wählen.

Kein Inhaber von Schuldverschreibungen hat das Recht, Verfahren in Bezug auf den Begebungsvertrag oder in Bezug auf Rechtsansprüche anzustrengen, es sei denn, dem Treuhänder wurde der andauernde Kündigungsgrund nach den Bestimmungen des Begebungsvertrags schriftlich mitgeteilt und eine vollumfängliche Freistellung für die Anstrengung eines Verfahrens als Treuhänder angeboten, und der Treuhänder hat von den Inhabern der Mehrheit des Gesamtnennbetrags der gemäß dem Begebungsvertrag ausgegebenen und ausstehenden Schuldverschreibungen keine dem widersprechende Anweisung erhalten und innerhalb von 60 Tagen kein Verfahren angestrengt. Die vorgenannten Einschränkungen gelten nicht für eine Klage auf Kapitalrückzahlung und Zahlung eines etwaigen Aufschlags (*premium*) oder Zinsen auf eine Schuldverschreibung an oder nach den in den Bedingungen der Schuldverschreibung angegebenen Fälligkeitsterminen, die durch einen Inhaber dieser Schuldverschreibung erhoben wird.

Die Inhaber der Mehrheit des ausstehenden Gesamtnennbetrags der Schuldverschreibungen haben das Recht, im Namen aller Inhaber der gesamten Emission von Schuldverschreibungen auf die Geltendmachung von Kündigungstatbeständen zu verzichten, mit Ausnahme von Kündigungstatbeständen in Bezug auf die Kapitalrückzahlung oder die Zahlung eventueller Aufschläge (*premium*) oder von Zinsen oder Kündigungstatbeständen in Bezug auf eine Auflage oder Bestimmung, die nicht ohne die Zustimmung der Inhaber jeder betroffenen Schuldverschreibung geändert oder angepasst werden darf. Der Emittent ist verpflichtet, einmal jährlich bei dem Treuhänder eine Bescheinigung einzureichen, in der ausgeführt wird, ob er sich in Übereinstimmung mit allen Bestimmungen und Auflagen des Begebungsvertrags befindet.

## **Änderungen und Verzicht**

Mit bestimmten Ausnahmen kann der Begebungsvertrag mit Zustimmung der Inhaber der Mehrheit des Nennbetrags der zu diesem Zeitpunkt ausstehenden Schuldverschreibungen geändert oder ergänzt werden (einschließlich Zustimmungen, die im Zusammenhang mit dem Rückkauf von Schuldverschreibungen oder im Rahmen eines Rückkauf- oder Umtauschangebots für Schuldverschreibungen abgegeben werden). Ebenso kann mit bestimmten Ausnahmen mit Zustimmung der Inhaber der Mehrheit des Nennbetrags der zu diesem Zeitpunkt ausstehenden Schuldverschreibungen auf die Rechte, die sich aus einem bestehenden Kündigungstatbestand ergeben, oder auf die Einhaltung von bestimmten Vorschriften verzichtet werden (einschließlich Zustimmungen, die im Zusammenhang mit dem Rückkauf von Schuldverschreibungen oder im Rahmen eines Rückkauf- oder Umtauschangebots für Schuldverschreibungen abgegeben werden).

Ohne die Zustimmung sämtlicher Inhaber einer ausstehenden Schuldverschreibung dürfen jedoch keine Änderungen beschlossen werden, die (in Bezug auf von einem nicht zustimmenden Inhaber gehaltene Schuldverschreibungen) unter anderem

- (1) den prozentualen Anteil des Nennbetrags von Schuldverschreibungen, deren Inhaber einer Änderung zustimmen müssen, reduzieren;
- (2) den Nominalzinssatz einer Schuldverschreibung verringern oder die Fälligkeit der Zinszahlung hinausschieben;
- (3) den Nennbetrag der Schuldverschreibung reduzieren oder die Vereinbarte Laufzeit der Schuldverschreibung verlängern;
- (4) den Zeitpunkt verändern, zu dem die Schuldverschreibung zurückgezahlt werden kann (siehe hierzu oben unter „— Optionale Rückzahlung“);

- (5) den Aufschlag (*premium*) einer Schuldverschreibung verringern, der bei Rückzahlung zahlbar ist, den Zeitpunkt ändern, zu dem die Schuldverschreibung zurückgekauft werden kann, oder die zu den Bestimmungen im Abschnitt „*Kontrollwechsel*“ gehörigen Definitionen ändern, nachdem die Verpflichtung zum Rückkauf der Schuldverschreibungen entstanden ist;
- (6) die Tilgung einer Schuldverschreibung in einer anderen als der unter der Schuldverschreibung angegebenen Währung vorsehen;
- (7) das Recht eines Inhabers einer Schuldverschreibung, die Zahlung eines etwaigen Aufschlags (*premium*), die Kapitalrückzahlung oder Zinszahlungen am oder nach den jeweiligen Fälligkeitszeitpunkten zu erhalten oder ein Verfahren zur Durchsetzung von Zahlungen auf oder im Zusammenhang mit den Schuldverschreibungen dieses Inhabers einzuleiten, beeinträchtigen; oder
- (8) Änderungen an den Änderungsbestimmungen, zu deren Wirksamkeit die Zustimmung jedes Inhabers der Schuldverschreibungen erforderlich ist, oder an den Bestimmungen über Verzichte vorsehen.

Ohne Zustimmung der Inhaber von Schuldverschreibungen dürfen der Emittent und der Treuhänder den Begebungsvertrag dahingehend ändern, dass

- (1) nicht eindeutige Teile des Begebungsvertrags sowie Lücken, Fehler oder Widersprüche geheilt werden;
- (2) die Verpflichtungen des Emittenten aus dem Begebungsvertrag oder eines Garantiegebers (der nicht die Gesellschaft ist) aus Schuldverschreibungsgarantien durch eine juristische Person übernommen werden;
- (3) nicht in Einzelurkunden verbrieft Schuldverschreibungen neben oder anstatt in Einzelurkunden verbrieft Schuldverschreibungen ausgegeben werden;
- (4) zusätzliche Garantien für die Schuldverschreibungen gestellt werden;
- (5) die Schuldverschreibungen besichert werden;
- (6) für den Emittenten und die Garantiegeber zusätzliche Auflagen zugunsten der Inhaber von Schuldverschreibungen gelten oder dem Emittenten zugewiesene Rechte aufgegeben werden;
- (7) die Ausgabe weiterer Schuldverschreibungen gemäß dem Begebungsvertrag vorgesehen wird;
- (8) Änderungen vorgenommen werden, die die Rechte der Inhaber von Schuldverschreibungen nicht beeinträchtigen;
- (9) die Annahme und Bestellung eines Nachfolgetreuhänders gemäß dem Begebungsvertrag nachgewiesen und vorgesehen wird;
- (10) der Wortlaut des Begebungsvertrages, der Schuldverschreibungen oder der Schuldverschreibungsgarantien mit einer Bestimmung dieser „*Beschreibung der Schuldverschreibungen*“ in Einklang gebracht wird, sofern eine Bestimmung dieser „*Beschreibung der Schuldverschreibungen*“ ein wörtliches Zitat einer Bestimmung des Begebungsvertrages, der Schuldverschreibungen oder der Schuldverschreibungsgarantien sein sollte; oder
- (11) die Bestimmungen einer maßgeblichen Wertpapierverwahrstelle eingehalten werden.

Für die Genehmigung der Form einer beabsichtigten Änderung des Begebungsvertrags oder eines Verzichts auf Rechte unter dem Begebungsvertrag ist gemäß dem Begebungsvertrag nicht die Zustimmung der Inhaber erforderlich. Es ist ausreichend, wenn die Zustimmung zum Inhalt der Änderung oder des Verzichts erteilt wird. Nachdem eine Änderung oder Ergänzung des Begebungsvertrags oder ein Verzicht auf Rechte unter dem Begebungsvertrag wirksam wird, muss

der Emittent die Inhaber der Schuldverschreibungen über die Änderung, Ergänzung oder den Verzicht auf dem Postweg schriftlich benachrichtigen und die Änderung, Ergänzung oder den Verzicht darin kurz inhaltlich beschreiben. Das Versäumnis der Benachrichtigung oder eine fehlerhafte oder unvollständige Benachrichtigung haben auf die Wirksamkeit einer Änderung, Ergänzung oder eines Verzichts keinen Einfluss.

### **Aufhebung (Defeasance)**

Der Emittent kann jederzeit alle seine Verpflichtungen aus den Schuldverschreibungen und dem Begebungsvertrag kündigen („rechtliche Aufhebung“), mit Ausnahme bestimmter Verpflichtungen, insbesondere solcher betreffend die Aufhebungs-Treuhand (*defeasance trust*) und Verpflichtungen, die Übertragung oder den Umtausch der Schuldverschreibungen zu registrieren, sowie beschädigte, zerstörte, verlorengegangene oder gestohlene Schuldverschreibungen zu ersetzen und in Bezug auf die maßgeblichen Schuldverschreibungen ein Register und eine Zahlstelle zu führen.

Der Emittent kann jederzeit seine Verpflichtungen aus den Auflagen, die unter „Bestimmte Auflagen“ (mit Ausnahme derjenigen unter „— Beschränkungen in Bezug auf Zusammenschlüsse und die Veräußerung von Vermögensgegenständen“) beschrieben sind, den Eintritt eines Cross Default bei Zahlungsverzug, die wechselseitigen Regelungen zur vorzeitigen Fälligkeit, die Insolvenzregelungen in Bezug auf Tochtergesellschaften, die Regelungen des Urteils-Kündigungsgrundes im Abschnitt „Kündigungsgründe“ und die Beschränkungen in Ziffer (4) des Abschnitts „Bestimmte Auflagen — „Beschränkungen in Bezug auf Zusammenschlüsse und die Veräußerung von Vermögensgegenständen“ („Auflagen-Aufhebung“).

Der Emittent darf sein Recht zur rechtlichen Aufhebung (*legal defeasance*) auch dann ausüben, wenn er im Vorfeld bereits Gebrauch von dem Recht zur Auflagen-Aufhebung gemacht hat. Übt der Emittent sein Recht zur rechtlichen Aufhebung aus, darf die Zahlung für die Schuldverschreibungen nicht wegen eines Kündigungsgrundes in Bezug auf diese Schuldverschreibungen vorzeitig fällig gestellt werden. Übt der Emittent sein Recht zur Auflagen-Aufhebung aus, darf die Zahlung für die Schuldverschreibungen nicht wegen eines in Ziffer (3), (4), (5) oder (6) (nur in Bezug auf andere Tochtergesellschaften als den Emittenten) des obigen Abschnitts „— Kündigungsgründe“ dargestellten Kündigungsgrundes oder wegen der Nichteinhaltung durch den Emittenten von Ziffer (4) des Abschnitts „Bestimmte Auflagen — „Beschränkungen in Bezug auf Zusammenschlüsse und die Veräußerung von Vermögensgegenständen“ vorzeitig fällig gestellt werden.

Um das Recht zur Aufhebung ausüben zu können, muss der Emittent zugunsten der Inhaber unwiderruflich Euro bzw. auf Euro lautende Designated Government Obligations für die Zwecke der Kapitalrückzahlung, der Zahlung eines etwaigen Aufschlags (*premium*) und der eventuellen Zahlung von Zinsen auf die Schuldverschreibungen bis zur Rückzahlung oder Fälligkeit bei dem Treuhänder zur treuhänderischen Verwahrung hinterlegen (die „Aufhebungs-Treuhand“ (*defeasance trust*) und darüber hinaus bestimmte zusätzliche Anforderungen erfüllen, zu denen unter anderem gehört, dem jeweiligen Treuhänder folgende Dokumente zu übermitteln:

- (1) ein Anwaltsgutachten (unter Berücksichtigung üblicher Ausnahmen und Ausschlüsse) dahingehend, dass die Hinterlegung und die Aufhebung für Inhaber der Schuldverschreibungen nach Maßgabe des U.S. Bundes-Einkommensteuerrechts weder als Einkommen, Gewinn noch als Verlust zu qualifizieren ist und dass die Inhaber in identischem Umfang, identischer Art und Weise und im identischen Zeitpunkt einkommensteuerpflichtig sind, wie es der Fall wäre, wenn die Hinterlegung und Aufhebung nicht eingetreten wären. Für den Fall einer rechtlichen Aufhebung muss das Anwaltsgutachten auf einer Entscheidung der U.S. Bundessteuerbehörde (*Internal Revenue Service*) oder einer anderweitigen Anpassung des U.S. Bundeseinkommensteuerrechts basieren; und
- (2) ein Anwaltsgutachten aus der Bundesrepublik Deutschland (unter Berücksichtigung üblicher Ausnahmen und Ausschlüsse) dahingehend, dass die Hinterlegung und die Aufhebung für Inhaber der Schuldverschreibungen nach Maßgabe des Einkommensteuerrechts der Bundesrepublik Deutschland weder als Einkommen, Gewinn



noch als Verlust zu qualifizieren ist und dass die Inhaber in Deutschland in identischem Umfang, identischer Art und Weise und im identischen Zeitpunkt einkommensteuerepflichtig sind, wie es der Fall wäre, wenn die Hinterlegung und Aufhebung nicht eingetreten wären.

### ***Keine persönliche Haftung der Geschäftsführer, leitenden Angestellten, Mitarbeiter und Anteilseigner***

Die Mitglieder des Board of Directors, die Geschäftsführer, die leitenden Angestellten, die Mitarbeiter, die Gründer oder die Anteilseigner des Emittenten, der Gesellschaft, der Komplementärin der Gesellschaft oder der anderen Garantiegeber haften jeweils nicht persönlich für die Verpflichtungen des Emittenten oder eines Garantiegebers aus den Schuldverschreibungen, dem Begebungsvertrag oder den Schuldverschreibungsgarantien sowie ferner nicht für jeden sonstigen Anspruch, der sich basierend auf, in Bezug auf oder aufgrund dieser Verpflichtungen oder deren Entstehen ergibt. Jeder Inhaber erteilt durch die Annahme der Schuldverschreibung einen Verzicht auf und eine Freistellung von derartigen Haftungsansprüchen. Jeder Inhaber erklärt sich ferner damit einverstanden, keine Ansprüche im Zusammenhang mit den Schuldverschreibungen, dem Begebungsvertrag oder den Schuldverschreibungsgarantien geltend zu machen, sofern hieraus eine solche persönliche Haftung resultieren könnte. Dieser Verzicht und die Freistellung sind Teil der Gegenleistung für die Ausgabe der Schuldverschreibungen und der Schuldverschreibungsgarantien. Der Verzicht und die Freistellung sind unter Umständen nicht geeignet, Ansprüche nach Maßgabe der U.S.-amerikanischen bundesstaatlichen Wertpapiergesetze auszuschließen und verstoßen nach Auffassung der SEC gegen die öffentliche Ordnung. Des Weiteren sind der Verzicht und die Freistellung unter Umständen nach deutschem Recht nicht wirksam.

### **Einverständnis mit Gerichtsstand und Zustellungsregeln**

Nach Maßgabe des Begebungsvertrages stimmt der Emittent unwiderruflich jedweder Zustellung im Rahmen von Rechtsstreitigkeiten bezüglich des Begebungsvertrages und der Schuldverschreibungen durch einen Federal Court oder State Court im Bezirk Manhattan, New York, USA, zu und erkennt die Zuständigkeit dieses Federal Court oder State Court an.

### ***Betreffend den Treuhänder***

Die Deutsche Trustee Company Limited ist der Treuhänder nach Maßgabe des Begebungsvertrages und wurde von dem Emittenten als Registerstelle (im Fall von auf den Namen lautenden Einzelurkunden) für die Schuldverschreibungen bestimmt. Der Hauptsitz des Treuhänder befindet sich in Winchester House, 1 Great Winchester Street, London EC2N 2DB, United Kingdom. Ein mit dem Treuhänder verbundenes Unternehmen wurde zur Zahlstelle für die Schuldverschreibungen bestellt. Der Treuhänder authentifiziert jede Globalurkunde sowie jede auf den Namen lautende Einzelurkunde und ist als Registerstelle für die Übertragung und Registrierung der nach Maßgabe des Begebungsvertrages umgetauschten Schuldverschreibungen zuständig. Im Falle des Eintritts eines Kündigungsgrundes, wie in dem Begebungsvertrag definiert, muss der Treuhänder die Inhaber der Schuldverschreibungen hierüber informieren. Im Anschluss daran steht es dem Treuhänder frei, verschiedene sich aus dem Begebungsvertrag ergebende Rechte und Ansprüche im Namen und mit Zustimmung der Inhaber der Schuldverschreibungen geltend zu machen. In seiner Funktion als Treuhänder steht es dem Treuhänder frei, im eigenen Namen gegen die Inhaber der Schuldverschreibungen rechtliche Schritte einzuleiten. Der Treuhänder haftet nicht für nach Treu und Glauben vorgenommene Handlungen bzw. unterlassene Handlungen, welche nach seiner Einschätzung nach Maßgabe des Begebungsvertrages zulässig waren. Der Treuhänder ist ferner berechtigt, vor der Vornahme von Handlungen ein Officers' Certificate oder ein Anwaltsgutachten anzufordern und nach Treu und Glauben auf deren Inhalt zu vertrauen. Der Treuhänder wird gemäß dem Begebungsvertrag durch den Emittenten hinsichtlich aller Verluste, Schäden, Ansprüche, Forderungen, Kosten, Auslagen und Haftungstatbestände einschließlich etwaiger Steuern, welche der Treuhänder weder schuldhaft noch vorsätzlich herbeigeführt hat und welche durch die Übernahme der Verwaltung der Treuhand nach Maßgabe des Begebungsvertrages entstanden sind, freigestellt. Der Treuhänder kann zu jedem Zeitpunkt sein Amt aufgeben, indem er

den Emittenten hierüber schriftlich informiert. Der Treuhänder kann durch die Inhaber einer Mehrheit des Nennbetrags der Schuldverschreibungen von seiner Aufgabe entbunden werden, indem der Emittent und der Treuhänder hierüber schriftlich informiert werden, und diese Mehrheit der Inhaber kann mit Zustimmung des Emittenten einen Nachfolgetreuhänder bestellen. Ferner kann der Emittent den Treuhänder von seinen Aufgaben entbinden, sofern der Treuhänder insolvent ist oder vergleichbare Umstände in Bezug auf den Treuhänder eingetreten sind oder wenn der Treuhänder nicht mehr in der Lage ist, seine Pflichten aus dem Begebungsvertrag wahrzunehmen.

### **Gültigkeit von Ansprüchen**

Der Zeitraum, in dem die Zahlung von Zinsen, des Kapitalbetrags, des Rückzahlungspreises oder einer anderen nach dem Begebungsvertrag anfallenden Zahlung verlangt werden kann, beträgt sechs Jahre ab Fälligkeit des Anspruchs.

### **Anwendbares Recht**

Der Begebungsvertrag und die Schuldverschreibungen unterliegen dem Recht des Staates New York, USA, und sind entsprechend auszulegen. Die Schuldverschreibungsgarantien unterliegen dem Recht des Staates New York, USA, und sind entsprechend auszulegen, mit Ausnahme der Regelungen betreffend etwaige Beschränkungen, die dem Recht der Bundesrepublik Deutschland unterliegen.

### **Verschiedene Definitionen**

Im nachstehenden Abschnitt bezeichnet „Gesellschaft“ die Fresenius SE & Co. KGaA. Nachstehende Begriffe haben entsprechend ihrer Verwendung in dem Begebungsvertrag jeweils die folgende Bedeutung:

„Anwaltsgutachten“ („*Opinion of Counsel*“) bezeichnet ein für den Treuhänder akzeptables Gutachten eines Anwalts. Der Anwalt kann Mitarbeiter des Emittenten sein.

„Ausgabetag“ („*Issue Date*“) ist der erste Tag, an dem Schuldverschreibungen ausgegeben werden.

„*Board of Directors*“ bezeichnet in Bezug auf den Emittenten, die Gesellschaft bzw. eine Tochtergesellschaft das Board of Directors (oder ein anderes Gremium, das Aufgaben ausübt, die mit denen eines Board of Directors vergleichbar sind, einschließlich der Aufgaben, die im Falle einer deutschen Aktiengesellschaft vom Vorstand ausgeübt werden) dieser Person oder einen Ausschuss, der ordnungsgemäß ermächtigt wurde, im Namen des Board of Directors (oder Gremiums) zu handeln.

„*Bund Rate*“ bezeichnet die Rückzahlungsrendite zum Zeitpunkt der Berechnung von direkten Bundesanleihen der Bundesrepublik Deutschland mit einer Festlaufzeit (laut der offiziellen Aufstellung und Veröffentlichung in den aktuellsten Finanzstatistiken, die mindestens zwei Geschäftstage (jedoch seit nicht länger als fünf Geschäftstage) vor dem Rückzahlungstag öffentlich verfügbar sind (oder, falls diese Finanzstatistiken nicht auf die genannte Weise veröffentlicht werden bzw. zur Verfügung stehen, eine von dem Emittenten in gutem Glauben gewählte öffentlich zugängliche Quelle vergleichbarer Marktdaten), die möglichst genau der Zeitspanne zwischen dem Rückzahlungstag und dem 15. April 2019 entspricht. Sollte jedoch diese Zeitspanne zwischen dem Rückzahlungstag und dem 15. April 2019 nicht der Festlaufzeit der direkten Bundesanleihen der Bundesrepublik Deutschland, deren wöchentlicher Durchschnittssatz herangezogen wird, entsprechen, so ist die *Bund Rate* im Wege der linearen Interpolation (berechnet auf das nächste Zwölftel eines Jahres) aus den wöchentlichen Durchschnittsrenditen dieser direkten Bundesanleihen, für die diese Renditen angegeben werden, zu ermitteln, es sei denn, die Zeitspanne zwischen dem Rückzahlungstag und dem 15. April 2019 ist kürzer als ein Jahr. In diesem Fall sind die auf eine Festlaufzeit von einem Jahr angepassten wöchentlichen Durchschnittsrenditen von tatsächlich gehandelten direkten Bundesanleihen der Bundesrepublik Deutschland anzuwenden.



„*Capital Stock*“ eines Rechtsträgers bezeichnet alle Aktien, Anteile, Bezugsrechte, Optionsscheine, Optionen, Beteiligungen oder andere Eigenkapitaläquivalente oder Beteiligungen am Eigenkapital (unabhängig von der jeweiligen Bezeichnung) dieses Rechtsträgers, einschließlich des Preferred Stock, jedoch mit Ausnahme aller in Eigenkapital umwandelbaren Schuldtitel.

„*Cash Management-Vereinbarungen*“ („*Cash Management Arrangements*“) bezeichnet Cash Management-Vereinbarungen der Gesellschaft und der mit ihr verbundenen Unternehmen (einschließlich der sich in diesem Rahmen ergebenden Verschuldung), die in den Rahmen des normalen und des mit den bisherigen Praktiken übereinstimmenden Geschäftsbetriebs fallen.

„*Designated Government Obligations*“ bezeichnet direkte nicht-kündbare und nicht-rücknahmefähige Schuldtitel (jeweils in Bezug auf den entsprechenden Emittenten) eines Mitgliedstaats der Europäischen Union, der zum Datum des Begebungsvertrages ein Mitglied der Europäischen Union ist, bzw. der Vereinigten Staaten von Amerika (jeweils einschließlich der entsprechenden Behörden oder Organe), deren Tilgung durch die gegenseitige Anerkennung von Gesetzen und Gerichtsentscheidungen durch die jeweiligen Mitgliedstaaten bzw. die jeweiligen Einzelstaaten der Vereinigten Staaten von Amerika abgesichert (full faith and credit) ist.

„*Disqualified Stock*“ bezeichnet in Bezug auf einen Rechtsträger Capital Stock, welcher gemäß seinen Bedingungen (oder gemäß den Bedingungen eines Wertpapiers, in das er umgewandelt oder gegen das er ausgetauscht werden kann) oder bei Eintritt eines Ereignisses:

- (1) aufgrund einer Verpflichtung zur Tilgung in Teilbeträgen (*sinking fund obligation*) oder aus sonstigen Gründen fällig oder Gegenstand einer Zwangsrücknahme wird;
- (2) in Finanzverbindlichkeiten oder Disqualified Stock umgewandelt oder gegen Finanzverbindlichkeiten oder Disqualified Stock ausgetauscht werden kann; oder
- (3) nach Wahl des jeweiligen Inhabers in seiner Gesamtheit oder in Teilen zurückgegeben werden kann;

jeweils am oder vor dem ersten Jahrestag der Vereinbarten Fälligkeit der Schuldverschreibungen, allerdings unter der Voraussetzung, dass Capital Stock, der nur aufgrund von Bestimmungen Disqualified Stock darstellt, die den jeweiligen Inhabern das Recht gewähren, von dem betreffenden Rechtsträger den Rückkauf oder die Rücknahme dieses Capital Stock bei einem Verkauf aller Einzelwirtschaftsgüter („*Asset Sale*“) oder einem „Kontrollwechsel“ vor dem ersten Jahrestag der Vereinbarten Fälligkeit der Schuldverschreibungen zu verlangen, nicht als Disqualified Stock zu erachten ist, wenn die für diesen Capital Stock geltenden Bestimmungen zu „*Asset Sale*“ oder „Kontrollwechsel“ für die Inhaber dieses Capital Stock nicht günstiger sind als die im Abschnitt „Kontrollwechsel“ beschriebenen Bestimmungen.

„*Durchschnittslaufzeit*“ („*Average Life*“) bezeichnet zum Zeitpunkt der Festlegung in Bezug auf Verschuldung oder Preferred Stock den Quotienten aus:

- (1) der Summe der Produkte aus der Anzahl der Jahre, die zwischen dem Zeitpunkt der Festlegung und den einzelnen nachfolgenden planmäßigen Terminen für die Zahlungen zur Tilgung dieser Verschuldung oder Rückzahlung oder Leistung einer ähnlichen Zahlung in Bezug auf diesen Preferred Stock liegen, und dem Betrag der betreffenden Zahlung, und
- (2) der Summe aus allen diesen Zahlungen.

„€“ oder „Euro“ bezeichnet die gemeinsame Währung der Teilnehmenden Mitgliedstaaten.

„*EBITDA*“ eines Rechtsträgers für einen bestimmten Zeitraum bezeichnet das gesamte Konsolidierte Ergebnis nach Ertragsteuern dieses Rechtsträgers zuzüglich Konsolidiertem Zinsaufwand dieses Rechtsträgers und zuzüglich folgender Posten, soweit diese bei der Berechnung des Konsolidierten Ergebnisses nach Ertragsteuern subtrahiert werden:

- (1) sämtlicher Aufwand für Ertragsteuern dieses Rechtsträgers oder seiner Tochtergesellschaften (welche im Fall der Gesellschaft auch die FMC AG & Co. KGaA und ihre Tochtergesellschaften umfassen);

- (2) Abschreibungen auf Sachanlagen;
- (3) Abschreibungen auf immaterielle Vermögensgegenstände, jeweils für den entsprechenden Zeitraum,
- und
- (4) sonstige nicht liquiditätswirksame Aufwendungen (mit Ausnahme von
  - (1) Restrukturierungsaufwendungen, die zunächst keine Zahlung erfordern, für die jedoch nachträgliche Zahlungen anfallen werden und (2) Aufwendungen, die aus der Rückstellung von Kosten resultieren, die im Rahmen des gewöhnlichen Geschäftsbetriebes entstanden sind, mit Ausnahme von Pensionsverpflichtungen).

Ungeachtet des Vorstehenden werden die Rückstellungen für Steuern auf Einkünfte oder Erträge einer Tochtergesellschaft sowie deren Abschreibungen und sonstige nicht liquiditätswirksame Aufwendungen zur Berechnung des EBITDA zum Konsolidierten Ergebnis nach Ertragsteuern addiert, soweit (und im entsprechenden Umfang) die Nettoerträge dieser Tochtergesellschaft bei der Berechnung des Konsolidierten Ergebnisses nach Ertragsteuern berücksichtigt wurden und sofern ein entsprechender Betrag zum Datum der Bestimmung von der betreffenden Tochtergesellschaft ohne vorherige Zustimmung gemäß den Bedingungen ihrer Gründungsdokumente und sämtlicher für diese Tochtergesellschaft und ihre Anteilsinhaber geltenden Vereinbarungen, Instrumente, Urteile, Gerichtsbeschlüsse, Anordnungen, Statuten, Regelungen und gesetzlichen Bestimmungen (die nicht eingeholt wurde), an diesen Rechtsträger als Dividende ausgeschüttet werden kann.

„Eingehen“ („*Incur*“) bezeichnet eine Ausgabe, Übernahme, Garantie oder sonstige Verpflichtung, wobei jedoch eine Verschuldung oder der Capital Stock eines Rechtsträgers zu dem Zeitpunkt als durch die Tochtergesellschaft eingegangen gilt, zu dem dieser Rechtsträger (durch Verschmelzung, Verfügung, Übernahme oder anderweitig) eine Tochtergesellschaft wird. Das Verb „eingehen“ hat die entsprechende Bedeutung. Zuwächse der Nennbeträge aus nicht verzinslichen oder sonstigen mit einem Abschlag erworbenen Wertpapieren gelten als Eingehen von Verschuldung.

„*Exchange Act*“ bezeichnet den U.S. Securities Exchange Act von 1934 in seiner jeweils geltenden Fassung.

„*Finanzierungsleasing-Verpflichtung*“ („*Capital Lease Obligation*“) bezeichnet eine Verpflichtung, die für die Zwecke der Finanzberichterstattung gemäß GAAP als Finanzierungsleasing (*capital lease*) zu klassifizieren und zu bilanzieren ist und der Betrag der Verschuldung, für den diese Verpflichtung steht, ist der nach GAAP ermittelte aktivierte Betrag; als deren Vereinbarte Fälligkeit gilt das Datum der letzten Zahlung der Miete oder eines anderen gemäß diesem Leasingvertrag fälligen Betrags vor dem ersten Datum, an dem dieses Leasingverhältnis vom Leasingnehmer ohne Zahlung einer Vertragsstrafe beendet werden kann.

„*Finanzierungstochtergesellschaft*“ („*Finance Subsidiary*“) bezeichnet den Emittenten und jede andere Hundertprozentige Tochtergesellschaft der Gesellschaft, die zum Zweck der Ausgabe von Verschuldung gegründet wurde, und deren Geschäftstätigkeit ähnlichen Beschränkungen unterliegt, wie die des Emittenten.

„*Fitch*“ bezeichnet Fitch, Inc. und ihre Rechtsnachfolger.

„*FMC AG & Co. KGaA*“ bezeichnet die Fresenius Medical Care AG & Co. KGaA (oder einen Rechtsnachfolger), jedoch keine ihrer Tochtergesellschaften.

„*FSE EBITDA*“ bezeichnet das EBITDA für die Gesellschaft, jedoch für die Zwecke dieser Definition ohne Berücksichtigung des Ergebnisses der FMC AG & Co. KGaA und ihrer Tochtergesellschaften bei der Berechnung des Konsolidierten Zinsaufwands, des Konsolidierten Ergebnisses nach Ertragsteuern und des EBITDA (jedoch zur Klarstellung einschließlich der von der FMC AG & Co. KGaA in dem maßgeblichen Zeitraum an die Gesellschaft oder eine ihrer

Tochtergesellschaften (außer der FMC AG & Co. KGaA und ihrer Tochtergesellschaften) tatsächlich gezahlten Ausschüttungen). Dabei gilt jedoch Folgendes:

- (1) Wenn die Gesellschaft oder eine ihrer Tochtergesellschaften (außer der FMC AG & Co. KGaA und ihrer Tochtergesellschaften) seit Beginn dieses Zeitraums eine Vermögensübertragung vorgenommen haben, ist das EBITDA (falls positiv) für diesen Zeitraum um einen Betrag zu reduzieren, der dem den von der Vermögensübertragung betroffenen Vermögenswerten für diesen Zeitraum direkt zuzuordnenden EBITDA entspricht, bzw. ist das EBITDA (falls negativ) um einen Betrag zu erhöhen, der dem entsprechend für diesen Zeitraum direkt zuzuordnenden EBITDA entspricht;
- (2) Wenn die Gesellschaft oder eine ihrer Tochtergesellschaften (außer der FMC AG & Co. KGaA und ihrer Tochtergesellschaften) seit Beginn dieses Zeitraums (durch Verschmelzung oder auf andere Weise) ein Investment in eine Tochtergesellschaft (oder einen Rechtsträger, der eine Tochtergesellschaft wird) oder einen Erwerb von Vermögenswerten, einschließlich dem Erwerb von Vermögenswerten im Rahmen einer Transaktion, die eine diesbezügliche Berechnung verlangt, und die den gesamten oder im Wesentlichen den gesamten operativen Bereich eines Unternehmens bilden, vorgenommen haben, muss das EBITDA für diesen Zeitraum unter der Annahme berechnet werden, dass das Investment oder der Erwerb am ersten Tag dieses Zeitraums erfolgt ist; und
- (3) Wenn die Gesellschaft oder eine ihrer Tochtergesellschaften (außer der FMC AG & Co. KGaA und ihrer Tochtergesellschaften) (die anschließend eine Tochtergesellschaft wurde oder der seit Beginn dieses Zeitraums mit einem solchen Rechtsträger oder einer seiner Tochtergesellschaften verschmolzen wurde) seit Beginn dieses Zeitraums eine Vermögensübertragung, ein Investment oder den Erwerb von Vermögenswerten vorgenommen hat, wodurch eine Anpassung gemäß vorstehender Ziffer (2) oder (3) erforderlich wird, weil diese Aktivitäten durch einen solchen Rechtsträger oder die Tochtergesellschaft in diesem Zeitraum durchgeführt wurden, muss die Berechnung des EBITDA für diesen Zeitraum unter der Annahme erfolgen, dass die Vermögensübertragung, das Investment oder der Erwerb jeweils am ersten Tag dieses Zeitraums erfolgt ist.

Für die Zwecke dieser Definition (jedoch, zur Klarstellung, nicht für die Zwecke anderer definierter Begriffe, die in dieser Definition verwendet werden) gilt Folgendes: Sofern und soweit Pro Forma Effekte in Bezug auf den Erwerb von Vermögenswerten, den diesbezüglichen Ertrag oder Gewinn mit bestimmten Annahmen zu berücksichtigen sind, so sind die auf Basis dieser Annahmen erfolgten Berechnungen nach Treu und Glauben durch einen zuständigen Finanz- bzw. Rechnungslegungsexperten der Gesellschaft vorzunehmen.

„Fortbestehender Rechtsträger“ („Surviving Person“) bezeichnet in Bezug auf einen Rechtsträger, der in eine Verschmelzung oder einen sonstigen Zusammenschluss oder in den Verkauf, die Abtretung, Übertragung, das Leasing oder die anderweitige Veräußerung aller oder im Wesentlichen aller seiner Vermögenswerte involviert ist, den Rechtsträger, der aus einer solchen Transaktion hervorgeht oder danach verbleibt, oder den Rechtsträger, an den eine entsprechende Veräußerung erfolgt.

„Garantie“ („Guarantee“) bezeichnet jede Eventual- oder sonstige Verpflichtung eines Rechtsträgers, die eine direkte oder indirekte Garantie für eine Verschuldung oder sonstige Verpflichtung eines Rechtsträgers darstellt (mit Ausnahme von Verpflichtungen von Tochtergesellschaften, die nicht als garantiegebende Tochtergesellschaft gelten) sowie sämtliche direkten oder indirekten Eventual- oder sonstigen Verpflichtungen dieses Rechtsträgers:

- (1) zum Erwerb oder zur Zahlung (oder Vorleistung bzw. Bereitstellung von Mitteln für den Kauf oder die Zahlung) im Rahmen der garantiegebende Tochtergesellschaft oder sonstiger Verpflichtungen dieses Rechtsträgers (aus Partnerschaftsvereinbarungen, Patronatserklärungen, Kaufvereinbarungen für Vermögensgegenstände, Güter, Wertpapiere oder Dienstleistungen, Take-or-Pay-Verträgen oder im Rahmen der Einhaltung der Bilanzierungsvorschriften oder anderweitig), oder

- (2) eingegangen zum Zwecke von Zusicherungen jedweder Art gegenüber dem Begünstigten in Bezug auf eine entsprechende garantiegabende Tochtergesellschaft oder sonstige Verpflichtung zur jeweiligen Zahlung bzw. zum Zwecke des Schutzes des Begünstigten vor diesbezüglichen (Teil- oder Total-)Verlusten; wobei jedoch der Begriff „Garantie“ keine Verpflichtungen in Bezug auf Indossamente und Einlagen im Rahmen des normalen Geschäftsbetriebs umfasst. Das Verb „garantieren“ hat die entsprechende Bedeutung. Der Begriff „Garantiegeber“ bezeichnet einen eine Verpflichtung garantierenden Rechtsträger.

„Garantiegeber“ („*Guarantor*“) bezeichnet die Gesellschaft, Fresenius Kabi AG und Fresenius ProServe GmbH, sofern sie nicht gemäß den Bestimmungen des Begebungsvertrages von allen ihren Verpflichtungen aus ihrer jeweiligen Schuldverschreibungsgarantie befreit ist.

„Garantiegebende Tochtergesellschaft“ („*Subsidiary Guarantor*“) bezeichnet eine Person, die den Begebungsvertrag unterzeichnet oder die in Zukunft einen Nachtrag zum Begebungsvertrag unterzeichnet, in dem sie sich verpflichtet, als garantiegabende Tochtergesellschaft an die Bestimmungen des Begebungsvertrages gebunden zu sein.

„Garantievereinbarung“ („*Guarantee Agreement*“) bezeichnet in Zusammenhang mit einer Verschmelzung oder einer Veräußerung aller oder einen wesentlichen Teil aller Vermögenswerte des Garantiegebers eine Vereinbarung, im Rahmen derer der Fortbestehende Rechtsträger aus einer Transaktion ausdrücklich alle Verbindlichkeiten des betreffenden Garantiegebers aus der Schuldverschreibungsgarantie übernimmt.

„Geschäftstag“ („*Business Day*“) ist jeder Tag mit Ausnahme der folgenden Tage:

- (1) Samstag und Sonntag, oder
- (2) ein Tag, an dem die Banken in Frankfurt am Main oder in der Rechtsordnung der Gründung des Emittenten oder des Sitzes der Zahlstelle (es sei denn, es handelt sich um den Treuhänder) von Gesetzes wegen oder aufgrund einer hoheitlichen Verfügung zur Schließung befugt oder verpflichtet sind.

„Hedging-Verpflichtungen“ („*Hedging Obligations*“) eines Rechtsträgers bezeichnen die Verpflichtungen dieses Rechtsträgers im Rahmen einer Zinssatzvereinbarung oder einer Währungsvereinbarung.

„HELIOS-Gruppe“ bezeichnet die HELIOS Kliniken GmbH und ihre Tochtergesellschaften

„Herabstufung“ („*Ratings Decline*“) bezeichnet (1), wenn die Schuldverschreibungen am Ratingdatum sowohl durch (i) Moody's als auch durch (ii) S&P als auch durch (iii) Fitch mit Investment Grade bewertet sind, eine Herabstufung des Ratings der Schuldverschreibungen durch zwei der drei Ratingagenturen auf unter Investment Grade, oder (2), wenn die Schuldverschreibungen am Ratingdatum von zwei der drei Ratingagenturen unter Investment Grade bewertet sind, eine Herabstufung des Ratings der Schuldverschreibungen durch eine dieser Ratingagenturen um eine oder mehrere Stufen (einschließlich Untergliederungen innerhalb von sowie zwischen Ratingkategorien), jeweils innerhalb von 90 Tagen nach dem Datum, an dem entweder ein eingetretener Kontrollwechsel oder eine eingetretene Transaktion, die einen Kontrollwechsel zur Folge hat, erstmals öffentlich bekannt gegeben wird — je nachdem, welches dieser Ereignisse früher eintritt (wobei sich dieser Zeitraum entsprechend verlängert, wenn eine der Ratingagenturen öffentlich bekannt gegeben hat, dass sie eine mögliche Herabstufung der Schuldverschreibungen prüft).

„Hundertprozentige Tochtergesellschaft“ („*Wholly Owned Subsidiary*“) bezeichnet eine Tochtergesellschaft, deren gesamter Capital Stock (ausgenommen Pflichtanteile der Mitglieder des Board of Directors sowie von anderen Rechtsträgern gehaltene Anteile, soweit solche Anteile gemäß geltenden Rechtsvorschriften von einem anderen Rechtsträger gehalten werden müssen, der nicht ihre Muttergesellschaft oder eine Tochtergesellschaft ihrer Muttergesellschaft ist) von dem betreffenden Rechtsträger oder einer oder mehreren Hundertprozentigen Tochtergesellschaften des betreffenden Rechtsträgers oder von dem betreffenden Rechtsträger oder einer oder mehreren seiner Hundertprozentigen Tochtergesellschaften gehalten wird.

„*Investment*“ in einen Rechtsträger bezeichnet direkte oder indirekte Darlehen (bei denen es sich nicht um Forderungen gegenüber Kunden im Rahmen des normalen Geschäftsbetriebs handelt, die in der Bilanz dieses Rechtsträgers unter den Forderungen ausgewiesen werden), andere Formen der Kreditgewährung (u.a. in Form einer Garantie oder ähnlicher Vereinbarungen), Kapitaleinlagen (durch Übertragung von Liquidität oder sonstigem Vermögen auf Dritte oder durch Bezahlung für Vermögensgegenstände oder Dienstleistungen für Rechnung oder Nutzung Dritter) oder den Erwerb bzw. die Übernahme von Capital Stock, Finanzverbindlichkeiten oder anderen ähnlichen von diesem Rechtsträger begebenen Instrumenten, wobei Darlehen und andere Formen der Kreditgewährung im Rahmen der Cash Management-Vereinbarungen nicht als Investments gelten.

„*Investment Grade*“ bezeichnet ein Rating von (i) Baa3 oder höher von Moody's bzw. (ii) ein Rating von BBB- oder höher von S&P und (iii) ein Rating von BBB- oder höher von Fitch, oder ein entsprechendes Rating von S&P oder Moody's oder Fitch sowie entsprechende Ratingkategorien von S&P oder Moody's oder Fitch ersetzenden Ratingagenturen.

„*Investment Grade Status*“ haben die Schuldverschreibungen dann, wenn zu diesem Zeitpunkt zwei der folgenden drei Bedingungen erfüllt sind: (i) das den Schuldverschreibungen von Moody's erteilte Rating beträgt mindestens Baa3 (oder eine entsprechende Ratingstufe), (ii) das den Schuldverschreibungen von S&P erteilte Rating beträgt mindestens BBB- (oder eine entsprechende Ratingstufe) oder (iii) das den Schuldverschreibungen von Fitch erteilte Rating beträgt mindestens BBB- (oder eine entsprechende Ratingstufe).

„*KGaA*“ bezeichnet eine Kommanditgesellschaft auf Aktien nach deutschem Recht.

„*Komplementär*“ („*General Partner*“) bezeichnet die Fresenius Management SE, eine *societas europaea* nach deutschem Recht, sowie ihre Nachfolger, Abtretungsempfänger und sonstige Rechtsträger, die zum jeweiligen Zeitpunkt als persönlich haftender Gesellschafter der Gesellschaft auftreten.

„*Konsolidierter Zinsdeckungsgrad*“ („*Consolidated Coverage Ratio*“) eines Rechtsträgers an einem Bestimmungszeitpunkt ist das Verhältnis zwischen (x) dem EBITDA für die letzten vier vollständigen Geschäftsquartale dieses Rechtsträgers, für die unmittelbar vor diesem Bestimmungszeitpunkt interne Abschlüsse zur Verfügung stehen, und (y) dem Konsolidierten Zinsaufwand für diese vier Geschäftsquartale. Dabei gilt jedoch Folgendes:

- (1) Wenn dieser Rechtsträger oder eine seiner Tochtergesellschaften seit Beginn eines solchen Zeitraums Verschuldung eingegangen ist, zurückgezahlt, zurückgekauft, aufgehoben oder anderweitig erfüllt hat (jeweils mit Ausnahme von Verschuldung im Rahmen revolvingender Kreditvereinbarungen, sofern diese Verschuldung nicht vollständig zurückgezahlt wurden und die entsprechende Vereinbarung damit beendet wurde), die danach noch weiterbesteht oder damit erfüllt ist, oder wenn die Berechnung des Konsolidierten Zinsdeckungsgrads erforderlich machende Transaktion das Eingehen oder die Erfüllung von Verschuldung oder beides darstellt, dann müssen das EBITDA und der Konsolidierte Zinsaufwand für diesen Zeitraum unter Pro Forma Berücksichtigung dieser Verschuldung berechnet werden, in dem unterstellt wird, dass die Verschuldung am ersten Tag dieses Zeitraums eingegangen oder erfüllt worden sind, bzw. in Bezug auf sonstige Verschuldung, dass diese Verschuldung am ersten Tag dieses Zeitraums eingegangen oder erfüllt worden sind;
- (2) Wenn ein solcher Rechtsträger oder seine Tochtergesellschaften seit Beginn dieses Zeitraums eine Vermögensübertragung vorgenommen haben, ist das EBITDA (falls positiv) für diesen Zeitraum um einen Betrag zu reduzieren, der dem den von der Vermögensübertragung betroffenen Vermögenswerten für diesen Zeitraum direkt zuzuordnenden EBITDA entspricht, bzw. ist das EBITDA (falls negativ) um einen Betrag zu erhöhen, der dem entsprechend für diesen Zeitraum direkt zuzuordnenden EBITDA entspricht; der Konsolidierte Zinsaufwand für diesen Zeitraum ist um einen Betrag zu reduzieren, der dem Konsolidierten Zinsaufwand entspricht, der Finanzverbindlichkeiten dieses Rechtsträgers oder seiner Tochtergesellschaften direkt zuzuordnen ist, die in Bezug auf diesen Rechtsträger und seine fortgeführten Tochtergesellschaften in Verbindung mit



der Vermögensübertragung in diesem Zeitraum zurückgezahlt, zurückgekauft, annulliert oder anderweitig erfüllt wurden (oder, wenn der Capital Stock einer Tochtergesellschaft verkauft wurde, der Konsolidierte Zinsaufwand für diesen Kreditzeitraum, der direkt den Finanzverbindlichkeiten dieser Tochtergesellschaft zuzuordnen ist, soweit dieser Rechtsträger und seine fortgeführten Tochtergesellschaften nach der Vermögensübertragung nicht länger für diese Finanzverbindlichkeiten haften);

- (3) Wenn ein solcher Rechtsträger oder seine Tochtergesellschaften seit Beginn dieses Zeitraums (durch Verschmelzung oder auf andere Weise) ein Investment in eine Tochtergesellschaft (oder einen Rechtsträger, der eine Tochtergesellschaft wird) oder einen Erwerb von Vermögenswerten, die den gesamten oder im Wesentlichen den gesamten operativen Bereich eines Unternehmens bilden, vorgenommen haben, müssen das EBITDA und der Konsolidierte Zinsaufwand für diesen Zeitraum unter der Annahme berechnet werden, dass das Investment oder der Erwerb (einschließlich des Eingehens von Verschuldung) am ersten Tag dieses Zeitraums erfolgt ist; und
- (4) Wenn ein Rechtsträger (der anschließend eine Tochtergesellschaft wurde oder der seit Beginn dieses Zeitraums mit einem solchen Rechtsträger oder einer seiner Tochtergesellschaften verschmolzen wurde) seit Beginn dieses Zeitraums eine Vermögensübertragung, ein Investment oder den Erwerb von Vermögenswerten vorgenommen hat, wodurch eine Anpassung gemäß vorstehender Ziffer (2) oder (3) erforderlich wird, weil diese Aktivitäten durch einen solchen Rechtsträger oder die Tochtergesellschaft eines solchen Rechtsträgers in diesem Zeitraum durchgeführt wurden, muss die Berechnung des EBITDA und des Konsolidierten Zinsaufwands für diesen Zeitraum unter der Annahme erfolgen, dass die Vermögensübertragung, das Investment oder der Erwerb jeweils am ersten Tag dieses Zeitraums erfolgt ist.

Für die Zwecke dieser Definition (jedoch, zur Klarstellung, nicht für die Zwecke anderer definierter Begriffe, die in dieser Definition verwendet werden) gilt Folgendes: Sofern und soweit Pro Forma Effekte in Bezug auf den Erwerb von Vermögenswerten, den diesbezüglichen Ertrag oder Gewinn und den mit diesbezüglich eingegangenen Finanzverbindlichkeiten verbundenen Konsolidierten Zinsaufwand mit bestimmten Annahmen zu berücksichtigen sind, so sind die auf Basis dieser Annahmen erfolgten Berechnungen nach Treu und Glauben durch einen zuständigen Finanz- bzw. Rechnungslegungsexperten der Gesellschaft vorzunehmen. Wenn Finanzverbindlichkeiten einem variablen Zinssatz unterliegen und Pro Forma berücksichtigt werden sollen, wird der Zinssatz für diese Finanzverbindlichkeiten so berechnet, als sei der zum Bestimmungszeitpunkt geltende Zinssatz für den gesamten Zeitraum anwendbar gewesen (unter Berücksichtigung von für diese Finanzverbindlichkeiten geltenden Zinssatzvereinbarungen, wenn diese eine Restlaufzeit von mehr als 12 Monaten aufweisen), und im Fall der Gesellschaft, umfassen Tochtergesellschaften die FMC AG & Co. KGaA und ihre Tochtergesellschaften.

„Konsolidiertes Ergebnis nach Ertragsteuern“ („Consolidated Net Income“) bezeichnet in Bezug auf einen Rechtsträger für einen beliebigen Zeitraum das Ergebnis nach Ertragssteuern für diesen Rechtsträger (der „Maßgebliche Rechtsträger“) und seine konsolidierten Tochtergesellschaften (zu denen im Falle der Gesellschaft die FMC AG & Co. KGaA und ihre Tochtergesellschaften zählen), wobei in diesem Ergebnis nach Ertragsteuern jedoch nicht zu erfassen sind:

- (1) das Ergebnis nach Ertragsteuern eines Rechtsträgers, der keine Tochtergesellschaft ist, es sei denn, dass (A) der Eigenkapitalanteil des Maßgeblichen Rechtsträgers am Ergebnis nach Ertragsteuern dieses Rechtsträgers für diesen Zeitraum vorbehaltlich der Ausnahmeregelung in (4) bis in Höhe des Barbetrags, der von diesem Rechtsträger in diesem Zeitraum tatsächlich als Dividende oder sonstige Ausschüttung an den Maßgeblichen Rechtsträger oder eine Tochtergesellschaft des Maßgeblichen Rechtsträgers ausgezahlt wird, in dem Konsolidierten Ergebnis nach Ertragsteuern zu erfassen ist (vorbehaltlich der Beschränkungen in (3) im Falle einer an eine Tochtergesellschaft gezahlten Dividende oder sonstigen Ausschüttung) und dass (B) der Eigenkapitalanteil des Maßgeblichen Rechtsträgers an einem Nettoverlust eines solchen Rechtsträgers für diesen

Zeitraum bei der Ermittlung des Konsolidierten Ergebnisses nach Ertragsteuern zu erfassen ist.

- (2) das Ergebnis nach Ertragsteuern (oder der Nettoverlust) eines Rechtsträgers, der von dem Maßgeblichen Rechtsträger oder einer Tochtergesellschaft in einer organschaftlichen Transaktion übernommen wurde, für einen beliebigen Zeitraum vor dem Tag der Übernahme.
- (3) das Ergebnis nach Ertragsteuern einer Tochtergesellschaft des Maßgeblichen Rechtsträgers, wenn diese Tochtergesellschaft direkt oder indirekt vertraglichen, behördlichen oder regulatorischen Beschränkungen unterliegt, welche direkt oder indirekt die Zahlung von Dividenden oder Ausschüttungen an den Maßgeblichen Rechtsträger durch die Tochtergesellschaft betreffen, es sei denn, dass (A) der Eigenkapitalanteil des Maßgeblichen Rechtsträgers am Ergebnis nach Ertragsteuern einer solchen Tochtergesellschaft für diesen Zeitraum vorbehaltlich der Ausnahmeregelung in (4) bis in Höhe des Barbetrags, der von dieser Tochtergesellschaft in diesem Zeitraum tatsächlich als Dividende oder sonstige Ausschüttung tatsächlich an den Maßgeblichen Rechtsträger oder eine andere seiner Tochtergesellschaften ausgezahlt wird, in dem Konsolidierten Ergebnis nach Ertragsteuern zu erfassen ist (vorbehaltlich der Beschränkungen in (3) im Falle einer an eine andere Tochtergesellschaft gezahlten Dividende oder sonstigen Ausschüttung) und dass (B) der Eigenkapitalanteil des Maßgeblichen Rechtsträgers an einem Nettoverlust einer solchen Tochtergesellschaft für diesen Zeitraum bei der Ermittlung des Konsolidierten Ergebnisses nach Ertragsteuern zu erfassen ist.
- (4) Gewinne oder Verluste, die beim Verkauf oder der anderweitigen Veräußerung von Vermögenswerten des Maßgeblichen Rechtsträgers oder seiner konsolidierten Tochtergesellschaften realisiert werden (einschließlich der im Rahmen von Sale- and Lease-back-Transaktionen realisierten) und die nicht im Rahmen des gewöhnlichen Geschäftsbetriebes verkauft oder anderweitig veräußert werden, sowie Gewinne und Verluste, die beim Verkauf oder der anderweitigen Veräußerung eines Capital Stock eines Rechtsträgers realisiert werden.
- (5) außerordentliche Gewinne oder Verluste.
- (6) der kumulative Effekt einer Änderung der Bilanzierungsgrundsätze.

„Konsolidierter Zinsaufwand“ („Consolidated Interest Expense“) bezeichnet in Bezug auf einen Rechtsträger für einen beliebigen Zeitraum den gesamten Zinsaufwand dieses Rechtsträgers (der „Maßgebliche Rechtsträger“) und seiner konsolidierten Tochtergesellschaften (zu denen im Falle der Gesellschaft die FMC AG & Co. KGaA und ihre Tochtergesellschaften zählen) zuzüglich, soweit nicht in dem gesamten Zinsaufwand enthalten, aber vom Maßgeblichen Rechtsträger oder seinen Tochtergesellschaften eingegangen,

- (1) des auf Finanzierungsleasing entfallenden Zinsaufwands,
- (2) Abschreibungen auf Disagio und Emissionskosten,
- (3) kapitalisierter Zinsen,
- (4) der nicht liquiditätswirksamen Zinsaufwendungen,
- (5) Provisionen, Abschlagszinsen und sonstiger Gebühren und Aufwendungen, die in Bezug auf Akkreditive und Bankakzepte geschuldet werden,
- (6) Nettokosten in Verbindung mit Hedging-Verpflichtungen (einschließlich Abschreibungen auf Gebühren),
- (7) Dividenden auf Preferred Stock in Bezug auf das gesamte Preferred Stock, welches von anderen Rechtsträgern als dem Maßgeblichen Rechtsträger oder einer Tochtergesellschaft des Maßgeblichen Rechtsträgers gehalten wird,

- (8) im Zusammenhang mit Investments in aufgegebenen Geschäftsbereichen aufgelaufener Zinsen,
- (9) Zinsen, die für beliebige Finanzverbindlichkeiten anderer Rechtsträger auflaufen, soweit diese Finanzverbindlichkeiten vom Maßgeblichen Rechtsträger oder einer seiner Tochtergesellschaften garantiert werden, und
- (10) der Bareinlagen in ein Mitarbeiterkapitalbeteiligungsmodell oder einen ähnlichen Trust, soweit solche Einlagen von diesem Modell oder Trust verwendet werden, um einem Rechtsträger (bei dem es sich nicht um den Maßgeblichen Rechtsträger handelt) Zinsen oder Gebühren im Zusammenhang mit von diesem Modell oder Trust eingegangenen Finanzverbindlichkeiten zu zahlen.

Ungeachtet des Vorstehenden ist, solange das Konsolidierte Ergebnis nach Ertragsteuern der FMC AG & Co. KGaA und ihrer Tochtergesellschaften aufgrund von (3) der Definition des Konsolidierten Ergebnisses nach Ertragsteuern nicht vollständig im Konsolidierten Ergebnis nach Ertragsteuern der Gesellschaft erfasst wird, auch der Konsolidierte Zinsaufwand der FMC AG & Co. KGaA und ihrer Tochtergesellschaften bei der Berechnung des Konsolidierten Zinsaufwands der Gesellschaft und ihrer Tochtergesellschaften auszuklammern.

„Kontrollwechsel“ („*Change of Control*“) bezeichnet den Eintritt eines oder mehrerer der folgenden Ereignisse:

- (1) Solange die Gesellschaft die Rechtsform einer KGaA hat: Wenn es sich bei dem mit der Führung der Gesellschaft beauftragten Komplementär der Gesellschaft zu irgendeinem Zeitpunkt nicht um eine Tochtergesellschaft der Else Kröner-Fresenius-Stiftung handelt oder wenn die Else Kröner-Fresenius-Stiftung nicht mehr als 10 % der stimmberechtigten Kapitalanteile (*capital stock with ordinary voting power*) der Gesellschaft besitzt und kontrolliert.
- (2) Wenn die Gesellschaft nicht mehr die Rechtsform einer KGaA hat: Ein Ereignis, in dessen Folge (A) eine „Person“ (*person*) oder „Gruppe“ (*group*) (gemäß der Verwendung dieser Begriffe in den Sections 13(d) und 14(d) des Exchange Act) mit Ausnahme des Zulässigen Inhabers unmittelbar oder mittelbar wirtschaftlicher Eigentümer (*beneficial owner*, gemäß der Bedeutung in Rule 13d-3 und 13d-5 des Exchange Act, außer diese Person oder Gruppe ist als wirtschaftlicher Eigentümer aller Gesellschaftsanteile zu erachten, die von einer solchen Person oder Gruppe erworben werden dürfen, unabhängig davon, ob dieses Erwerbsrecht unmittelbar oder erst nach einer gewissen Zeit ausgeübt werden darf) von mehr als 35 % aller Stimmrechte des stimmberechtigten Kapitals der Gesellschaft ist oder wird und (B) sich nicht unmittelbar oder mittelbar ein insgesamt höherer prozentualer Anteil an der Gesamtheit der Stimmrechte des Voting Stock der Gesellschaft im wirtschaftlichen Eigentum (*beneficially own*, gemäß der Bedeutung in den Rules 13d-3 und 13d-5 des Exchange Act) des Zulässigen Inhabers befindet.
- (3) Ein Verkauf, ein Leasing, ein Tausch oder eine sonstige Übertragung (im Rahmen einer einzigen Transaktion oder einer Reihe miteinander zusammenhängender Transaktionen) aller oder aller wesentlichen Vermögenswerte der Gesellschaft an einen bzw. mit einem Rechtsträger oder eine(r) Gruppe verbundener Rechtsträger im Sinne von Section 13(d) des Exchange Act (eine „Gruppe“) zusammen mit deren Verbundenen Unternehmen (unabhängig davon, ob dies ansonsten unter Einhaltung der Bestimmungen des Begebungsvertrags erfolgt).
- (4) Ein Ereignis, in dessen Folge die Ergebnisse der FMC AG & Co. KGaA nicht gemäß GAAP vollständig mit den Ergebnissen der Gesellschaft konsolidiert werden; oder
- (5) Der Eintritt eines Kontrollwechselereignisses (*Change of Control Triggering Event*) (wie in den jeweiligen unter (i), (ii) und (iii) genannten Begebungsverträgen definiert) entweder (i) nur solange eine der 2015 fälligen Schuldverschreibungen noch ausstehen, gemäß dem Begebungsvertrag (*indenture*) vom 21. Januar 2009 zwischen der Fresenius US Finance II,



Inc., den Garantiegebern und The Bank of New York Mellon als Treuhänder, (ii) nur solange eine der 2013 fälligen Schuldverschreibungen noch ausstehen, gemäß dem Begebungsvertrag (*indenture*) vom 20. Januar 2006 für die 2013 fälligen Schuldverschreibungen zwischen dem Emittenten, den Garantiegebern und der Deutsche Trustee Company Limited als Treuhänder, oder (iii) nur solange eine der 2016 fälligen 5,00% Schuldverschreibungen noch ausstehen, gemäß dem Begebungsvertrag (*indenture*) vom 20. Januar 2006 für die 2016 fälligen 5,50% Schuldverschreibungen zwischen dem Emittenten, den Garantiegebern und der Deutsche Trustee Company Limited als Treuhänder.

„Kontrollwechselereignis“ („*Change of Control Triggering Event*“) ist entweder (i) der Eintritt eines der in Ziffer (4) oder (5) der Definition von „Kontrollwechsel“ genannten Ereignisse oder (ii) der Eintritt eines der in Ziffer (1), (2) oder (3) der Definition von „Kontrollwechsel“ genannten Ereignisse und eine Herabstufung.

„Kreditvereinbarung 2008“ („*Senior Credit Agreement*“) bezeichnet die Kreditvereinbarung vom 20. August 2008 (in der jeweils neugefassten, geänderten, erweiterten, verlängerten und/oder ergänzten Fassung oder wie jeweils refinanziert oder ersetzt) zwischen der Gesellschaft, der Deutsche Bank AG, London Branch, als Verwaltungsstelle und den anderen darin genannten Kreditnehmern, Garanten und Kreditgebern.

„Kündigungstatbestand“ („*Default*“) bezeichnet ein Ereignis, das ein Kündigungsgrund (wie hierin definiert) ist oder nach Mitteilung oder Zeitablauf oder beidem ein Kündigungsgrund wäre.

„Moody's“ bezeichnet Moody's Investors Service, Inc. und deren Nachfolger.

„Nachrangige Verpflichtung“ („*Subordinated Obligation*“) bezeichnet eine (am Ausgabebetrag ausstehende oder danach eingegangene) Verschuldung des Emittenten oder der Gesellschaft, die gemäß den Bedingungen einer schriftlichen Vereinbarung gegenüber den Schuldverschreibungen bezüglich der Zahlungsansprüche nachrangig (*subordinate or junior*) ist.

„Officers' Certificate“ bezeichnet eine von zwei Zuständigen Officern des Emittenten, der Gesellschaft oder eines Garantiegebers unterzeichnete Bescheinigung.

„Preferred Stock“ bezeichnet in Bezug auf den Capital Stock einer Kapitalgesellschaft Capital Stock beliebiger Gattungen (unabhängig von deren Bezeichnung), welcher bei der Dividendenausschüttung oder der Auskehrung eines Liquidationserlöses bei Abwicklung oder Auflösung dieser Gesellschaft durch Gesellschafterbeschluss oder aber durch Gläubiger- oder Gerichtsbeschluss gegenüber einer anderen Aktiengattung dieser Gesellschaft bevorrechtigt ist.

„Ratingagenturen“ („*Rating Agencies*“) bezeichnet:

- (1) S&P,
- (2) Moody's, und
- (3) Fitch, oder
- (4) sofern S&P oder Moody's oder Fitch bzw. alle drei kein Rating der Schuldverschreibungen veröffentlichen, eine oder mehrere von der Gesellschaft ausgewählte europaweit anerkannte Ratingagentur(en), die S&P oder Moody's oder Fitch bzw. alle drei ersetzt bzw. ersetzen.

„Ratingdatum“ („*Rating Date*“) bezeichnet das Datum 90 Tage vor (1) einem Kontrollwechsel oder (2) der öffentlichen Bekanntgabe eines bereits eingetretenen Kontrollwechsels bzw. durch die Gesellschaft oder einen Rechtsträger beabsichtigten Kontrollwechsels, je nachdem, welches dieser Ereignisse früher eintritt.

„Ratingkategorie“ („*Rating Category*“) bezeichnet:

- (1) in Bezug auf S&P eine der folgenden Kategorien: BB, B, CCC, CC, C und D (bzw. entsprechende Nachfolgekategorien);

- (2) in Bezug auf Moody's eine der folgenden Kategorien: Ba, B, Caa, Ca, C und D (bzw. entsprechende Nachfolgekategorien);
- (3) in Bezug auf Fitch eine der folgenden Kategorien: BB, B, CCC, CC, C und D (bzw. entsprechende Nachfolgekategorien);
- (4) diesen Kategorien von S&P oder Moody's oder Fitch entsprechende Ratingkategorien einer anderen Ratingagentur. Bei der Bestimmung, ob das Rating der Schuldverschreibungen um eine oder mehrere Stufen herabgestuft wurde, werden die jeweiligen Ratingkategorien weiter untergliedernde Zusätze („+“ und „-“ bei S&P, „1“, „2“ und „3“ bei Moody's, „+“ und „-“ bei Fitch bzw. entsprechende Zusätze anderer Ratingagenturen) berücksichtigt (z.B. entspricht bei S&P eine Ratingänderung von BB+ auf BB oder von BB- auf B+ jeweils einer Herabstufung um eine Stufe).

„*Rechtsträger*“ bezeichnet eine natürliche Person, Kapitalgesellschaft, Personengesellschaft, ein Joint Venture, einen Trust, eine Organisation ohne eigene Rechtspersönlichkeit, eine staatliche Stelle oder Behörde, eine Gebietskörperschaft oder einen sonstigen Rechtsträger.

„*Refinanzierung*“ („*Refinance*“) bezeichnet in Bezug auf eine Verschuldung eine Refinanzierung, Verlängerung, Erneuerung, Rückzahlung, Vorauszahlung, Rücknahme oder Annullierung, oder die Ausgabe einer anderweitigen Verschuldung im Tausch gegen oder anstelle einer solchen Verschuldung. „*Refinanziert*“ und „*Refinanzierung*“ werden gleichbedeutend verwendet.

„*Refinanzierungsverschuldung*“ („*Refinancing Indebtedness*“) bezeichnet Verschuldung zwecks Refinanzierung von Verschuldung der Gesellschaft oder einer Tochtergesellschaft, die am Ausgabebetrag besteht oder unter Einhaltung des Begebungsvertrags eingegangen wurde, einschließlich der Verschuldung zur Refinanzierung von Refinanzierungsverschuldung, jedoch unter der Maßgabe, dass:

- (1) eine solche Refinanzierungsverschuldung eine Vereinbarte Fälligkeit aufweist, die nicht vor der vereinbarten Fälligkeit der Verschuldung liegt, die dadurch refinanziert werden;
- (2) diese Refinanzierungsverschuldung zum Zeitpunkt ihrer Übernahme eine Durchschnittslaufzeit aufweisen, die mindestens der Durchschnittslaufzeit der Verschuldung entspricht, die dadurch refinanziert werden; und
- (3) diese Refinanzierungsverschuldung einen Gesamtnennbetrag (bzw., im Falle einer Übernahme mit einem Emissionsdisagio, einen Gesamtausgabepreis) aufweisen, der höchstens dem im Rahmen der Verschuldung, die dadurch refinanziert wird, zum entsprechenden Zeitpunkt ausstehenden oder zugesagten Gesamtnennbetrag (bzw., im Falle des Eingehens von Verschuldung mit einem Emissionsdisagio, dem gesamten erhöhten Wert) (zuzüglich Gebühren und Aufwendungen sowie einschließlich etwaiger Aufschläge und Annullierungskosten) entspricht, wobei jedoch gilt, dass Refinanzierungsverschuldung weder (x) der Verschuldung einer Tochtergesellschaft zur Refinanzierung der Verschuldung der Gesellschaft noch (y) die Verschuldung der Gesellschaft oder einer Tochtergesellschaft zur Refinanzierung der Verschuldung einer anderen Tochtergesellschaft einschließen.

„*Sale- and Lease-back-Transaktion*“ („*Sale and Leaseback Transaction*“) bezeichnet eine direkte oder indirekte Vereinbarung, die mit einem Rechtsträger geschlossen wird bzw. bei der der Rechtsträger Vertragspartei ist und die das Leasing an die Gesellschaft oder eine Tochtergesellschaft von Vermögensgegenständen vorsieht, die am Ausgabebetrag Eigentum der Gesellschaft oder einer Tochtergesellschaft sind oder später erworben wurden und die von der Gesellschaft oder der Tochtergesellschaft an diesen Rechtsträger oder an einen anderen Rechtsträger, von dem mit diesen Vermögensgegenständen als Sicherheit Mittel bereitgestellt wurden oder bereitgestellt werden sollen, verkauft oder übertragen wurden oder werden sollen.

„*Schuldverschreibungsgarantie*“ („*Note Guarantee*“) bezeichnet die Garantie eines Garantiegebers für die Verpflichtungen des Emittenten aus den Schuldverschreibungen.

„SEC“ bezeichnet die U.S. Securities and Exchange Commission.

„Sicherheit“ („Lien“) bezeichnet jede Hypothek, Verpfändung, Sicherungsrecht, Belastung oder dingliche Sicherungsrechte aller Art (einschließlich Strukturen mit Eigentumsvorbehalt oder ähnlich gearteter Leasingverhältnisse).

„S&P“ bezeichnet die Standard & Poor’s Corporation und etwaige Nachfolgeunternehmen.

„Teilnehmende Mitgliedstaaten“ („Participating Member States“) bezeichnet einen Mitgliedsstaat der Europäischen Union, der die gemeinsame Währung in Übereinstimmung mit dem EG-Vertrag in seiner jeweils geltenden Fassung eingeführt hat oder einführt.

„Tochtergesellschaft“ („Subsidiary“) bezeichnet in Bezug auf einen Rechtsträger eine Kapitalgesellschaft, eine Gesellschaft mit Haftungsbeschränkung, eine Vereinigung, eine Personengesellschaft oder ein sonstiges Unternehmen, dessen Ergebnisse gemäß GAAP mit den Ergebnissen folgender Personen konsolidiert werden:

- (1) dieses Rechtsträgers;
- (2) dieses Rechtsträgers und einer oder mehreren Tochtergesellschaften dieses Rechtsträgers; oder
- (3) einer oder mehrerer Tochtergesellschaften dieses Rechtsträgers,

wobei jedoch für die Zwecke der in vorstehendem Abschnitt „— Bestimmte Auflagen“ beschriebenen Auflagen und der damit verbundenen Definitionen und der im vorstehenden Abschnitt „—Kündigungsgründe“ beschriebenen Ereignisse und der damit verbundenen Definitionen FMC AG & Co. KGaA und ihre Tochtergesellschaften, sofern nicht anders angegeben, nicht zu den Tochtergesellschaften der Gesellschaft zählen.

„Übernommene Verschuldung“ („Acquired Indebtedness“) bezeichnet die Verschuldung eines Rechtsträgers, die zu dem Zeitpunkt besteht, zu dem dieser Rechtsträger eine Tochtergesellschaft wird oder mit einem anderen Rechtsträger verschmolzen wird, oder die in Verbindung mit dem Erwerb von Vermögenswerten dieses Rechtsträgers übernommen werden, und die von diesem Rechtsträger in jedem Fall nicht im Zusammenhang mit bzw. in der Erwartung bzw. Erwägung seiner Übernahme als Tochtergesellschaft bzw. dieser Verschmelzung bzw. dieses Erwerbs eingegangen worden sind.

„GAAP“ bezeichnet die jeweils geltenden, in den Vereinigten Staaten von Amerika allgemein anerkannten Rechnungslegungsgrundsätze, u.a. aus folgenden Quellen:

- (1) Einschätzungen und Verlautbarungen (*Opinions and Pronouncements*) des Accounting Principles Board of the American Institute of Certified Public Accountants,
- (2) Stellungnahmen (Statements) und Verlautbarungen des Financial Accounting Standards Board,
- (3) Stellungnahmen anderer Rechtsträger, die von einem wesentlichen Teil der Rechnungslegungsbranche anerkannt sind, und
- (4) den Bestimmungen und Vorschriften der SEC bezüglich der Einbeziehung von Abschlüssen (einschließlich Pro-forma-Abschlüssen) in regelmäßigen Berichten, die gemäß Section 13 des Exchange Act einzureichen sind, einschließlich Einschätzungen und Verlautbarungen in Staff Accounting Bulletins und vergleichbaren schriftlichen Stellungnahmen von Rechnungslegungsexperten der SEC.

„Verbundener Geschäftsbereich“ („Related Business“) bezeichnet die Geschäftsbereiche der Gesellschaft und ihrer Tochtergesellschaften am Ausgabetag und alle mit diesen Geschäftsbereichen verbundenen, diesen untergeordneten oder diese ergänzenden Geschäftsbereiche.

„Verbundenes Unternehmen“ („Affiliate“) eines bestimmten Rechtsträgers ist

- (1) jeder andere Rechtsträger, der diesen Rechtsträger direkt oder indirekt kontrolliert bzw. direkt oder indirekt von ihm kontrolliert wird, oder
- (2) mit diesem Rechtsträger unter direkter oder indirekter einheitlicher Kontrolle steht.

Für den Zweck dieser Definition bezeichnet „Kontrolle“ bei Verwendung in Bezug auf einen Rechtsträger die Befugnis, dessen Geschäftsführung und Unternehmenspolitik direkt oder indirekt zu bestimmen, sei es durch den Besitz von stimmberechtigten Kapitalanteilen, gemäß Vertrag oder anderweitig, und die Bedeutung der Begriffe „kontrolliert“ und „kontrollieren“ ist entsprechend zu verstehen.

„*Vereinbarte Fälligkeit*“ („*Stated Maturity*“) bezeichnet in Bezug auf ein Wertpapier den für dieses Wertpapier angegebenen festgelegten Termin, an dem die endgültige Tilgungszahlung für dieses Wertpapier fällig wird, unter Berücksichtigung etwaiger Bestimmungen für eine Rücknahmepflicht (jedoch ohne Berücksichtigung etwaiger Bestimmungen, die im Falle bestimmter Ereignisse eine Rücknahme dieses Wertpapiers nach Wahl des Inhabers vorsehen, es sei denn, ein entsprechendes Ereignis ist eingetreten).

„*Vermögensübertragung*“ („*Asset Disposition*“) bezeichnet die direkte oder indirekte Veräußerung, Ausgabe, Übertragung, Leasing (ausgenommen im Rahmen des normalen Geschäftsbetriebs eingegangener Operating Lease-Verhältnisse), Übereignung oder anderweitige entgeltliche Übertragung durch die Gesellschaft oder eine ihrer Tochtergesellschaften (einschließlich aller Sale- und Lease-back-Transaktionen) an bzw. auf einen Rechtsträger, der nicht die Gesellschaft oder eine Tochtergesellschaft der Gesellschaft ist, einschließlich aller Übertragungen im Wege einer Verschmelzung oder ähnlichen Transaktion (für die Zwecke dieser Definition jeweils als „Übertragung“ bezeichnet) von

- (1) Anteilen des Capital Stock einer Tochtergesellschaft (sofern es sich nicht um Pflichtanteile der Mitglieder des Board of Directors oder um Anteile handelt, die von Gesetzes wegen von einem Rechtsträger zu halten sind, der nicht die Gesellschaft oder eine Tochtergesellschaft ist),
- (2) allen oder allen wesentlichen Vermögenswerten einer Geschäftssparte oder eines Geschäftsbereichs der Gesellschaft oder einer Tochtergesellschaft, oder
- (3) anderen Vermögenswerten der Gesellschaft oder einer Tochtergesellschaft, die nicht im Rahmen des normalen Geschäftsbetriebs der Gesellschaft oder der betreffenden Tochtergesellschaft erfolgt, sofern es sich in den vorstehend unter Ziffer (1), (2) und (3) dargelegten Fällen nicht um Folgendes handelt:
  - (a) eine Übertragung von Vermögenswerten oder die Ausgabe von Capital Stock durch eine Tochtergesellschaft auf bzw. an die Gesellschaft oder durch die Gesellschaft oder eine Tochtergesellschaft auf bzw. an einen Rechtsträger, der zum Zeitpunkt dieser Übertragung oder Ausgabe eine Tochtergesellschaft wird,
  - (b) gemäß dem Abschnitt „*Bestimmte Auflagen — Beschränkungen in Bezug auf Zusammenschlüsse und die Veräußerung von Vermögensgegenständen*“ zulässige Transaktionen, und
  - (c) Übertragungen in Verbindung mit Zulässigen Sicherheiten, Zwangsvollstreckungsverfahren in Bezug auf Vermögenswerte und einen Verzicht auf wertgeminderte oder abgeschriebene Forderungen.

„*Verschuldung*“ („*Indebtedness*“) bezeichnet in Bezug auf einen Rechtsträger an einem Tag, an dem dies bestimmt wird (ohne Doppelzählung):

- (1) den Kapitalbetrag und den (gegebenenfalls anfallenden) Aufschlag (*premium*) in Bezug auf (A) die Verschuldung dieses Rechtsträgers im Rahmen von Fremdmitteln und (B) die Verschuldung im Rahmen von Schuldverschreibungen, Schuldtiteln, Anleihen oder sonstigen ähnlichen Instrumenten, für deren Zahlung dieser Rechtsträger verantwortlich oder haftbar ist,

- (2) sämtliche Finanzierungsleasing-Verpflichtungen dieses Rechtsträgers,
- (3) sämtliche ausgegebenen oder übernommenen Verbindlichkeiten dieses Rechtsträgers, die den Teil eines Kaufpreises von Vermögensgegenständen oder Dienstleistungen darstellen, der zu einem späteren Zeitpunkt entrichtet wird (*deferred purchase price*), sämtliche Verpflichtungen mit Eigentumsvorbehalt dieses Rechtsträgers sowie alle Verpflichtungen dieses Rechtsträgers im Rahmen von Leasingverhältnissen (sofern es sich nicht um (x) übliche Beschränkungen oder Eigentumsvorbehalte aus mit Zulieferern im Rahmen des normalen Geschäftsbetriebs geschlossenen Verträgen, (y) im Rahmen des normalen Geschäftsbetriebs entstandene Außenstände, die nicht länger als 90 Tage offen sind, oder (z) Verpflichtungen aus Pensions- oder Altersvorsorgeplänen oder -vereinbarungen oder im Rahmen der arbeitgeberfinanzierten Altersversorgung (*deferred compensation*) gemäß dem Employee Retirement Income Security Act von 1974 in der jeweils geltenden Fassung bzw. den Bestimmungen eines ausländischen Gesetzgebers handelt oder darauf in untenstehender Ziffer 1 Bezug genommen wird),
- (4) sämtliche Verpflichtungen dieses Rechtsträgers zur Erstattung gegenüber einem Schuldner in Bezug auf Akkreditive, Bankgarantien, oder ähnliche Kredittransaktionen (sofern sich eine entsprechende Erstattungsverpflichtung nicht auf während des normalen Geschäftsbetriebs entstandene Außenstände bezieht und die Erstattungsverpflichtung innerhalb von 30 Tagen nach Begleichung der entsprechenden Außenstände erfüllt wird oder darauf in untenstehender Ziffer 1 Bezug genommen wird),
- (5) die Summe aller Verpflichtungen dieses Rechtsträgers in Bezug auf die Rücknahme, Rückzahlung oder den anderweitigen Rückkauf von Disqualified Stock bzw. in Bezug auf eine Tochtergesellschaft dieses Rechtsträgers, Preferred Stock (jeweils ohne aufgelaufene Dividenden),
- (6) alle unter (1) bis (5) aufgeführten Verpflichtungen anderer Rechtsträger und sämtliche Dividenden sonstiger Rechtsträgers, für deren jeweilige Zahlung dieser Rechtsträgers direkt oder indirekt als Schuldner, Garantiegeber oder anderweitig verantwortlich oder haftbar ist, einschließlich im Rahmen einer Garantie,
- (7) alle unter (1) bis (6) aufgeführten Verpflichtungen anderer Rechtsträgers, die durch eine Sicherheit an Vermögen dieses Rechtsträgers (unabhängig davon, ob eine entsprechende Verpflichtung von diesem Rechtsträger übernommen wird) besichert sind, wobei der Betrag der jeweiligen Verpflichtung dem niedrigeren der folgenden Werte entsprechen muss: dem Wert des Vermögens oder dem Betrag der Verpflichtung, die mit diesem Vermögen besichert ist, und
- (8) Hedging-Verpflichtungen dieses Rechtsträgers, soweit diese nicht anderweitig in dieser Definition enthalten sind.

Der Betrag der Verschuldung eines Rechtsträgers zu einem bestimmten Zeitpunkt entspricht der zu diesem Datum ausstehenden Summe aller unbedingten Verpflichtungen wie vorstehend beschrieben, und bei Eintritt eines bestimmten Ereignisses, das in einer entsprechenden Verpflichtung resultiert, der Haftungsobergrenze von zu diesem Zeitpunkt bestehenden Eventualverbindlichkeiten. Zur Klarstellung: Folgendes gilt nicht als Verschuldung:

- (1) Verschuldung in Bezug auf Forderungen aus Unfallversicherungen, Forderungen im Rahmen der Eigenversicherung (*self insurance*), Erfüllungs-, Bürgschafts-, Fertigstellungs- oder ähnliche Garantien im Rahmen des normalen Geschäftsbetriebs;
- (2) Verschuldung aus Vereinbarungen zur Schadloshaltung, Anpassungen des Kaufpreises oder ähnlichen Verpflichtungen, die jeweils in Zusammenhang mit der Veräußerung oder dem Erwerb von Unternehmensteilen, Vermögenswerten oder Capital Stock einer Tochtergesellschaft entstehen oder übernommen werden, sofern der Höchstbetrag der Verbindlichkeit in Bezug auf die gesamte Verschuldung (ausgenommen Steuern und Schadloshaltung in Bezug auf Umweltangelegenheiten) zu keinem Zeitpunkt die von der

Gesellschaft und ihren Tochtergesellschaften bei einer Veräußerung tatsächlich erhaltenen Bruttoerlöse (bei einer Veräußerung) und den Marktwert der erworbenen Unternehmensteile, Vermögenswerte oder des erworbenen Capital Stock (bei einem Erwerb) übersteigt.

- (3) Verschuldung aus der Einlösung eines Schecks, Wechsels oder ähnlichen Instruments (ausgenommen Überziehungskredite, die nur während eines Geschäftstages bestehen) bei einer Bank oder einem sonstigen Finanzinstitut aus ungedeckten Mitteln im normalen Geschäftsverlauf, sofern die Verschuldung innerhalb von fünf Geschäftstagen nach Eingehen erlöschen.

„*Voting Stock*“ eines Rechtsträgers bezeichnet sämtliche Klassen von Capital Stock oder sonstige Anteile (einschließlich Gesellschaftsanteilen) dieses Rechtsträgers, die jeweils ausstehen und normalerweise (ohne Berücksichtigung des Eintritts bestimmter Eventualitäten) ein Stimmrecht bei der Wahl von Geschäftsführungsverantwortlichen, Führungskräften oder Treuhändern dieses Rechtsträgers verbriefen.

„*Währungsvereinbarung*“ („*Currency Agreement*“) bezeichnet einen Devisenkontrakt, eine Vereinbarung über einen Währungsswap oder eine sonstige ähnliche Vereinbarung.

„*Wesentliche Tochtergesellschaft*“ („*Significant Subsidiary*“) bezeichnet in Bezug auf einen Rechtsträger eine Tochtergesellschaft dieses Rechtsträgers, die die Kriterien für eine „significant subsidiary“ im Sinne von Rule 1.02 der Regulation S-X des Exchange Act erfüllt.

„*Zinssatzvereinbarung*“ („*Interest Rate Agreement*“) bezeichnet eine Vereinbarung über einen Zinsswap, einen Zinscap oder eine ähnliche Vereinbarung finanzieller Art.

„*Zulässige Inhaber*“ („*Permitted Holders*“) bezeichnet die Else Kröner-Fresenius-Stiftung und alle mit ihr Verbundenen Unternehmen.

„*Zulässige Sicherheiten*“ („*Permitted Liens*“) bezeichnet in Bezug auf einen Rechtsträger:

- (1) Sicherheiten an Vermögensgegenständen der Gesellschaft oder einer ihrer Tochtergesellschaften, die Verschuldung besichert, welche gemäß Absatz (a) und Ziffer (1), (7) und (12) von Absatz (b) von vorstehendem Abschnitt „— *Beschränkungen in Bezug auf das Eingehen von Verschuldung*“ zulässig sind.
- (2) Zahlungsverpflichtungen (*pledges*) oder Einzahlungen (*deposits*) dieses Rechtsträgers aufgrund gesetzlicher Regelungen zur Unfallversicherung, Arbeitslosenversicherung oder ähnlicher gesetzlicher Regelungen, in gutem Glauben geleistete Garantiezahlungen im Zusammenhang mit Ausschreibungen, Verträgen (ausgenommen auf die Tilgung der Verschuldung gerichtete Verträge) oder Mietverträge, an denen dieser Rechtsträger sich beteiligt hat bzw. die er eingegangen ist, als Sicherheit für öffentlich-rechtliche oder gesetzliche Verpflichtungen dieses Rechtsträgers geleistete Zahlungen sowie Zahlungen, Geldmittel oder Designated Government Obligations als Sicherheit für eine Bürgschaft (*surety bond*) oder eine Garantie für die Berufungskosten (*appeal bond*) mit diesem Rechtsträger als Partei, Zahlungen als Sicherheit für streitige Steuern, Import- oder sonstige Zölle oder Mietkautionen, die jeweils im Rahmen der normalen Geschäftstätigkeit eingegangen wurden;
- (3) Gesetzliche Sicherheiten, so u.a. Carriers' Liens, Warehousemen's Liens und Mechanics' Liens jeweils in Bezug auf noch nicht fällige oder nach Treu und Glauben streitige Beträge, wenn dafür Rücklagen oder entsprechende Rückstellungen, sofern diese nach GAAP vorgeschrieben sind, gebildet wurden;
- (4) Sicherheiten im Zusammenhang mit Steuern oder sonstigen staatlichen Abgaben, für die noch keine Säumniszuschläge angefallen oder die nach Treu und Glauben streitig sind, wenn dafür nach GAAP gegebenenfalls vorgeschriebene Rückstellungen gebildet wurden;



- (5) Sicherheiten, die zugunsten der Aussteller einer Bürgschafts- oder Erfüllungsgarantie, eines Akkreditivs oder einer Bankgarantie auf Verlangen und für Rechnung des jeweiligen Rechtsträgers im Rahmen des normalen Geschäftsbetriebs bestellt wurden;
- (6) Belastungen, Grunddienstbarkeiten (Wegerecht, Wasserrecht, Rechte in Bezug auf Stromversorgung, Anbindung ans Telefonnetz und ähnliche Rechte), Bebauungs- oder sonstige Beschränkungen in der Nutzung von Grundvermögen (*real property*), im Rahmen des Geschäftsbetriebs dieses Rechtsträgers begründete oder mit dem Eigentum an ihrem Vermögen verbundene Sicherungsrechte, die in ihrer Gesamtheit den Wert dieses Vermögens nicht wesentlich mindern oder die Nutzung dieses Vermögens im Geschäftsbetrieb dieses Rechtsträgers nicht wesentlich beeinträchtigen;
- (7) Sicherheiten für Hedging-Verpflichtungen, sofern Sicherungsrechte für die entsprechende Verschuldung an demselben Vermögen bestellt werden und nach dem Begebungsvertrag bestellt werden dürfen, das auch als Sicherheit für die Hedging-Verpflichtungen oder die Zinssatzvereinbarung dient;
- (8) Nutzungsrechte (leases, subleases, licenses) in Bezug auf Grundvermögen, die den normalen Geschäftsbetrieb der Gesellschaft oder einer ihrer Tochtergesellschaften nicht wesentlich beeinträchtigen, sowie Nutzungsrechte in Bezug auf anderes Vermögen im Rahmen des normalen Geschäftsbetriebs;
- (9) Keinen Kündigungsgrund begründende Judgement Liens, sofern für diese adäquate Garantien bestehen und in dem ordnungsgemäß eingeleiteten entsprechenden Rechtsverfahren zur Überprüfung des Urteils noch keine endgültige Entscheidung ergangen oder die Frist für die Einleitung eines solchen Verfahrens noch nicht abgelaufen ist;
- (10) Sicherheiten für die Zahlung (oder Refinanzierung der Zahlung) des gesamten oder eines Teils des Kaufpreises von für die Nutzung in einem Verbundenen Geschäftsbereich erworbenem oder geschaffenem Vermögen oder Finanzierungsleasingverbindlichkeiten in Bezug auf solches Vermögen, sofern:
  - (a) der gesamte Nennbetrag, über den diese Sicherheiten bestellt wurden, nicht die Kosten für den Erwerb oder die Schaffung dieses Vermögens übersteigt; und
  - (b) diese Sicherheiten innerhalb von 180 Tagen ab Schaffung oder Erwerb des entsprechenden Vermögens bestellt werden (oder, im Refinanzierungsfall, innerhalb dieser Frist bestellte Sicherheiten ersetzen) und damit kein anderes Vermögen als dieses Vermögen und damit verbundene(s) Vermögen oder Rechte der Gesellschaft oder einer Tochtergesellschaft belastet werden;
- (11) Sicherheiten, die ausschließlich durch gesetzliche Vorschriften oder Common Law zu Banker's Liens, Aufrechnungsrechten oder ähnlichen Rechten und Ansprüchen in Bezug auf Depotkonten oder andere bei einem Einlagenkreditinstitut geführte Guthaben begründet werden, sofern die Gesellschaft oder eine Tochtergesellschaft mit dem Depotkonto keine Besicherungsabsicht gegenüber dem Kreditinstitut verfolgt;
- (12) In *Finanza* ??? auf der Grundlage des Uniform Commercial Code der Vereinigten Staaten (oder ähnlichen Einreichungen in anderen einschlägigen Rechtsordnungen) resultierende Sicherheiten in Bezug auf Operating Leasing-Verpflichtungen, die die Gesellschaft im Rahmen des normalen Geschäftsbetriebs eingegangen ist;
- (13) Am Ausgabetag bestehende Sicherheiten (mit Ausnahme der in vorstehender Ziffer (1) und in nachstehender Ziffer (20) genannten Sicherheiten);
- (14) An Vermögen oder Aktien eines Rechtsträgers zu dem Zeitpunkt bestehende Sicherheiten, zu dem dieser Rechtsträger eine Tochtergesellschaft wird, unter der Voraussetzung, dass diese Sicherheiten nicht in Verbindung damit oder im Hinblick darauf eingegangen oder übernommen werden, dass dieser andere Rechtsträger eine Tochtergesellschaft wird, und

sich diese Sicherheit nicht auf anderes Vermögen der Gesellschaft oder einer Tochtergesellschaft erstreckt;

- (15) An Vermögen zu dem Zeitpunkt bestehende Sicherheiten, zu dem die Gesellschaft oder eine Tochtergesellschaft das Vermögen erworben hat, auch im Rahmen einer Verschmelzung mit der oder auf die Gesellschaft oder eine(r) Tochtergesellschaft, unter der Voraussetzung, dass diese Sicherheiten nicht in Verbindung mit oder im Hinblick auf diesen Erwerb bestellt oder übernommen werden und sich diese Sicherheiten nicht auf anderes Vermögen der Gesellschaft oder einer Tochtergesellschaft erstrecken (außer im Fall eines Erwerbs durch die HELIOS-Gruppe, in welchem Fall die Sicherheiten im Zusammenhang mit oder im Hinblick auf einen solchen Erwerb an Vermögen eines Mitglieds der HELIOS-Gruppe bestellt werden können);
- (16) Sicherheiten in Zusammenhang mit den Schuldverschreibungen und der gesamten sonstigen Verschuldung, die gemäß ihren Bedingungen besichert werden muss, wenn die Schuldverschreibungen besichert sind;
- (17) Sicherheiten, die Verschuldung oder andere Verpflichtungen der Gesellschaft gegenüber einer Tochtergesellschaft oder Verschuldung oder andere Verpflichtungen einer Tochtergesellschaft gegenüber der Gesellschaft oder einer Tochtergesellschaft besichern;
- (18) Sicherheiten, die Refinanzierungsverschuldung besichern, welche zur Refinanzierung von bislang besicherter Verschuldung eingegangen wurden, vorausgesetzt, diese Sicherheit ist auf das Gesamtvermögen oder den Teil des Vermögens beschränkt, der als Sicherheit für die refinanzierte Verschuldung dient;
- (19) Sicherheiten, die auf gesetzlicher Grundlage oder mit derselben Wirkung auf vertraglicher Grundlage im Rahmen des normalen Geschäftsbetriebs begründet werden; und
- (20) Sicherheiten an Vermögen einer Tochtergesellschaft der Gesellschaft, die Verschuldung dieser Tochtergesellschaft besichert, welche gemäß den Abschnitten (a), (b)(2) und (b)(12) des Abschnitts „— Beschränkungen in Bezug auf das Eingehen von Verschuldung“ zulässig sind, wobei diese Verschuldung 750 Mio. € nicht übersteigen dürfen.

*Dabei gilt:* Die Summe aus (i) dem Gesamtnennbetrag von Verschuldung, die durch eine nach vorstehender Ziffer (1) zulässige Sicherheit besichert sind, und (ii) dem Gesamtnennbetrag von Verschuldung, die einer Tochtergesellschaft, die kein Garantiegeber ist, geschuldet werden und durch eine nach vorstehender Ziffer (17) zulässige Sicherheit besichert sind, darf den höheren der folgenden Beträge nicht übersteigen: (i) 3,050 Mrd. US\$ und (ii) den Multiplikator von 2,5 x FSE EBITDA zum Zeitpunkt des Eingehens dieser Verschuldung.

„Zurechenbare Verschuldung“ („*Attributable Debt*“) bezeichnet in Bezug auf Sale- and Lease-back-Transaktionen zum Zeitpunkt der Festlegung die Gesamtverbindlichkeit (nach Abzinsung auf den Barwert anhand eines Jahressatzes in Höhe des Abzinsungsfaktors, der gemäß GAAP für eine Finanzierungsleasing-Verpflichtung mit ähnlicher Laufzeit angewendet würde), die auf Seiten des Leasingnehmers für Mietzahlungen bestehen, die im Laufe der Restdauer der anfänglichen Laufzeit des in der Sale- and Lease-back-Transaktion enthaltenen Leasingverhältnisses zu leisten sind (nicht berücksichtigt werden Beträge, die für Grundsteuer, Instandhaltung, Reparaturen, Versicherungen, Wasserabgaben und sonstige Zwecke zu zahlen sind, die keine Zahlungen für Eigentumsrechte darstellen).

„Zuständiger Officer“ („*Responsible Officer*“) bezeichnet den Vorstandsvorsitzenden, Präsidenten, Finanzvorstand, Senior Vice President Finanzen, Treasurer, stellvertretenden Treasurer, Geschäftsführer, ein Vorstands- oder Board-Mitglied eines Unternehmens oder einen Prokuristen (bzw. im Falle der Gesellschaft einen Zuständigen Officer ihres Komplementärs bzw. einer anderen geschäftsführenden Person oder eines anderen Rechtsträgers, der befugt ist, in ihrem Namen zu handeln, sowie, sofern es sich bei diesem Rechtsträger um eine Personengesellschaft, Gesellschaft mit Haftungsbeschränkung oder einen vergleichbar organisierten Rechtsträger handelt, einen



Zuständigen Officer des Rechtsträgers, der gegebenenfalls befugt ist, im Namen dieses Rechtsträgers zu handeln).

### **Ratingagenturen**

Moody's hat ihren Sitz in der Europäischen Gemeinschaft und hat Registrierungen nach der Verordnung (EG) Nr. 1060/2009 des Europäischen Parlaments und des Rates über Ratingagenturen vom 16. September 2009 beantragt.

S&P hat ihren Sitz in der Europäischen Gemeinschaft und hat die Registrierung nach der Verordnung (EG) Nr. 1060/2009 des Europäischen Parlaments und des Rates über Ratingagenturen vom 16. September 2009 beantragt.

Fitch hat ihren Sitz in der Europäischen Gemeinschaft und hat Registrierungen nach der Verordnung (EG) Nr. 1060/2009 des Europäischen Parlaments und des Rates über Ratingagenturen vom 16. September 2009 beantragt.

Eine Liste der registrierten und zertifizierten Ratingagenturen ist auf der Internetseite der European Securities and Markets Authority unter [www.esma.europa.eu/index.php](http://www.esma.europa.eu/index.php) abrufbar.

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