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CONVERSION REPORT

of the Management Board of

Fresenius Aktiengesellschaft

for the conversion of

Fresenius Aktiengesellschaft, Bad Homburg v.d.H., Germany,

into a

European Company (*Societas Europaea*, SE)

as

Fresenius SE

Bad Homburg v.d.H., Germany

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I. Preface of the Chairman of the Supervisory Board and the Chairman of the Management Board of Fresenius AG

To our Shareholders:

In recent years, Fresenius has grown very successfully as a global health care group. This growth was characterized by key strategic steps, solid operations management and commercial prudence.

The management and supervisory board of Fresenius AG today propose two new important steps and ask for your approval in an extraordinary general meeting on December 4, 2006:

- the conversion of Fresenius AG into a European Company (*Societas Europaea*, SE) and
- the new division of the subscribed capital (share split) of Fresenius AG in connection with a capital increase from the Company's funds.

We would like to describe these steps in greater detail:

Fresenius' growth has been accompanied by several changes in its legal form. The original commercial business of a single entrepreneur was transformed into a limited liability company and then into a limited partnership. In 1981, Fresenius became a stock corporation and, since 1986, Fresenius AG has been a listed company. In 1986, Fresenius Group had approximately 2,100 employees and achieved sales of DM 465 mn. In 2006, sales are expected to increase to approximately Euro 10.7 bn. The Company now has more than 100,000 employees. Approximately 46% are employed in the member states of the European Union and the signatory states to the European Economic Area.

After the successful expansion of the Group's international activities and the strong growth in recent years, the proposed conversion of Fresenius AG into a European Company is a consistent step in the Company's development.

The legal form of a European Company will allow Fresenius to continue its high-quality and efficient corporate governance practices. The supervisory board of future Fresenius SE will continue to have twelve members as it is the case with Fresenius AG today. Maintaining the size of the supervisory board will ensure that the Company's corporate governance remains efficient while adhering to the guideline set by the German Corporate Governance Code (No. 3.1) – "management board and supervisory board cooperate closely for the benefit of the

enterprise". Without the proposed conversion, Fresenius would have to increase the number of supervisory board members to twenty due to the increased number of German employees.

In addition, the new legal form will also reflect Fresenius' international business focus. With the proposed conversion into a European Company, we use a legal form which is recently available in Germany and is based on European law. As such, it particularly facilitates the development of an open and international corporate culture. For example, employee representatives on the supervisory board of future Fresenius SE will represent all Group employees in the member states of the European Union and the signatory states to the European Economic Area. In the future, these employees will participate in appointing employee representatives to the supervisory board, increasing their identification with Fresenius. With the conversion we consequently reflect the international focus of our business in the legal form.

However, Fresenius will continue to have its registered office in Germany. The management and supervisory boards of Fresenius AG are committed to this country and the Company's historic roots.

The legal and economic identity of the Company will be preserved by the conversion. The participations held in the Company by the shareholders will remain unchanged.

The management and supervisory boards propose to convert Fresenius AG into a European Company to continue its high-quality and efficient corporate governance and to facilitate an open and international corporate culture at Fresenius. This is explained in detail in the following conversion report.

At the same time, the management and supervisory boards propose a new division of the subscribed capital of Fresenius AG (share split), in connection with a capital increase from the Company's funds. As a result the number of shares issued will triple with a proportionate amount of the subscribed capital of Euro 1.00 per ordinary and preference share.

The price of the Fresenius shares has increased significantly during the last couple of years. It is currently one of the most heavily weighted stocks in the HDAX. The price level is to be reduced arithmetically without affecting the overall value for the shareholders. The measure is intended to promote trading activity in Fresenius shares and to increase the share's attractiveness for a broad group of investors.

Following the capital increase from the Company's funds and the subsequent share split every holder of one current no-par value share of the Company will hold three no-par value shares. This proposal also entails a number of amendments to the articles of association which, however, only serve the purpose of adjusting the capital figures.

The management and supervisory boards are convinced that these two steps – combined with a long-term strategy focused on profitable growth – will further promote Fresenius' successful path into the future.

Yours sincerely,

Dr. Gerd Krick

Chairman of the Supervisory Board
of Fresenius AG

Dr. Ulf M. Schneider

Chairman of the Management Board
of Fresenius AG

II. Introduction

The management board of Fresenius Aktiengesellschaft (hereinafter "**Fresenius AG**" or the "**Company**") has prepared a conversion plan which was notarised on October 10, 2006 (Roll of Deeds No. 223/2006 of notary public Dr. Kersten von Schenck, Frankfurt am Main) (the "**Conversion Plan**"). The subject matter of this Conversion Plan is the conversion of Fresenius AG into a European Company (*Societas Europaea*, hereinafter also referred to as "**SE**"). The conversion is conducted pursuant to Art. 37 in connection with Art. 2 para. 4 of Council Regulation (EC) No. 2157/2001 of October 8, 2001, on the Statute for a European company (SE) ("**SE Regulation**"). In addition, the Law for the Implementation of Council Regulation (EC) No. 2157/2001 of October 8, 2001, on the Statute for a European company (SE) of December 22, 2004 (SE Implementation Act – *SE-Ausführungsgesetz*, "**SEAG**") applies.

The involvement of the employees in Fresenius SE (participation on the entrepreneurial (supervisory board) level and co-determination rights of the works council) is subject to the provisions of the Act on the participation of employees in a European Company of December 22, 2004 (SE Employee Participation Act – *SE-Beteiligungsgesetz*, "**SEBG**") which implements Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees ("**SE Employee Involvement Directive**"). In addition, the respective transformation provisions in respect of the SE Employee Involvement Directive in the other member states of the European Union ("**EU**") and in the signatory states of the European Economic Area ("**EEA**") in which Fresenius Group has employees. In contrast, the German Co-determination Act 1976 (*Mitbestimmungsgesetz* – "**MitBestG 1976**") which currently applies to Fresenius AG will not be applicable to Fresenius SE.

The conversion does neither lead to a liquidation of Fresenius AG nor to the formation of a new legal entity. The interests of the shareholders in the Company continue to exist because of the identity of the legal entity.

The Conversion Plan requires the approval of the general meeting of shareholders of Fresenius AG. Management board and supervisory board of Fresenius AG have decided to submit the Conversion Plan, including the statutes of future Fresenius SE, to the extraordinary general meeting of the Fresenius shareholders on December 4, 2006, for approval.

The management board of Fresenius AG has prepared this report in accordance with Art. 37 para. 4 SE Regulation, in which an explanation and the reasons are being given for the legal and economic aspects of the conversion and the effects of the transition from the legal form of an *Aktiengesellschaft* (German stock corporation – *AG*) to the legal form of an SE for the shareholders and employees are being stated.

III. Fresenius AG

1. Registered Office, Financial Year and Corporate Purpose

Fresenius AG has its registered office in Bad Homburg v.d.H., Germany. Its business address is Else-Kröner-Straße 1, 61352 Bad Homburg v.d.H., Germany. It is registered in the commercial register of the local court (*Amtsgericht*) in Bad Homburg v.d.H. under the entry number HRB 2617. The financial year of Fresenius AG corresponds to the calendar year. Fresenius AG is the operating holding company of the Fresenius group of companies. Fresenius AG and its group companies are hereinafter referred to as "**Fresenius**" or "**Fresenius Group**".

Pursuant to its articles of association, the corporate purpose of Fresenius AG is

- development, manufacture and sale as well as trading with pharmaceutical, dietary and medical devices, systems and processes, hospital products, disinfectants and other products,
- planning and construction of production plants, in particular for the manufacture of pharmaceutical, dietary and medical devices,
- construction, development and operation of medical and curative facilities as well as of hospitals,
- consulting in the medical and pharmaceutical fields as well as scientific information and documentation.

The company is entitled to enter into all business transactions and take any measures which are deemed to be necessary or useful to accomplish the purposes of the company, in particular, to acquire interests in other companies of the same or a similar nature, to take over their management and/or representation, to transfer company divisions, including major company divisions, to other companies, provided that the company owns at least the majority of the voting capital and/or holds a controlling interest, and to establish branches at home and abroad.

2. Business Activities and Participations

a) Overview of Fresenius Group

Fresenius is a global health care group with more than 100,000 employees. As per June 30, 2006, 46% of the employees were employed in the member states of the EU and the signatory

states to the EEA. Fresenius offers products and services in the health care sector. Fresenius Group comprises the following business segments: Fresenius Medical Care, which according to publicly available data regarding sales and the number of patients in care, respectively, is the largest dialysis company in the world, Fresenius Kabi, one of the leading companies for infusion therapies, clinical nutrition and transfusion technology, as well as Fresenius ProServe. This business segment is active in hospital operations and offers engineering and services for hospitals, health care facilities and for the pharmaceutical industry. Fresenius Group has business activities in approximately 100 countries and operates more than 60 production facilities worldwide. In Europe, Fresenius Group is active in more than 30 countries with subsidiaries and other companies in which it holds interests and operates 36 production facilities. In the financial year 2005, Fresenius Group generated sales of Euro 7.889 bn., an EBIT of Euro 969 mn. and a net income of Euro 222 mn. (unless expressly indicated otherwise, all statements regarding financial data in this report are made in accordance with US GAAP).

Fresenius Group is able to look back to a history of more than 90 years; the history of the Fresenius family in the medical industry dates back even further. Since 1986, Fresenius AG is a listed company.

Fresenius Medical Care came into existence in the year 1996 after a number of transactions by which the dialysis product business of Fresenius Group was combined with National Medical Care Inc., the dialysis care branch of W.R. Grace. In the course of the initial public offering of Fresenius Medical Care, its ordinary shares were traded for the first time on the New York Stock Exchange (NYSE) as American Depositary Receipts ("**ADR**") on October 1, 1996, and in Frankfurt am Main on October 2, 1996. The trade in preference shares commenced after the first issuance on November 25, 1996, in New York as ADRs and on November 27, 1996, in Frankfurt am Main. In the financial year 2006, 96% of the preference shares of Fresenius Medical Care were converted into ordinary shares and Fresenius Medical Care was converted from the legal form of a stock corporation into the legal form of a partnership limited by shares (*Kommanditgesellschaft auf Aktien – KGaA*). At the end of March 2006, Fresenius Medical Care completed the acquisition of dialysis care provider Renal Care Group and thereby significantly strengthened its position in dialysis in the USA.

In 1998, Fresenius acquired the international infusion and nutrition business from Pharmacia & Upjohn. The combination of this business with the former business segment Fresenius Pharma led to the creation of Fresenius Kabi. At the beginning of 2005, Fresenius Kabi extended its European business by acquiring Portuguese company Labesfal which is active in

the field of intravenously administered drugs, and in December 2005 through the acquisition of Clinico, a supplier of medical devices.

In 1999, Fresenius AG was transformed into an operating holding company with its business segments forming independent legal entities.

In 2001, Fresenius Group acquired the Wittgensteiner Kliniken and, at the end of 2005, the HELIOS Kliniken which both form part of the business segment Fresenius ProServe. With the acquisition of HELIOS Kliniken, Fresenius Group significantly extended its hospital operation business.

In the following, the operational activities of Fresenius Group are being described, which, in addition to the activities of Fresenius AG, are divided between the three legally separate business segments (sub-groups) Fresenius Medical Care, Fresenius Kabi and Fresenius ProServe, which are managed by Fresenius AG as an operationally active parent company.

(aa) Business Segment Fresenius Medical Care

The business segment Fresenius Medical Care comprises Fresenius Medical Care AG & Co. KGaA and its subsidiaries. Fresenius Medical Care is the leading vertically integrated supplier worldwide of dialysis care and dialysis products for the treatment of patients with chronic kidney failure. As of June 30, 2006, Fresenius Medical Care treated 161,675 patients worldwide (December 31, 2005: 131,450) in 2,078 clinics (December 31, 2005: 1,680) in 26 countries. The increase largely resulted from the inclusion of the clinics and the patients under treatment of the acquired Renal Care Group. In addition, Fresenius Medical Care develops and produces a complete product portfolio of devices, systems, equipment parts and disposables for dialysis which is being sold to customers in over 100 countries. In North America, the company is conducting, in addition, clinical laboratory tests and offers perfusion and autotransfusion services as well as services in the field of therapeutical apheresis.

While the contribution to sales of dialysis care in North America was 89% in 2005, on the international level outside North America dialysis products were dominant with a share in the sales of 63%. In the year 2004, this share had been 65%. Thus, dialysis care plays an increasingly important role for Fresenius Medical Care also outside of North America, driven by the growing trend towards privatisation.

In this regard, Europe is a heterogeneous market. In some respects, the more than 35 individual markets differ considerably with regard to their reimbursement structure and market access. For example, in some countries it is presently not permissible for privately owned companies to operate dialysis clinics. In contrast, in Eastern Europe clinics are being privatised which opens up new opportunities for growth. In the countries of Central Europe, Fresenius Medical Care mostly sells dialysis products, whereas in many other countries in Europe, such as France, the United Kingdom, Italy, Poland, Portugal, Slovenia, Spain, Czech Republic, Turkey and Hungary, the company also acts as a provider of dialysis care. Fresenius Medical Care operates approximately 330 dialysis clinics in Europe. In addition, Fresenius Medical Care has a network of production facilities in Europe in order to satisfy the local demand for dialysis products.

In the financial year 2005, Fresenius Medical Care generated sales of USD 6.772 bn. (2004: USD 6.228 bn.). The EBIT for the year 2005 was USD 939 mn. (2004: USD 852 mn.), the net income amounted to USD 455 mn. (2004: USD 402 mn.).

In the six months ended June 30, 2006, Fresenius Medical Care generated an increase in sales of 19% to USD 3.912 bn. (first six months 2005: USD 3.283 bn.). In addition to a strong organic growth, the increase is due to the first-time consolidation of Renal Care Group in the second quarter of 2006. Approximately 16% of the sales were generated in the member states of the EU and the signatory states to the EEA. The EBIT for the six months ended June 30, 2006, was USD 757 mn. (six months ended June 30, 2005: USD 579 mn.), the net income was increased to USD 246 mn. (six months ended June 30, 2005: USD 223 mn.). This includes an amount of USD 20 mn. for one-time items, mostly for the refinancing of debt, expenses related to the stock option accounting change as well as for the after-tax on the divestitures of dialysis clinics in the United States which was a condition precedent for the approval of the US Federal Trade Commission of the acquisition of Renal Care Group. Excluding the above effects net income was up 19% to USD 266 mn.

As per June 30, 2006, the business segment Fresenius Medical Care had a total of 58,394 employees (December 31, 2005: 50,250), of these, 10,440 were employed in the member states of the EU and the signatory states to the EEA.

(bb) Business Segment Fresenius Kabi

The business segment Fresenius Kabi is the leading provider in Europe and in almost all markets in Latin America and Asia Pacific of infusion therapies and clinical nutrition for severely and chronically ill patients. The products are being used in the emergency room,

during operations, in intensive care and regular hospital wards as well as in outpatient care. Fresenius Kabi is one of the few companies worldwide to offer infusion therapies, clinical nutrition and related medical devices. In addition, Fresenius Kabi is a leading supplier of transfusion technology products. In the field of infusion therapy, products for fluid and blood volume replacement as well as generic intravenously administered drugs and the necessary infusion technologies are being offered. In clinical nutrition, Fresenius Kabi is offering parenteral (i.e. administered intravenously) and enteral nutrition (i.e. administered via the gastrointestinal tract) as well as inpatient and outpatient infusion technologies. In transfusion technology, a broad portfolio of products for blood banks and blood donation units for the production and further processing of blood products is being offered.

Fresenius Kabi has an international production network. The most important production sites include the facilities in Friedberg, Germany, and Uppsala, Sweden. In addition, Fresenius Kabi operates production facilities in nine other European countries as well as in Latin America, Asia and South Africa. The international production network enables Fresenius Kabi, which is active in many local markets, to implement its business model and, in particular, to meet the high logistical and regulatory demands which are made on the company.

Europe is the largest market for Fresenius Kabi. Progress in medical science and the demographic development will continue to be growth factors. In Eastern Europe, in addition, the demand for an improved primary care in hospitals, which creates a higher demand for medical products, will increase. Therefore, the eastern European countries are part of the regions with strong growth of Fresenius Kabi.

In 2005, Fresenius Kabi completed two important acquisitions in Europe. In January 2005, Fresenius Kabi acquired Labesfal – Laboratório de Especialidades Farmacêuticas Almiro S.A. – which operates in Portugal in the area of intravenously administered generic drugs; the transaction was completed in March 2005. In the future, the products of Labesfal are to be marketed throughout Europe. Labesfal has a high-tech production plant in Portugal the capacities of which allow for the international expansion of business. In October 2005, Fresenius Kabi acquired the business of Clinico GmbH, Germany, a manufacturer of medical devices. The transaction was completed in December 2005. The company has a development centre and a tool-making site in Germany, as well as plants with advanced production technologies in Poland and China. Labesfal was consolidated in the consolidated financial statements commencing January 1, 2005, the business of Clinico was consolidated as per

December 31, 2005. In both cases Fresenius Kabi can put to use its existing international marketing network in order to market the products of the acquired companies.

In the financial year 2005, the business segment Fresenius Kabi generated sales of Euro 1.681 bn. (2004: Euro 1.491 bn.), an EBIT of Euro 234 mn. (2004: Euro 176 mn.) and a net income of Euro 111 mn. (2004: Euro 79 mn.).

In the six months ended June 30, 2006, the sales of Fresenius Kabi increased by 15% to Euro 937 mn. (six months ended June 30, 2005: Euro 818 mn.). 65% of the sales were generated in the member states of the EU and the signatory states to the EEA. In respect of EBIT, Fresenius Kabi was able to achieve in the six months ended June 30, 2006, an increase by 26% to Euro 139 mn. (six months ended June 30, 2005: Euro 110 mn.). The net income for the six months ended June 30, 2006, was Euro 60 mn. (six months ended June 30, 2005: Euro 51 mn.).

As per June 30, 2006, the business segment Fresenius Kabi had a total of 15,345 employees, of these, 9,039 were employed in the member states of the EU and the signatory states to the EEA (December 31, 2005: 14,453).

(cc) Business Segment Fresenius ProServe

The business segment Fresenius ProServe is a leading private hospital operator in Germany with more than 50 clinics (HELIOS Kliniken Group). The service portfolio further includes engineering and services for hospitals and health care facilities (VAMED) as well as for the pharmaceutical industry (Pharmaplan).

HELIOS Kliniken GmbH, Fulda (in the future: Berlin), Germany, was acquired by Fresenius AG in September 2005; the transaction was completed in December 2005. At the end of the year 2005, HELIOS Kliniken GmbH was transferred to Fresenius ProServe GmbH. With this acquisition, Fresenius has expanded its business segment Fresenius ProServe into its third strong business segment and has assumed a leading position among private hospital operators in Germany. The previously existing clinics of Fresenius in the Wittgensteiner Group (WKA) were placed under the leadership of HELIOS and together with HELIOS Kliniken GmbH form a single unit within HELIOS Kliniken Group.

As per the June 30, 2006, HELIOS Kliniken Group owns 51 clinics with more than 14,100 beds, with 47 clinics in Germany and four in the Czech Republic. The clinics network comprises 33 acute care clinics, including four maximum care hospitals with a capacity of

more than 1000 beds each, and 18 post acute care clinics. Each year about 420,000 inpatient treatments are being performed. HELIOS Kliniken Group has 23,594 employees (as per June 30, 2006). The customers of HELIOS Kliniken Group include social security agencies and health insurers as well as private patients.

In March 2006, HELIOS Kliniken GmbH signed an agreement for the acquisition of an interest of 60% in HUMAINE Kliniken GmbH ("**HUMAINE**"). At the same time, an option right for the acquisition of the remaining 40% was agreed upon. In the year 2005, HUMAINE generated sales of Euro 197 mn. and operates six acute care and post acute care clinics as well as special rehabilitation clinics with a capacity of 1,850 beds, with 1,530 of which in the field of acute care. The group owns two major regional hospitals (*Krankenhäuser der Schwerpunktversorgung*) with approx. 600 beds each. The transaction was completed in September 2006. HUMAINE will be consolidated in the consolidated financial statements commencing July 1, 2006.

VAMED AG engages in the international market for hospital engineering and services. It specialises in international hospital projects and, in particular, is a world leader in the development and construction of major hospital projects. In Europe, VAMED is the leading provider in the field of technical management. The customers of VAMED include public and private hospitals and other health care facilities. The company realises the worldwide development, planning, construction as well as the entire equipment, maintenance and technical management of health care facilities. In its home market Austria, VAMED was able to consolidate its leading market position in the field of health care facilities with additional major projects in the financial year 2005.

Pharmaplan GmbH specialises in the planning, construction and supervision of pharmaceutical and medical-technical production plants at home and abroad. The customers of Pharmaplan include domestic and foreign pharmaceutical and biotechnology companies. In 2005, Pharmaplan has a particularly strengthened its market presence in Eastern Europe.

In the financial year 2005, the business segment Fresenius ProServe generated sales of Euro 809 mn. (2004: Euro 813 mn.). The EBIT was Euro 20 mn. (2004: Euro 9 mn.), the net income amounted to Euro 2 mn. (2004: Euro -10 mn.). The inclusion of HELIOS Kliniken in the year 2005 (pro forma) would have resulted in sales of Euro 2.009 bn. and an EBIT of Euro 125 mn.

In the six months ended June 30, 2006, the sales of Fresenius ProServe increased by 3% to Euro 974 mn. (six months ended June 30, 2005, incl. HELIOS Kliniken GmbH: Euro 942

mn.). 91% of the sales were generated in the member states of the EU and the signatory states to the EEA. The EBIT of Fresenius ProServe increased by 15% to Euro 62 mn. (six months ended June 30, 2005, incl. HELIOS Kliniken GmbH: Euro 54 mn.). The net income for the six months ended June 30, 2006, was Euro 23 mn. (six months ended June 30, 2005, incl. HELIOS Kliniken GmbH: Euro 15 mn.)

As per June 30, 2006, the business segment Fresenius ProServe had a total of 25,844 employees (December 31, 2005: 26,664), of these, 25,685 were employed in the member states of the EU and the signatory states to the EEA.

(dd) Business Segment Corporate/Other

The business segment Corporate/Other comprises the holding activities, participations of Fresenius AG in companies which conduct the holding functions in respect of real property, financing and insurance, Fresenius Netcare, which offers services in the field of information technology, as well as Fresenius Biotech. Fresenius Biotech develops innovative therapies with trifunctional antibodies for the treatment of cancer as well as cell therapies for the treatment of the immune system and manufactures and markets an immunosuppressive agent used to suppress graft rejection following organ transplantation. In addition, the segment Corporate/Other is responsible for the consolidation activities between the business segments.

(ee) Principal Subsidiaries of Fresenius AG

Company	Fresenius capital share in %	Sales 2005 in mn. USD	Results of operations ¹⁾ 2005 in mn. USD	Shareholders' Equity December 31, 2005 in mn. USD	Employees December 31, 2005
Europe					
1 Fresenius Medical Care AG & Co. KGaA, Hof an der Saale, Germany (Sub-group/US-GAAP)	36.30	6,772	455	3,973.7	50,250

¹⁾ Net income/loss..

Company	Fresenius capital share in %	Sales 2005 in mn. Euro	Results of operations ¹⁾ 2005 in mn. Euro	Shareholders' Equity December 31, 2005 in mn. Euro	Employees December 31, 2005
Europe					
2 Fresenius Kabi Deutschland GmbH Bad Homburg v.d.H., Germany (with profit and loss transfer agreement)	100	509.7	–	314.5	1,659

Company	Fresenius capital share in %	Sales 2005 in mn. Euro	Results of operations ¹⁾ 2005 in mn. Euro	Shareholders' Equity December 31, 2005 in mn. Euro	Employees December 31, 2005
3 Fresenius HemoCare Deutschland GmbH Bad Homburg v.d.H., Germany (with profit and loss transfer agreement)	100	28.3	–	9.1	162
4 MC Medizintechnik GmbH Alzenau, Germany (with profit and loss transfer agreement)	100	26.6	–	2.2	92
5 V. Krütten Medizinische Einmalgeräte GmbH Idstein, Germany (with profit and loss transfer agreement)	100	16.2	–	2.3	119
6 Pharmaplan Group Bad Homburg v.d.H., Germany,	100	82.5	4.0 ²⁾	16.0	464
7 Wittgensteiner Kliniken Group Bad Berleburg, Germany	100	349.6	-9.4	73.8	6,983
8 Fresenius Kabi France S.A.S. Sèvres, France	100	118.3	1.2	27.7	552
9 Fresenius Vial S.A.S. Brézins, France	100	49.5	3.5	20.0	232
10 Calea France S.A.S. Sèvres, France	100	17.8	0.2	1.2	129
11 Fresenius Kabi Italia S.p.A. Verona, Italy	100	61.9	0.5	46.8	271
12 Fresenius HemoCare Italia S.r.l. Medolla/Modena, Italy	100	39.4	0.3	7.9	180
13 Fresenius Kabi España S.A. Barcelona, Spain	100	47.8	2.6	21.4	183
14 Labesfal – Laboratório de Especialidades Farmacêuticas Almiro S.A. Campo de Besteiros, Portugal	100	62.0	13.6	47.7	364
15 Fresenius Kabi Ltd. Basingstoke/Hampshire, Great Britain	100	102.0	3.1	5.6	303
16 Fresenius Kabi Austria GmbH Graz, Austria	100	162.0	20.4	57.2	546
17 VAMED Gruppe Wien, Austria	77	367.6	15.7	78.1	1,884
18 Fresenius Kabi (Schweiz) AG Stans, Switzerland	100	19.8	0.6	4.6	47
19 Fresenius HemoCare Netherlands B.V. Emmen, The Netherlands	100	114.7	3.5	29.8	1,127
20 Fresenius Kabi Nederland B.V. 's-Hertogenbosch, The Netherlands	100	20.1	1.9	2.0	13
21 Fresenius Kabi N.V. Schelle, Belgium	100	27.9	-0.5	2.4	39
22 Fresenius Kabi Norge A.S. Halden, Norway	100	57.9	7.6	20.5	378
23 Fresenius Kabi AB Stockholm, Sweden	100	170.1	14.9	174.8	745
24 Fresenius Kabi Polzka Sp.Z.o.o. Warsaw, Poland	100	19.5	-0.5	12.1	231

Company	Fresenius capital share in %	Sales 2005 in mn. Euro	Results of operations ¹⁾ 2005 in mn. Euro	Shareholders' Equity December 31, 2005 in mn. Euro	Employees December 31, 2005
25 Fresenius Kabi S.r.o. Prag, Czech Republic	100	18.6	-0.8	3.3	186
26 Fresenius Finance B.V. 's-Hertogenbosch, The Netherlands	100	0.0	0.8	1.8	0
North/South America					
27 Calea Ltd. Toronto, Canada	100	69.8	5.2	11.4	275
28 Grupo Fresenius México S.A. de C.V. Guadalajara, Mexico	100	29.0	3.6	28.5	503
29 Fresenius Kabi Brasil Ltda. Campinas/São Paulo, Brazil	100	40.8	-0.8	7.1	1,036
Asia					
30 Sino-Swed Pharmaceutical Corporation Ltd. Wuxi, China	51	58.5	12.8	50.7	992
31 Beijing Fresenius Kabi Pharmaceutical Co., Ltd. Beijing, China	100	45.6	5.8	25.2	451
32 Fresenius Kabi Korea Ltd. Yongin, Korea	100	21.9	0.6	6.2	104
Africa					
33 Fresenius Kabi South Africa Ltd. Midrand, South Africa	100	67.1	10.1	42.4	501

¹⁾ Net income/loss.

²⁾ Euro 0.1 mn. before loss transfer according to profit and loss transfer agreement.

A complete list of the shareholdings has been deposited with the commercial register of the local court in Bad Homburg v.d.H.

(ff) Business Development and Key Financial Data of Fresenius Group in the Financial Years 2005, 2004, 2003 and in the first six Months of the Financial Year 2006.

in mn. Euro	Six months ended June 30, 2006 US-GAAP	2005 US-GAAP	2004 US-GAAP	2003 US-GAAP
Sales	5,078	7,889	7,271	7,064
EBIT	681	969	845	781
Net income	140	222	168	115
Depreciation and amortisation	186	320	315	325
Operating cash flow	385	780	851	776
Operating cash flow in % of sales	7.6%	9.9%	11.7%	11.0%
Earnings per ordinary share in Euro	2.75	5.28	4.08	2.79

in mn. Euro	Six months ended June 30, 2006 US-GAAP	2005 US-GAAP	2004 US-GAAP	2003 US-GAAP
Earnings per preference share in Euro	2.77	5.31	4.11	2.82
Balance Sheet				
Total assets	14,831	11,594	8,188	8,347
Non-current assets	10,960	8,063	5,433	5,603
Shareholders' equity ¹⁾	5,380	5,130	3,347	3,214
Equity ratio ¹⁾	36%	44%	41%	39%
Investments ²⁾	3,633	2,247	421	430
Profitability				
EBIT margin	13.4%	12.3%	11.6%	11.1%
Return on equity after taxes (ROE)	9.6% ⁴⁾	11.4% ³⁾	10.5%	7.5%
Return on operating assets (ROOA)	10.3% ⁴⁾	11.7% ³⁾	11.1%	9.8%
Return on invested capital (ROIC)	7.7% ⁴⁾	8.0% ³⁾	7.4%	6.3%
Dividend per ordinary share in Euro	-	1.48	1.35	1.23
Dividend per preference share in Euro	-	1.51	1.38	1.26
Employees (December 31)	100,196	91,971	68,494	66,264

¹⁾ Shareholders' equity including minority interest.

²⁾ Property, plant and equipment and intangible assets, acquisition.

³⁾ 2005: In the balance sheet data, the acquisition of HELIOS Kliniken was eliminated.

⁴⁾ On a pro forma basis (incl. Renal Care Group in the first quarter 2006), does not include earnings from the sale of dialysis clinics of Fresenius Medical Care.

In the six months ended June 30, 2006, the sales of Fresenius Group increased by 37% to Euro 5.078 bn. (six months ended June 30, 2005: Euro 3.702 bn.). Euro 2.007 bn. are attributable to the member states of the EU and the signatory states to the EEA. Organic growth was 9%, acquisitions contributed 25% to the increase in sales. In this regard, it was mostly the first-time consolidation of Renal Care Group and HELIOS Kliniken GmbH that had effect on the income statement. Currency effects had an effect of 3%.

The EBIT for the six months ended June 30, 2006, was Euro 681 mn. (six months ended June 30, 2005: Euro 453 mn.). The EBIT includes an amount of Euro 32 mn. resulting from the divestitures of dialysis clinics in the United States which was a condition precedent for the approval of the US Federal Trade Commission of the acquisition of Renal Care Group. As the goodwill attributable to the divested clinics is not considered for tax purposes, the sale resulted in a loss of Euro 2mn. after tax. The EBIT further includes one-time expenses in an overall amount of Euro 11 mn., resulting from alterations in the accounting of stock options.

The net income was Euro 140 mn. (six months ended June 30, 2005: Euro 101 mn.). This includes a total amount of Euro 19 mn. for one-time expenditures, mostly for the refinancing of debt as well as for expenses related to the stock option accounting change.

In the first six months ended June 30, 2006, the business segments made the following contributions to group sales (reference values for the six months ended June 30, 2005, given in brackets): Fresenius Medical Care 63% (69%), Fresenius Kabi 18% (22%) and Fresenius ProServe 19% (9%).

b) Subscribed Capital and Shareholders

(aa) Subscribed Capital

The subscribed capital of Fresenius AG amounts to Euro 130,752,921.60 (including the capital increase from authorised capital against contribution in kind in the amount of Euro 903,884.80 in the course of the acquisition of HUMAINE which yet has to be registered in the commercial register, but not taking into account the capital increases from the conditional capitals (Section 4 para. 5 and para. 6 of the articles of association of Fresenius AG) in the amount of Euro 771,968.00 in the course of the year 2006) and is divided into 25,537,680 ordinary bearer shares ("**Ordinary Shares**") and 25,537,680 non-voting preference bearer shares ("**Preference Shares**") (not taking into account any Ordinary or Preference Shares issued in 2006 because of the exercising of options and convertible bonds). The shares are no-par value shares with a proportionate amount of the subscribed capital of Euro 2.56 per share.

It is proposed to the extraordinary general meeting of shareholders on December 4, 2006, to conduct a capital increase from the Company's funds without the issuance of new shares (the "**Capital Increase From The Company's Funds**"). After this, according to the proposal to the general meeting, a new division of the subscribed capital is to be conducted in such manner that the number of Ordinary Shares and Preference Shares issued is being tripled (share split at a ratio of one share with a proportionate amount of the subscribed capital of Euro 2.56 (previously) to three shares with a proportioned amount of the subscribed capital of Euro 1.00 each (in the future), hereinafter the "**Share Split**").

(bb) Authorised Capitals

(1) Authorised Capital I

Pursuant to Section 4 para. 3 of the articles of association of Fresenius AG, the management board is authorised, with the approval of the supervisory board, to increase until May 9, 2011, the subscribed capital of the Company by a total of nominally Euro 12,800,000.00, through the single or multiple issuance of new Ordinary Shares and/or Preference Shares against contributions in cash (Authorised Capital I – *Genehmigtes Kapital I*). The number of shares has to increase in the same proportion as the subscribed capital. The shareholders are to be granted a subscription right. The management board is authorised, however, to exclude fractional amounts from the shareholders' subscription right and, if Ordinary and Preference Shares are issued at the same time, to exclude the subscription right of the holders of shares of one type to shares of the other type, provided that the subscription ratio is determined to be the same for both types.

The authorisation also includes the right to issue additional Preference Shares which are equal to non-voting Preference Shares previously issued in respect of the distribution of profits or of the Company's assets. This authorisation may only be exercised to the extent that the number of Ordinary Shares issued does not exceed the number of non-voting Preference Shares issued in case all authorised capitals which are registered in the commercial register (*Handelsregister*) on the basis of the resolutions adopted by the general meeting of May 10, 2006, are fully utilised.

(2) Authorised Capital II

Pursuant to Section 4 para. 4 of the articles of association of Fresenius AG (which already takes into account the capital increase from authorised capital against contribution in kind in the amount of Euro 903,884.80 in the course of the acquisition of HUMAINE which is not yet registered in the commercial register), the management board is authorised, with the approval of the supervisory board, to increase until May 9, 2011, the subscribed capital of the Company by a total of nominally Euro 5,496,115.20, through the single or multiple issuance of new Ordinary Shares and/or Preference Shares against contributions in cash and/or in kind (Authorised Capital II – *Genehmigtes Kapital II*). The number of shares has to increase in the same proportion as the subscribed capital. The management board is authorised to exclude fractional amounts from the shareholders' subscription right and, if Ordinary and Preference Shares are issued at the same time, to exclude the subscription right of the holders of shares of one type to shares of the other type, provided that the subscription ratio is determined to be

the same for both types. Furthermore, the management board is authorised to decide on the exclusion of the shareholders' subscription rights, in each case with the approval of the supervisory board. The exclusion of subscription rights is only permissible, however, if in the case of a capital increase against contribution in cash, the issue price is not significantly lower than the stock exchange price. The exclusion of subscription rights in the case of a capital increase against contribution in kind is only permissible for the purposes of acquiring an enterprise or parts of an enterprise or an interest in an enterprise. The authorisation also includes the right to issue additional Preference Shares which are equal to non-voting Preference Shares previously issued in respect of the distribution of profits or of the Company's assets. This authorisation may only be exercised to the extent that the number of Ordinary Shares issued does not exceed the number of non-voting Preference Shares issued in case all authorised capitals which have been registered in the commercial register (*Handelsregister*) on the basis of the resolutions adopted by the general meeting of Fresenius AG of May 10, 2006, are fully utilised.

(3) Adjustment in the Course of the Capital Increase From The Company's Funds and the Share Split

In the course of the share split it is proposed to increase the subscribed capital of the Company from the Company's funds (cf. item 2 b) of the agenda of the extraordinary general meeting of shareholders of December 4, 2006). However, in the course of the Capital Increase From The Company's Funds the authorised capital is not increased. It remains unchanged.

(cc) Conditional Capitals

(1) Conditional Capital I

Pursuant to Section 4 para. 5 sentence 1 of the articles of association of Fresenius AG, the subscribed capital of the Company is conditionally increased by up to Euro 1,246,248.96 (not taking into account any subscription shares issued in 2006 because of the exercising of options), divided into 486,816 shares, through the issuance of new Ordinary Shares (Conditional Capital I Ordinary Shares – *Bedingtes Kapital I Stämme*). Taking into account the subscription shares issued so far in the course of 2006, the Conditional Capital I Ordinary Shares only amounts to Euro 919,918.08, divided into 359,343 Ordinary Shares. The conditional capital increase will only be implemented to the extent that subscription rights for Ordinary Shares are being issued under the stock option plan pursuant to the resolution of the general meeting of shareholders of June 18, 1998, and the holders of such subscription rights

exercise these rights. The new Ordinary Shares are entitled to profit participation starting from the beginning of the financial year in which they are issued.

The subscribed capital of the Company is conditionally increased by up to Euro 1,246,248.96 (not taking into account any subscription shares issued in 2006 because of the exercising of options), divided into 486,816 shares, through the issuance of new non-voting preference bearer shares (Conditional Capital I Preference Shares – *Bedingtes Kapital I Vorzüge*). Taking into account the subscription shares issued so far in the course of 2006, the Conditional Capital I Preference Shares only amounts to Euro 919,918.08, divided into 359,343 Preference Shares. The conditional capital increase will only be implemented to the extent that subscription rights for Reference Shares are being issued under the stock option plan pursuant to the resolution of the general meeting of shareholders of June 18, 1998, and the holders of such subscription rights exercise these rights. The new non-voting preference bearer shares are entitled to profit participation starting from the beginning of the financial year in which they are issued.

(2) Conditional Capital II

Pursuant to Section 4 para. 6 of the articles of association of Fresenius AG, the subscribed capital of the Company is conditionally increased by up to Euro 2,254,433.28 (not taking into account any subscription shares issued in 2006 because of the exercising of options), divided into up to 880,638 shares, through the issuance of new Ordinary Shares (Conditional Capital II Ordinary Shares – *Bedingtes Kapital II Stämme*). Taking into account the subscription shares issued so far in the course of 2006, the Conditional Capital II Ordinary Shares only amounts to Euro 2,194,780.16, divided into 857,336 Ordinary Shares. The conditional capital increase will only be implemented to the extent that convertible bonds for Ordinary Shares are being issued under the stock option plan pursuant to the resolution of the general meeting of shareholders of May 28, 2003, and the holders of such convertible bonds exercise their conversion rights. The new Ordinary Shares are entitled to profit participation starting from the beginning of the financial year in which they are issued.

The subscribed capital of the Company is conditionally increased by up to Euro 2,254,433.28 (not taking into account any subscription shares issued in 2006 because of the exercising of options), divided into 880,638 shares, through the issuance of new non-voting preference bearer shares (Conditional Capital II Preference Shares – *Bedingtes Kapital II Vorzüge*). Taking into account the subscription shares issued so far in the course of 2006, the Conditional Capital II Preference Shares only amounts to Euro 2,194,780.16, divided into

857,336 Preference Shares. The conditional capital increase will only be implemented to the extent that convertible bonds for Preference Shares are being issued under the stock option plan pursuant to the resolution of the general meeting of shareholders of May 28, 2003, and the holders of such convertible bonds exercise their conversion rights. The new non-voting preference bearer shares are entitled to profit participation starting from the beginning of the financial year in which they are issued.

(3) Adjustment in the Course of the Capital Increase From The Company's Funds and the Share Split

In the course of the Capital Increase From The Company's Funds (cf. item 2 a) of the agenda of the extraordinary general meeting of shareholders of December 4, 2006) the conditional capital increases in the same proportion as the subscribed capital by operation of law (cf. Section 218 sentence 1 of the German Stock Corporation Act – *Aktiengesetz* ("**AktG**")). Therefore, no adjustment of the additional capital is required in the course of the Capital Increase From The Company's Funds.

However, in the course of the Share Split (cf. item 2 b) of the agenda of the extraordinary general meeting of shareholders of December 4, 2006) the number of shares to be issued under the conditional capital increases. The number of Ordinary or Preference Shares to be issued in each case has to be tripled. Therefore, the provisions in the articles of association regarding the conditional capital have to be adjusted accordingly (cf. item 2 b)bb) of the agenda of the extraordinary general meeting of shareholders of December 4, 2006).

(dd) Shareholders

The subscribed capital of Fresenius AG exists in the form of ordinary and non-voting preference shares issued to the bearer. Accordingly, Fresenius AG generally is in no position to determine who its shareholders are and how many shares are held by a certain shareholder. However, the following figures are known:

The Else Kröner-Fresenius-Stiftung is the largest shareholder in the voting capital of Fresenius AG. Else Kröner-Fresenius-Stiftung holds approx. 61% of the voting capital of Fresenius AG (as per June 30, 2006). Else Kröner-Fresenius-Stiftung sponsors medical science, in particular in the field of research and treatment of illnesses as well as the development of devices and drugs. It may only support such research projects the results of which are, in principle, available to the general public. In addition, it supports the training of doctors and other persons involved in the treatment and care of patients, in particular persons

working in the field of dialysis. It also sponsors the education of particularly gifted pupils and students.

According to its own statements, Allianz Lebensversicherungs-AG holds between 5 and 10% of the voting capital of Fresenius AG.

There are no affiliations from a company law point of view between the two largest shareholders in the voting capital. The remaining shares of Fresenius AG are in free float.

A shareholder survey conducted at the beginning of 2006, which identified 81% of the subscribed capital, facilitated the identification of nearly all of the Ordinary Shares and approx. 63% of the Preference Shares. According to this survey, 213 institutional investors hold about 20.6 mn. shares. These were divided into 6.5 mn. Ordinary Shares and 14.1 mn. Preference Shares. 1.1 mn. Ordinary Shares and 1.9 mn. Preference Shares were identified as retail holdings.

The top 10 investors held approx. 17% of the total Ordinary Share capital and approx. 23% of the overall Preference Share capital. Both share classes are mainly held by investors in Germany and Great Britain.

c) Corporate Bodies

The corporate bodies of the Company are at the management board, the supervisory board and the general meeting of shareholders. The competences of these corporate bodies are stipulated in the German Stock Corporation Act, the articles of association of Fresenius AG and in the rules of procedure for the management board and the supervisory board and its committees. In accordance with the provisions of the stock corporation act, Fresenius AG has a two-tier management and supervision system comprising of management board and supervisory board. The two corporate bodies work independently from each other and one person cannot, at the same time, be a member of both corporate bodies. Pursuant to its articles of association, Fresenius AG is represented by two members of the management board or by one member of the management board together with a *Prokurist* (i.e. an executive holding a general power of attorney).

(aa) Management Board

The management board conducts the business of the Company and represents the Company vis-à-vis third parties. The management board of Fresenius AG comprises five members. In accordance with the rules of procedure of the management board, each member is responsible

for his area of competence. However, the members have a joint responsibility for the management of the Group. The management board has to report to the supervisory board on a regular basis, regarding, in particular, the intended business policy and strategies, the profitability of the business, the ongoing operation of the business and all other transactions which may be of significant importance for the profitability and liquidity.

The members of the management board are:

Name	Age in years	Year of first appointment	Responsibility/ Task	Memberships on supervisory boards
Dr. Ulf M. Schneider	41	2003	Chairman	Memberships on supervisory boards: (a) Fresenius Medical Care Management AG (Chairman) Fresenius Kabi AG (Chairman) Helios Kliniken GmbH (Chairman) Eufets AG (Chairman) (b) Fresenius Kabi Austria GmbH, Austria Fresenius Kabi España S.A., Spain Fresenius Medical Care Groupe France S.A., France (Chairman) Fresenius Hemocare Nederlands B.V. The Netherlands FHC (Holdings), Ltd., Great Britain
Rainer Baule	58	1997	Business segment Fresenius Kabi	Memberships on supervisory boards: (b) Fresenius Kabi Austria GmbH, Austria (Chairman) Fresenius Hemocare Nederlands B.V., The Netherlands (Chairman) Fresenius Kabi España S.A., Spain Calea Ltd., Canada FHC (Holdings), Ltd., Great Britain
Andreas Gaddum	50	2005	Business segment Fresenius ProServe	Memberships on supervisory boards: (a) Helios Kliniken GmbH Wittgensteiner Kliniken AG (Chairman) (b) VAMED AG, Austria
Dr. Ben J. Lipps	66	2004	Business segment Fresenius Medical Care	Membership on management boards: Fresenius Medical Care Management AG (Chairman)

Name	Age in years	Year of first appointment	Responsibility/ Task	Memberships on supervisory boards
Stephan Sturm	43	2005	Chief Financial Officer and Labour Relations Director	Memberships on supervisory boards: (a) Fresenius Kabi AG Helios Kliniken GmbH Wittgensteiner Kliniken AG (b) Fresenius Hemocare Nederlands B.V., The Netherlands FHC (Holdings), Ltd., Great Britain

(a) Memberships in supervisory boards which are to be established pursuant to statutory law

(b) Memberships in similar supervisory bodies of foreign companies

The members of the management board can be reached under the business address of the group head offices of Fresenius AG, Else-Kröner-Straße 1, 61352 Bad Homburg v.d.H., Germany.

(bb) Supervisory Board

The supervisory board appoints the members of the management board and consults with and supervises the management board with regard to the management of the company. Generally, the supervisory board may not assume any management functions. However, the articles of association and the rules of procedure of the management board provide that the management board may not carry out certain transactions without the approval of the supervisory board. The supervisory board has to convene in meetings at least twice in each half of the calendar year.

The composition of the supervisory board of Fresenius AG is governed by the MitbestG 1976. According to these provisions, the supervisory board is to be composed on a parity basis with representatives of the shareholders and representatives of the employees. Currently, the supervisory board of the Company comprises of twelve members, six representatives of the shareholders and six representatives of the employees. The shareholder representatives are elected by the general meeting of shareholders. The election of the employee representatives is governed by the provisions of the MitbestG 1976.

The following persons are members of the supervisory board of Fresenius AG:

Name (Principal Profession)	Position	Membership since	Other Memberships
Dr. Gerd Krick (former Chairman of the Management Board of Fresenius AG)	Chairman	2003	Committees: Chairman of the Personnel Committee Member of the Audit Committee Member of the Mediation Committee Supervisory Board: Fresenius Medical Care AG & Co. KGaA (Chairman) Fresenius Medical Care Management AG VAMED AG, Austria (Chairman) Allianz Private Krankenversicherungs-AG Advisory Board: HDI Haftpflichtverband der deutschen Industrie V.a.G. Board of Directors: Adelphi Capital Europe Fund, Cayman Islands
Gerhard Herres (Member of the trade union Deutscher Handels- und Industriearbeitnehmer Verband im CGB, Member of the Works Council St. Wendel plant)		2003	
Dr. Gabriele Kröner (Doctor)		1996	Management Board: Else Kröner-Fresenius-Stiftung
Dr. Bernd Mathieu (Graduate chemist)		2003	Board of Directors: Fresenius Medical Care Japan Co. Ltd., Japan Fresenius-Kawasumi Co. Ltd., Japan
Christel Neumann (Chairlady of the Fresenius European Employee Forum, Chairlady of the Works Council, Schweinfurt plant, Member of the General Works Council)		1993	
Ilona Oesterle (Member of the Works Council Bad Homburg v.d.H.)		1998	
Dr. Gerhard Rupprecht (Member of the Management Board of Allianz AG, Chairman of the Management Board of Allianz Deutschland AG)		2004	Supervisory Board: Heidelberger Druckmaschinen AG ThyssenKrupp Automotive AG Allianz Lebensversicherungs-AG (Chairman) Allianz Versicherungs-AG (Chairman) Allianz Private Krankenversicherungs-AG (Chairman) Allianz Beratungs- und Vertriebs-AG (Chairman) Allianz First Life Insurance Co. Ltd., Korea

Wilhelm Sachs (Chairman of the General Works Council, Deputy Chairman of the Works Council Friedberg plant)		2004	Committees: Member of the Mediation Committee
Dr. Dieter Schenk (Lawyer and Tax Consultant)		1998	Committees: Member of the Mediation Committee Supervisory Board: Fresenius Medical Care AG & Co. KGaA (Deputy Chairman) Fresenius Medical Care Management AG (Deputy Chairman) Gabor Shoes AG (Chairman) Greiffenberger AG (Deputy Chairman) TOPTICA Photonics AG (Deputy Chairman) Administrative Board: Else Kröner-Fresenius-Stiftung (Chairman)
Dr. Karl Schneider (former Management Board Spokesman Südzucker AG)		1991	Committees: Member of the Personnel Committee Administrative Board: Else Kröner-Fresenius-Stiftung (Deputy Chairman)
Volker Weber (Full-time Secretary of the trade union IG Bergbau, Chemie, Energie)	Deputy Chairman	2005	Committees: Member of the Personnel Committee Member of the Audit Committee Member of the Mediation Committee Supervisory Board: SV Deutschland GmbH
Dr. Bernhard Wunderlin (former Managing Director Harald Quandt Holding GmbH)		1998	Committees: Chairman of the Audit Committee Supervisory Board: Harald Quandt Holding GmbH Hertie School of Governance Advisory Board: Equita Management GmbH Von Rautenkranz Nachfolger GbR Marsh & McLennan Holdings GmbH Administrative Board: Senckenbergische Naturforschende Gesellschaft Management Board: Gemeinnützige Hertie-Stiftung (Deputy Chairman) Foundation Council: PwC-Stiftung

The members of the supervisory board can be reached under the business address of the group head offices of Fresenius AG, Else-Kröner-Straße 1, 61352 Bad Homburg v.d.H..

From among its members, the supervisory board has established three committees, the personnel committee, the audit committee and the mediation committee. With the exception of the mediation committee, which comprises four members, the committees have three members. The personnel committee makes decisions regarding the employment agreements of the management board members. It is the task of the audit committee, in particular, to prepare the decision of the supervisory board regarding the approval of the annual financial statements and the consolidated financial statements, to examine the interim reports as well as to commission – after consultation with the management board – the auditor (including his fee agreement). The mediation committee is responsible for the tasks allocated to the supervisory board in Section 31 para. 3 sentence 2 MitbestG 1976.

The supervisory board regards the examination of its own efficiency pursuant to No. 5.6 of the German Corporate Governance Code as a permanent process. It is characterised by intensive communication within the supervisory board. The examination of its own efficiency so far conducted by the supervisory board has shown that the supervisory board is organised efficiently and that, in particular, the cooperation of management board and supervisory board is working very well.

Pursuant to Section 6.2 of the conversion plan, the term of office of the acting supervisory board members terminates upon the registration of Fresenius SE in the commercial register, at the latest, in any event, regularly upon the conclusion of the general meeting of shareholders of the Company in the year 2008.

d) Employees and Co-determination

As per June 30, 2006, Fresenius Group had 100,196 employees worldwide (December 31, 2005: 91,971), 45,777 of these in 22 member states of the EU and of the EEA. Another 328 employees work for Fresenius Group in Romania; this country will presumably become a member of the EU on January 1, 2007.

With regard to the election of the six employee representatives on the supervisory board of Fresenius AG which is composed on a parity basis pursuant to the MitbestG 1976, the German employees of Fresenius Group have the active and passive voting right in accordance with the MitbestG 1976. In addition, there are additional supervisory boards in other companies of Fresenius Group in which the employees have participation rights.

Besides, in accordance with applicable national laws there are employee representative bodies within Fresenius Group.

On December 15, 2005, the management board of Fresenius AG, the management board of Fresenius Medical Care AG (now Fresenius Medical Care AG & Co. KGaA), the management board of Fresenius Kabi AG, the management of Fresenius ProServe GmbH and the general works council (*Gesamtbetriebsrat*) of Fresenius AG as well as the industrial union Industriegewerkschaft Bergbau, Chemie, Energie ("**IGBCE**"), represented by its principal management body, have entered into an agreement regarding the works council structure with regard to Germany and have refrained from the establishment of a central works council (*Konzernbetriebsrat*) for the Group while maintaining the general works council structure. The agreement stipulates that at locations of joint establishments of more than one enterprise of Fresenius Group in Germany uniform works councils for the entire location, so-called location works councils (*Standortbetriebsräte*), are to be established. The employee representative bodies of Wittgensteiner Kliniken as well as of HELIOS Kliniken are not governed by this agreement. Both they have central works councils of their own.

On November 8, 2005, the management board of Fresenius AG has entered into an agreement with the steering committee of the so called European Forum regarding the Fresenius European Employee Forum ("**European Forum**"). The agreement lays down rules for the notification and consultation procedure pursuant to Art. 6/13 of the European Works Council Directive (*Europäische Betriebsratsrichtlinie* – "**EBR-RL**"). The scope of application of the agreement includes Fresenius AG and all subsidiaries within the European Union (cf. in this regard the statements in chapter VII.1.g)(bb) in this report).

IV. Principal Aspects of the Conversion

1. Principal Reasons for the Conversion

One reason for the conversion of Fresenius AG into an SE is that the management board of the Company wishes to emphasise, by means of the conversion, the importance of the international, particularly the European, business for Fresenius Group by reflecting already in the company name of the Group its orientation beyond Germany.

Fresenius Group has worldwide business activities and a strong presence in Europe. 40% of Group sales are attributable to the member states of the EU and the signatory states to the EEA (six months ended June 30, 2006). 22% of the sales of Fresenius Group are attributable to Germany and 18% of sales to the other member states of the EU and the signatory states to the EEA. By means of a conversion of Fresenius AG into an SE, the Company is enabled to present itself as a European company in the only supranational legal form currently available and thus to emphasise more strongly the business activities extending beyond Germany's

borders as well as the importance of the European market for Fresenius Group. Therefore, the legal form of an SE is more appropriate with regard to the Europe-wide business and the internationalisation of Fresenius Group.

Another reason for the change of the legal form from a stock corporation into an SE is to maintain the good and efficient corporate governance currently existing at Fresenius AG: The supervisory board of Fresenius AG currently comprises twelve members (six representatives each of the shareholders and the employees). The composition of the supervisory board of twelve members has worked well in the past and has led to an efficient operation of the supervisory board. It is therefore to be continued in the future.

Without a conversion of Fresenius AG into an SE, pursuant to the provisions of the MitbestG 1976 applicable to stock corporations the supervisory board of Fresenius AG would have to be enlarged to twenty members because of the completed acquisitions (mainly HELIOS Kliniken GmbH), which have resulted in an increase of the number of employees of Fresenius Group in Germany to more than 29,000.

By means of the conversion of Fresenius AG into an SE such an enlargement of the supervisory board can be avoided. The provisions of the MitbestG 1976 do not apply to the SE. The size of the supervisory board does not depend on the number of employees within the Group, but is rather determined by the body stipulating the statutes (the general meeting of shareholders of the SE) in accordance with the provisions of the SE Regulation and the SEAG. Therefore, it is possible for Fresenius SE to have a supervisory board comprising twelve members – as is currently the case with Fresenius AG. Management board and supervisory board propose to the extraordinary general meeting of shareholders of Fresenius AG on December 4, 2006, to maintain, also in future Fresenius SE, the size of the supervisory board of twelve members and to compose the supervisory board on a parity basis with six representatives each of the shareholders and the employees.

An enlargement of the supervisory board would complicate, and thus decelerate, the decision-making process and the communication process within the supervisory board. Therefore, in view of the great importance of an efficient work of the supervisory board for the affairs of the Company and an efficient corporate governance, it is proposed to maintain the current size of the supervisory board which has worked well in the past. Finally, an enlargement of the supervisory board would also lead to an increase in costs. The costs resulting from the conversion into an SE would be compensated, from a mid-term perspective, by avoiding this increase in costs resulting from an enlargement of the supervisory board.

The conversion into an SE leads to a Europeanisation of the employees' side of the supervisory board. Whereas pursuant to the MitbestG 1976 the employees' side of the supervisory board is exclusively elected by the employees of Fresenius Group in Germany, the conversion into an SE grants an opportunity for the employees' side of the supervisory board – subject to an agreement to the contrary in the course of the so-called procedure for the involvement of employees – to include also representatives of employees from other member states of the EU or, respectively, the signatory states to the EEA. Considering the fact that a similar share of the sales of Fresenius Group is generated in the member states of the EU and the signatory states to the EEA on the one hand and Germany on the other hand, a participation of the other European employees on the level of Fresenius AG or, respectively, Fresenius SE as the holding company of Fresenius Group is appropriate.

Finally, the change of the legal form is accompanied by a renewed commitment of the Company to maintaining the registered office of the Company in Germany. No relocation of the registered office is intended; besides, such relocation would require the approval of the shareholders.

2. Alternatives to the Conversion

Prior to the change of the legal form, the management board of Fresenius AG has examined in great detail the alternatives to the proposed measure. The result of its examination is that there are no alternatives to the proposed measure which accommodate the interests of the Company and its shareholders in the same way. In this regard, from the outset only such supranational legal forms could be contemplated which allow for a stock market listing of the Company.

As a supranational legal form comparable to the *Aktiengesellschaft* (stock corporation) and providing the opportunity of a stock market listing, the SE currently is the only available option. The SE is a corporation which both from a financing and a management point of view is best suited to accommodate the needs of an enterprise with business activities all over the European Union – such as Fresenius AG – and which allows for a stock market listing. Therefore, the SE provides to the internationally active Fresenius Group an opportunity to present itself accordingly (cf. also chapters I and IV.1. of this report). Besides, it is the only legal form which allows for maintaining the number of supervisory board members to be twelve.

It follows from the considerations above that only a conversion of Fresenius AG into an SE facilitates the accomplishment of the aforementioned objectives in the interest of the Company and its shareholders.

3. Costs of the Conversion

According to the current estimate of the management board, the overall costs of the conversion will be up to Euro 3 million.

This estimate includes, in particular, the costs for preparatory measures, the costs of the conversion audit by the court-appointed auditor, the costs of the notarisation of the conversion plan, the cost of the registrations, the costs of external advisors, the costs for the holding of the extraordinary general meeting of shareholders of Fresenius AG and the required publications, the costs for the conduction of the procedure for the involvement of employees as well as the costs of the change of the stock listing of Fresenius AG shares to Fresenius SE shares.

V. Comparison of the Legal Position of the Shareholders of Fresenius AG and Fresenius SE

Before explanatory statements will be made in the following chapters of the conversion report (chapters VI. to IX. of this report) concerning the implementation of the conversion of Fresenius AG into Fresenius SE (chapter VI.), the conversion plan and the statutes of Fresenius SE as well as the effects of the conversion on the shareholders and the employees of Fresenius AG (chapter VII.), the other corporate law effects (chapter VII.4), the accounting and tax effects of the conversion (chapter VIII.) and the consequences for stock exchange trading and stock market listing (chapter IX.), the material provisions under statutory law and the articles of association currently applicable to Fresenius AG are compared to those provisions which will apply to Fresenius SE in the future. In this regard, particular attention will be given to the rights of the shareholders and aspects of corporate governance. The statements follow the system of the German Stock Corporation Act with which the shareholders of Fresenius AG are familiar.

1. Introduction

Pursuant to the statutory definition in Art. 1 para. 1 SE Regulation, the SE is a company in the form of a European stock corporation. It is a supranational legal form which was created by the law of the European Union. The SE Regulation is directly applicable law in all member states. This ensures the Europe-wide recognition of the SE, regardless of the place of

its registered office. Subject to the provisions of the SE Regulation, the SE is treated in each member state as if it were a stock corporation formed in accordance with the law of the country in which the SE's registered office is situated; it may neither be treated preferentially nor discriminated against (cf. Art. 10 SE Regulation). As is the case with the stock corporation under national law, it has legal personality (cf. Art. 1 para. 3 SE Regulation), its capital is divided into shares and it is liable to its creditors only with its corporate assets (cf. Art. 1 para. 2 SE Regulation).

The Regulation as Community law prevails over the provisions of national law. However, the small scope of the provisions of the SE Regulation necessitates an extensive subsidiary application of national law provisions. In this regard, the SE Regulation uses as techniques for the determination of the applicable law both the method of comprehensive reference (*Gesamtverweisung*) and of transmission (*Sachnormverweisung*). In the case of a comprehensive reference, it has to be analysed in accordance with the provisions of Private International Law which national material provisions of law apply. Since Fresenius SE will be formed in Germany and, in addition, will have its head administrative office there, German material law will be applicable to Fresenius SE. In the case of transmission, however, direct reference is being made to the material law of a certain country; with regard to Fresenius SE this, too, means the applicable provisions of German law, mainly stock corporation law. Generally, it can be said that conflicts of applicable laws are practically excluded since in accordance with both the comprehensive reference and the transmission method reference is made to the provisions of German law.

Thus, the rights of the shareholders as well as the corporate governance of Fresenius SE as an SE with its registered office in Germany are governed by the provisions of the SE Regulation, the statutes of Fresenius SE, the SEAG as well as the provisions of law applicable to a German stock corporation, particularly those of the Stock Corporation Act (cf. e.g. Art. 9 para. 1 lit. c)(ii) SE Regulation).

2. General Provisions

a) Subscribed Capital / Shares

As is the case with a stock corporation, the subscribed capital of an SE is made out in Euro (Art. 4 para. 1 SE Regulation). Whereas in the case of a stock corporation the minimum nominal amount of the subscribed capital is Euro 50,000 (Section 7 AktG), the subscribed capital of an SE may not be less than Euro 120,000 (Art. 4 para. 2 SE Regulation). The subscribed capital of Fresenius AG currently amounts to Euro 130,752,921.60 (including the

capital increase from authorised capital against contribution in kind in the amount of Euro 903,884.80 in the course of the acquisition of HUMAINE which is not yet registered in the commercial register, but not taking into account the capital increases from the conditional capitals (Section 4 para. 5 and para. 6 of the articles of association of Fresenius AG) in the amount of Euro 771,968.00 in the course of the year 2006). The subscribed capital of Fresenius SE will be exactly the same amount as the subscribed capital of Fresenius AG at the point in time of the conversion (cf. Sections 3.3 and 3.4 of the Conversion Plan). Thus, the minimum capital of Euro 120,000 is exceeded by far.

As is the case with the shares of a stock corporation, the shares of an SE can have different features, because in this regard, as a consequence of the transmission provision in Art. 5 SE Regulation, the material provisions of law applicable to a German stock corporation also apply, in principle, to a German SE. Accordingly, they can be either par value shares with minimum nominal amounts or no-par value shares with a proportionate amount of the subscribed capital as the minimum amount. Besides, the shares of the SE may also be made out to the bearer or may be registered shares. As is the case with a stock corporation, registered shares may be subjected to a transfer restriction (*Vinkulierung*). The issuance of shares of different classes, particularly the issuance of preference shares, is permissible.

With regard to the features of the shares of Fresenius AG no changes occur as a consequence of the conversion into an SE. As before, the subscribed capital of Fresenius SE will be divided half-and-half into Ordinary Shares and non-voting Preference Shares (cf. Section 4 para. 1 and Section 5 of the statutes of Fresenius SE as well as chapter VII.2.d)(aa) of this report).

b) Registered Office

In a stock corporation, the registered office is stipulated in the articles of association (Section 5 para. 1 AktG). This also applies to the SE (Art. 7 SE Regulation in connection with Section 2 SEAG). The registered officer has to be within the Community, in the same member state as its head office (Art. 7 sentence 1 SE Regulation). For an SE with its registered office in Germany, Section 2 SEAG further stipulates that the registered office has to be at the place of the head office.

Therefore, the registered office of a stock corporation as well as of an SE may only be changed by an alteration of the statutes (cf. with regard to the stock corporation Sections 179 et seqq., 45 AktG; with regard to the SE Art. 8 SE Regulation in connection with Art. 9 para. 1 lit. c)(ii) SE Regulation in connection with Sections 179 et seqq. AktG). For a stock

corporation, a resolution of the general meeting of shareholders to transfer the registered office to another country constitutes a dissolution resolution as defined in Section 262 para. 1 no. 2 AktG (dissolution). In contrast, an SE may transfer its registered office across borders within the EU without dissolution. However, Section 12 SEAG requires that in the case of a transfer to another country of the registered office of an SE which has its registered office in Germany, an adequate cash compensation has to be offered to the shareholders. This provision is modelled after Section 29 and Section 207 of the German Transformation Act (*Umwandlungsgesetz* – "**UmwG**"), respectively, which contain similar provisions for the case of a change of the legal form.

c) **Notification Requirements**

As is the case with Fresenius AG as a listed stock corporation, with regard to notification requirements in respect of voting rights held the provisions in Sections 21 et seqq. of the German Securities Trading Act (*Wertpapierhandelsgesetz* – "**WpHG**") also apply to future Fresenius SE as a listed SE, by virtue of the comprehensive reference provision in Art. 9 para. 1 lit. c)(ii) SE Regulation. This includes, therefore, the application of Section 28 WpHG according to which shareholder rights are suspended in the case of a violation of notification obligations.

3. Formation of the Company

The provisions governing the formation of a stock corporation, with the stipulation of the articles of association, special advantages, formation expenditure, parties to the formation, establishing of the company, appointment of the supervisory board members, management board members and the auditor, formation report, formation audit, filing of the company with the commercial register, examination by the court and registration in the commercial register are laid down in Sections 23 et seqq. AktG. With regard to a change of the legal form, in addition Sections 190 et seqq. UmwG apply.

Since, generally, the formation of an SE is governed by the law of the state in which the SE establishes its registered office (Art. 15 SE Regulation) and an SE, upon its formation, is to be regarded as a stock corporation (cf. Art. 3 SE Regulation), the formation provisions applicable to German stock corporations also apply, in principle, to the formation of Fresenius SE. In the case of a conversion, the party conducting the conversion is the company which is changing its legal form, i.e. presently Fresenius AG.

Specifically, by virtue of the transmission provision in Art. 5 SE Regulation, the strict rules of stock corporation law regarding capital contribution also apply to the SE. However, these provisions are modified or replaced, respectively, by Art. 37 SE Regulation for the purposes of a conversion into an SE. With regard to the details of the conversion of Fresenius AG into Fresenius SE, in particular with regard to the details of the formation, see the statements in chapter VI. of this report.

4. Legal Relations of the Company and the Shareholders

The German Stock Corporation Act requires the equal treatment of shareholders in equal circumstances (Section 53a AktG). By virtue of the comprehensive reference provision in Art. 9 para. 1 lit. c)(ii) SE Regulation, this principle applies, without restriction, also to the SE.

Pursuant to Art. 5 SE Regulation, the capital maintenance provisions of the Stock Corporation Act also apply to the SE. As a consequence, Section 56 AktG prohibits the subscription of the company's own shares (treasury shares) and Section 57 AktG prohibits the repayment of contributions. In addition, the provisions governing the utilisation of the net income and the setting aside of reserves (Section 58 para. 1 to 3 AktG) as well as the distribution of profits (Section 58 para. 4 AktG) also apply to the SE. Also, partial payments on account of the balance sheet profits are only permissible subject to strict requirements (Art. 5 SE Regulation in connection with Section 59 AktG). The distribution of profits generally has to be made in accordance with the shares held by the shareholders, whereas the statutes of the SE – as is the case with an AG – may stipulate a different method of profit distribution with ordinary and preference shares. In accordance with the principle of capital maintenance, in the SE, too, the acquisition of treasury shares is only permissible subject to certain restricting requirements (cf. Art. 5 SE Regulation in connection with Sections 71, 71a, 71b, 71c and 71d AktG).

As is the case with the articles of association of Fresenius AG, the statutes of Fresenius SE provided that in accordance with the statutory requirement in Section 139 para. 1 AktG the preference shareholders receive an increased dividend (cf. Section 20 paras. 2 and 3 of the statutes of Fresenius SE as well as chapter VII.2.t) of this report).

5. Organisational Constitution of the Company: Two-tier System – One-tier System

The German stock corporation follows the two-tier system with a management board (Sections 76 et seqq. AktG) and a supervisory board (Sections 95 et seqq. AktG). In contrast,

in the SE the one-tier system with a single administrative organ (cf. Art. 43 et seqq. SE Regulation in connection with Sections 20 et seqq. SEAG) is also permissible in addition to the two-tier system (Art. 39 et seqq. SE Regulation in connection with Sections 15 et seqq. SEAG). However, the statutes of Fresenius SE – as is currently the case with Fresenius AG – provide for a two-tier system with the management board and supervisory board (cf. Section 6 of the statutes of Fresenius SE as well as chapter VII.2.f) of this report). In this regard, the conversion has no effects. However, there are certain changes regarding the provisions governing the management board and supervisory board, because SE Regulation and SEAG contains stipulations which deviated from those of German stock corporation law.

In more detail:

a) Management Board

(aa) Management of the Company

With regard to the management of future Fresenius SE the conversion of Fresenius AG into an SE does not result in any changes. As is the case with Fresenius AG, the management board of Fresenius SE conducts the business of the SE in its own responsibility (cf. with regard to the stock corporation Section 76 para. 1 AktG, with regard to the SE Art. 39 para. 1 sentence 1 SE Regulation).

(bb) Size and Composition of the Management Board

In a German stock corporation, the management board generally comprises one or more persons (Section 76 para. 2 sentence 1 AktG), whereas in a company subject to co-determination pursuant to the MitbestG 1976 – such as Fresenius AG – a labour relation director (*Arbeitsdirektor*) has to be appointed as an "equal member" on the management board (Section 33 MitbestG 1976), i.e. the management board comprises at least two members. In an SE with the subscribed capital of more than Euro 3 mn. the management board also comprises at least two persons (Section 16 SEAG).

Accordingly, the statutes of Fresenius SE provide that – as is the case with Fresenius AG – the management board has to comprise at least two persons (cf. Section 7 para. 1 of the statutes of Fresenius SE as well as Section 6 para. 1 of the articles of association of Fresenius AG). However, as the MitbestG 1976 is not applicable, there is no appointment of a management board member with the special responsibility as labour relation director; in case the subsidiary regulation by operation of law with regard to the involvement of employees in

the SE applies, it is merely stipulated that one member of the management board has to be responsible for "labour and social affairs" (cf. Section 16 sentence 2 SEAG in connection with Section 38 para. 2 sentence 2 SEBG). It is possible to establish such special responsibility also by virtue of an agreement in the course of the procedure for the involvement of the employees.

(cc) Executive Management

As is the case with a German stock corporation, subject to stipulations to the contrary in the statutes and the rules of procedure the principle of joint management also applies to the SE. In addition, the principle applicable under stock corporation law according to which differences of opinion in the management board cannot be decided by one or several members of the management board against the majority of the members of the management board, also applies to the SE (Art. 9 para. 1 lit. c)(ii) SE Regulation in connection with Section 77 para. 1 sentence 2 AktG). In the SE, it is permissible to grant to a management board member who has been appointed as the chairman of the management board a veto right in respect of decisions of the management board; the statutes of Fresenius SE contain a provision to that effect (cf. Section 7 para. 4 of the statutes of Fresenius SE as well as chapter VII.2.g) of this report). The exercising of the veto right has the consequence that the resolution is deemed to not have been passed.

In Fresenius AG as a stock corporation co-determined pursuant to the MitbestG 1976 such a veto right would not be permissible because of the equal position of the labour relations director.

(dd) Representation of the Company

A German stock corporation is represented in and out of court by the management board, with the proviso that – subject to stipulations to the contrary in the articles of association – all management board members are only jointly authorised to represent the company (Section 78 paras. 1 and 2 AktG). In addition, the articles of association may stipulate that individual members of the management board are authorised to solely represent the company or together with a *Prokurist* (i.e. an executive holding a general power of attorney) (Section 78 para. 3 AktG).

In respect of the SE, there are no SE-specific provisions regarding representation; therefore, the provisions of the AktG and the stipulations in the statutes which are permissible in accordance with the latter are applicable by virtue of the comprehensive reference provision

in Art. 9 para. 1 lit. c)(ii) and (iii) SE Regulation. As is already currently the case with the articles of association of Fresenius AG (cf. *ibid.* Art. 7 para. 1), the statutes of Fresenius SE (cf. *ibid.* Section 8 para. 1 as well as chapter VII.2.h) of this report) also provide that the Company is to be represented by two members of the management board or by one member of the management board together with a *Prokurist*. In so far, the conversion of Fresenius AG into an SE does not lead to any changes.

(ee) Appointment and Dismissal of the Management Board / Term of office

The members of the management board of a German stock corporation are appointed by the supervisory board for a maximum term of five years, with reappointments or a prolongation of the term of office being permissible, in each case, for a maximum of five years. The appointment of a member of the management board may be revoked by the supervisory board for good cause (cf. Section 84 AktG).

The members of the management board of an SE are appointed by the supervisory board for a term stipulated in the statutes which may not exceed six years (cf. Art. 46 para. 1 SE Regulation). Subject to any stipulations to the contrary in the statutes, reappointments are permissible (Art. 46 para. 2 SE Regulation). The statutes of Fresenius SE provide for an appointment of the members of the management board for a maximum term of five years. Reappointments are permissible (Section 7 para. 2 of the statutes of Fresenius SE as well as chapter VII.2.g) of this report). With regard to the dismissal of management board members, neither the SE regulation nor the SEAG contain any stipulations. Because of the stipulation in the statutes of Fresenius SE and the comprehensive reference provision in Art. 9 para. 1 lit. c)(ii) SE Regulation to the national provisions applicable to stock corporations, there are no changes as a consequence of the conversion of Fresenius AG into an SE with regard to the appointment and dismissal of the management board as well as the term of office.

(ff) Principles for the Remuneration of the Management Board Members, Prohibition of Competition, Granting of Loans to Management Board Members

The conversion of Fresenius AG into an SE does not lead to any changes. By virtue of the comprehensive reference provision in Art. 9 para. 1 lit. c)(ii) SE Regulation, the principles applicable to Fresenius AG regarding the remuneration of the management board members, the prohibition of competition as well as the granting of loans to management board members (Sections 87 to 89 AktG) also apply to Fresenius SE.

(gg) Reports to the Supervisory Board

The reporting obligations vis-à-vis the supervisory board of an SE are modelled after the reporting obligations vis-à-vis the supervisory board of an AG.

The management board of a German stock corporation has to report to the supervisory board with regard to (1) the intended business policy and other fundamental issues of business planning (in particular, financial, investment and personnel planning), with the proviso that deviations of the actual development from objectives reported earlier have to be explained and the reasons specified, (2) the profitability of the company, in particular the shareholders' equity, (3) the course of business (particularly sales) and the situation of the company, (4) transactions which may be of significant importance for the profitability or liquidity of the company. If the company is a parent company, the report also has to include subsidiaries and joint ventures. In addition, reports have to be given to the chairman of the supervisory board in the case of other important matters. It is also to be regarded as an important matter if a business matter relating to an affiliated company becomes known to the management board which could have a significant effect on the situation of the company. The AktG requires that reports are being given on a regular basis.

In addition, the supervisory board is entitled, at any time, to request a report about matters relating to the company, about its business relationships with affiliated companies as well as business matters relating to such companies which could have a significant effect on the situation of the company. An individual member may also request a report, but only to be addressed to the supervisory board.

The reports have to be prepared in accordance with the principles of conscientious and faithful accounting. They are to be made as soon as possible and, generally, in text form (Section 90 para. 4 AktG).

Every supervisory board member is entitled to take notice of the content of the reports (Section 90 para. 5 sentence 1 AktG).

In an SE, too, the management board has to report to the supervisory board at least every three months on the progress of the SE's business and its foreseeable development (Art. 41 para. 1 SE Regulation). In addition to the regular reports, it has to pass to the supervisory board any information on events likely to have an appreciable effect on the SE (Art. 41 para. 2 SE Regulation). The supervisory board of an SE may require information of any kind to be provided which is needed for exercising supervision by the supervisory board (Art. 41

para. 3 SE Regulation). An individual member of the supervisory board may also require information of any kind from the management board, but only to be addressed to the supervisory board (Art. 41 para. 3 SE Regulation in connection with Section 18 SEAG). The supervisory board may undertake or arrange for any investigations necessary for the performance of its duties (Art. 41 para. 4 SE Regulation). Each member of the supervisory board is entitled to examine all information submitted to the board (Art. 41 para. 5 SE Regulation).

Even if it appears as if Section 90 AktG contains more detailed stipulations than Art. 41 SE Regulation, there are, in effect, no substantial changes resulting from the conversion of Fresenius AG into an SE with regard to the reporting obligations of the management board vis-à-vis the supervisory board. The reporting obligations of the future management board of Fresenius SE vis-à-vis the supervisory board of Fresenius SE will have the same extent as those of the management board of Fresenius AG.

(hh) Obligations of the Management Board in the Case of Loss, Overindebtedness or Illiquidity

By virtue of the comprehensive reference provision in Art. 9 para. 1 lit. c)(ii) SE Regulation, the management board of an SE is under an obligation to convene a general meeting of shareholders in the case of a loss of half of the subscribed capital, and to apply for the institution of insolvency proceedings in the case of illiquidity or overindebtedness (cf. Section 92 AktG). In this regard, the conversion of Fresenius AG into an SE does not lead to any changes.

(ii) Duty of Care and Liability

Pursuant to Art. 51 SE Regulation, the members of an SE's management body are liable in accordance with the provisions applicable to stock corporations in the country in which the SE's registered office is situated, for the loss sustained by the SE following any breach on their part of the legal, statutory or other obligations inherent in their duties. The virtue of the transmission provision (*Sachnormverweisung*) in Art. 51 SE Regulation, the standards of a prudent and conscientious manager (Section 93 para. 1 sentence 1 AktG) as well as the so-called business judgment rule (Section 93 para. 1 sentence 2 AktG) together with the provisions governing the liability of the management board (cf. Section 93 para. 2 AktG) also apply to the management board of Fresenius SE. In addition, the SE Regulation expressly provides that the members of the management board are under a duty, even after they have ceased to hold office, not to divulge any information which they have concerning the SE the

disclosure of which might be prejudicial to the company's interests, except where such disclosure is required or permitted under national law provisions applicable to stock corporations or is in the public interest (Art. 49 SE Regulation); this stipulation also corresponds to a German stock corporation law (cf. Art. 49 SE Regulation in connection with Section 93 AktG).

As is the case with a German stock corporation, the management board of an SE may only refuse to answer a question in the general meeting of shareholders if one of the rights to withhold information pursuant to Section 131 para. 3 sentence 1 AktG applies (with regard to the shareholders' right to information cf. chapter V.5.c)(ff) of this report).

In this regard, the conversion of Fresenius AG into an SE does not lead to any changes concerning the responsibility of the management board.

(jj) Utilisation of Influence on the Company – Liability for Damages

By virtue of Art. 51 SE Regulation, the prohibition to cause members of the administration or executive employees to engage in a conduct detrimental to the stock corporation or its shareholders (cf. Section 117 AktG) also applies to an SE.

b) Supervisory Board

(aa) Size and Composition of the Supervisory Board

With regard to a company subject to co-determination pursuant to the MitbestG 1976, the size of the supervisory board depends on the number of domestic employees (cf. Section 95 sentence 5 AktG in connection with Section 7 MitbestG 1976). In accordance with these provisions, the supervisory board of a company with a regular number of domestic employees of 10,000 or less is composed of six representatives each from the shareholders' side and the employees' side, if the regular number of domestic employees is more than 10,000 but not more than 20,000, there are eight representatives each from the shareholders' side and the employees' side and if the regular number of domestic employees is more than 20,000, there are 10 representatives each from the shareholders' side and the employees' side.

In the SE, however, the number of members of the supervisory board or, respectively, the stipulation according to which such number is to be determined is laid down in the statutes of the company (Art. 40 para. 3 SE Regulation). Pursuant to Art. 40 para. 3 sentence 2 SE Regulation in connection with Section 17 para. 1 SEAG, the number of members has to be divisible by three and that the supervisory board has to be composed of at least three and not

more than 21 members. The number of members from the employees' side is determined in an agreement on the involvement of employees (Section 21 para. 3 no. 1 SEBG) or – in case no agreement can be reached – by the so-called subsidiary regulation of employee involvement by operation of law (cf. Sections 22 et seqq. SEBG as well as chapter VII.1.g)(hh) of this report). In the event of the formation of an SE by way of conversion, in respect of all components of employee involvement at least the same extent of involvement has to be granted that existed within the company which is to be converted into an SE. However, this only refers to the quality of employee involvement, i.e. for example composition on a parity basis, but not to the absolute number of members on the supervisory board.

In accordance with the aforementioned principles (divisibility by three, composition on a parity basis) the statutes of Fresenius SE provide for a supervisory board comprising of 12 members, which is composed on a parity basis of employee representatives and shareholder representatives (cf. Section 9 para. 1 of the statutes of Fresenius SE as well as chapter VII.2.i) of this report).

Thus, by choosing the supranational legal form of an SE, an opportunity is created to limit the number of members on the supervisory board of Fresenius SE to twelve, with six representatives each from the shareholders' side and the employees' side. In contrast, following status proceedings pursuant to Sections 97 et seqq. AktG, the supervisory board of Fresenius AG would have to be enlarged to twenty members, particularly in view of the acquisition of HELIOS Kliniken, because of the increase of the number of employees of Fresenius Group in Germany to more than 20,000. In view of the plans to convert Fresenius AG into an SE and to maintain, in the interest of an efficient corporate governance, the limitation of the number of members on the supervisory board to twelve, while maintaining composition on the parity basis, no status proceedings have been initiated.

As was described above, probably not only the domestic employees, but also employees from other member states of the EU and signatory states to the EEA will be represented on the supervisory board of Fresenius SE; it is expected that – reflecting the subsidiary regulation by operation of law – four representatives from Germany and one representative each from France and Austria will be elected by the employees (cf. also chapter VII.1.g)(hh) of this report).

(bb) Status Proceedings Regarding the Composition of the Supervisory Board

By virtue of the comprehensive reference provision in Art. 9 para. 1 lit. c)(ii) SE Regulation, the provisions of the Stock Corporation Act regarding the so-called status proceedings, which apply in cases where it is in dispute or uncertain whether the supervisory board is composed in accordance with applicable statutory provisions (Sections 97, 98, 99 AktG), also apply to a German SE. In addition, the provision in Section 17 para. 3 SEAG applies which stipulates that the SE works council, too, is entitled to initiate the status proceedings in court.

(cc) Personal Requirements for Supervisory Board Members

As is the case with a German stock corporation, by virtue of the transmission provision (*Sachnormverweisung*) in Art. 47 para. 1 SE Regulation only natural persons of full legal capacity are eligible to be members of the supervisory board of an SE the registered office of which is situated in Germany (cf. Section 100 para. 1 AktG). Besides, no person can be a member of the corporate body who pursuant to the law of the member state where the SE's registered office is situated is disqualified from serving on a management, supervisory or administrative body of a stock corporation governed by the law of such member state or who, owing to a judicial or administrative decision delivered in a member state, is disqualified from serving on a management, supervisory or administrative body of a stock corporation governed by the law of a member state (Art. 47 para. 2 SE Regulation). By making reference to Section 100 para. 2 AktG, congruity is achieved with the provision under German stock corporation law concerning the personal requirements for members on the supervisory board with regard to obstacles (generally, not more than ten memberships in corporate bodies, statutory representative of a controlled enterprise, no cross-holdings of membership positions, cf. Section 100 para. 2 AktG).

(dd) Appointment of the Supervisory Board

In a stock corporation, the members of the supervisory board are elected by the general meeting of shareholders, provided that no deviating provisions apply pursuant to co-determination law (Section 101 para. 1 AktG). Pursuant to these provisions, at the employee representatives on the supervisory board of Fresenius AG are appointed by the domestic employees of Fresenius Group and not by the general meeting of shareholders (cf. Sections 10 et seqq. MitbestG 1976).

Generally, the members of the supervisory board of an SE are appointed by the general meeting of shareholders (Art. 40 para. 2 sentence 1 SE Regulation).

This applies to both the shareholder representatives and the employee representatives on the supervisory board; with regard to the latter, this applies at least in cases where the subsidiary regulation by operation of law for the involvement of employees in the SE applies (cf. Section 36 para. 4 SEBG).

Whereas the shareholder representatives are proposed to the general meeting by the supervisory board, the employee representatives are determined, under the subsidiary regulation by operation of law for the involvement of employees in the SE, in accordance with the respective applicable national laws, taking into account the geographical distribution of the employees within the EU and the EEA. It can be assumed that similar stipulations will apply also in case an agreement is reached regarding the involvement of employees. Section 9 para. 1 of the statutes of Fresenius SE contains a provision to this effect. The proposals for the candidates of the employees who have been determined in this way are binding on the general meeting of shareholders (cf. Section 36 para. 4 SEBG, Section 9 para. 1 of the statutes of Fresenius SE as well as chapter VII.2.i) of this report).

Therefore, in effect, the employee representatives on the supervisory board of Fresenius SE are not determined by the employees of Fresenius Group in Germany, as was the case with Fresenius AG, but pursuant to the employee involvement procedure applicable by virtue of a contractual agreement or the subsidiary regulation by operation of law.

In contrast, with regard to the appointment of the shareholder representatives on the supervisory board the conversion into Fresenius SE does not lead to any changes with regard to the procedure currently applicable.

(ee) Term of Office

Whereas the appointment of the members of the supervisory board of a stock corporation cannot be made for a longer period than until the conclusion of the general meeting resolving on the ratification of actions in respect of the fourth financial year following the beginning of the term of office (not including the financial year in which the term of office begins (Section 102 para. 1 AktG)), the members of the supervisory board of an SE are appointed for a period of time which is laid down in the statutes and which may not exceed six years (Art. 46 para. 1 SE Regulation). Thus, with regard to an SE, longer terms of office are generally permissible.

So far, the articles of association of Fresenius AG provided that the election should be made for the maximum period permitted by statutory law, unless express stipulations to the

contrary are made at the election (Section 8 para. 2 of the articles of association of Fresenius AG). The statutes of Fresenius SE provide for an appointment of the supervisory board members – subject to special provisions applicable to the appointment of the members of the first supervisory board of Fresenius SE – for a term until the close of the general meeting resolving on the ratification of actions for the fourth financial year after the term of office commenced, not including the financial year in which the term of office commences, however, for no longer than for a period of six years. Reappointments are permissible (cf. Section 9 para. 3 of the statutes of Fresenius SE as well as chapter VII.2.i) of this report). Thus, the provision in the statutes follows the maximum duration of the term as stipulated in the AktG. In this regard, the conversion of Fresenius AG into an SE does not lead to any changes.

(ff) Dismissal

Supervisory board members of a stock corporation who have been elected by the general meeting of shareholders without binding proposals for the election may be dismissed by the general meeting – subject to any stipulations to the contrary within the articles of association – with a majority of at least three quarters of the votes cast (Section 103 para. 1 AktG). In addition, upon a motion of the supervisory board the competent court has to dismiss a member of the supervisory board if there is good cause (*wichtiger Grund*). The supervisory board decides on the filing of the motion with a simple majority. Members of a supervisory board of a stock corporation which is subject to co-determination pursuant to the MitbestG 1976 (as is the case with Fresenius AG), who have neither been elected by the general meeting of shareholders without binding proposals for the election nor delegated pursuant to stipulations made in the articles of association may only be dismissed – except for the cases of the aforementioned dismissal by a court – upon an application by the employees (cf. Section 23 MitbestG 1976).

With regard to the SE, neither the SE Regulation nor the SEAG contain any stipulations governing the dismissal of members of the supervisory board. By virtue of the comprehensive reference provision (*Gesamtverweisung*) in Art. 9 para. 1 lit. c)(ii) SE Regulation, in principle, the provisions of the German Stock Corporation Act apply. With regard to the dismissal of employee representatives, the MitbestG 1976 is no longer applicable; instead, the following applies: Domestic employee representatives on the supervisory board of an SE may be dismissed – subject, however, to an agreement to the contrary concluded in the course of the employee involvement procedure – upon a proposal of the employees (cf. Section 37 para. 1 SEBG). The general meeting is bound to this proposal (Section 37 para. 1 SEBG at

the end). The dismissal of a supervisory board member determined by the employees from another member state is not governed by the SEBG, but – subject to an agreement concerning employee involvement to the contrary – by the respective applicable national legal provisions. However, as is the case with a stock corporation, employee representatives on the supervisory board of an SE may still be dismissed by a court, provided that the respective requirements under statutory law are met.

In principle, the conversion of Fresenius AG into an SE does not lead to any changes with regard to the dismissal of supervisory board members. The dismissal of supervisory board members is still generally governed by the AktG. In addition – as a consequence of the inapplicability of the MitbestG 1976 – and to the extent that no stipulation to the contrary is provided for in an agreement regarding the involvement of employees, a possibility for the dismissal of employee representatives has at least been provided for in the course of the subsidiary regulation by operation of law in the SEBG. In this regard, the SEBG follows the system of the MitbestG 1976.

(gg) Appointment by the Court

The SE Regulation does not expressly stipulate whether a supervisory board member may be appointed by a competent court. However, by virtue of the comprehensive reference provision (*Gesamtverweisung*) in Art. 9 para. 1 lit. c)(ii) SE Regulation, the provisions of the German Stock Corporation Act apply. In accordance with these provisions, upon a respective motion the court has to supplement the supervisory board to meet the number of members required to constitute a quorum (Section 104 para. 1 sentence 1 AktG), if the supervisory board comprises less than this number of members. In urgent cases, the court has to supplement the supervisory board, upon a respective motion, even if the board still constitutes a quorum and prior to the expiry of the three months period regularly required for supplementing the board because of an insufficiency of members (cf. Section 104 para. 2 AktG). In the case of a stock corporation, such an urgent case is always deemed to exist if a supervisory board which is subject to co-determination pursuant to the MitbestG 1976 does not comprise all the members of which it has to comprise pursuant to applicable statutory provisions or the statutes, i.e. if there is no composition on a parity basis (Section 104 para. 3 AktG). Such an urgent case will also have to be assumed (despite the inapplicability of the MitbestG 1976) in the case of an SE supervisory board composed on a parity basis, with the consequence that prior to the expiry of the three months period an appointment by the court is also possible in cases where the supervisory board still constitutes a quorum, but is not complete.

With regard to the SE, the supplementary provision in Section 17 para. 3 SEAG applies which stipulates that the SE works council, too, is entitled to initiate proceedings for the appointment by the court.

Therefore, the conversion of Fresenius AG into an SE generally does not lead to any changes.

(hh) Incompatibility of the Membership in the Management and Supervisory Boards

As is the case with a stock corporation, in the SE, too, no person may, at the same time, be a member of the management board and the supervisory board. However, the supervisory board may – as is the case with a stock corporation – delegate one of its members to assume the responsibilities of a member of the management board for a limited period of time which may not exceed one year. During this time, the office of the respective person as a member of the supervisory board is suspended. A repeated appointment or the prolongation of the term of office are permissible, provided that the total term of office does not exceed one year (cf. Art. 39 para. 3 SE Regulation in connection with Section 15 SEAG for the SE and Section 105 para. 1 and para. 2 AktG for the AG). Save for this exception, no person can be a member of a corporate body of an SE who pursuant to the law of the member state where the SE's registered office is situated is disqualified from serving on a management or supervisory body of a stock corporation governed by the law of such member state (Art. 47 para. 2 lit. a) SE Regulation).

It follows from this provision and from the comprehensive reference provision in Art. 9 para. 1 lit. c)(ii) SE Regulation (in connection with Section 105 para. 1 AktG) that in this regard the conversion of Fresenius AG into an SE does not lead to any changes.

(ii) Internal Organisation – Chairman/Deputy Chairman of the Supervisory Board

The chairman of the supervisory board of a company subject to co-determination pursuant to the MitbestG 1976 – such as Fresenius AG – is elected by the shareholder representatives on the supervisory board, unless a chairman has already been elected in a first ballot with a two thirds majority. The same applies accordingly with regard to the deputy chairman, with the proviso that the latter is to be elected by the employee representatives on the supervisory board (Section 27 para. 2 MitbestG 1976).

These provisions do not apply to an SE. The election is made by the supervisory board in its entirety, with the majority of the votes of the members present or represented being required. However, in the case of a supervisory board composed on a parity basis it is mandatory for

the chairman of the supervisory board to be a shareholder representative (Art. 42 sentence 2 SE Regulation). In case the deputy chairman is to be granted a casting vote (which is not permissible in a stock corporation subject to co-determination pursuant to the MitbestG 1976), the latter also has to be a shareholder representative. Since Fresenius SE is subject to co-determination on a parity basis, provisions to this effect have been included in the statutes of Fresenius SE (cf. Sections 10 and 11 para. 5 of the statutes of Fresenius SE as well as chapter VII.2.j) and k) of this report).

(jj) Internal Organisation / Adoption of Resolutions by the Supervisory Board

The supervisory board of a stock corporation subject to co-determination – such as Fresenius AG – constitutes a quorum if at least half of the total number of members of which it comprises, participates in the passing of a resolution (Section 28 MitbestG 1976). Generally, the adoption of resolutions require us the majority of the votes cast (Section 29 para. 1 MitbestG 1976). In the case of a tie, the chairman has a casting vote in a new ballot. No such right is granted to the deputy chairman (Section 29 para. 2 sentence 3 MitbestG 1976).

The supervisory board of an SE constitutes a quorum – subject to a stipulation to the contrary in the statutes (which is not intended for the statutes of Fresenius SE) or the SE Regulation – if at least half of its members are present or represented (Art. 50 para. 1 lit. a) SE Regulation). The adoption of resolutions requires a majority of the votes of the members present or represented (Art. 50 para. 1 lit. b) SE Regulation).

In a supervisory board composed on a parity basis, it is mandatory pursuant to Art. 50 para. 2 SE Regulation in the event of a tie, as is the case with a German stock corporation, that the chairman of the supervisory board has a casting vote (with no second ballot being required – as would be the case in a stock corporation governed by the MitbestG 1976). The right to have a so-called casting vote may also be granted to the deputy chairman, provided that the latter is a shareholder representative. This is not permissible in a stock corporation subject to co-determination. The statutes of Fresenius SE contain a provision to this effect in Section 11 para. 5 of the statutes of Fresenius SE.

(kk) Calling of Supervisory Board Meetings

Neither the SE Regulation nor the SEAG contain provisions regarding the calling of supervisory board meetings. Therefore, by virtue of the comprehensive reference provision in Art. 9 para. 1 lit. c)(ii) and (iii) SE Regulation, respectively, the provisions applicable to

German stock corporations apply in their entirety with the consequence that the conversion of Fresenius AG into an SE does not lead to any changes. In accordance with the provisions of the AktG, each supervisory board member may request that the chairman of the supervisory board promptly call a meeting of the supervisory board, provided that such member states the purpose and reasons for the request. If no meeting is held within a period of two weeks, the supervisory board member of all the management board may call a meeting of the supervisory board (cf. Section 110 AktG).

In the case of listed companies, such as Fresenius AG and Fresenius SE, the supervisory board has to convene in meetings at least twice in each half of the calendar year.

(II) Responsibilities and Right of the Supervisory Board

According to the AktG, the supervisory board supervises the management of the company (Section 111 para. 1 AktG). The supervisory board has to convene a general meeting of shareholders if the interests of the company so require (Section 111 para. 3 sentence 1 AktG).

In an SE, too, the supervisory board supervises the management of the company by the management board (Art. 40 para. 1 sentence 1 SE Regulation). Pursuant to Art. 54 para. 2 SE Regulation in connection with Section 111 para. 3 sentence 1 AktG, it is also entitled to call a general meeting of shareholders if the interests of the company so require. In so far, the conversion of Fresenius AG into an SE does not lead to any changes.

The members of the supervisory board may not delegate their responsibilities to other persons – not even other supervisory board members (Section 111 para. 5 AktG).

In a stock corporation, the management of the company may not be delegated to the supervisory board. In an SE, too, the management of the company (*Maßnahmen der Geschäftsführung*) may not be delegated to the supervisory board (cf. Art. 40 para. 1 sentence 2 SE Regulation).

In a stock corporation, the articles of association or the supervisory board have to stipulate that certain categories of transactions may only be conducted with the authorisation of the supervisory board (cf. Section 111 para. 4 sentence 2 AktG); however, the articles of association do not have to contain such catalogue, since the determination of the catalogue by the supervisory board is sufficient (cf. Section 111 para. 4 sentence 2 AktG). In contrast, Art. 48 para. 1 sub-para. 1 SE Regulation obliges the corporate body stipulating statutes to make a determination, within the statute of the SE, of the categories of transactions which

require an authorisation from the supervisory board. Without a respective stipulation in the statutes, there would be an obstacle for the registration of the SE. However, this obligation to include in the statutes a catalogue of transactions which require authorisation does not prevent the supervisory board from determining other categories of transactions in the rules of procedure which also require its approval (cf. Art. 48 para. 1 sub-para. 2 SE Regulation in connection with Section 19 SEAG).

However, the differences in the provisions governing the determination of the transactions requiring authorisation for a German stock corporation and an SE are without consequences for Fresenius SE, because the articles of association of Fresenius AG as well as the statutes of Fresenius SE in their Section 8 para. 3 already contain a catalogue of transactions requiring authorisation.

In contrast to Section 111 para. 4 sentences 3 through 5 AktG, the SE Regulation does not provide for the power of the general meeting of the SE to substitute a refused authorisation of the supervisory board by a resolution of the general meeting.

In addition, by virtue of the comprehensive reference provision in Art. 9 para. 1 lit. c)(ii) SE Regulation, the provisions of the AktG apply with the consequence that the conversion of Fresenius AG into an SE does not lead to any changes.

(mm) Duty of Care and Confidentiality Obligations

In the exercise of its functions, the supervisory board of a German stock corporation has to apply the care of a prudent and conscientious supervisory board member (Section 116 sentence 1 in connection with Section 93 para. 1 sentence 1 AktG). In addition, the members of the supervisory board are under a confidentiality obligation (Section 116 sentence 2 AktG). In an SE, by virtue of the transmission provision in Art. 51 SE Regulation the responsibility of the members of the supervisory board is governed by the same provisions of the German Stock Corporation Act, whereas the confidentiality obligation is governed by Art. 49 SE Regulation in connection with Section 93 AktG. Therefore, the conversion of Fresenius AG into Fresenius SE does not lead to any changes.

(nn) Representation of the Company vis-à-vis Management Board Members

The supervisory board of a German stock corporation represents the company, in and out of court, vis-à-vis management board members (Section 112 AktG). By virtue of the

comprehensive reference provision in Art. 9 para. 1 lit. c)(ii) SE Regulation, this also applies to the SE.

(oo) Remuneration of Supervisory Board Members, Contracts with Supervisory Board Members, Granting of Loans to Supervisory Board Members

By virtue of the comprehensive reference provision in Art. 9 para. 1 lit. c)(ii) SE Regulation, the provisions of the AktG regarding the remuneration of the supervisory board members, contracts with the supervisory board members and the granting of loans to supervisory board members (Sections 113 to 115 AktG) also apply to the SE. As is the case with Fresenius AG, the remuneration of the supervisory board is also stipulated in the statutes of Fresenius SE. In principle, the conversion of Fresenius AG into an SE does not lead to any changes in this regard (cf. Section 14 of the statutes of Fresenius SE as well as chapter VII.2.n) of this report).

With regard to the members of the first supervisory board of an AG, these remuneration provisions do not apply. Pursuant to Section 113 para. 2 AktG, they receive a remuneration which is at the discretion of the general meeting resolving upon the ratification of their actions. By virtue of the comprehensive reference provision in Art. 9 para. 1 lit. c)(ii) SE Regulation, this also applies to the SE.

c) General Meeting of Shareholders

(aa) Rights of the General Meeting

The shareholders of a German stock corporation exercise their rights relating to the matters of the company in the general meeting of shareholders, unless statutory law provides otherwise (Section 118 para. 1 AktG). The members of the management board and the supervisory board are supposed to take part in the general meeting (Section 118 para. 2 sentence 1 AktG). This also applies to the SE (by virtue of Art. 9 para. 1 lit. c)(ii) SE Regulation and Art. 53 SE Regulation), with the consequence that the conversion of Fresenius AG into an SE does not lead to any changes in this regard.

The general meeting of an SE whose registered office is situated in Germany decides on matters for which responsibility is given to the general meeting of a German stock corporation by virtue of either national legal provisions or stipulations in the statutes, namely the appointment of the members of the supervisory board, the utilisation of balance sheet profits, the ratification (*Entlastung*) of the actions of the members of the management and

supervisory boards, the appointment of the auditor, amendments of the statutes, measures for the procurement of capital and capital reduction, the appointment of special auditors for the examination of events in connection with the formation or of the management of the company as well as the winding up of the company (Section 119 para. 1 AktG, Art. 52 sub-para. 2 SE Regulation).

Generally, with regard to measures of company management, the general meeting of shareholders of a German stock corporation and of an SE with its registered office in Germany can only take decisions if this is requested by the management board (cf. Section 119 para. 2 AktG, Art. 52 sub-para. 2 SE Regulation). Exceptions apply with regard to the so-called *Holz Müller/Gelatine* cases, i.e. to structural measures which generally fall within the scope of executive competence of the management board, but which, because of their importance, affect the rights of the shareholders. Presumably, this also applies to an SE with its registered office in Germany (cf. Art. 52 sub-para. 2 SE Regulation) with the consequence that in this regard, too, the conversion of Fresenius AG into an SE does not lead to any changes.

Besides, the general meeting of shareholders of a stock corporation as well as of an SE with its registered office in Germany decides on measures under transformation law pursuant to the German Transformation Act (e.g. mergers, divisions, transfers of assets or changes of the legal form).

In addition, in an SE, pursuant to Art. 52 sub-para. 1 SE Regulation, the general meeting decides on matters for which it is given sole responsibility by the SE Regulation or by the legislation of the member state in which the SE's registered office is situated adopted in implementation of Directive 2001/86/EC (SE Employee Involvement Directive).

These include, in particular, the transfer of the registered office (Art. 8 SE Regulation) as well as the reconversion into a national stock corporation (Art. 66 para. 6 SE Regulation). A reconversion decision may only be taken after two years have elapsed since the registration of the SE or after the first two annual financial statements have been approved.

(bb) Ratification of the Actions of Management Board and Supervisory Board

In a German stock corporation, the general meeting of shareholders resolves, within the first eight months of each financial year, upon the ratification (*Entlastung*) of the actions of the management board and the supervisory board, by which it approves the management of the

company by the members of the management board and the supervisory board (cf. Sections 119 para. 1 no. 3, 120 AktG).

By virtue of the transmission provision in Art. 52 sub-para. 2, 53 SE Regulation, the provisions of the German Stock Corporation Act generally apply, without restriction, also to the SE. The only change resulting from the conversion of Fresenius AG into an SE is that the general meeting of the SE is to be held within six months (and not eight months, as is the case with the AG) of the end of a financial year (Art. 54 para. 1 SE Regulation, see also the following).

(cc) Convening the General Meeting

In an SE, the general meeting may be convened at any time by the management board or the supervisory board in accordance with the national law applicable to stock corporations in the member state where the SE's registered office is situated (Art. 54 para. 2 SE Regulation). The organisation and conduct of the general meeting as well as the voting procedure are governed, in principle, by the provisions of the German Stock Corporation Act (Art. 53 SE Regulation, with regard to applicable majority requirements for resolutions see below items (hh) and (ii)). A general meeting is held at least once each year within six months of the completion of the financial year (Art. 54 para. 1 SE Regulation). Accordingly, the provisions of German Stock Corporation Act apply (cf., in particular, Section 121 AktG), with the exception that the regular general meeting of shareholders is not held within the first eight months of the financial year (cf. for the German stock corporation Section 175 para. 1 sentence 2 AktG), but within the first six months after the end of the financial year.

Since apart from this the relevant stipulations in the statutes of Fresenius SE correspond to those of Fresenius AG – with the exception of convening the general meeting within six months of the end of the financial year –, the conversion of Fresenius AG into an SE does not lead to any changes in this regard (cf. Sections 15 through 18 of the statutes of Fresenius SE as well as chapter VII.2.o) through r) of this report).

(dd) Convening of the General Meeting upon Request of a Minority / Supplementing the Agenda upon Request of a Minority

The general meeting of a German stock corporation is to be convened if shareholders whose shares, in the aggregate, represent 5% of the subscribed capital request this in writing, provided that such minority states the purpose and reasons for the request (Section 122 para. 1 AktG). The shareholders have to prove that they have owned the shares for at least

three months before the date of the general meeting and that they continue to hold the shares until the decision on the motion is made (i.e. until the authorisation by a court or until the convening of the meeting by the management board) (Section 122 para. 1 sentence 3 in connection with Section 142 para. 2 sentence 2 AktG). In the same way, shareholders whose shares, in the aggregate, represent 5% of the subscribed capital or a proportionate amount of the subscribed capital of Euro 500,000 may request that certain items for the adoption of a resolution of a general meeting of shareholders be published (Section 122 para. 2 AktG). If the request is not granted, a court can authorise the shareholders who have submitted the request to convene the general meeting or to publish the item for the adoption of a resolution (Section 122 para. 3 sentence 1 AktG).

The convening of the general meeting of shareholders of an SE and the drawing-up of the agenda therefor may be requested by one or more shareholders who together hold at least 5% of the subscribed capital (Art. 55 para. 1 SE Regulation, Section 50 para. 1 SEAG). The request that a general meeting be convened has to state the items to be put on the agenda (Art. 55 para. 2 SE Regulation). Upon a respective request, a court may authorise the shareholders to convene the general meeting, if the general meeting has not been held within two months, at the latest, after the request for convening a general meeting has been made (Art. 55 para. 3 SE Regulation). In contrast to the provisions of the German Stock Corporation Act in Sections 122 para. 1 sentence 3, 142 para. 2 sentence 2 AktG, a minimum holding period of three months before making the request is not a condition precedent for the request in the case of an SE.

The inclusion of one or more additional items in the agenda of the general meeting of an SE may be requested by one or more shareholders who together hold at least 5% of the subscribed capital or a proportionate amount of Euro 500,000 (Art. 56 SE Regulation, Section 50 para. 2 SEAG). The procedures and time limits applicable to such requests are governed by national law, i.e. presently by the SEAG (cf. Art. 56 sentence 2 SE Regulation in connection with Section 50 SEAG).

In effect, thereby the SE Regulation and the SEAG essentially adopt the provisions of the German Stock Corporation Act with a consequence that, generally, the conversion of Fresenius AG into an SE does not lead to any changes.

(ee) Organisation and Conduct of the General Meeting

With regard to the organisation and conduct of the general meeting of an SE, the SE Regulation makes reference, by virtue of the transmission provision in Art. 53, 54 para. 2 and

the comprehensive reference provision in Art. 9 para. 1 lit. c)(ii) SE Regulation, to the provisions of the German Stock Corporation Act, with the consequence that, in so far, the conversion of Fresenius AG into an SE does not lead to any changes. Therefore, among others, the provisions governing the limitation of the speaking right also continue to apply (cf. chapter VII.2.r)).

(ff) Right to Information, Speaking Right and Right to Put Questions of the Shareholders in the General Meeting

In order to exercise their rights, the shareholders of a German stock corporation require sufficient information about the company. The basis for this information is the annual financial statements, including the notes thereto, and the management report of the management board (Section 175 para. 2 AktG) as well as the report of the supervisory board (Section 171 para. 2 AktG). In addition, Section 131 AktG grants to each shareholder, regardless of the extent of his interest in the company, a right to information in the general meeting to the extent this is necessary for the appropriate assessment of the agenda. This right cannot be restricted by the articles of association (cf. Section 23 para. 5 AktG); it is mandatory. It is only for specific reasons which are listed in Section 131 para. 3 AktG that the management board may refuse to give the information. For example, such a right to withhold information exists in cases where divulging the information could lead, in the view of a reasonable businessman, to a significant disadvantage for the company. The right to sufficient information is also granted to the shareholders of an SE. By virtue of the comprehensive reference provision in Art. 9 para. 1 lit. c)(ii) SE Regulation, the stock corporation law provisions cited above also apply to the SE with the consequence that in the course of the conversion into Fresenius SE the rights of the shareholders to information and to put questions are fully maintained.

(gg) Rules of Procedure

The general meeting of a stock corporation may lay down rules of procedure for itself concerning the preparation and conduct of the general meeting with a majority of at least three quarters of the subscribed capital represented at the casting of votes (Section 129 para. 1 sentence 1 AktG).

In principle, this also applies to the SE (cf. Art. 53 SE Regulation in connection with Section 129 para. 1 AktG). Whereas the AktG requires a majority of three quarters of the represented subscribed capital for the adoption of a resolution to lay down rules of procedure for the preparation and conduct of the general meeting, the laying down of such rules of

procedure in an SE requires a majority of three quarters of the votes (validly) cast, since the provisions of the AktG regarding the applicable majority requirements for resolutions have to be interpreted in a manner consistent with the SE. In contrast to the AktG, the SE Regulation uses the criterion of votes cast (cf. Art. 57, 58, 59 SE Regulation). Since under German law no shares with multiple voting rights are permissible, this change has no practical consequences, because in a German AG or SE, respectively, the majority of the subscribed capital is identical to the majority of votes.

(hh) Regular Resolutions of the General Meeting (Not Involving an Amendment of the Statutes)

The adoption of resolutions of the general meeting of a German stock corporation requires the majority of the votes cast (simple majority of votes), unless a larger majority or additional requirements are stipulated by statutory law or the articles of association (Section 133 para. 1 AktG).

The resolutions of the general meeting of an SE are adopted by a majority of the votes validly cast, save where a larger majority is stipulated by the SE Regulation or by stock corporation law (Art. 57 SE Regulation). Therefore, the conversion of Fresenius AG into an SE does not lead to any changes with regard to the principle of simple majority of votes for the adoption of resolutions of the general meeting.

(ii) Resolutions of the General Meeting Involving Amendments to the Statutes

Resolutions involving amendments to the articles of association of a stock corporation require a majority of at least three quarters of the subscribed capital represented at the casting of votes as well as a simple majority of the votes cast (Sections 179 para. 2, 133 AktG). The articles of association may stipulate deviating majority requirements, however, with the proviso that in respect of a change of the corporate purpose only a larger majority of the subscribed capital may be stipulated (Section 179 para. 2 sentence 2 AktG). According to the articles of association of Fresenius AG – save where mandatory statutory law provides otherwise – the simple majority of the subscribed capital (and the simple majority of votes cast) is sufficient for amendments of the articles of association (Section 17 para. 3 of the articles of association of Fresenius AG).

In the case of an SE, amendments of the statutes require a resolution of the general meeting adopted with a majority of at least two thirds of the votes cast, provided that the legal provisions applicable to stock corporations do not stipulate or allow for larger majority

requirements (Art. 59 para. 1 SE Regulation). Therefore, according to the prevailing opinion, those amendments of the articles of association which pursuant to the AktG already require a mandatory majority of the subscribed capital of three quarters now require, in the case of an SE, a majority of three quarters of the *votes* (validly) cast (cf. above chapter V.5.c)(gg) of this report).

The statutes of an SE may stipulate that the simple majority of votes cast is sufficient for a resolution of the general meeting effecting amendments to the statutes, provided that at least half of the subscribed capital is represented (Section 51 sentence 1 SEAG). This does not apply with regard to an alteration of the corporate purpose, a resolution on the transfer of the registered office as well as in cases where a larger majority of the subscribed capital is required by mandatory statutory law (Section 51 sentence 1 SEAG). The statutes of Fresenius SE contain a provision to this effect (cf. Section 18 para. 3 of the statutes of Fresenius SE as well as chapter VII.2.r) of this report).

Therefore, by virtue of the provisions in Art. 59 SE Regulation and Section 51 SEAG in connection with the statutes of Fresenius SE, the majority requirements for the adoption of resolutions are rendered more strict in comparison to Fresenius AG, in that amendments to the statutes of the SE may still be resolved with a simple majority of the votes cast, but only if at least half of the subscribed capital is represented. Otherwise, a majority of two thirds of the votes cast (and not a simple majority of the votes and of the subscribed capital) is required (provided that no larger majority is mandatory anyway). Eventually, however, this will not be relevant because of the shareholder structure of Fresenius SE with a majority shareholder who holds more than 60% of the subscribed capital of Fresenius SE, since because of this majority shareholder a presence of more than 50% is generally to be expected in the general meeting of shareholders of Fresenius SE and therefore resolutions for the amendment of the statutes can still be adopted as before with a simple majority of the votes.

(jj) Preference Shares Carrying No Voting Rights / Separate Resolution

In a stock corporation, the voting right may be excluded with regard to shares which grant a subsequent preference right with regard to the distribution of the profits (Section 139 para. 1 AktG). If, in one year, there is no or only a partial preference payment and the arrears are not paid in the next year in addition to the full preference payment of that year, the preference shareholders are entitled to vote until payment of the arrears has been made. In that case, the preference shares also have to be taken into account for the purposes of calculating a majority

of the subscribed capital required under statutory law or the articles of association (Section 140 para. 2 AktG).

Neither the SE Regulation nor the SEAG contain express provisions regarding preference shares. By virtue of the comprehensive reference provision in Art. 9 para. 1 lit. c)(ii) SE Regulation and the transmission provision in Art. 5 SE Regulation, the provisions of the German Stock Corporation Act apply. Since, besides, the stipulations in the statutes of Fresenius SE governing the preference right for the preference shares of Fresenius SE are identical to those relating to preference shares of Fresenius AG, the conversion of Fresenius AG into an SE does not lead to any changes in this regard (cf. Section 20 of the statutes of Fresenius SE as well as chapter VII.2.t) of this report).

In a stock corporation, a resolution cancelling or limiting the preference right further requires the consent of the preference shareholders in order to be effective (Section 141 para. 1 AktG). A resolution for the issuance of preference shares which have the same rank or enjoy priority with regard to the distribution of the profits or the assets of the company only requires the consent of the preference shareholders if the subscription right of the preference shareholders is excluded (cf. Section 141 para. 2 AktG). With regard to the granting of the consent, the preference shareholders have to adopt a separate resolution in a separate meeting with a majority of at least three quarters of the votes cast (Section 141 para. 3 AktG).

Where an SE has two or more classes of shares, every decision by the general meeting is subject to a separate resolution by the class of shareholders whose specific rights are affected by the decision (Art. 60 para. 1 SE Regulation). Where the decision requires a qualified majority, that majority is also required for the separate resolution (Art. 60 para. 2 SE Regulation). Therefore – as is the case with an AG – the cancellation or limitation of the preference rights of preference shares requires a majority of three quarters of the votes cast. Thus, in this regard, too, there are no differences between an SE and an AG.

Since Art. 60 SE Regulation only makes reference to a separate resolution and does not mention a separate meeting, it is not permissible to opt for the conduction of a separate meeting; there is only one general meeting in the course of which separate resolutions are being passed.

(kk) Special Audit

By virtue of the comprehensive reference provision in Art. 9 para. 1 lit. c)(ii) SE Regulation and the transmission provision in Art. 52 sub-para. 2 SE Regulation, the stock corporation

law provisions (Sections 142, 258 AktG) apply with the consequence that the conversion of Fresenius AG into an SE does not lead to any changes in this regard.

(II) Assertion of Claims for Damages against Corporate Bodies / Shareholder Lawsuits

The SE Regulation and the SEAG do not contain any provisions regarding the assertion of claims for damages or shareholder lawsuits. By virtue of the comprehensive reference provision in Art. 9 para. 1 lit. c)(ii) SE Regulation, the provisions of the AktG (Sections 147 et seqq. AktG) apply.

6. Annual Financial Statements / Consolidated Financial Statements

The preparation of the annual financial statements and the consolidated financial statements, including related management reports, as well as the auditing and publication of the financial statements are governed by the legal provisions applicable to a German stock corporation (Art. 61 SE Regulation). In addition, the provisions of German stock corporation law and of the German Commercial Code (*Handelsgesetzbuch*) apply by virtue of Art. 9 para. 1 lit. c)(ii) SE Regulation and Art. 52 sub-para. 2 SE Regulation, with the consequence that the conversion of Fresenius AG into an SE does not lead to any changes in this regard.

7. Procurement of Capital and Capital Reduction

Generally, the same stock corporation law provisions regarding capital measures applicable to a German stock corporation also apply to an SE. To the extent that resolutions for capital measures of an SE can be adopted with only a simple majority of the subscribed capital pursuant to a stipulation in the statutes, they now only require a simple majority of the votes cast. However, this only applies if at least half of the subscribed capital is represented. Otherwise, a majority of two thirds of the votes cast (and not a simple majority of the votes cast and of the subscribed capital) is required. Those capital measures which pursuant to the AktG already require mandatory larger majorities for stock corporations (such as capital increases with an exclusion of the subscription right or capital reductions) also require, in the case of an SE, a majority of three quarters of the votes cast.

8. Alteration of the Relationship between Several Classes of Shares to the Detriment of One Class (in General)

In a stock corporation, the alteration of the relationship between several classes of shares to the detriment of one class requires the consent of the affected shareholders in the form of a separate resolution adopted with a simple majority of the subscribed capital and a simple

majority of the votes cast (Section 179 para. 3 sentence 2 AktG in connection with Section 17 para. 3 of the articles of association of Fresenius AG).

Where an SE has two or more classes of shares, every decision by the general meeting is subject to a separate resolution by the class of shareholders whose specific rights are affected by the decision (Art. 60 para. 1 SE Regulation). In this regard, the same majority requirements apply as are applicable to the decision which affects the specific rights of the respective class of shares, i.e. which is detrimental to them (Art. 60 para. 2 SE Regulation).

In so far, the conversion of Fresenius AG into an SE does not lead to any changes.

9. Invalidity of Resolutions of the General Meeting of Shareholders and of the Approved Annual Financial Statements / Special Audit because of Impermissible Undervaluation

a) Invalidity of Resolutions of the General Meeting of Shareholders

The SE Regulation and the SEAG do not contain any provisions regarding the challenging of resolutions or the examination (by a court) of the legality of the content of resolutions (*materielle Beschlusskontrolle*). By virtue of the comprehensive reference provision in Art. 9 para. 1 lit. c)(ii) SE Regulation and in Art. 5 SE Regulation, the provisions of the AktG regarding the invalidity of resolutions of the general meeting (Sections 241 et seqq. AktG) apply.

b) Invalidity or Challenging of the Election of Supervisory Board Members

By virtue of the comprehensive reference provision in Art. 9 para. 1 lit. c)(ii) SE Regulation and in Art. 5 SE Regulation, the provisions of the AktG (Sections 250 et seqq. AktG) apply. Insofar as the election of employee representatives on the supervisory board is concerned, at least in cases where the subsidiary regulation by operation of law applies, the unlawful adoption of election proposals for the employee representatives on the supervisory board may only be asserted pursuant to the national provisions of the member states regarding appointments in respect of the seats allocated to them. Therefore, with regard to domestic employee representatives, pursuant to Section 37 SEBG the election of a supervisory board member representing employees may be challenged where substantive provisions concerning the right to vote, eligibility for election or the election procedure have been infringed and such infringement has not been remedied, unless the result of the vote could not be altered or influenced by the infringement. Such challenges may be asserted by those persons who are entitled to submit a motion for the dismissal of employee representatives from the

supervisory board, by the SE works council and by the management of the SE. Any action has to be brought forward within one month following the appointment decision of the general meeting of shareholders.

c) Invalidity of the Approved Annual Financial Statements

By virtue of the comprehensive reference provision in Art. 9 para. 1 lit. c)(ii) SE Regulation, the provisions governing the invalidity of the approved annual financial statements (Sections 256, 257 AktG) apply. Therefore, the conversion does not lead to any changes.

d) Special Audit because of an Impermissible Undervaluation

By virtue of the comprehensive reference provision in Art. 9 para. 1 lit. c)(ii) SE Regulation, the provisions governing the special audit because of an impermissible undervaluation (Sections 258 through 261a AktG) also apply to the SE. Therefore, the conversion does not lead to any changes.

10. Winding Up and Declaration of Nullity in Respect of the Company

With regard to the winding up, liquidation, insolvency, cessation of payments and similar procedures, an SE is governed by the legal provisions applicable to a stock corporation; this includes the provisions relating to the adoption of resolutions by the general meeting (Art. 63 SE Regulation) with the consequence that the conversion of Fresenius AG into an SE does not lead to any changes.

However, in contrast to a stock corporation, a resolution to transfer the registered office to another member state does not constitute a winding-up resolution in the case of an SE, since the transfer of the registered office of an SE into another member state is permitted by Art. 8 SE Regulation. The transfer of the registered office is subject to a resolution of the general meeting requiring the same majority applicable to amendments of the statutes. To any shareholder whose declaration of objection to the transfer resolution is recorded in the minutes of the general meeting the SE has to offer to acquire his shares against payment of an adequate cash compensation (Section 12 para. 1 sentence 1 SEAG).

11. Affiliated Companies

German law on groups of companies is applicable to the SE. Pursuant to the prevailing opinion this also applies to a controlled SE. Therefore, in the event of the conclusion of a control and/or profit and loss transfer agreement, the outside shareholders are entitled to the rights to adequate compensation payments which are provided for in the case of a stock

corporation. This also applies in the case of a squeeze-out of minority shareholders against payment of an adequate cash compensation (Sections 327a et seqq. AktG). Therefore – pursuant to the prevailing opinion – the conversion does not lead to any changes.

12. Winding Up by a Court

By virtue of the comprehensive reference provision in Art. 9 para. 1 lit. c)(ii) SE Regulation and Art. 63 SE Regulation, the provisions governing the winding up of stock corporations by a court (Sections 396 through 398 AktG) also apply to an SE the registered office of which is situated in Germany, with the consequence that the conversion of Fresenius AG into an SE does not lead to any changes in this regard.

13. Criminal Law and Civil Penalty Provisions

The criminal law and civil penalty provisions under stock corporation law (Sections 399 et seqq. AktG) also apply to an SE (Section 53 SEAG and Art. 9 para. 1 lit. c)(ii) SE Regulation). Therefore, the conversion does not lead to any changes.

VI. Implementation of the Conversion of Fresenius AG into Fresenius SE

1. Preparation of the Conversion Plan

Pursuant to Art. 37 para. 4 SE Regulation, the management board has to prepare a conversion plan. The SE Regulation does not stipulate any requirements as to the content of the conversion plan (cf. Art. 37 SE Regulation). To the extent that Art. 37 para. 4 SE Regulation stipulates requirements with regard to the statements relating to the legal and economic aspects, these refer to the conversion report.

As a guideline for the content of the conversion plan, the management board has taken recourse to the requirements stipulated by Art. 20 SE Regulation in respect of the merger plan, except where these are specifically designed to meet the particular requirements of a merger. In accordance with these provisions, the conversion plan has to contain stipulations regarding the name and registered office of the company, the statutes as well as the procedure for the involvement of the employees.

The Conversion Plan prepared by the management board, including the statutes of Fresenius SE, is printed under Part A of this conversion documentation and is explained in more detail in chapters VII.1 and VII.2 of this Conversion Report.

The supervisory board has addressed the conversion on September 22, 2006. For its deliberations, the draft Conversion Plan, including the statutes of Fresenius SE, as well as the draft of this Conversion Report were submitted to the supervisory board. On October 10, 2006, the management board has adopted the Conversion Plan (including the statutes of Fresenius SE) in its final version and has had it notarised. In its meeting on October 11, 2006, the supervisory board has resolved to submit the Conversion Plan (including the statutes of Fresenius SE), in the version adopted by the management board, to the extraordinary general meeting of shareholders of Fresenius AG on December 4, 2006, for approval.

From the convening of the extraordinary general meeting of shareholders the Conversion Plan, the certificate issued by the conversion auditor as well as this Conversion Report will be available for inspection at the offices of Fresenius AG, Else-Kröner-Straße 1, 61352 Bad Homburg v.d.H., Germany. Upon request, a copy of these documents will be sent to each shareholder promptly and free of charge.

2. Conversion Audit

Pursuant to Art. 3, 15 para. 1 SE Regulation in connection with Section 32 AktG, the incorporators have to prepare a report on the conduction of the formation of the SE.

However, it follows from the rationale of Section 75 para. 2 UmwG that no formation report is required in the case of a conversion, if the legal form is changed between types of corporations (*Kapitalgesellschaften*). Section 75 para. 2 UmwG provides that in the case of a merger a formation report and a formation audit are not required if the transferring entity is a corporation. Accordingly, since Fresenius AG as a corporation is converted into an SE which also is a corporation, no formation report has to be prepared.

However, it is required that a conversion audit is conducted by the members of the management board and the supervisory board of Fresenius SE (cf. Art. 15 para. 1 SE Regulation in connection with Section 33 para. 1 AktG).

It is not required that a formation audit is conducted by external auditors pursuant to Art. 15 para. 1 SE Regulation in connection with Section 33 para. 2 AktG, since the rationale of Section 75 para. 2 UmwG which was described above also applies in this regard.

However, pursuant to Art. 37 para. 6 SE Regulation it is required that one or more independent experts (conversion auditors) issue a certificate prior to the adoption of the resolution for the conversion into an SE by the general meeting of Fresenius AG certifying

that the net assets of the Company are at least equivalent to its subscribed capital plus those reserves which pursuant to statutory provisions or the statutes may not be distributed.

In this regard, the management board of Fresenius AG has applied, in preparation of the conversion, to the District Court (*Landgericht*) Frankfurt am Main by letter dated August 4, 2006, for the appointment of an independent expert pursuant to Art. 37 para. 6 SE Regulation in connection with Section 10 UmwG. The management board of Fresenius AG has proposed Ernst & Young AG Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft, Stuttgart ("**Ernst & Young**"), to be appointed.

By court order of August 9, 2006, the District Court Frankfurt am Main has appointed Ernst & Young as an independent expert ("**Conversion Auditor**"). The expert appointed by the court has commenced his examination on August 14, 2006, and has issued the certificate pursuant to Art. 37 para. 6 SE Regulation on October 9, 2006. The certificate is restated in **Annex 2** to this report. It arrives at the following conclusion:

“According to our findings, the net asset values exceed the subscribed capital plus those reserves which, pursuant to statutory provisions or the company articles, may not be distributed. If the capital measures which currently have already been initiated and which have been described in chapter “C. Amount of the Capital” had already been implemented as of the valuation date, the net asset values – not taking into account the net assets which are partially contributed in the course of such measures – would also exceed the subscribed capital to be shown in that case plus those reserves which, pursuant to statutory provisions or the company articles, may not be distributed.”

3. Extraordinary General Meeting of Shareholders of Fresenius AG

The general meeting of shareholders of Fresenius AG has to consent to the Conversion Plan and has to approve the statutes of Fresenius SE (Art. 37 para. 7 SE Regulation).

Therefore, under item 1 of the agenda, the management board and the supervisory board of Fresenius AG submit the Conversion Plan including the statutes to the extraordinary general meeting of shareholders of Fresenius AG on December 4, 2006, for the adoption of a resolution.

In addition to the adoption of a resolution on the conversion, it is proposed to the extraordinary general meeting on December 4, 2006, under item 2 of the agenda, to increase the subscribed capital of the Company from the Company's funds without the issuance of new

shares and to conduct a new division of the subscribed capital (Share Split) in such manner that one previous share in the future represents three shares of the subscribed capital. Without undue delay after the extraordinary general meeting of Fresenius AG – provided that respective resolutions have been adopted by the general meeting – the registration in the commercial register of the Capital Increase From The Company's Funds and the Share Split is to be effected in order for these measures to take effect. They would thus take effect prior to the registration, and thereby the becoming effective of, the conversion of Fresenius AG into an SE.

4. Conduction of the Procedure for the Involvement of Employees in the Future Fresenius SE

In order to safeguard the rights to participate in the decisions of the Company acquired by the employees of Fresenius AG, in the course of the conversion of Fresenius AG into an SE a procedure regarding the involvement of the employees in the future Fresenius SE is to be conducted. The objective of this procedure is the conclusion of an agreement regarding the involvement of employees in the SE, i.e., in particular, regarding the participation of the employees in the supervisory board of Fresenius SE and the procedure for the information and consultation of employees either by establishment of an SE works council or in another way to be agreed upon with the management board of Fresenius AG. In this regard – since the change of the legal form is effected by means of a conversion – in respect of all components of employee involvement at least the same extent of employee rights has to be granted as currently exists at Fresenius AG.

For the conduction of the negotiations a Special Negotiating Body is to be established by the employees. The constituent meeting of the Special Negotiating Body is scheduled to take place on January 16, 2007. Upon the establishment of the Special Negotiating Body, the negotiations between the management of Fresenius AG and the Special Negotiating Body regarding an agreement on employee involvement may begin and – subject to an extension to up to one year by mutual consent of the parties – last up to six months. In case no agreement is reached within this negotiation period, the so-called subsidiary regulation by operation of law pursuant to Sections 22 et seqq. SEBG applies.

The details of this procedure are described in Section 7 of the Conversion Plan and are commented on in chapter VII.1.g) of this report.

5. Registration of the Conversion into Fresenius SE

After approval has been granted by the general meeting of Fresenius AG and after the conclusion of the employee involvement procedure the conversion can, after a respective filing, be entered in the commercial register of Fresenius AG in Bad Homburg. Upon registration, the change of the legal form of Fresenius AG into Fresenius SE becomes effective.

a) Filing and Registration in the Commercial Register of Fresenius AG

The filing of the conversion for registration in the commercial register has to be made by the representative body of Fresenius AG as the company changing its legal form, i.e. by the management board. In connection with the filing, the management board has to declare that an action against the validity of the conversion resolution has not been filed or has not been filed within the applicable period or that such action has been finally dismissed or withdrawn (so-called negative declaration (*Negativerklärung*), cf. Art. 15 para. 1 SE Regulation in connection with Sections 198 para. 3, 16 para. 2 UmwG). Without such declaration, the conversion may not be registered (so-called blockade of the register (*Registersperre*)).

In the case of an action against the validity of the conversion resolution of the general meeting of Fresenius AG a clearance procedure (*Unbedenklichkeitsverfahren*) pursuant to Art. 15 para. 1 SE Regulation in connection with Sections 198 para. 3, 16 para. 3 UmwG may be conducted. This way, upon an application by Fresenius AG, the blockade of the register may be overcome if the action filed is inadmissible or evidently unfounded or if, in the unbiased opinion of the court in consideration of the materiality of the violations of law alleged in the action, an early effectiveness of the conversion is deemed to have priority in order to avert the material disadvantages, to be shown by Fresenius AG, for the Company and its shareholders (cf. Section 16 para. 3 sentence 2 UmwG).

Furthermore, an SE may only be registered in the commercial register and thereby be established, if the procedure regarding the involvement of the employees has been completed (cf. Section 7 of the Conversion Plan and the related comments in chapter VII.1.g)). This is the case if either an agreement regarding the involvement of the employees has been concluded, or if the period in time stipulated for such negotiations has expired without an agreement having been concluded (Art. 12 para. 2 SE Regulation). Negotiations for an agreement will only commence after the resolution of the general meeting of shareholders of Fresenius AG and after the constituent meeting of the Special Negotiating Body scheduled for January 16, 2007.

The statutes of future Fresenius SE must not, at any time, be in contradiction to a negotiated agreement on employee involvement (Art. 12 para. 4 SE Regulation). In the case of such contradiction, the statutes are to be amended by resolution of the general meeting of Fresenius AG.

If no agreement is concluded on employee involvement, the stipulations concerning employee participation which existed at Fresenius AG prior to the conversion remain in place (cf. Sections 35 para. 1, 34 para. 1 no. 1 in connection with Section 22 SEBG). With regard to the question whether the existing rights of the employees are maintained, a purely formal test on the basis of quality criteria is to be applied. For the purpose of such test, the ratio of the number of employees representatives on the supervisory board of Fresenius SE to the total number of supervisory board members has to be compared to the ratio of the number of employees representatives on the supervisory board of Fresenius AG to the total number of supervisory board members. The proportion of employee representatives on the supervisory board of Fresenius SE may not be lower than on the supervisory board of Fresenius AG. This follows from Section 15 para. 4 no. 1 SEBG which does not protect the absolute number of employee representatives, but only the percentage ratio of employee representatives and shareholder representatives. As a consequence, the supervisory board of Fresenius SE is to be composed on a parity basis.

Since Fresenius AG is a German stock corporation subject to co-determination with a supervisory board composed on a parity basis, a supervisory board composed on a parity basis also has to exist at Fresenius SE. An agreement on employee involvement, too, has to provide (at least) for a supervisory board composed on a parity basis (Section 15 para. 5 SEBG). The statutes of future Fresenius SE already provide for the composition on a parity basis of the supervisory board with employee representatives; therefore, no amendment of the statutes will be required.

If all registration requirements have been met the conversion is to be registered in the commercial register at the registered office of Fresenius AG. Upon registration, the SE acquires legal personality (cf. Art. 16 para. 1 SE Regulation). However, the principle of identity of the legal entity (*Rechtsträgeridentität*) applies, i.e. Fresenius AG does not cease to exist, but merely changes its legal form.

b) Establishment of the First Supervisory Board of Future Fresenius SE and Appointment of the First Management Board

Upon the effectiveness of the conversion, the offices of the acting members of the management and supervisory boards of Fresenius AG terminate. The members of the management board are to be appointed by the first supervisory board of future Fresenius SE (cf. Art. 39 para. 2 sentence 1 SE Regulation), with the appointment already having to be made prior to the conversion becoming effective.

The first supervisory board of Fresenius SE comprises twelve members – six representatives each from the shareholders and the employees (Section 9 para. 1 of the statutes of Fresenius SE). The six shareholder representatives are appointed in the statutes of Fresenius SE (cf. Art. 40 para. 2 sentence 2 SE Regulation and Section 9 para. 2 sentence 1 of the statutes of Fresenius SE). Since the appointment of the employee representatives can only be made after the conclusion of the procedure for the involvement of employees by way of an agreement and since this procedure will not be concluded at the point in time of the extraordinary general meeting of shareholders, their appointment in the statutes of Fresenius SE is not possible. Therefore, the employee representatives are appointed by the order of a court following the conclusion of the procedure for the involvement of employees by way of an agreement and after the filing of the conversion for registration (Art. 9 para. 1 lit. c)(ii) SE Regulation in connection with Section 98 AktG).

The supervisory board appointed in the statutes of Fresenius SE will constitute itself after the extraordinary general meeting of Fresenius AG only with the shareholder representatives prior to the filing of the conversion for registration, it will elect the chairman of the supervisory board and will appoint the members of the management board. The members of the management board have to be included in the filing of the conversion with the commercial register (Art. 15 para. 1 SE Regulation in connection with Section 246 para. 2 AktG).

VII. Comments on the Conversion Plan and the Statutes of Fresenius SE as well as on the Consequences for Shareholders and Employees

1. Comments on the Conversion Plan

a) Conversion of Fresenius AG into Fresenius SE (Section 1 of the Conversion Plan)

Section 1 of the Conversion Plan stipulates that Fresenius AG is to be converted into a *Societas Europaea* (SE) pursuant to Art. 2 para. 4 in connection with Art. 37 SE Regulation. With Fresenius Finance B.V. with its registered office in 's-Hertogenbosch, The Netherlands,

established on September 24, 1998, and registered in the commercial register at the registered office of the company on September 29, 1998, Fresenius AG has had for eight years, and thus for more than two years, a subsidiary company governed by the law of another member state. The requirements for the conversion into an SE pursuant to Art. 2 para. 4 SE Regulation are thereby fulfilled. The conversion does neither lead to a winding up of the Company nor to the formation of a new legal entity. The interests held by the shareholders in Fresenius AG continue to exist unchanged because of the identity of the legal entity.

b) Effectiveness of the Conversion (Section 2 of the Conversion Plan)

The conversion becomes effective upon the registration in the commercial register of Fresenius AG. The registration may only occur after the conclusion of the employee involvement procedure. For this purpose, negotiations have to be conducted with the Special Negotiating Body of the employees, which may begin with the constituent meeting of the Special Negotiating Body scheduled for January 16, 2007, and which – subject to an extension by mutual consent of the parties – may last up to six months.

c) Company Name, Registered Office, Subscribed Capital and Statutes of Fresenius SE, Cash Exit Offer (Section 3 of the Conversion Plan)

Section 3 of the Conversion Plan determines the company name, registered office and statutes of Fresenius SE and clarifies that no cash exit offer will be made.

The future company name of Fresenius AG is Fresenius SE. This change of the company name is necessary, because an SE must place the addition "SE" in front of or behind its company name (Art. 11 para. 1 SE-Regulation). The registered office of the Company will continue to be situated at Bad Homburg v.d.H., Germany.

Section 3.3 of the Conversion Plan contains stipulations regarding the subscribed capital. The subscribed capital of Fresenius SE is made up of the subscribed capital of Fresenius AG in the amount existing at the point in time of the registration of the conversion in the commercial register (the current amount being Euro 130,752,921.60, taking into account the capital increase against contribution in kind utilising the Authorised Capital II in the course of the acquisition of an interest in HUMAINE, but not taking into account the Capital Increase From The Company's Funds as well as the capital increases from the Conditional Capitals I and II resulting from the exercising of options or, respectively, convertible bonds in the year 2006) and in the division into Ordinary Shares and Preference Shares existing at the point in time of the registration of the conversion in the commercial register (there currently being 25,537,680 each of the Ordinary Shares and the Preference Shares, not taking into

account any Ordinary or Preference Shares issued in 2006 under the Conditional Capitals I and II because of the exercising of options and convertible bonds).

The shareholders of Fresenius AG will hold an interest in the subscribed capital of Fresenius SE in the same extent and with the same number of no-par value shares as they did in respect of the subscribed capital of Fresenius AG prior to the conversion becoming effective. The ordinary shareholders receive the same number of Ordinary Shares they hold in Fresenius AG prior to the conversion becoming effective; the preference shareholders receive the same number of Preference Shares they hold in Fresenius AG prior to the conversion becoming effective. The arithmetic portion of each no-par value share in the subscribed capital is maintained in the way it exists immediately prior to the conversion becoming effective. If the Capital Increase From The Company's Funds together with the Share Split proposed under item 2 of the agenda of the extraordinary general meeting of shareholders on December 4, 2006, have become effective prior to the conversion of Fresenius AG into an SE taking effect by virtue of the registration in the commercial register of Fresenius AG, the subscribed capital of Fresenius SE is increased accordingly. The proportionate amount of the subscribed capital per share will then be Euro 1. Accordingly, the shareholders receive shares with a proportionate amount of the subscribed capital of Euro 1.

As a consequence of the conversion of Fresenius AG into an SE, the content of the share certificate becomes incorrect. The Company intends to cancel those actual shares which in spite of a respective invitation are not submitted to the Company to be exchanged with the approval of the court (Section 73 para. 1 AktG). As is stipulated in the statutes of Fresenius SE and also in the articles of association of Fresenius AG (cf. Section 5 para. 2 of the statutes as well as chapter VII.2.e) of this report), the shares of Fresenius SE are to be embodied solely by the global share certificates and are to be held exclusively in a collective deposit of securities (*Girosammelverwahrung*).

Section 3.4 stipulates that Fresenius SE is to have the statutes enclosed as Annex 1 to the Conversion Plan, which forms part of the Conversion Plan. The statutes are commented on in detail below in chapter VII.2 of this report. Section 3.4 of the Conversion Plan further stipulates that the subscribed capital of Fresenius SE will correspond to the subscribed capital of Fresenius AG at the point in time the conversion of Fresenius AG into an SE becomes effective. Further, the authorised capitals of Fresenius SE (Section 4 paras. 4 and 5 of the statutes of Allianz SE) are to correspond to the existing authorised capitals of Fresenius AG at the point in time the conversion becomes effective (Section 4 paras. 3 and 4 of the articles of association of Fresenius AG). This also applies to the conditional capitals of Fresenius SE

(Section 4 paras. 6 and 7 of the statutes of Fresenius SE), which correspond to the amounts stated in Section 4 paras. 5 and 6 of the articles of association of Fresenius AG at the point in time the conversion becomes effective. Finally, it is stipulated that the preference dividend and the minimum dividend for the Preference Shares of Fresenius AG (Section 19 paras. 2 through 4 of the articles of association of Fresenius AG) correspond to the preference dividend and the minimum dividend for the Preference Shares of Fresenius SE (Section 20 paras. 2 to 4 of the statutes of Fresenius SE). In this regard, the Capital Increase From The Company's Funds as well as the Share Split which are proposed, under item 2 of the agenda, to be resolved upon by the extraordinary general meeting of shareholders on December 4, 2006, are being taken into account, provided that these measures also have taken effect at the point in time the conversion becomes effective.

In order to be able to make adjustments, if necessary, to the statutes of Fresenius SE regarding the subscribed capital, the authorised capitals, the conditional capitals as well as the preference and minimum dividend, the supervisory board of Fresenius SE is authorised and instructed to make any adjustments, if necessary, to the wording of the draft of the statutes of Fresenius SE prior to the registration of the conversion. Against this background, a parallelism is provided for by the stipulation in Section 3.4 of the Conversion Plan between the subscribed capital, the amount of the authorised and conditional capitals as well as the preference and minimum dividend of Fresenius AG and of future Fresenius SE.

Shareholders who object to the conversion are not being offered a cash compensation, since no such cash exit offer is provided for by statutory law.

d) Holders of Special Rights and Holders of Other Securities (Section 4 of the Conversion Plan)

In application, *mutatis mutandis*, of the stipulations governing the merger plan (cf. Art. 20 para. 1 lit. f) SE Regulation), the Conversion Plan contains a provision as to which rights will be conferred by the SE on the holders of shares which carry special rights and on the holders of securities other than shares, or, respectively, the measures proposed concerning these persons.

(aa) Preference Shares

The holders of Preference Shares in Fresenius AG will continue to receive in Fresenius SE for each of the Preference Shares held by them a dividend from the annual balance sheet profits which is higher by Euro 0.03 than the dividend for the Ordinary Shares, provided that

they receive at least a dividend in the amount of Euro 0.06 per Preference Share. The minimum dividend in an amount of Euro 0.06 per Preference Share prevails over the distribution of a dividend to Ordinary Shares. If the balance sheet profits of one or more financial years are not sufficient to distribute Euro 0.06 per Preference Share, the lacking amounts excluding interest shall be paid subsequently from the balance sheet profits of the following financial years, in each case after distribution of the minimum dividend to the Preference Share for these financial years and before distributing a dividend to the Ordinary Shares. The right to the payment of arrears is part of the share in profits for the financial year from the retained earnings of which the payment of arrears on the Preference Shares is made.

In the event that, after the implementation of the Capital Increase From The Company's Funds and the Share Split, the proportionate amount of the subscribed capital per Preference Share is Euro 1.00 (instead of previously Euro 2.56), the amount of the increased dividend is Euro 0.01 (instead of previously Euro 0.03) per Preference Share and the amount of the minimum dividend is Euro 0.02 (instead of previously Euro 0.06) per Preference Share. The amount of the claim for payment of arrears is changed accordingly.

Thus, the preference shareholders in Fresenius SE will be put in the same position they were in at Fresenius AG. In this regard, the rights of the preference shareholders remain unchanged, even if, in the meantime, the Capital Increase From The Company's Funds and the Share Split have been implemented.

(bb) Stock Option Plans

On the basis of the resolutions adopted by the general meeting of shareholders of June 18, 1998, the Company has issued subscription rights for Ordinary Shares and Preference Shares, respectively, to members of the management board of the Company, to members of the management of affiliated companies of the Company, to employees of the Company and to employees of affiliated companies of the Company (stock option plan 1998). In addition, on the basis of the resolution of the general meeting of shareholders of May 28, 2003, the Company has granted convertible bonds for Ordinary Shares and Preference Shares (stock option plan 2003).

In the course of the conversion, the beneficiaries receive a subscription right for shares in Fresenius SE instead of shares in Fresenius AG. The number of shares does not change as a result of the conversion. The conditional capitals which were created in order to secure the subscription rights under the stock option plan 1998 and the stock option plan 2003 continue to exist accordingly at Fresenius SE (cf. Section 4 paras. 6 and 7 of the statutes of Fresenius

SE). However, in the course of the Capital Increase From The Company's Funds (cf. item 2 a) of the agenda of the extraordinary general meeting of shareholders of December 4, 2006) the conditional capital increases in the same proportion as the subscribed capital (cf. Section 218 sentence 1 AktG). Subsequently, as a consequence of the Share Split, instead of one Ordinary or Preference Share as before, the beneficiaries will now receive three Ordinary or Preference Shares, respectively, upon exercising an option or a convertible bond. Thereby, it is ensured that Fresenius SE is capable of fulfilling its obligations under the employee programs.

e) Special Advantages (Section 5 of the Conversion Plan)

In accordance with the stipulations applicable to mergers (Art. 20 para. 1 lit. g) SE Regulation) a provision concerning special advantages has been included in the Conversion Plan. Special advantages are such advantages which in the course of the conversion are granted to the conversion auditor issuing the certification pursuant to Art. 37 para. 6 SE Regulation or to the members of the administrative, management, supervisory or controlling organs of the company undergoing conversion, i.e. Fresenius AG.

For reasons of legal precaution, it is pointed out in this context that, notwithstanding the competences of the supervisory board of Fresenius SE under company law, it is to be expected that the acting members of the management board of Fresenius AG will be appointed as members of the management board of Fresenius SE. The acting members of the management board of Fresenius AG are Dr. Ulf M. Schneider (Chairman), Rainer Baule, Andreas Gaddum, Dr. Ben J. Lipps and Stephan Sturm.

In addition, members of the supervisory board of Fresenius AG are to be appointed as members of the supervisory board of Fresenius SE (see also Section 9 of the statutes as well as chapter VII.2.i) of this report).

Also for reasons of legal precaution, it is therefore pointed out that the following acting shareholder representatives on the supervisory board of Fresenius AG are intended to be appointed as supervisory board members of Fresenius SE:

Dr. Gerd Krick, Dr. Gabriele Kröner, Dr. Gerhard Rupprecht, Dr. Dieter Schenk, Dr. Karl Schneider, Dr. Bernhard Wunderlin.

f) Supervisory Board (Section 6 of the Conversion Plan)

Pursuant to Section 9 para. 1 of the statutes of Fresenius SE, Fresenius SE is to have a supervisory board comprising – as is currently the case with Fresenius AG – of twelve

members. Of the twelve members, six members are to be appointed upon proposal of the employees.

The terms of office of the shareholder representatives on the supervisory board of Fresenius AG terminate upon the effectiveness of the conversion. The terms of office of the employee representatives on the supervisory board of Fresenius AG also terminate upon the effectiveness of the conversion, since the employee representatives on the supervisory board of Fresenius SE are to be appointed subject to the employee involvement procedure (cf. Section 6.2 of the Conversion Plan).

g) Information on the Procedure for Arrangements for Employee Involvement (Section 7 of the Conversion Plan)

Section 7 of the Conversion Plan contains the particulars regarding the procedure by which the agreement regarding employee involvement is concluded pursuant to the SEBG and the national statutes transforming the SE Employee Involvement Directive in the other member states of the EU and in the signatory states to the EEA in which Fresenius Group has business activities. The provision further contains statements regarding the effects of the conversion on the employees of Fresenius Group.

The statements contained in the Conversion Plan and the related comments in this report can only be made from an *ex ante* perspective. The reason is that the invitation for the constituent meeting of the Special Negotiating Body which conducts the negotiations with the management board of Fresenius AG can only be issued after its members have been appointed, but no later than ten weeks after the proceedings have been initiated with the required notification (cf. Section 12 in connection with Section 11 para. 1 sentence 1 SEBG). Taking into account this ten-week-period, this means that the negotiations can begin in mid-January 2007, i.e. approximately five to six weeks after the extraordinary general meeting of shareholders of Fresenius AG. The constituent meeting is scheduled to take place on January 16, 2007.

(aa) Basic Principles and Terminology (Section 7.1 of the Conversion Plan)

In order to safeguard the rights to participate in entrepreneurial decisions acquired by the employees of Fresenius AG, in the course of the conversion into an SE a procedure for the involvement of employees on the basis of an agreement is to be conducted for Fresenius SE. The objective is the conclusion of an agreement regarding the involvement of employees in the SE, i.e., in particular, regarding the participation of the employees in the supervisory

board of Fresenius SE and the procedure for the information and consultation of employees either by establishment of an SE works council or in another way to be agreed upon with the management board of Fresenius AG. Section 7.1 of the Conversion Plan contains an introductory description of the basic principles and the relevant terminology in connection with the procedure for the involvement of employees in Fresenius SE.

The procedure for the involvement of employees is characterised by the principle of protecting the acquired rights of the employees of Fresenius AG. An agreement may not result in a reduction of the existing participation rights of the employees (Section 15 para. 5 SEBG). The extent of the involvement of the employees in the SE is determined by the definition in Section 2 para. 8 SEBG which, essentially, follows Art. 2 lit. h) of Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees.

"Involvement of employees" is the collective term for any mechanism – including, in particular, information, consultation and participation – through which employees' representatives may exercise an influence on decisions to be taken within the company.

"Information" in this context means the informing of the SE works council or other employees' representatives by the management of the SE, i.e. the management board of Fresenius SE, on matters which concern the SE itself and any of its subsidiaries or establishments situated in another member state or which exceed the powers of the decision-making organs in a single member state.

"Consultation" means, in addition to employees' representatives expressing an opinion on matters relevant for the decision-making process, the exchange of views between employees' representatives and management and a dialogue with the objective of reaching agreement, however, with the company management remaining free in its decision.

The most far-reaching influence is being conferred by participation; the term either refers to the right to appoint or elect members of the supervisory organ or, alternatively, to recommend such members for appointment or to oppose such recommendations made by a third party.

(bb) Current Situation and Consequences of the Conversion (Section 7.2 of the Conversion Plan)

Section 7.2 describes the current situation of Fresenius Group and contains information regarding the consequences of the conversion.

As parent company of the Group, Fresenius AG currently has a supervisory board with twelve members which is composed on a parity basis in accordance with the MitbestG 1976. With regard to the election of the six employee representatives on the supervisory board of Fresenius AG, presently only the domestic employees of the group companies have the active and passive voting right in accordance with the election procedure pursuant to the MitbestG 1976.

Upon the effectiveness of the conversion of Fresenius AG into an SE, the terms of office of the employee representatives as well as the terms of office of the shareholder representatives on the supervisory board of Fresenius AG terminate (see chapter VII.1.f)). The provisions of the MitbestG 1976 regarding the representation of employees on the supervisory board of Fresenius AG are replaced by the agreement concluded in the course of the employee involvement procedure or, respectively – if no such agreement is concluded – by the provisions of the SEBG and its stipulations (with regard to the other consequences of the change of the legal form for the employees and their representative bodies, see chapter VII.1.h)). The shareholder representatives on the new supervisory board of Fresenius SE are already appointed in the statutes of Fresenius SE. The first employee representatives on the supervisory board of Fresenius SE will be appointed after the completion of the procedure for the involvement of employees. It is to be expected that the appointment of the first employee representatives will be made by the local court of Bad Homburg v.d.H. (*Amtsgericht Bad Homburg v.d.H.*), Germany (registration court) as the competent court for Fresenius SE.

On December 15, 2005, the management board of Fresenius AG, the management board of Fresenius Medical Care AG (now Fresenius Medical Care AG & Co. KGaA), the management board of Fresenius Kabi AG, the management of Fresenius ProServe GmbH and the general works council (*Gesamtbetriebsrat*) of Fresenius AG as well as the IGBCE, represented by its principal management body, have entered into an agreement regarding the works council structure and have refrained from the establishment of a central works council (*Konzernbetriebsrat*) for the Group while maintaining the general works council structure. The agreement stipulates that at locations of joint establishments of more than one enterprise of Fresenius Group in Germany uniform works councils for the entire location are to be established. The employee representative bodies of Wittgensteiner Kliniken as well as of HELIOS Kliniken are not governed by this agreement. Both they have central works councils of their own.

On November 8, 2005, the management board of Fresenius AG has entered into an agreement with the steering committee of the so-called European Forum regarding the Fresenius

European Employee Forum ("**European Forum**"). The agreement lays down rules for the information and consultation procedure pursuant to Art. 6/13 EBR-RL. The scope of application of the agreement includes Fresenius AG and all subsidiaries within the European Union. Participants in the European Forum are delegates of the employees and the employers. Pursuant to Section 3 para. 1 of the agreement, a person is only eligible to be a delegate if he/she is in an employment relationship with Fresenius AG or its subsidiary companies. Pursuant to Section 3 para. 7 of the agreement, it is a requirement for delegating an employee representative that there has been an average number of employees of at least 150 in a member state of the European Union in the last 12 months. If the average number of employees is 701 or more in a member state of the European Union, an additional employee representative can be delegated; if the average number of employees is 10,000 or more, the respective country is entitled to delegate a third, if it is 20,000 or more, a fourth and if it is 30,000 or more, a fifth representative to the European Forum.

The European Forum is an information and consultation procedure pursuant to Section 1 para. 1 of the European Works Councils Act (*Europäische Betriebsrätegesetz – EBRG*). Pursuant to Section 47 para. 1 no. 2 SEBG, the SEBG does not affect the participation rights to which employees are entitled under domestic legal provisions and regulations, except with regard to the provisions of the European Works Councils Act. The European Forum and the SE works council have similar functions regarding the cross-border information and consultation of the employees and therefore exclude each other.

(cc) Initiation of the Procedure Regarding the Involvement of Employees (Section 7.3 of the Conversion Plan)

Section 7.3 of the Conversion Plan describes the initiation of the procedure regarding the involvement of employees in the form of the notification of the employees and their representative bodies involved which is required for this purpose by statutory law. The information which is to be made available is provided for by statutory law and is also listed in Section 7.3.

The initiation of the procedure for the involvement of the employees is conducted in accordance with the provisions of the SEBG. The latter require that the management body of the participating company, i.e. the management board of Fresenius AG, invites the employees to establish a Special Negotiating Body and that it notifies the employees or their representative bodies involved, respectively, about the conversion project. The procedure is to be initiated – by means of the notification required by law – unrequested and without

undue delay after the management board of Fresenius AG has published the Conversion Plan prepared by it. As a company governed by German law, Fresenius AG is required in this regard to file the publication with the competent commercial register in Bad Homburg v.d.H. and to include in the filing the Conversion Plan attested by a notary public (cf. Section 12 para. 1 of the German Commercial Code – *Handelsgesetzbuch* ("**HGB**")). The required notification of the employees or their representative bodies concerned, respectively, includes, in particular, (i) the names and structure of Fresenius AG, the concerned subsidiaries and concerned establishments, and their distribution among the member states; (ii) the bodies representing employees existing within these companies and establishments; (iii) the number of persons employed in these companies and establishments, and the total number of persons employed in a given member state determined on the basis thereof, and (iv) the number of employees enjoying participation rights in the corporate bodies of these companies.

(dd) Establishment of the Special Negotiating Body (Sections 7.4 and 7.5 of the Conversion Plan)

It is provided by statutory law that the employees or, respectively, their representative bodies involved elect or appoint the members of the Special Negotiating Body within a period of ten weeks after the initiation of the procedure by means of the notification required by law of the employees or, respectively, the employee representatives involved. The Special Negotiating Body is composed of representatives of the employees from all affected member states of the EU and the signatory states to the EEA which are involved.

It is the task of this Special Negotiating Body to negotiate with the management of the SE the procedural details of the involvement procedure and the determination of the participation right of the employees within the SE.

The establishment and composition of the Special Negotiating Body are being described in Section 7.4 of the Conversion Plan. In principle, they are subject to German law (Sections 4 to 7 SEBG). The allocation of the seats in the Special Negotiating Body to the individual member states of the EU and the signatory states to the EEA in which Fresenius Group has employees is governed, in respect of the formation of an SE with its registered office in Germany, by Section 5 para. 1 SEBG: The allocation of the seats follows the following basic principle:

Each member state of the EU and signatory state to the EEA in which Fresenius Group has employees is allocated at least one seat. The number of seats allocated to a member state of the EU or a signatory state to the EEA is increased by 1 in each case where the number of

employees employed in this member state of the EU or signatory state to the EEA exceeds the thresholds of 10%, 20%, 30% etc. of all European employees of Fresenius Group. The relevant point in time for the determination of the allocation of seats is, in principle, the time of the notification (cf. Section 4 para. 4 SEBG).

On the basis of the employee figures of Fresenius Group in the individual member states of the EU and the signatory states to the EEA as of June 30, 2006, the following allocation of seats applies:

Country	Number of employees	% (rounded)	Delegates in the Special Negotiating Body
Belgium	108	0.2	1
Denmark	16	0.0	1
Germany	29,288	64.0	7
Estonia	24	0.1	1
Finland	17	0.0	1
France	2,269	5.0	1
Greece	37	0.1	1
Ireland	7	0.0	1
Italy	1,223	2.7	1
Luxemburg	11	0.0	1
Netherlands	709	1.5	1
Norway	403	0.9	1
Austria	2,301	5.0	1
Poland	2,040	4.5	1
Portugal	1,037	2.3	1
Sweden	889	1.9	1
Slovakia	348	0.8	1
Slovenia	100	0.2	1
Spain	1,808	3.9	1
Czech Republic	1,397	3.1	1
Hungary	770	1.7	1
United Kingdom	975	2.1	1
Total	45,777	100	28

It is to be expected that at the likely point in time of the constituent meeting of the Special Negotiating Body Romania will have joined the EU as a new member. In Romania, Fresenius Group has 328 employees (as per June 30, 2006) with the consequence that the latter have to be integrated into the employee involvement procedure and will receive one seat in the

Special Negotiating Body. Fresenius Group has therefore decided to inform the employees in Romania, on a voluntary basis and without prejudice, already at the same time as the other employees of Fresenius Group in the EU and the EEA.

If, during the term of office of the Special Negotiating Body, changes in the structure of or number of employees in the participating companies, concerned subsidiaries or concerned establishments occur which would alter the composition of the Special Negotiating Body, the composition of the Special Negotiating Body is to be amended accordingly (Section 5 para. 4 SEBG).

With regard to the election or appointment, respectively, of the members of the Special Negotiating Body from the individual EU member states and EEA signatory states the relevant national provisions of law apply. The election or, respectively, appointment of the members as well as the establishment of the Special Negotiating Body is, in principle, the responsibility of the employees and their representative bodies involved and of the relevant unions, respectively.

Pursuant to Section 8 para. 1 sentence 1 SEBG, the members of the Special Negotiating Body attributable to the employees employed in Germany by the companies participating in the formation of the SE and the subsidiaries as well as the establishments involved are to be elected by an election body in a secret and direct election. Pursuant to Section 8 para. 2 sentence 2 SEBG, the representation by the election body also includes, in principle, those employees who have not elected a works council in their establishment or company.

The manner in which the composition of the election body is determined depends on which employee representative bodies already exist at the establishing company or a subsidiary or an establishment involved. In principle, those employee representative bodies which, in each case, exist at the highest level of works councils are to assume the task of the election. If, as is the case with the conversion of Fresenius AG into an SE, only one domestic company group participates in the formation of the SE, the election body comprises of the members of the central works council (*Konzernbetriebsrat*) or, if there is no such council, of the members of the general works councils (*Gesamtbetriebsräte*) or, if there is no such council, of the works council or the works councils, respectively.

On December 15, 2005, the management board of Fresenius AG, the management board of Fresenius Medical Care AG (now Fresenius Medical Care AG & Co. KGaA), the management board of Fresenius Kabi AG, the management of Fresenius ProServe GmbH and the general works council (*Gesamtbetriebsrat*) of Fresenius AG as well as the IGBCE,

represented by its principal management body, have entered into an agreement regarding the works council structure and have refrained from the establishment of a central works council (*Konzernbetriebsrat*) for the Group while maintaining the general works council structure. The employee representative bodies of Wittgensteiner Kliniken as well as of HELIOS Kliniken are not subject to this agreement. Both they have central works councils of their own.

Therefore, the election body responsible for the election of the domestic members of the Special Negotiating Body will comprise of the members of the general works council of Fresenius AG, the members of the central works council of the Wittgensteiner Kliniken as well as the members of the central works council of the HELIOS Kliniken. Since the maximum number of members of the election body is 40 (cf. Section 8 para. 6 sentence 1 SEBG) and the general works council of Fresenius AG, the central works council of the Wittgensteiner Kliniken and the central works council of the HELIOS Kliniken have a combined total of more than 40 members, the number of members in the election body is to be reduced in accordance to their proportion pursuant to the d'Hondt highest averages method (cf. Section 8 para. 6 sentence 2 SEBG).

In Germany, employees of the companies and establishments as well as union representatives are eligible for the Special Negotiation Body. For each member, a substitute member is to be elected. In the event that more than two members of the Special Negotiating Body are from Germany, every third member is to be elected upon the proposal of a union (cf. Section 6 para. 3 in connection with Section 8 para. 1 sentence 2 SEBG). In the event that more than six members of the Special Negotiating Body are from Germany, upon a respective proposal from the spokesmen's committee (*Sprecherausschuss*) at least every seventh member is an executive employee (*leitender Angestellter*) (cf. Section 6 para. 4 in connection with Section 8 para. 1 sentence 5 SEBG).

Statutory law in this regard refrains from laying down detailed provisions and confines itself to describing general principles. Thus, at least two thirds of the members of the election body who represent at least two thirds of the employees have to be present for the election. The members of the election body have as many votes as they represent employees. The members of the election body have to adhere to the principles of secret and direct election (cf. Section 8 para. 1 sentence 1 SEBG).

The procedure for the establishment of the Special Negotiating Body ends with its constituent meeting. In this regard, the management board of Fresenius AG has to issue an invitation

without undue delay after all members have been appointed, but no later than ten weeks after the notification pursuant to Section 4 para. 2 and para. 3 SEBG was issued (cf. Sections 12 para. 1, 11 para. 1 SEBG).

The negotiations begin on the day for which the management board of Fresenius AG has issued the invitation for the constituent meeting of the Special Negotiating Body. Statutory law provides for a maximum duration of the negotiations of up to six months which, however, the parties to the negotiation may extend by mutual consent to a period of up to one year (cf. Section 20 SEBG).

The negotiation procedure takes place also if the period for the election or appointment of individual or all members of the Special Negotiating Body is exceeded for reasons within the responsibility of the employees (Section 11 para. 2 sentence 1 SEBG). It is in the interest of the employees to complete the election or appointment of the members of the Special Negotiating Body within the ten-week period.

Members who are being elected or appointed during the course of the negotiations are not finally excluded; they may, at any time, participate in the negotiation procedure (Section 11 para. 2 sentence 2 SEBG). However, a member joining the negotiations belatedly has to accept the current status of the negotiations at that time. There is no claim for an extension of the six-months negotiation period (Section 20 SEBG).

The objective of the negotiations is the conclusion of an agreement regarding the involvement of employees in Fresenius SE. The subject matter of the negotiations is the participation of the employees in the supervisory board of Fresenius SE and the determination of the procedure for the information and consultation of employees either by establishment of an SE works council or in another way.

(ee) Agreement Regarding the Involvement of Employees on the Entrepreneurial Level
(Section 7.6 of the Conversion Plan)

Section 7.6 describes which minimum content an agreement regarding the involvement of employees has to contain with regard to involvement on the entrepreneurial level.

Agreements regarding the involvement of the employees on the entrepreneurial level at least have to contain information regarding the number of employee representatives on the supervisory board, the procedure according to which these employee representatives are determined and the rights of such representatives. As required by Art. 40 para. 3

SE Regulation, Section 17 para. 1 SEAG, the size of the supervisory board will be determined in the statutes of Fresenius SE. The respective provision of the statutes provides for a supervisory board of twelve members. In this regard, the principle of composition on a parity basis is to be maintained. Accordingly, the statutes of Fresenius SE provide that six of the members of the supervisory board are to be appointed by the general meeting of shareholders upon the proposal of the employees. In the agreement, only the geographical allocation and the procedure for the appointment have to be determined. In the event that such agreement regarding employee involvement is not concluded, the geographical allocation is made in accordance with the subsidiary regulation by operation of law. With regard to the rights of the employee representatives on the supervisory board, the framework for negotiations is restricted by the right of the supervisory board to organise its own affairs (*Selbstorganisationsrecht*).

(ff) Agreement Regarding the Information and Consultation of the Employees (Section 7.7 of the Conversion Plan)

Section 7.7 describes the minimum content which an agreement regarding the procedure for the information and consultation of employees has to contain.

Furthermore, it is to be stipulated in the agreement between the management board and the Special Negotiating Body whether an SE works council is to be established for the purpose of the information and consultation of the employees. In the case of its establishment, the following has to be stipulated: the number of its members and the allocation of seats, the functions and the procedure for its information and consultation, the frequency of meetings, the financial and material resources to be made available, the date of entry into force and the duration of the agreement as well as the circumstances in which the agreement is to be renegotiated and the procedure to be used in this regard.

Since the parties to the negotiations are under no obligation to establish an SE works council, they may also agree on another procedure by which the information and consultation of the employees is ensured.

Further, it is to be stipulated in the agreement that negotiations concerning the involvement of employees in the SE shall also be opened prior to structural changes to the SE.

The agreement may also include employees from countries which are not member states of the EU or signatory states to the EAA into its scope of application.

(gg) Adoption of Resolutions in the Special Negotiating Body (Section 7.8 of the Conversion Plan)

The conclusion of an agreement regarding the involvement of employees requires a resolution adopted by the Special Negotiating Body which, generally, adopts resolutions by a majority of its appointed members, provided that this majority also represents a majority of the employees. No resolution may be adopted in this regard which results in a reduction of employee participation rights (cf. Section 15 para. 5 SEBG). Further, no resolution may be adopted to the effect that no negotiations should be entered into or that negotiations already entered into should be broken off (cf. Section 16 para. 3 SEBG).

(hh) Subsidiary Regulation by Operation of Law (Section 7.9 of the Conversion Plan)

If no agreement regarding the involvement of employees is being reached within the negotiation period, the subsidiary regulation by operation of law pursuant to Sections 22 et seqq. SEBG applies; the latter may also be agreed upon from the outset as the content of the agreement.

In the present case, the subsidiary regulation by operation of law would have the consequence with regard to employee participation on the supervisory board that the principle of employee participation on a parity basis existing at the supervisory board of Fresenius AG would be continued for Fresenius SE, so that half of the members of the supervisory board of Fresenius SE would be employee representatives. However, the employee representatives would no longer be exclusively appointed by the employees in Germany, but by all employees in the member states of the EU and the signatory states to the EEA. The employees would have to appoint, in accordance with the respective provisions applicable in these countries their employee representatives who are to be elected by the general meeting of Fresenius SE. If no appointment were made, the SE works council would have to make it.

On the basis of the current number of employees and their distribution by countries, in a supervisory board composed of twelve members with six employee representatives there would be four seats for employees of Fresenius SE from Germany, one seat for employees from France and one seat for employees from Austria.

Pursuant to Section 36 para. 3 sentence 1 SEBG, the determination of the domestic employee representatives, i.e. those allocated to Germany, for the supervisory board of an SE is made by an election body which is composed of the members of the employee representative bodies of the SE, its subsidiaries and establishments. Pursuant to Section 8 para. 2 sentence 2

SEBG, the representation by the election body also includes, in principle, those employees who have not elected a works council in their establishment or company.

The manner according to which the composition of the election body is determined depends on which employee representative bodies already exist at the establishing company or a subsidiary or an establishment involved. In principle, those employee representative bodies which, in each case, exist at the highest level of works councils are to assume the task of the election. If, as is the case with the conversion, only one domestic company group participates in the formation of the SE, the election body is, accordingly, composed of the members of the central works council or, if there is no such council, of the members of the general works councils or, if there is no such council, of the works council.

On December 15, 2005, the management board of Fresenius AG, the management board of Fresenius Medical Care AG (now Fresenius Medical Care AG & Co. KGaA), the management board of Fresenius Kabi AG, the management of Fresenius ProServe GmbH and the general works council (*Gesamtbetriebsrat*) of Fresenius AG as well as the IGBCE, represented by its principal management body, have entered into an agreement regarding the works council structure and have refrained from the establishment of a central works council (*Konzernbetriebsrat*) for the Group while maintaining the general works council structure. The employee representative bodies of Wittgensteiner Kliniken as well as of HELIOS Kliniken are not governed by this agreement. Both have central works councils of their own.

Therefore, the election body responsible for the election of the domestic employee representatives on the supervisory board of Fresenius SE will be composed of the members of the general works council of Fresenius AG, the members of the central works council of the Wittgensteiner Kliniken as well as the members of the central works council of the HELIOS Kliniken. Since the maximum number of members of the election body is 40 (cf. Section 8 para. 6 sentence 1 SEBG) and the general works council of Fresenius AG, the central works council of the Wittgensteiner Kliniken and the central works council of the HELIOS Kliniken have a combined total of more than 40 members, the number of members in the election body is to be reduced in accordance to their proportion pursuant to the d'Hondt highest averages method (cf. Section 8 para. 6 sentence 2 SEBG).

Pursuant to Section 36 para. 3 sentence 2 SEBG, with regard to the election procedure, the essential provisions for the election of the domestic representatives in the Special Negotiating Body are applied *mutatis mutandis*. Pursuant to Section 6 para. 2 SEBG, the employees of the

SE, of the subsidiaries and the establishments as well as union representatives are eligible for the supervisory board of an SE.

Statutory law in this regard refrains from laying down detailed provisions and confines itself to describing general principles. Section 10 para. 1 SEBG stipulates a minimum number of members present of the election body as well as the allocation of voting rights in accordance with the number of employees represented by the respective works councils in the election body. Accordingly, at least two thirds of the members of the election body who represent at least two thirds of the employees have to be present for the election. The members of the election body have as many votes as they represent employees. The election is made by simple majority of the votes cast.

In the event that more than two members of the supervisory board of the SE are from Germany, every third member from Germany is to be elected upon a respective proposal from a union which is represented in one of the enterprises involved in the formation of the SE (cf. Section 36 para. 3 sentence 2 in connection with Sections 6 para. 3, 8 para. 1 sentence 2 SEBG). Thus, there is a right to make proposals for the election, but no delegation right.

This provision is modelled after the provision in Section 7 para. 2 MitbestG 1976 which, depending on the size of the supervisory board, stipulates a certain number of union representatives.

According to current employee figures of Fresenius AG, there will be four employee representatives from Germany on the supervisory board of Fresenius SE, with the consequence that one seat on the supervisory board will be allocated to a union representative from Germany.

The right to submit proposals in respect of this seat does not rest with the election body, but – insofar reflecting Section 16 para. 2 MitbestG 1976 – election proposals for union representatives may be submitted by any union which is represented in one of the enterprises involved in the formation of the SE, i.e. the unions represented in Fresenius Group in Germany.

The term ‘enterprises involved’ also includes the concerned domestic subsidiaries and establishments.

The union proposals for the election of the union representative on the supervisory board are binding on the election body; the union representative is to be elected from among the proposed persons. The election body cannot, of its own right, propose other candidates for this particular seat on the supervisory board or consider for its election candidates who have been proposed otherwise.

It is conceivable that the unions who have the right to make proposals submit a joint proposal or that one of the unions waives its right to make proposals. However, Section 8 para. 1 sentence 3 SEBG stipulates that where only one election proposal is submitted, this proposal has to contain at least twice as many candidates as union representatives have to be elected. Section 16 para. 2 sentence 2 MitbestG 1976 contains an identical provision. This selection opportunity is necessary for the election body to be able to actually exercise its election right.

With regard to the protection of the right to information and consultation of the employees of Fresenius SE, the subsidiary regulation by operation of law would have the consequence that an SE works council would have to be established, the function of which would be to safeguard the right to information and consultation of the employees in the SE. The council would be responsible for matters which affect the SE itself, one of its subsidiaries or one of its establishments in another member state or which go beyond the powers of the competent bodies at the level of the individual member states. The SE works council would have to be notified and consulted annually with regard to the development of the business situation and the future prospects of the SE. It would have to be notified and consulted with regard to extraordinary circumstances. The composition of the SE works council as well as the election of its members would be determined, in principle, in accordance with the provisions applicable to the composition and appointment of the members of the Special Negotiating Body.

(ii) Review at Regular Intervals (Section 7.10 of the Conversion Plan)

Section 7.10 describes the review of employee involvement in the SE at regular intervals in cases where the subsidiary regulation by operation of law applies. In this case, it is to be reviewed every two years during the existence of the SE whether changes within the SE, its subsidiaries or its establishments require an alteration of the composition of the SE works council. Besides, in case the subsidiary regulation by operation of law applies, four years after its establishment the SE works council has to resolve with the majority of its members whether negotiations shall be re-opened with regard to an agreement for the involvement of employees within the SE or whether the existing regulations are to remain in place. If a

resolution is adopted to enter into negotiations for an agreement regarding the involvement of employees, for the purpose of these negotiations the SE works council replaces the Special Negotiating Body.

(jj) **Costs of the Special Negotiating Body (Section 7.11 of the Conversion Plan)**

The necessary costs arising from the establishment and operation of the Special Negotiating Body will be borne by Fresenius AG and, after its formation, by Fresenius SE. Pursuant to Section 7.11, the obligation to bear the costs includes the material and personal expenses incurred in connection with the activities of the Special Negotiating Body, including the negotiations. In particular, premises, material resources (e.g. telephone, telefax, required literature), interpreters and clerical staff required for meetings are to be provided and the travel and subsistence expenses of the members of the Special Negotiating Body are to be covered.

h) Other Consequences of the Conversion for the Employees and their Representative Bodies (Section 8 of the Conversion Plan)

Section 8 describes the other consequences of the conversion for the employees and their representative bodies. As a general rule, the conversion of Fresenius AG into an SE does not have any consequences for the employees of Fresenius Group. Their employment contracts are being continued as before with the respective group company; in the case of the employees of Fresenius AG, their employment contracts are being continued unchanged with Fresenius SE.

The existing operating agreements (*Betriebsvereinbarungen*) and collective labour agreements (*Tarifverträge*) remain in force in accordance with the provisions of the respective agreement.

For the members of bodies representing employees at the operational level at Fresenius AG and within Fresenius Group there will be no changes resulting from the conversion into an SE. The existing bodies representing employees at the operational level (*betriebliche Arbeitnehmervertretungen*) remain in place.

Further, there are no other measures intended or planned as a consequence of the conversion which would affect the situation of the employees.

i) Auditor (Section 9 of the Conversion Plan)

Section 9 of the Conversion Plan provides for the appointment of the auditor for the first financial year of Fresenius SE.

2. Comments on the Statutes of Fresenius SE

Upon effectiveness of the conversion, Fresenius AG changes its legal form into an SE. The existing articles of association of Fresenius AG will be replaced by the new statutes of Fresenius SE. These statutes are part of the Conversion Plan which is subject to approval by the general meeting of shareholders of Fresenius AG.

The present draft of the statutes of Fresenius SE is based on the existing articles of association of Fresenius AG, which already take into account the capital increase against contribution in kind utilising the Authorised Capital II in the course of the acquisition of an interest in HUMAINE as well as the capital increases from the conditional capitals of the Company (Section 4 para. 5 and para. 6 of the articles of association of Fresenius AG) conducted prior to October 10, 2006. In this regard, the stipulations of the current articles of association of Fresenius AG could be adopted, to a large extent, for the statutes of future Fresenius SE, because essentially the provisions of the SE Regulation and the SEAG relevant for the statutes of Fresenius SE correspond to the provisions applicable to the articles of association of a German stock corporation.

In the following paragraphs, the draft statutes for Fresenius SE are commented on as follows:

a) Company Name, Registered Office (Section 1 of the Statutes)

As is the case with Fresenius AG, the registered office of Fresenius SE will be situated in Bad Homburg v.d.H., Germany. Except for the alteration of the adjunct indicating the legal form from "AG" into "SE" the company name will not be altered as a consequence of the conversion, either. The alteration of the adjunct indicating the legal form is a mandatory requirement pursuant to Art. 11 para. 1 SE Regulation.

b) Corporate Purpose (Section 2 of the Statutes)

Fresenius SE will essentially have the same corporate purpose as Fresenius AG. The provision in Section 2 para. 1 of the draft statutes was merely brought up-to-date with regard to its wording and regarding the order of the description of the corporate purpose and was adjusted to the business policy and strategy of Fresenius AG as currently practised and communicated to the shareholders. In addition, a clarification was added in Section 2 para. 1

of the draft statutes to the effect that the Company engages in business activities in its domestic market or abroad either directly or through associated companies.

c) Notifications (Section 3 of the Statutes)

As is presently the case with Fresenius AG, the proclamations of the Company will be made in the electronic Federal Gazette (*elektronischer Bundesanzeiger*).

d) Subscribed Capital (Section 4 of the Statutes)

(aa) Amount and Division of the Subscribed Capital

Section 4 para. 1 of the statutes contains the stipulations regarding the amount of the subscribed capital and its division into ordinary bearer shares and preference bearer shares.

It is intended that in the extraordinary general meeting resolving on the conversion of Fresenius AG into an SE a resolution is passed, in accordance with the proposal under item 2.b)aa) of the agenda for the extraordinary general meeting on December 4, 2006, also on the implementation of a share split of 1 (previously) : 3 (in the future). Since the notional value may not be less than Euro 1, this requires – without the issuance of new shares – a capital increase from the free reserves (Capital Increase From The Company's Funds, Sections 207 et seqq. AktG) in accordance with the proposal under item 2.a) of the agenda of the extraordinary general meeting. The Capital Increase From The Company's Funds results in a proportionate amount of the subscribed capital per share of Euro 3, so that subsequently a stock split of 1 (previously) : 3 (in future) can be implemented.

The stipulated subscribed capital of Fresenius SE takes into account the Capital Increase From The Company's Funds and the Share Split in accordance with the proposal for the general meeting on December 4, 2006. However, in order to achieve a parallelism of the amounts of the subscribed capitals of Fresenius AG and Fresenius SE at the point in time the conversion becomes effective, it is expressly provided in the Conversion Plan that the supervisory board of Fresenius SE is authorised and also instructed to make any adjustments, if necessary, to the wording of the statutes, including the subscribed capital and its division into Ordinary Shares and Preference Shares, in order to ensure that at the point in time the conversion becomes effective the subscribed capital and its division into shares of Fresenius SE corresponds to the subscribed capital and its division into shares of Fresenius AG. Therefore, in the event that, in particular, the Capital Increase From The Company's Funds as well as the Share Split do not take effect prior to the conversion, the wording of the statutes is to be adjusted accordingly.

It is further stipulated in Section 4 para. 1 that the issuance of further Preference Shares, which with respect to the distribution of the profits or of the Company's assets rank equal to or prevail over the non-voting Preference Shares already issued, is not subject to the approval of the holders of Preference Shares. This stipulation corresponds to the provision already currently contained in Section 4 para. 1 of the articles of association of Fresenius AG.

Section 4 para. 2 describes in which manner the subscribed capital of Fresenius AG has been provided, Section 4 para. 3 describes in which manner the subscribed capital of Fresenius SE is provided by means of a conversion into Fresenius SE. With regard to the application of the law of incorporation, such provision is required and therefore a corresponding note regarding the provision of the subscribed capital has been included in the statutes of Fresenius SE. This refers to the total amount of subscribed capital and thus to the Ordinary Shares as well as the Preference Shares.

(bb) Authorised Capital

Section 4 paras. 4 and 5 of the statutes of Fresenius SE correspond to the stipulations regarding the authorised capitals in Section 4 paras. 3 and 4 of the articles of association of Fresenius AG. However, in addition to the stipulations in the articles of association of Fresenius AG a provision has been added that the amount of the authorised capitals may not be higher than the amount of the respective authorised capital in which such authorised capital is stated in the articles of association of Fresenius AG at the point in time of the conversion of Fresenius AG. This ensures that the amount of the authorised capitals of Fresenius SE is identical to the amount stated for Fresenius AG. Since, as a consequence of the conversion of Fresenius AG into Fresenius SE, the legal form is changed, but the legal entity continues to exist, a synchronisation is achieved by this provision of the amount of the authorised capitals of Fresenius AG and Fresenius SE (cf. also Section 3.4 of the Conversion Plan as well as the comments in chapter VII.1.c) of this report). Thus, the amounts of the authorised capitals in Section 4 paras. 4 and 5 of the draft statutes of Fresenius SE are also to be adjusted accordingly in the case of any capital increases of Fresenius AG from authorised capital prior to the effectiveness of the conversion. Section 3.4 of the Conversion Plan contains an authorisation and instruction of the supervisory board of Fresenius SE to adjust accordingly the wording of the draft statutes of Fresenius SE.

(1) Authorised Capital I (Section 4 para. 4 of the Statutes)

Section 4 para. 4 of the statutes of future Fresenius SE provides for an Authorised Capital I against contributions in cash and/or in kind with an aggregate nominal amount of up to

Euro 12,800,000.00. This Authorised Capital I of Fresenius SE functionally replaces the Authorised Capital I currently existing at Fresenius AG.

The purpose of the Authorised Capital I is, again, to enable the Company to strengthen its equity basis in favourable capital market conditions. In this case, the new shares generally have to be offered to the shareholders for subscription. However, in the event of a simultaneous issuance of Ordinary and Preference Shares, Fresenius SE is authorised to exclude the statutory subscription right of the shareholders with the proviso that the ordinary shareholders are exclusively granted a subscription right for new Ordinary Shares and the preference shareholders are exclusively granted a subscription right for new Preference Shares. This authorisation may only be utilised, however, if the subscription ratio is identical for both classes of shares. This type of restriction of the subscription right allows for maintaining in an unchanged way in the course of a capital increase the acquired rights of the shareholder classes in their relationship to each other. In addition, Fresenius SE is only entitled to exclude the subscription right in order to compensate for fractional amounts in order to achieve a round amount of the issue and a round subscription ratio.

At the relevant time, the subscription price will be determined in such manner that in consideration of the actual capital market conditions both the interests the shareholders and the concerns of the Company will be protected

(2) Authorised Capital II (Section 4 para. 5 of the Statutes)

Section 4 para. 5 of the statutes of future Fresenius SE provides for an Authorised Capital II against contributions in cash and/or in kind with an aggregate nominal amount of up to Euro 5,496,115.20. This Authorised Capital II of Fresenius SE functionally replaces the Authorised Capital II currently existing at Fresenius AG. Under the Authorised Capital II, in addition to the authorisation to exclude subscription rights for fractional amounts and for a mutual exclusion of the subscription right of the holders of one class of shares for the other class of shares, the management board is also authorised to exclude the statutory subscription right in its entirety. The capital increases may be conducted against contributions both in cash and in kind. This enables Fresenius SE to strengthen its equity base at the most favourable conditions and to grant Ordinary Shares and Preference Shares against contributions in kind for the purpose of acquisitions. The authorisation to grant Ordinary Shares and Preference Shares against contributions in kind affords to Fresenius SE the necessary room for manoeuvre to quickly and flexibly take advantage of acquisition opportunities regarding undertakings, parts of undertakings or interests therein. The Authorised Capital II with an

exclusion of the subscription right of the shareholders in the case of contributions in kind allows for this, because a capital increase by way of the adoption of a resolution of the general meeting of shareholders would not be possible when opportunities for acquisitions arise or, respectively, would not afford the flexibility required in the course of takeovers.

In the case of contributions in cash, the authorisation of the management board to exclude, with the approval of the supervisory board, the subscription right in the case of a utilisation of the Authorised Capital II may only be used if the issue price of the new shares is not significantly lower than the stock exchange price. This reflects the valuation of the legislator in Section 186 paragraph 3 sentence 4 AktG which largely excludes a dilution of the value of the interests held by the current shareholders. A placement of shares with an exclusion of the subscription rights affords the opportunity to generate a higher inflow of funds than in the case of an issue in which subscription rights are granted. With this type of capital increase, the management board is to be enabled to implement by means of a flexible utilisation of favourable market conditions the strengthening of the equity basis necessary for the future development of the business at the best possible conditions. This authorisation is limited to a maximum amount of 10% of the subscribed capital of the Company at the point in time of the adoption of the resolution.

(cc) Conditional Capitals (Section 4 paras. 6 and 7 of the Statutes)

The provisions in Section 4 para. 6 and 7 of the statutes are intended to provide Fresenius SE with sufficient conditional capital. In this regard, too, the conditional capitals existing at Fresenius AG at the point in time the conversion takes effect are to be continued by Fresenius SE with regard to their amount.

Section 4 para. 6 of the statutes provides for a conditional capital in an amount of up to Euro 1,078,029.00, divided into 1,078,029 Ordinary Shares, as well as for another conditional capital also in an amount of up to Euro 1,078,029.00, divided into 1,078,029 Preference Shares. This Conditional Capital I corresponds to the Conditional Capital I of Fresenius AG (cf. Section 4 para. 5 of the articles of association of Fresenius AG). However, with regard to the amount of the conditional capital and the division into Ordinary and Preference Shares the Capital Increase From The Company's Funds as well as the Share Split (cf. item 2 b)bb) of the agenda of the extraordinary general meeting of shareholders of December 4, 2006) have been taken into account. In this regard, the Conditional Capital I will only be established at Fresenius SE in such amount as exists at Fresenius AG at the point in time the conversion takes effect.

The Conditional Capital I serves the purpose of fulfilling subscription rights under the stock option plan 1998. In 1998, Fresenius AG established a stock option plan (Fresenius AG stock option plan 1998) for the issuance of shares to the management board and executive employees. The stock option plan 1998 was replaced by the Fresenius AG stock option plan 2003. Since 2003, no more stock options have been issued under the stock option plan 1998. Under the stock option plan 1998, the option holders are granted the right to acquire Ordinary Shares and Preference Shares of Fresenius AG. The stock options granted under this plan have a term of ten years. At the earliest, one third of them may be exercised, in each case, two, three or four years after the issuance date of the options. Each option grants the right to subscribe one Ordinary Share or Preference Share, respectively. As per December 31, 2005, 763,266 stock options had been issued. Of these, 676,724 may be exercised. In the course of the Capital Increase From The Company's Funds and the Share Split, the option conditions have to be adjusted in such manner that, in the future, for each option three Ordinary or Preference Shares may be acquired instead of one Ordinary or Preference Share as before.

Section 4 para. 7 of the statutes of Fresenius SE provides for another conditional capital in an amount of up to Euro 2,572,008.00, divided into up to 2,572,008 Ordinary Shares as well as an additional amount of up to Euro 2,572,008.00, divided into up to 2,572,008 Preference Shares. This Conditional Capital II corresponds to the Conditional Capital II of Fresenius AG (cf. Section 4 para. 6 of the articles of association of Fresenius AG). However, with regard to the amount of the conditional capital and the division into Ordinary and Preference Shares here, too, the Capital Increase From The Company's Funds as well as the Share Split (cf. item 2 b)bb) of the agenda of the extraordinary general meeting of shareholders of December 4, 2006) have been taken into account. In this regard, the Conditional Capital II will only be established at Fresenius SE in such amount as exists at the point in time the conversion of Fresenius AG into Fresenius SE takes effect.

The Conditional Capital II serves the purpose of issuing shares for convertible bonds under the stock option plan 2003. Pursuant to a resolution of the general meeting of shareholders of Fresenius AG of May 28, 2003, the management board, with the approval of the supervisory board, is authorised to issue, under the stock option plan 2003, convertible bonds in the overall nominal amount of up to Euro 4,608,000.00 to members of the management board of the Company, to members of the management of affiliated companies of the Company, to employees of the Company and to employees of affiliated companies of the Company which grant rights to subscribe to a total of up to 900,000 Ordinary Shares and up to 900,000 Preference Shares. However, the following persons are excluded: members of the

management and employees of Fresenius Medical Care AG (now Fresenius Medical Care AG & Co. KGaA) and of those affiliated companies which are only connected to the Company through Fresenius Medical Care. 400,000 convertible bonds granting subscription rights to up to 200,000 each of the Ordinary Shares and Preference Shares are attributable to the group of the members of the management board. 1,400,000 convertible bonds granting subscription rights for up to 700,000 each of the Ordinary Shares and Preference Shares are attributable to the group of the employees.

The beneficiaries are entitled to choose between convertible bonds which are subject to a performance objective (stock price target) and convertible bonds without a performance objective. The conversion price for convertible bonds which are subject to a performance objective corresponds to the stock price of the Ordinary Shares or Preference Shares, respectively, at the point in time at which the increase of the stock price as compared to the initial value is at least 25% for the first time. The initial value is determined on the basis of the average stock price of the Ordinary Shares and Preference Shares, respectively, during the last 30 trading days at the Frankfurt Stock Exchange prior to the issuance date. The conversion price for convertible bonds without a performance objective corresponds to the initial value. Those beneficiaries who choose convertible bonds without a performance objective receive a number of stock options which is 15% less than if they chose convertible bonds which are subject to a performance objective. Each convertible bond entitles its holder to subscribe, after payment of the respective conversion price, one Ordinary Share or Preference Share, respectively. Every year, up to 20% of the total number of convertible bonds available under the Fresenius AG stock option plan 2003 may be issued. As per December 31, 2005, 767,324 convertible bonds had been issued. Of these, 47,236 may be exercised. In the course of the Capital Increase From The Company's Funds and the Share Split, the option conditions have to be adjusted in such manner that, in the future, for each convertible bond issued three Ordinary or Preference Shares may be acquired instead of one Ordinary or Preference Share as before. Future convertible bonds which are issued after the implementation of the Capital Increase From The Company's Funds and the Share Split are to have a nominal amount of Euro 1.00 per convertible bond and are to carry a right for the subscription, upon conversion, of one Ordinary or Preference Share, respectively, with a proportionate amount of the subscribed capital of Euro 1.

(dd) Entitlement to Share in the Profits (Section 4 para. 8 of the Statutes)

Section 4 para. 8 of the statutes of Fresenius SE provides – as does Section 4 para. 7 of the articles of association of Fresenius AG – that in the case of a capital increase the distribution

of profits may be determined in deviation from Section 60 AktG, with the consequence that, for example, shares issued during the course of a financial year may be entitled to dividends for the entire financial year.

e) Shares (Section 5 of the Statutes)

The stipulations regarding the shares are identical to the stipulations in Section 5 of the articles of association of Fresenius AG. The shares are no-par value shares and are issued to the bearer.

Fresenius SE is further entitled to issue share certificates made out to the bearer which embody multiple shares (global share certificates). The shareholders' right to have their shares embodied in certificates is excluded, unless certificates are required under the rules applicable at a stock exchange where the shares are admitted. The management board, with the approval of the supervisory board, shall determine the form of the share certificates and of the dividend and renewal coupons. The Company intends not to issue any more actual share certificates in the future. The actual share certificates of Fresenius AG are to be cancelled.

f) Corporate Bodies (Section 6 of the Statutes)

The SE Regulation pursuant to its Art. 38 lit. b) offers a choice between the two-tier system (supervisory board and managing board) and the one-tier system (administrative board). Fresenius AG has opted in favour of the two-tier system, which corresponds to the present structure of Fresenius AG. Accordingly, Section 6 of the statutes stipulates, in accordance with Art. 38 lit. b) SE Regulation, that the corporate bodies of the Company are the management board, the supervisory board and the general meeting of shareholders.

g) Composition of the Management Board (Section 7 of the Statutes)

As is the case with Fresenius AG, pursuant to Section 7 para. 1 of the statutes the management board of Fresenius SE comprises at least two persons, with the supervisory board being authorised to determine a higher number. As is the case with the articles of association of Fresenius AG, it is provided that substitute management board members may be appointed. Also, a chairman of the management board may be appointed, as is currently provided for in Section 7 para. 2 sentence 2 of the articles of association of Fresenius AG.

Whereas in the case of Fresenius AG, pursuant to the MitbestG 1976, a labour relations director (*Arbeitsdirektor*) has to be appointed as a "member with equal rights" of the management board (Section 33 para. 1 sentence 1 MitbestG 1976), this position will not exist

in Fresenius SE, as there is no provision of law to this effect for the SE. Only in the event that the subsidiary regulation by operation of law applies (in this regard, see paragraph V.5.a)(bb) of this report), it is stipulated by Section 38 para. 2 sentence 2 SEBG that in the course of the allocation of responsibilities the responsibility for labour and social affairs is to be allocated to one member of the management board without conferring a special legal position.

Pursuant to Section 7 para. 2, the members of the management board are appointed by the supervisory board for a maximum term of five years. Reappointments, in each case for a term no longer than five years, are permissible. Under German stock corporation law, the members of the management board of Fresenius AG can be appointed for a maximum term of five years (Section 84 para. 1 sentence 1 AktG). In an SE, the maximum term for members of corporate bodies is six years (Art. 46 para. 1 SE Regulation); the term is to be stipulated in the statutes. Therefore, the stipulations now proposed for Fresenius SE generally follow the stock corporation law provision in Section 84 para. 1 sentence 1 AktG.

Section 7 para. 3 of the statutes provides that the resolutions of the management board are to be adopted by simple majority of the votes unless required otherwise by statutory law. In the case of a tie, the chairman of the management board has the casting vote (Section 7 para. 3 sentence 2 of the statutes). This provision of the statutes follows the statutory provision in Art. 50 para. 1 lit. b) SE Regulation and, with regard to the casting vote, in Art. 50 para. 2 SE Regulation.

Section 7 para. 4 of the statutes provides for a veto right of the chairman of the management board against resolutions of the management board. In a German stock corporation, it is, in principle, permissible to grant a veto right to the chairman of the management board in the articles of association or in the rules of procedure of the management board. However, according to the prevailing opinion, this is not permissible in the case of a stock corporation which is subject to co-determination pursuant to the MitbestG 1976. The reason for this is seen in the equal position of the labour relations director. However, in contrast to the MitbestG 1976, in respect of the SE no provision is made for a labour relations director with a similar equal-rights position. Therefore, in an SE a veto right of the chairman of the management board is permissible. If the chairman of the management board exercises his veto right the resolution is deemed to not have been passed (Section 7 para. 4 sentence 2 of the statutes of Fresenius SE as well as chapter V.5.a)(cc) of this report).

h) Representation of the Company (Section 8 of the Statutes)

Section 8 of the statutes of Fresenius SE corresponds to Section 7 of the articles of association of Fresenius AG with the exception that the appointment of a chairman of the management board is now no longer stipulated in the context of the representation of the Company, but in the context of the composition of the management board (cf. Section 7 para. 1 sentence 3 of the statutes of Fresenius SE).

Pursuant to Section 8 para. 1 of the statutes, Fresenius SE is legally represented by two management board members or by a one management board member jointly with an executive holding a general power of attorney (*Prokura*). The supervisory board may grant the right to solely represent the Company (*Einzelvertretung*) to individual or several members of the management board and revoke such right at any time (Section 8 para. 2 of the statutes). In addition, in Section 8 para. 3, the statutes expressly provide for cases in which the approval of the supervisory board is required. Such approval requirements are also provided for in Section 7 para. 3 of the articles of association of Fresenius AG. Pursuant to Section 8 para. 4 of the statutes of Fresenius SE, the supervisory board may stipulate detailed provisions in this regard in the rules of procedure for the management board and may define, in extension of the transactions requiring approval pursuant to Section 8 para. 3 of the statutes, the acts for the conduction of which the management board requires the express prior consent of the supervisory board. In addition, Section 8 para. 5 of the statutes stipulates that the management board may lay down for itself rules of procedure, as long and to the extent that the supervisory board has not laid down such rules of procedure for the management board. The rules of procedure which the management board lays down for itself are subject to the approval of the supervisory board.

i) Appointment and Term of Office of the Supervisory Board (Section 9 of the Statutes)

Section 9 para. 1 of the statutes lays down provisions for the appointment and term of office of the members of the supervisory board of Fresenius SE.

In accordance with these provisions, the supervisory board of Fresenius SE comprises twelve members. All twelve members of the supervisory board are appointed by the general meeting of shareholders. Of the twelve members, six members are appointed upon proposal of the employees. The proposals for the appointment of the employee representatives are binding on the general meeting.

If necessary, these provisions have to be amended by resolution of the general meeting of Fresenius AG in case that a deviating stipulation regarding the participation of the employees is laid down in an agreement on the involvement of employees in future Fresenius SE. If, however, the subsidiary regulation by operation of law were to apply because of a break-off of the negotiations, no amendment of the statute would be required, since the provision in Section 9 para. 1 sentence 2 of the statutes reflects the subsidiary regulation by operation of law, i.e. the binding effect on the general meeting of shareholders of the proposals for the appointment of the employee representatives.

According to Section 35 para. 1 SEBG, the extent of participation is, in principle, preserved. This, however, does not apply to the absolute number of members of the supervisory board, with the consequence that the supervisory board can be comprised of twelve members, although by now the supervisory board of Fresenius AG may have to have more than twelve members following a status proceeding (*Statusverfahren*).

In Section 9 para. 2 of the statutes the six shareholder representatives on the first supervisory board are being appointed. The term of office expires with the close of the general meeting which resolves on the ratification of their actions with regard to the first financial year of Fresenius SE, but in no case later than after three years. The other six members of the supervisory board are appointed upon proposals of the employees.

According to Art. 40 para. 2 sentence 2 SE Regulation, the members of the first supervisory board may be appointed in the statutes; the terms of office are also to be determined in the statutes. The supervisory board appointed by the general meeting of Fresenius AG has to appoint the management board of Fresenius SE. Therefore, the supervisory board has to constitute itself before the registration of the conversion of Fresenius AG into an SE.

Section 9 para. 3 of the statutes governs the term of office of those members of the supervisory board who are not members of the first supervisory board of Fresenius SE (cf. in this regard Section 9 para. 2 of the statutes of Fresenius SE and the comments above). Currently, the members of the supervisory board of Fresenius AG may regularly be appointed for a term of five years. Their office expires with the close of the general meeting which resolves on the ratification of their actions for the fourth financial year after the beginning of their term, with the financial year in which their term had commenced not being counted (cf. Section 102 AktG, Section 8 para. 1 of the articles of association of Fresenius AG). Pursuant to Section 9 para. 3 of the statutes, the appointment of the members of the supervisory board is made for a term until the close of the general meeting which resolves on the ratification of

actions for the fourth financial year after the term of office commenced, with the financial year in which the term of office commences not being counted. However, the appointment is made for a maximum term of six years, with reappointments being permissible. This provision of the statutes reflects Art. 46 para. 1 SE Regulation according to which the term of office of members of corporate bodies may not be longer than six years and has to be stipulated in the statutes of the company.

If a member appointed by the general meeting ceases to be a member of the supervisory board before his term of office expires, a new member is to be appointed by the next general meeting. The newly-appointed member shall hold office for the remaining term of office of the member whose membership has ceased. This provision in Section 9 para. 4 of the statutes of Fresenius SE reflects the respective provision in the articles of association of Fresenius AG. It leads to a synchronisation of the terms of office of all supervisory board members and avoids staggered terms of office of the members of the supervisory board.

In addition, it is stipulated in Section 9 para. 5 of the statutes of Fresenius SE, as in Section 8 para. 6 of the articles of association of Fresenius AG, that substitute members may be appointed. Since, in the future, not only the shareholder representatives, but also the employee representatives on the supervisory board will be appointed by the general meeting, the provision regarding the appointment of substitute members is drafted in an open manner. With regard to the shareholder representatives, the appointment of the substitute members is conducted in an order which is stipulated at the point in time of the appointment. With regard to the employee representatives, one substitute member is appointed for each supervisory board member. This is necessary, because, on the one hand, the employee representatives are appointed in respect of particular countries and, on the other hand, the third member from a particular country is a union representative.

Finally, Section 9 para. 6 of the statutes of Fresenius SE provides, as does Section 8 para. 7 of the articles of association of Fresenius AG, that any member of the supervisory board may, at any time, resign from office, also without good cause, by giving one month's written notice.

j) Constitution of the Supervisory Board (Section 10 of the Statutes)

With regard to the constituent meeting of the supervisory board Section 10 para. 1 of the statutes of Fresenius SE provides, as does Section 9 para. 1 of the articles of association of Fresenius AG, that following the general meeting at which a new supervisory board has been appointed, the supervisory board holds a meeting without special notice. In the course of this meeting the supervisory board elects, from among its members, a chairman as well as two

deputies for a period corresponding to their term of office on the supervisory board. Since the supervisory board of Fresenius SE comprises twelve members, six of which are shareholder representatives and six of which are employee representatives, pursuant to Art. 42 SE Regulation only a shareholder representative is eligible as chairman of the supervisory board.

It is intended to hold the constituent meeting of the first supervisory board immediately prior to the filing for registration of the conversion of Fresenius AG into Fresenius SE.

In case the membership of the chairman or one of his deputies should cease before the expiry of his term of office, pursuant to Section 10 para. 2 of the statutes of Fresenius SE the supervisory board is to elect a successor without undue delay (*unverzüglich*). This stipulation corresponds to Section 9 para. 2 of the articles of association of Fresenius AG.

In addition, Section 10 para. 3 of the statutes of Fresenius SE stipulates that for the election of the chairman of the supervisory board, the oldest member in terms of age among the shareholder representatives on the supervisory board is to have the chair. This stipulation was included in order to safeguard, for the election of the chairman, the casting vote - provided for by statute - of the chairman, who is to be appointed by the shareholder representatives (cf. Art. 50 para. 2 sentence 2 SE Regulation), and thus to avoid deadlocks in the course of the election of the chairman.

k) Meetings and Resolutions of the Supervisory Board (Section 11 of the Statutes)

The provisions in Section 11 of the statutes of Fresenius SE regarding meetings and resolutions of the supervisory board follow Section 10 of the articles of association of Fresenius AG. The meetings of the supervisory board of Fresenius SE are to be convened by the chairman in writing with a notice period of 14 days. The individual items of the agenda are to be stated in the invitation to the meeting. In urgent cases, this notice period may be shortened and the meeting convened by telegram, telex, facsimile, by other means of electronic communication (e-mail etc.) or by telephone.

As is currently the case with Fresenius AG, resolutions of the supervisory board of Fresenius SE will generally be passed in actual meetings (*Präsenzsitzungen*). It is permissible that meetings of the supervisory board are held by means of video conference, or that individual members of the supervisory board participate by means of video transmission, and that in such cases resolutions or votes are also passed or cast by means of video conference or video transmission, respectively. Outside of meetings, resolutions may be passed in text form (in writing, by telegram, telex, facsimile, by other means of electronic communication (e-mail

etc.) – cf. Section 126b of the German Civil Code – *BGB*) or by telephone, if the chairman of the supervisory board, or in case the chairman is unavailable, his Deputy directs to do so and no member of the supervisory board objects to this procedure in text form without undue delay (*unverzüglich*). In this regard, the previous wording of the articles of association was slightly altered. The alteration serves the purpose of smoother procedures. Now, the objection does not have to be made in writing, but may also be declared in other text form (e.g. by e-mail).

The supervisory board constitutes a quorum if half of the total number of members of which it has to comprise participates in the passing of a resolution. This provision follows Art. 50 para. 1 lit. a) SE Regulation. If no equal number of shareholders' representatives and of employees' representatives on the supervisory board takes part in the passing of a resolution, or if the chairman of the supervisory board does not take part, the passing of the resolution is, upon motion of at least two supervisory board members, to be postponed. To the new passing of a resolution the procedure described above applies; it may take place on the same day if the chairman of the supervisory board so directs.

If members of the supervisory board are unable to attend meetings, they may have their written vote submitted by another member of the supervisory board. The submission of a written vote shall count as participation in the passing of the resolution.

Resolutions of the supervisory board require the majority of the votes cast, which follows the stipulation in Art. 50 para. 1 lit. a) SE Regulation. In deviation from the current situation at Fresenius AG it is stipulated that, in the case of a tie, already in the first ballot the vote of the chairman, and if he does not participate in the voting, the vote of the deputy chairman is the casting vote, provided the latter is a shareholder representative. A deputy chairman who is an employee representative is not entitled to a casting vote. This also applies to the passing of resolutions in the committees of the supervisory board of which the chairman or his deputy, if he is a shareholder representative, is a member. This stipulation corresponds to Art. 50 para. 2 SE Regulation with the clarification that if the chairman is unavailable, the vote of the deputy chairman shall be decisive in the case of a parity of votes. With regard to the applicable statutory requirements, according to which no casting vote may be granted to an employee representative, the provision further clarifies that only a deputy chairman who also is a shareholder representative can be granted a casting vote. Besides, the provisions regarding the casting vote also apply to cases of a tie in the committees.

As is stipulated also in the articles of association of Fresenius AG, minutes are to be prepared of the meetings of the supervisory board of Fresenius SE which are to be signed by the chairman of the meeting. The chairman of the supervisory board has to sign the records of resolutions passed outside of actual meetings (*Präsenzsitzungen*).

l) Rights and Duties of the Supervisory Board (Section 12 of the Statutes)

Section 12 of the statutes of Fresenius SE follows Section 11 of the articles of association of Fresenius AG. The supervisory board of Fresenius SE has the rights and duties defined by mandatory legal provisions and by the statutes of Fresenius SE. It is supposed to issue rules of procedure for the management board in accordance with Section 8 para. 4 of the statutes of Fresenius SE. The supervisory board is entitled to make such amendments to the statutes which only concern their wording without a resolution of the general meeting.

m) Rules of Procedure of the Supervisory Board (Section 13 of the Statutes)

Section 13 of the statutes of Fresenius SE provides, as does Section 12 of the articles of association of Fresenius AG, that the supervisory board issues rules of procedure for itself within the framework of applicable mandatory legal provisions and the statutes.

n) Remuneration of the Supervisory Board (Section 14 of the Statutes)

The provisions regarding the remuneration of the supervisory board have essentially been adopted from Section 13 of the articles of association of Fresenius AG, taking into account the amendments in connection with the Share Split (cf. item 2 of the agenda for the extraordinary general meeting on December 4, 2006).

The supervisory board remuneration provided for in Section 13 para. 1 of the articles of association of Fresenius AG prior to the implementation of the Share Split stipulates a fixed remuneration in the amount of Euro 12,782.30 per annum. In the course of the Share Split, this amount is to be rounded upwards to Euro 13,000.00. Pursuant to the current stipulation, the fixed remuneration increases by 10% for each one percentage point by which the dividend for an Ordinary Share for the financial year is higher than 13% of the proportionate amount of the subscribed capital attributable to each individual no-par value share. Since as a consequence of the Share Split the proportionate amount of the subscribed capital attributable to each share is being reduced, the calculation method for the variable supervisory board remuneration is to be adjusted in a manner that it remains by and large unchanged. This is allowed for in Section 14 para. 1 of the statutes of Fresenius SE by a reduction of the reference value from 13% to 3.6%.

If the general meeting resolves a higher remuneration in view of the results of the financial year, such new amount shall be applicable. The chairman of the supervisory board will receive twice, his deputies one and a half times the remuneration of a supervisory board member (cf. Section 14 para. 1 sentences 3 and 4 of the statutes of Fresenius SE).

For a membership in the audit committee (*Prüfungsausschuss*) and for a membership in the personnel committee (*Personalausschuss*) of the supervisory board a member shall receive – as is already currently the case with Fresenius AG – an additional remuneration of Euro 10,000.00 for each membership, while the chairman of such committee shall receive twice the amount (cf. Section 14 para. 2 of the statutes of Fresenius SE).

If a financial year does not comprise a full calendar year or if a member of the supervisory board is on the supervisory board only for part of a financial year, the remuneration shall be paid on a *pro-rata temporis* basis. This applies accordingly to the membership in the audit committee and in the personnel committee of the supervisory board (cf. Section 14 para. 3 of the statutes of Fresenius SE).

In addition, the members of the supervisory board are reimbursed for the expenses incurred exercising their office, including applicable value-added tax (cf. Section 14 para. 4 sentence 1 of the statutes of Fresenius SE).

Furthermore, Section 14 para. 4 of the statutes of Fresenius SE contains a provision according to which the Company shall provide insurance coverage to the members of the supervisory board in an extent appropriate with regard to the exercise of the supervisory board office, and with an appropriate deductible (*angemessener Selbstbehalt*). No provision of this kind is contained in the articles of association of Fresenius AG. With regard to the agreement on an appropriate deductible, the provision in the statutes reflects No. 3.8 of the German Corporate Government Code.

With regard to the members of the first supervisory board, the remuneration provisions laid down in Section 14 of the statutes of Fresenius SE do not apply (Art. 9 para. 2 lit. c)(ii) SE Regulation in connection with Section 113 para. 2 AktG). The remuneration is within the discretion of the general meeting of shareholders of Fresenius SE which resolves upon the ratification of the actions of the members of the first supervisory board; in view of the procedure for the involvement of employees which has to be conducted, this will be the annual general meeting of Fresenius SE in the year 2008. A resolution adopted by an earlier general meeting would be invalid.

o) Convening the General Meeting (Section 15 of the Statutes)

The provisions relating to the convening of the general meeting follow the stipulations in the articles of association of Fresenius AG. The general meeting of Fresenius SE is to be convened at least 30 days prior to the day by the end of which the shareholders have to register for the general meeting. It is to be held at the registered office of the Company, or at the place of a German stock exchange, or at the registered office of a domestic associated company.

p) Participation in the General Meeting (Section 16 of the Statutes)

The provisions relating to the participation in the general meeting in Section 16 of the statutes of Fresenius SE follow the stipulations relating to the participation in the general meeting in Section 15 of the articles of association of Fresenius AG.

Shareholders who wish to participate in the general meeting or to exercise their voting right have to register for the general meeting and prove their eligibility. The registration and proof of eligibility must be received by the Company at the address stated for this purpose in the invitation no later than on the seventh day prior to the general meeting (registration date). If the end of the period falls on a Saturday, Sunday, or a holiday recognised by statutory law at the registered office of the Company, the preceding working day shall be relevant for the delivery.

For the purpose of proving eligibility, a special proof of share ownership issued by the custodian institution in text form in the German or English language is sufficient. The proof regarding shares which are not held in a collective custody account may also be issued by the Company or by a bank against delivery of the shares. The proof of shareholding has to relate to the point in time as determined by the German Stock Corporation Act.

q) Date of the General Meeting (Section 17 of the Statutes)

Pursuant to Art. 54 para. 1 SE Regulation, a general meeting is held at least once each calendar year within six months of the completion of the financial year. Accordingly, Section 17 of the statutes of Fresenius SE now stipulates that the general meeting which receives the approved annual financial statements or, as the case may be, which resolves upon the approval of the annual financial statements as well as the ratification of the actions of the management board and supervisory board and the appropriation of profits (annual general meeting of shareholders) has to be held within the first six months after the completion of a

financial year and not within the first eight months as is provided for in Section 16 of the articles of association of Fresenius AG (cf. also chapter V.5.c)(cc) of this report).

r) Chairmanship of the General Meeting and Voting (Section 18 of the Statutes)

Section 18 para. 1 of the statutes of Fresenius SE reflects Section 17 para 1 of the articles of association of Fresenius AG. Accordingly, the general meeting is to be chaired by the chairman of the supervisory board, and, if he is unavailable or at the request of the chairman of the supervisory board, by another member of the supervisory board which the chairman of the supervisory board determines. If no such determination is made, another member of the supervisory board to be determined by the supervisory board shall chair the meeting if the chairman of the supervisory board is unavailable.

As is stipulated in Section 17 para. 2 of the articles of association of Fresenius AG, the chairman chairs the meeting, determines the order of items to be discussed and of the speakers as well as the manner and form of voting. The chairman may determine appropriate restrictions of the speaking time, of the question time, and of the combined speaking and question time at the beginning or during the general meeting, regarding the discussions on individual items of the agenda, as well as for individual speaking and question contributions. He orders the end of the debate to the extent that and as soon as this is necessary for an orderly conduct of the general meeting.

The resolutions of the General Meeting shall be passed by a simple majority of votes cast unless the statutes of Fresenius SE or mandatory legal provisions do require otherwise. Unless mandatory legal provisions require otherwise, amendments of the statutes require a majority of two thirds of the votes cast or, if at least half of the subscribed capital is represented, the simple majority of votes cast. This stipulation is based on Art. 59 para. 2 SE Regulation in connection with Section 51 SEAG. In effect, this means that – provided that no higher majority requirements apply pursuant to mandatory law – amendments of the statutes now require a majority of two thirds of the votes cast instead of a simple majority as before, unless at least half of the subscribed capital is represented at the general meeting. If, for the effectiveness of the passing of resolutions, mandatory legal provisions require that, in addition, a majority of the subscribed capital be represented when the resolution is passed, the simple majority of the subscribed capital represented is sufficient, to the extent that this is permitted by law. If the voting results in a tie a motion is deemed to be rejected (cf. chapters V.5.c)(hh) and V.5.c)(ii) of this report).

As long as the Else Kröner-Fresenius-Stiftung as the largest shareholder holds an interest of more than 50% of the voting capital, it can be assumed that a presence of 50% of the subscribed capital is ensured and therefore amendments of the statutes can be resolved with a simple majority of the votes.

As is presently the case with Fresenius AG, each Ordinary Share of Fresenius SE grants one vote in the general meeting. The Preference Shares carry no voting rights unless mandatory legal provisions provide otherwise. Accordingly, the preference shareholders are entitled to vote if, in one year, there is no or only a partial preference payment and the arrears are not paid in the next year in addition to the full preference payment of that year. The voting right exists until payment of the arrears has been made (Art. 9 para. 1 lit. c)(ii) SE Regulation in connection with Section 140 para. 2 sentence 1 AktG).

s) Financial Year, Accounting (Section 19 of the Statutes)

The provisions relating to the financial year and to accounting follow the stipulations in the Section 18 of the articles of association of Fresenius AG. The financial year of Fresenius SE corresponds to the calendar year.

The management board has to prepare the financial statements and the management report for the respective previous financial year within the first three months of the financial year, however, at the latest within the maximum period set by mandatory legal provisions, and submit them to the auditors.

The supervisory board mandates the auditor for the audit.

The management board has to submit the annual financial statements and the management report as well as the consolidated financial statements and the group management report to the supervisory board without undue delay (*unverzüglich*) after their preparation. At the same time, the management board has to present to the supervisory board the proposal which it intends to submit to the general meeting concerning the appropriation of balance sheet profits.

t) Appropriation of Profits (Section 20 of the Statutes)

The provisions relating to the appropriation of profits follow the stipulations relating to the appropriation of profits in Section 19 of the articles of association of Fresenius AG. Accordingly, the general meeting of shareholders decides on the appropriation of balance sheet profits, with the non-voting Preference Shares receiving a dividend from annual balance

sheet profits which is Euro 0.03 per Preference Share higher than the dividend for the Ordinary Shares, however, the dividend shall amount to at least Euro 0.06 per Preference Share.

If the proportionate amount of the subscribed capital for each Preference Share no longer amounts to Euro 2.56 per share but, after completion of the Capital Increase From The Company's Funds and subsequent new division of the subscribed capital (items 2.a) and b) of the agenda of the extraordinary general meeting of December 4, 2006), only amounts to Euro 1.00 per share, the Preference Shares shall receive a dividend that is Euro 0.01 (instead of Euro 0.03) per Preference Share higher than the dividend for the Ordinary Shares, however, the dividend shall amount to at least Euro 0.02 (instead of Euro 0.06) per Preference Share. The minimum dividend in an amount of Euro 0.06 per Preference Share (or, respectively, Euro 0.02 in the case of a proportionate amount in the subscribed capital of Euro 1.00 per Preference Share) is to prevail over the distribution of a dividend to Ordinary Shares.

If the balance sheet profits of one or more financial years are not sufficient to distribute Euro 0.06 per Preference Share (or, respectively, Euro 0.02 in the case of a proportionate amount in the subscribed capital of Euro 1.00 per Preference Share), the lacking amounts excluding interest shall be paid subsequently from the retained earnings of the following financial years, in each case after distribution of the minimum dividend on the Preference Shares for these financial years and before distributing a dividend to the Ordinary Shares. The right to the payment of arrears is part of the share in profits for the financial year from the retained earnings of which the payment of arrears on the Preference Shares is made.

By the adjustment of the preference dividend and the minimum dividend after the implementation of the Capital Increase From The Company's Funds and the Share Split provided for in the statutes it is ensured that the provisions relating to the preference dividend and the minimum dividend are designed in the same manner as they are designed in the articles of association of Fresenius AG at the point in time of the conversion of Fresenius AG into Fresenius SE.

u) Formation Expenses / Benefits (Section 21 of the Statutes)

With regard to the formation expenses, the statutes of Fresenius SE, in Section 21 paras. 1 and 2, reflect the provisions laid down in Section 20 paras. 1 and 2 of the articles of association of Fresenius AG. In addition, Section 21 para. 3 of the statutes of Fresenius SE

stipulates that with regard to the conversion of Fresenius AG into Fresenius SE the formation expenses up to an amount of Euro 3 million are borne by the Company.

Finally, notwithstanding the statutory competences of the supervisory board of Fresenius SE, it is assumed that the acting members of the management board of Fresenius AG will be appointed members of the management board of Fresenius SE. Members of the management board of Fresenius AG are Dr. Ulf M. Schneider (Chairman), Rainer Baule, Andreas Gaddum, Dr. Ben J. Lipps and Stephan Sturm. In addition, the shareholder representatives on the supervisory board of Fresenius AG are to be appointed as members of the supervisory board of Fresenius SE (see Section 9 paras. 2 and 3 of the statutes of Fresenius SE). This is mentioned for reasons of legal precaution with regard to a potential benefit within the meaning of Section 26 para. 1 AktG.

3. German Corporate Governance Code

Pursuant to Section 161 AktG, the management board and supervisory board of listed stock corporations have to declare on an annual basis that the recommendations of the "Government Commission on the German Corporate Governance Code" published by the Federal Ministry of Justice in the official section of the electronic Federal Gazette (*elektronischer Bundesanzeiger*) have been and are being complied with or which of the recommendations have not or are not being applied. The declarations have to be made permanently accessible to the shareholders. The German Corporate Governance Code contains essential provisions regarding management and supervision (company management) and includes both stipulations describing German provisions of statutory law and recommendations (*Empfehlungen*) and suggestions (*Anregungen*). Only the statutory provisions have a binding character for enterprises. With regard to the recommendations, Section 161 AktG stipulates that listed companies have to declare on an annual basis whether they deviate from the recommendations (declaration of conformity).

Fresenius AG has last issued a declaration of conformity in December 2005 which is available on the website of the Company. Therein, the Company has declared that it complies with the recommendations of the German Corporate Governance Code with the exception that no disclosure is made of the individual compensation for each member of the management board and that the current stock option plans provide for the possibility to refrain from stipulating demanding, relevant comparison parameters, i.e. performance targets.

The SE Regulation does not contain any express provisions on the applicability of the German Corporate Governance Code. However, by virtue of Art. 9 para. 1 lit. c)(ii) SE

Regulation the provision in Section 161 AktG is applicable with the consequence that Fresenius SE – as Fresenius AG – has to declare on an annual basis whether it complies with the recommendations of the German Corporate Governance Code.

4. Other Corporate Law Effects

a) Legal Effects of the Conversion

Upon the registration of Fresenius SE in the commercial register at the registered office of the Company the conversion of Fresenius AG into Fresenius SE becomes effective.

The conversion of Fresenius AG into an SE does neither lead to a liquidation of the Company nor to the formation of a new legal entity (cf. Art. 37 para. 2 SE Regulation). Rather, it is a case of the change of the legal form in the course of which the legal and economic identity are being maintained. There is no transfer of assets. The interests of the shareholders in the Company continue to exist because of the identity of the legal entity. However, there is a change of the set of legal rules applicable to the legal form (discontinuity of constitution, *Diskontinuität der Verfassung*) (cf. also chapter V of this report).

In addition, Art. 37 para. 9 SE Regulation expressly stipulates that the rights and obligations of the company to be converted arising from employment contracts or employment relationships existing at the point in time of the registration are being transferred, as regards the terms and conditions of employment, to the SE upon its registration.

b) Dividend Entitlements

The dividend entitlements of the ordinary shareholders and the preference shareholders do not change by virtue of the conversion of Fresenius AG into Fresenius SE. The preference dividend and the minimum dividend of the preference shareholders remain in place. The appropriation of balance sheet profits is decided upon – as is the case with Fresenius AG – by the general meeting of shareholders.

c) Shareholder Structure of Fresenius SE after the Implementation of the Conversion

Since the participations held in the Company by the shareholders of Fresenius AG continue to exist unchanged because of the identity of the legal entity, the proportions of shareholdings do not change by virtue of the conversion of Fresenius AG into Fresenius SE. The ordinary shareholders receive the same number of Ordinary Shares they held in Fresenius AG prior to the conversion becoming effective and the preference shareholders receive the same number

of Preference Shares they held in Fresenius AG prior to the conversion becoming effective. The arithmetic portion of each no-par value share in the subscribed capital is maintained in exactly the way it existed immediately prior to the conversion becoming effective. In this regard, it has to be taken into account that in the course of the Capital Increase From The Company's Funds and the new division of the subscribed capital (cf. item 2. of the agenda of the extraordinary general meeting of shareholders of December 4, 2006) the proportionate amount per share of the subscribed capital will be reduced from Euro 2.56 to Euro 1.00 and that the number of Ordinary and Preference Shares issued will be tripled.

VIII. Accounting and Tax Effects of the Conversion

The conversion of Fresenius AG into an SE does neither lead to a liquidation of the Company nor to the formation of a new legal entity (cf. Art. 37 para. 2 SE Regulation). The legal and economic identity of the Company will be preserved. With regard to the preparation of and any other stipulations relating to the annual financial statements and the management report as well as the consolidated financial statements and the group management report the provisions applicable to a German stock corporation apply. Thus, the conversion does not have any accounting effects.

Fresenius AG expects that the conversion of Fresenius AG into an SE with its registered office in Germany which preserves the legal identity can be achieved in a manner which is neutral from a taxation point of view. Future dividend payments of Fresenius SE as well as transfers of Fresenius shares have, in principle, the same taxation consequences for the shareholders of Fresenius SE, for the purposes of German income taxation, as dividend payments and transfers prior to the conversion, unless there is a change of the applicable laws or of the factual circumstances. The conversion of Fresenius AG into an SE does not trigger any significant German capital investment tax, sales tax or stamp duty.

It is recommended that the shareholders of Fresenius AG consult their tax advisors with regard to potential tax-relevant circumstances in their individual cases.

IX. Securities and Stock Exchange Trading

1. Effects of the Conversion on the Shares of Fresenius SE

As a result of the conversion, the current shareholders of Fresenius AG will, by operation of law, become shareholders of Fresenius SE upon the taking effect of the conversion of Fresenius AG into an SE. As before, the shares of Fresenius SE will also be no-par value shares issued to the bearer. The share certificates will be exchanged. To the extent that the

Fresenius AG shares are certified by means of global share certificates, this is effected by means of an exchange of the global share certificates. As a consequence of the conversion of Fresenius AG into an SE, the actual share certificates of Fresenius AG become incorrect and are to be cancelled (Section 73 para. 1 AktG). As is stipulated in the statutes of Fresenius SE and also in the articles of association of Fresenius AG (cf. Section 5 para. 2 of the statutes), the shares of Fresenius SE are to be embodied solely by the global share certificates and are to be held exclusively in a collective deposit of securities (*Girosammelverwahrung*).

2. Effects of the Conversion on the Stock Market Listing

Based on the criteria on of market capitalisation, Fresenius AG is among Germany's top 35 businesses and is listed on the MDAX and in the industry index Pharma & Health of the Prime Standard, industry group Healthcare, as well as on the Dow Jones STOXX 600 and on the Dow Jones STOXX Sustainability Index. The Ordinary and Preference Shares of Fresenius AG are listed on the official market of the stock exchanges in Frankfurt am Main, Dusseldorf and Munich.

The conversion does not affect the stock exchange trading of the shares of the current Fresenius shareholders. The latter continue to be able without changes, after the conversion of Fresenius AG into Fresenius SE, to trade their (then) Fresenius SE shares on all stock exchanges on which the shares are currently listed. The conversion does not affect the inclusion of Fresenius SE shares in the above-mentioned stock indexes. No admission to stock market trading is required for the Fresenius SE share, because the conversion does neither lead to a liquidation nor to a re-formation of the Company (cf. Art. 37 para. 2 SE Regulation).

Bad Homburg v.d.H., October 10, 2006

**Fresenius Aktiengesellschaft
The Management Board**

sgd.: Dr. Ulf M. Schneider

sgd.: Rainer Baule

sgd.: Andreas Gaddum

sgd.: Dr. Ben J. Lipps

sgd.: Stephan Sturm