

FRESENIUS MEDICAL CARE CORP

Form F-4

May 10, 2005

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**As filed with the Securities and Exchange Commission on May 10, 2005**  
**Registration No. 333-**

**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

**Form F-4**  
**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

**Fresenius Medical Care Aktiengesellschaft**  
*(Exact Name of Registrant as Specified in Its Charter)*  
**Fresenius Medical Care Corporation**  
*(Translation of Registrant's Name into English)*

<b>Germany</b> <i>(Jurisdiction of incorporation or organization)</i>	<b>3841</b> <i>(Primary Standard Industrial Classification Code Number)</i>	<b>Not applicable</b> <i>(I.R.S. Employer Identification Number)</i>
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**Else-Kröner-Strasse 1**  
**61352 Bad Homburg v.d.H., Germany**  
**Telephone: 011-49-6172-609-0**  
*(Address, Including Zip Code, and Telephone Number,  
Including Area Code, of Registrant's Principal Executive Offices)*

**Dr. Ben J. Lipps**  
**Fresenius Medical Care Holdings, Inc.**  
**95 Hayden Avenue**  
**Lexington, MA 02420**  
**617-402-9000**  
*(Name, Address, Including Zip Code, and Telephone Number,  
Including Area Code, of Agent For Service)*

*Copy to:*  
**Charles F. Niemeth, Esq.**  
**Baker & McKenzie LLP**  
**805 Third Avenue**  
**New York, New York 10022**  
**(212) 751-5700**

**Approximate date of commencement of proposed sale to the public:** As soon as practicable after this  
Registration Statement becomes effective.

**CALCULATION OF REGISTRATION FEE**

<b>Title of Each Class of Securities to be Registered(1)(2)</b>	<b>Amount to be Registered(3)</b>	<b>Proposed Maximum Offering</b>	<b>Proposed Maximum Aggregate Offering Price(3)(4)</b>	<b>Amount of Registration Fee</b>
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		<b>Price per Unit(4)</b>		
<b>Ordinary Shares</b>	14,629,780	\$ 78.63	1,150,339,601	
<b>Preference Shares</b>	6,462,060	\$ 62.29	402,521,717	\$ 182,772

- (1) American Depositary Receipts evidencing American Depositary Shares ( ADSs ) issuable upon deposit of the securities registered hereby will be registered under a separate registration statement on Form F-6.
- (2) This registration statement is being filed by Fresenius Medical Care Aktiengesellschaft ( Fresenius Medical Care AG ) to register the ordinary shares and preference shares of Fresenius Medical Care AG & Co. KGaA ( Fresenius Medical Care KGaA ) that will be issued in connection with the transformation of Fresenius Medical Care AG from a stock corporation under German law into a partnership limited by shares under German law. Fresenius Medical Care KGaA will not be formed as a separate entity but will be established by registering a transformation resolution with the commercial register Hof an der Saale, Germany. Upon completion of the transformation, Fresenius Medical Care KGaA will be the successor to Fresenius Medical Care AG within the meaning of General Instruction I.A.4 to Form F-3.
- (3) Includes the maximum number of ordinary shares and preference shares expected to be issued or delivered to U.S. persons pursuant to the transformation. This number is based on (a) an estimated 14,629,780 ordinary shares, including ordinary shares held in the form of ADSs, held by U.S. persons, that are expected to be transformed in the transformation and (b) an estimated 6,462,060 preference shares, including preference shares held in the form of ADSs, held by U.S. persons, that are expected to be transformed in the transformation.
- (4) The Proposed Maximum Aggregate Offering Price (estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(f) under the Securities Act) is based on a price of \$78.63 per ordinary share of Fresenius Medical Care AG and \$62.29 per preference share of Fresenius Medical Care AG. The price per ordinary share is based on a market value of 60.785 per ordinary share, calculated pursuant to Rule 457(c) by taking the average of the high and low prices of ordinary shares as reported on the Frankfurt Stock Exchange on May 4, 2005. The price per preference share is based on a market value of 48.15 per preference share, calculated pursuant to Rule 457(c) by taking the average of the high and low prices of preference shares as reported on the Frankfurt Stock Exchange on May 4, 2005. The price per ordinary share and the price per preference share were converted into U.S. dollars based on an exchange rate of 1.00 = U.S. \$1.2936, the Noon Buying Rate on May 4, 2005 as reported by the Federal Reserve Bank of New York.

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, or until this Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

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The information in this information statement/ prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This information statement/ prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state or jurisdiction where the offer or sale is not permitted.

**SUBJECT TO COMPLETION, DATED MAY 10, 2005**

**INVITATION TO THE EXTRAORDINARY GENERAL MEETING**

**ISIN: DE 0005785802 // Securities Identification Numbers 578 580**

**ISIN: DE 0005785836 // Securities Identification Numbers 578 583**

**ISIN: DE 000A0DRW61 // Securities Identification Numbers A0DRW6**

**ISIN: US 3580291066 // American Depositary Receipts Numbers 879 529**

**ISIN: US 3580292056 // American Depositary Receipts Numbers 903 780**

We are pleased to invite our shareholders to attend an extraordinary general meeting of the shareholders of Fresenius Medical Care Aktiengesellschaft ( Fresenius Medical Care AG or the Company ) on \_\_\_\_\_, \_\_\_\_\_, 2005. The meeting will begin promptly at \_\_\_\_\_ a.m. local time at \_\_\_\_\_. The purpose of this meeting is to submit to the consideration and approval of our ordinary shareholders the proposals stated in the Agenda below.

**AGENDA**

1. The conversion of our outstanding preference shares into ordinary shares;
2. The conversion of interests held and related adjustments under our employee participation programs;
3. The creation of authorized capital; and
4. The transformation of the Company's legal form from a stock corporation (*Aktiengesellschaft*) under German law into a partnership limited by shares under German law, a *Kommanditgesellschaft auf Aktien* ( KGaA ) to be called Fresenius Medical Care AG & Co. KGaA ( Fresenius Medical Care KGaA ), with Fresenius Medical Care Management AG ( Management AG ), a subsidiary of Fresenius AG, as the sole general partner.

The following documents are available for the inspection of our shareholders at the offices of the Company, Else-Kröner-Strasse 1, 61352 Bad Homburg, Germany:

The conversion report of our management board on the conversion of our preference shares into ordinary shares;

The report of our management board on the reasons for the exclusion of the pre-emptive right in connection with the creation of authorized capital; and

The transformation report of our management board setting forth the reasons for the transformation.

Copies of the English translation of the conversion report and the transformation report have been furnished to the Securities and Exchange Commission under cover of a Report on Form 6-K and may be obtained as described below under Where You Can Find More Information. On request, each shareholder will be provided with a copy of each of the above documents free of charge. These reports will also be available for inspection at the extraordinary general meeting.

**NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED THE SECURITIES TO BE ISSUED UNDER THIS INFORMATION STATEMENT/ PROSPECTUS OR DETERMINED IF THIS INFORMATION STATEMENT/ PROSPECTUS IS ACCURATE OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

This information statement/ prospectus is dated \_\_\_\_\_, 2005, and is first being mailed to  
shareholders on or about \_\_\_\_\_, 2005.

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Shareholders who hold American Depositary Shares evidenced by American Depositary Receipts are being furnished, together with this information statement/ prospectus, a request for voting instructions directed to the depositary for the American Depositary Shares. Holders of ordinary American Depositary Shares who wish to have their shares voted at the extraordinary general meeting should complete such request and return it to the depositary in accordance with the instructions accompanying the request on or before the date specified therein. The depositary will try, as far as is practical, subject to the provisions of and governing our ordinary shares, to vote or to have its agents vote the shares or other deposited securities as instructed. The depositary will only vote or attempt to vote as holders instruct. The depositary will not itself exercise any voting discretion. Neither the depositary nor its agents are responsible for any failure to carry out any voting instructions, for the manner in which any vote is cast or for the effect of any vote.

Shareholders (other than holders of American Depositary Shares) who deposit their shares during normal business hours no later than \_\_\_\_\_, 2005 with the Company, a notary public in the Federal Republic of Germany, a securities clearing and depository bank, or Dresdner Bank AG and its branches, and keep their shares deposited through the close of the extraordinary general meeting will be entitled to attend the meeting. In case of deposit with a German notary public or a securities clearing and depository bank, you must submit the certificate to be issued by them to the cash office of the Company no later than on the first business day after the deadline for deposit, i.e. by \_\_\_\_\_, 2005. Shares will be deemed properly deposited if, with the consent of the depositary, the shares are blocked in favor of such depositary at a credit institution until the close of the meeting.

A shareholder may also exercise his or her voting right and/or his or her right of attendance at the extraordinary general meeting by engaging a party to act as his or her proxy, such as the depositary bank, an association of shareholders or another person of his or her choice. As a special service, ordinary shareholders (other than holders of American Depositary Shares), can authorize a proxy who will be appointed by the Company before the meeting. Shareholders who would like to authorize the proxy announced by the Company must obtain an entrance card for the extraordinary general meeting. An entrance card will be issued upon deposit of shares in accordance with the above procedures. Proxies must be transmitted in text form. The necessary documents and information will be distributed to shareholders together with the entrance card.

Each ordinary share will be entitled to one (1) vote at the extraordinary general meeting. Preference shareholders are invited to attend but are not entitled to vote at the extraordinary general meeting.

Counter proposals to a proposal of the management board and supervisory board on a particular item on the agenda may be made to:

Fresenius Medical Care AG  
Attention: Investor Relations  
Else-Kröner-Strasse 1  
61352 Bad Homburg v.d.H., Germany  
Telefax: ++49-6172-609-2301  
e-mail: [ir-fms@fmc-ag.de](mailto:ir-fms@fmc-ag.de)

Counter proposals received no later than two weeks before the date of the extraordinary general meeting at this address will be made accessible to other shareholders on our website at [www.fmc-ag.com](http://www.fmc-ag.com) as soon as practicable after receipt. Counter proposals that are sent to any address other than the address set forth above will not be considered.

Hof a.d. Saale, \_\_\_\_\_ 2005

The Management Board

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**INVITATION TO THE SEPARATE MEETING**  
**ISIN: DE 0005785836 // Securities Identification Numbers 578 583**  
**ISIN: US 3580292056 // American Depositary Receipts Numbers 903 780**

We are pleased to invite our preference shareholders to attend a separate meeting of the preference shareholders of Fresenius Medical Care Aktiengesellschaft ( Fresenius Medical Care AG or the Company ) on \_\_\_\_\_, \_\_\_\_\_, 2005. The meeting will begin promptly after the extraordinary general meeting, which begins at \_\_\_\_\_ a.m. local time at \_\_\_\_\_. The purpose of the separate meeting is to submit to the consideration and approval of our preference shareholders the proposals stated in the Agenda below.

**AGENDA**

1. The conversion of our outstanding preference shares into ordinary shares; and
2. The conversion of interests held and related adjustments under the employee participation programs.

The conversion report of our management board on the conversion of our preference shares into ordinary shares is available for the inspection of our preference shareholders at the offices of the Company, Else-Kröner-Strasse 1, 61352 Bad Homburg, Germany. On request, each preference shareholder will be provided with a copy of this report free of charge. The conversion report will also be available for inspection at the separate meeting.

A report of our management board on the reasons for the exclusion of the pre-emptive right in connection with the creation of authorized capital and a transformation report of our management board setting forth the reasons for the proposed transformation of the Company from a stock corporation (*Aktiengesellschaft*) into a partnership limited by shares, a *Kommanditgesellschaft auf Aktien* ( KGaA ) to be called Fresenius Medical Care AG & Co. KGaA, will also be available for inspection at the extraordinary general meeting that precedes the separate meeting. These matters will be voted on only by our ordinary shareholders. Copies of the English translation of the conversion report and the transformation report have been furnished to the Securities and Exchange Commission under cover of a Report on Form 6-K and may be obtained as described below under **Where You Can Find More Information**.

Shareholders who hold preference American Depositary Shares evidenced by American Depositary Receipts are being furnished, together with this information statement/ prospectus, a request for voting instructions directed to the depositary for the American Depositary Shares. Holders of preference American Depositary Shares who wish to have their shares voted at the separate meeting should complete such request and return it to the depositary in accordance with the instructions accompanying the request on or before the date specified therein. The depositary will try, as far as is practical, subject to the provisions of and governing our preference shares, to vote or to have its agents vote the shares or other deposited securities as instructed. The depositary will only vote or attempt to vote as holders instruct. The depositary will not itself exercise any voting discretion. Neither the depositary nor its agents are responsible for any failure to carry out any voting instructions, for the manner in which any vote is cast or for the effect of any vote.

Preference shareholders (other than holders of American Depositary Shares) who deposit their shares during normal business hours no later than \_\_\_\_\_, 2005 with the Company, a notary public in the Federal Republic of Germany, a securities clearing and depository bank,

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or Dresdner Bank AG and its branches, and keep their shares deposited through the close of the separate meeting will be entitled to attend the meeting. In case of deposit with a German notary public or a securities clearing and depository bank, you must submit the certificate to be issued by them to the cash office of the Company no later than on the first business day after the deadline for deposit, i.e. by \_\_\_\_\_, 2005. Shares will be deemed properly deposited if, with the consent of the depository, the shares are blocked in favor of such depository at a credit institution until the close of the meeting.

A preference shareholder may also exercise his or her voting right and/or his or her right of attendance at the separate meeting by engaging a party to act as his or her proxy, such as the depository bank, an association of shareholders or another person of his or her choice. As a special service, preference shareholders (other than holders of American Depositary Shares), can authorize a proxy who will be appointed by the Company before the separate meeting. Shareholders who would like to authorize the proxy announced by the Company must obtain an entrance card for the extraordinary general meeting. An entrance card will be issued upon deposit of shares in accordance with the above procedures. Proxies must be transmitted in text form. The necessary documents and information will be distributed to shareholders together with the entrance card.

Each preference share will be entitled to one (1) vote at the separate meeting.

Counter proposals to a proposal of the management board and supervisory board on a particular item on the agenda may be made to:

Fresenius Medical Care AG  
Attention: Investor Relations  
Else-Kröner-Strasse 1  
61352 Bad Homburg v.d.H., Germany  
Telefax: ++ 49-6172-609-2301  
e-mail: [ir-fms@fmc-ag.de](mailto:ir-fms@fmc-ag.de)

Counter proposals received no later than two weeks before the date of the extraordinary general meeting at this address will be made accessible to other shareholders on our website at [www.fmc-ag.com](http://www.fmc-ag.com) as soon as practicable after receipt. Counter proposals that are sent to any address other than the address set forth above will not be considered.

Hof a.d. Saale, \_\_\_\_\_ 2005

The Management Board

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**WHERE YOU CAN FIND MORE INFORMATION**

We file annual reports on Form 20-F and furnish periodic reports on Form 6-K to the United States Securities and Exchange Commission (the "SEC"). You may read and copy any of these reports at the SEC's public reference room at 450 Fifth Street N.W., Washington, D.C., 20549, U.S.A., and its public reference rooms in New York, New York, U.S.A. and Chicago, Illinois, U.S.A. Please call the SEC at 1-800-SEC-0330 for further information on the public reference rooms. The reports may also be obtained from the website maintained by the SEC at <http://www.sec.gov>, which contains reports and other information regarding registrants that file electronically with the SEC. The New York Stock Exchange currently lists American Depositary Shares representing our ordinary shares and American Depositary Shares representing our preference shares. Our periodic reports, registration statements and other information that we file with the SEC are also available for inspection and copying at the offices of the New York Stock Exchange, 20 Broad Street, New York, New York 10005, U.S.A. Our SEC filings are also available to the public from commercial document retrieval services.

We prepare annual and quarterly reports, which are then distributed to our shareholders. Our annual reports contain financial statements examined and reported upon, with opinions expressed by, our independent auditors. The consolidated financial statements of Fresenius Medical Care AG included in these annual reports are prepared in conformity with U.S. generally accepted accounting principles. Our annual and quarterly reports to our shareholders are posted on our website at [www.fmc-ag.com](http://www.fmc-ag.com). In furnishing our web site address in this information statement/prospectus, however, we do not intend to



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incorporate any information on our website into this information statement/ prospectus, and you should not consider any information on our website to be part of this information statement/ prospectus.

We will also furnish JP Morgan Chase Bank, N.A., the depository for our American Depositary Receipts, with all notices of general meetings of shareholders and other reports and communications that are made generally to our shareholders. The depository, to the extent permitted by law, will arrange for the transmittal to the registered holders of American Depositary Receipts of all notices, reports and communications, together with the governing instruments affecting our shares and any amendments thereto. Such documents will also be available for inspection by registered holders of American Depositary Receipts at the principal office of the depository, presently located at 4 New York Plaza, New York, New York, 10004, U.S.A.

This information statement/ prospectus is a part of a registration statement on Form F-4 that we are filing with the SEC to register the ordinary shares and the preference shares of Fresenius Medical Care KGaA and constitutes a prospectus in addition to being an information statement for the meetings. As allowed by SEC rules, this information statement/ prospectus does not contain all the information included in the registration statement or the exhibits to the registration statement.

The SEC allows us to incorporate by reference information into this information statement/ prospectus, which means that we can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is deemed to be part of this information statement/ prospectus, except for any information superseded by information in, or incorporated by reference in, this information statement/ prospectus. This information statement/ prospectus incorporates by reference the documents set forth below that we have previously filed with or furnished to the SEC. These documents contain important information about our company and its finances.

<b>SEC Filings (File No. 001-14444)</b>	<b>Period/Filing Date</b>
Annual Report on Form 20-F	Fiscal Year ended December 31, 2004 (filed with the SEC March 1, 2005)
Form 6-K Report	January 2005 (furnished to the SEC January 14, 2005)
Form 6-K Report	January 2005 (furnished to the SEC January 25, 2005)
Form 6-K Report	April 2005 (furnished to the SEC April 6, 2005)
Form 6-K Report	April 2005 (furnished to the SEC April 12, 2005)
Form 6-K Report	April 2005 (furnished to the SEC April 21, 2005)
Form 6-K Report	May 2005 (furnished to the SEC May 4, 2005 announcing the definitive merger agreement with Renal Care Group, Inc.)

We may also incorporate by reference some of the reports on Form 6-K that we furnish to the SEC between the date of this information statement/ prospectus and the date of the meetings.

If you are a shareholder, we may have sent you some of the documents incorporated by reference, but you can obtain any of them through us or the SEC. Documents incorporated by reference are available from us without charge, excluding all exhibits unless we have specifically incorporated by reference an exhibit in this information statement/ prospectus. **Shareholders may obtain documents incorporated by reference in this information statement/ prospectus by requesting them in writing or by telephone from the appropriate party at the following address:**

**In North America**

Fresenius Medical Care North America  
 95 Hayden Avenue  
 Lexington, MA 02420  
 Attn: Heinz Schmidt  
 Toll Free: 800-662-1237

**Elsewhere**

Fresenius Medical Care AG  
 Investor Relations  
 Else-Kröner-Strasse 1  
 61352 Bad Homburg v.d.H., Germany  
 Attn: Oliver Maier

Banks & Brokers:

++ 49 6172 609-2661

Banks & Brokers:

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IF YOU WOULD LIKE TO REQUEST DOCUMENTS, INCLUDING ANY DOCUMENTS WE MAY SUBSEQUENTLY FILE WITH THE SEC BEFORE THE SHAREHOLDER MEETINGS, PLEASE DO SO BY , 2005 SO THAT YOU WILL RECEIVE THEM BEFORE THE SHAREHOLDER MEETINGS.

This information statement/ prospectus does not constitute an offer to sell, or a solicitation of an offer to purchase, the securities offered by this information statement/ prospectus, or the solicitation of a proxy, in any jurisdiction to or from any person to whom or from whom it is unlawful to make such offer, solicitation of an offer or proxy solicitation in such jurisdiction. Neither the delivery of this information statement/ prospectus nor any distribution of securities pursuant to this information statement/ prospectus will, under any circumstances, create any implication that there has been no change in the information set forth or incorporated into this information statement/ prospectus by reference or in our affairs since the date of this information statement/ prospectus.

You should rely only on the information contained or incorporated by reference in this information statement/ prospectus to vote on the matters presented to you for your approval. We have not authorized anyone to provide you with information that is different from what is contained in this information statement/ prospectus. This information statement/ prospectus is dated , 2005. You should not assume that the information contained in this information statement/ prospectus is accurate as of any date other than this date, and neither the mailing of the information statement/ prospectus to shareholders nor the issuance of securities will create any implication to the contrary.

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**SUMMARY**

**The Company**

Fresenius Medical Care AG is a stock corporation (*Aktiengesellschaft*) organized under the laws of Germany. It was incorporated on August 5, 1996. Fresenius Medical Care AG is registered with the commercial register of the local court (*Amtsgericht*) of Hof an der Saale, Germany, under HRB 2460. Our registered office (*Sitz*) is Hof an der Saale, Germany. Our business address is Else-Kröner-Strasse 1, 61352 Bad Homburg v.d.H., Germany, telephone ++49-6172-609-0.

We are the world's largest kidney dialysis company engaged in both providing dialysis care and manufacturing dialysis products, based on publicly reported revenues and patients treated. We provide dialysis treatment to over 125,900 patients in 1,630 clinics worldwide located in 26 countries. In the U.S. we also perform clinical laboratory testing and provide inpatient dialysis services, therapeutic apheresis, hemoperfusion and other services under contract to hospitals. We also develop and manufacture a complete range of equipment, systems and disposable products, which we sell to customers in over 100 countries. We use the insight we gain when treating patients in developing new and improved products. We believe that our size, our activities in both dialysis care and dialysis products and our concentration in specific geographic areas allow us to operate more cost-effectively than many of our competitors. For the year ended December 31, 2004, we had net revenues of \$6.2 billion, an increase of 13% over 2003 revenues. We derived 68% of our revenues in 2004 from our North America operations and 32% from our International operations.

In this information statement/prospectus, (1) the Company refers to both Fresenius Medical Care AG prior to the transformation and Fresenius Medical Care KGaA after the transformation; (2) we and our refers either to the Company or the Company and its subsidiaries on a consolidated basis both before and after the transformation, as the context requires; and (3) Management AG refers to a newly formed entity that will serve as the general partner of Fresenius Medical Care KGaA and that is wholly owned by Fresenius AG.

**Recent Developments**

On May 3, 2005, we entered into a definitive merger agreement with Renal Care Group, Inc. (RCG) to acquire RCG for an all cash purchase price of approximately \$3.5 billion. At December 31, 2004, RCG provided dialysis and ancillary services to over 29,700 patients through 418 outpatient dialysis centers in 33 states, in addition to providing acute dialysis services to more than 200 hospitals. Completion of the acquisition is subject to governmental approvals (including termination or expiration of the waiting period under the Hart-Scott Rodino Antitrust Improvements Act of 1976, as amended), third-party consents, and approval by RCG's stockholders. We expect to complete the acquisition during the second half of 2005 but we cannot offer any assurance that the acquisition will be completed during this time or that it will be completed at all.

In connection with the proposed acquisition, we have entered into a commitment letter pursuant to which Bank of America, N.A. and Deutsche Bank AG New York Branch have agreed, subject to certain conditions, to underwrite an aggregate of \$5.0 billion in principal amount of term and revolving loans to be syndicated to other financial institutions. See Recent Developments Acquisition of Renal Care Group, Inc. and New Senior Credit Facility.

On May 9, 2005, the closing price per share in euro for our ordinary shares was 63.37 and the closing price per share in euro for our preference shares was 50.00, as reported by the Frankfurt Stock Exchange Xetra system. On the same date, the closing price per American Depositary Share, or ADS, for ADSs representing our ordinary shares was \$27.38, as reported by the New York Stock Exchange, and the closing price per ADS for ADSs representing our preference shares was \$21.00, as reported by the New York Stock Exchange. Three ordinary ADSs represent one ordinary share, and three preference ADSs represent one preference share.

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**The Meetings**

All of our shareholders are invited to attend an extraordinary general meeting at \_\_\_\_\_ on \_\_\_\_\_, \_\_\_\_\_, 2005 at which our ordinary shareholders will be entitled to vote on proposals relating to the conversion of our outstanding preference shares into ordinary shares, the creation of authorized capital and the transformation of the Company's legal form from a stock corporation to a partnership limited by shares under German law, a KGaA, to be called Fresenius Medical Care AG & Co. KGaA, with Fresenius Medical Care Management AG, a subsidiary of Fresenius AG, as the sole general partner.

Each ordinary share will be entitled to one (1) vote at the extraordinary general meeting. The vote required to approve each proposal is 75% of the ordinary shares present at the meeting. Fresenius AG, which holds approximately 50.8% of our outstanding ordinary shares, intends to vote in favor of each of the proposals. Each of the members of our supervisory board and our management board, none of whom beneficially owns more than 1% of our outstanding ordinary shares, also intends to vote any shares they hold in favor of each of the proposals.

A separate meeting of our preference shareholders will be held on the same day at which our preference shareholders will be entitled to vote on proposals relating to the conversion. Each preference share is entitled to one (1) vote at the separate meeting. The vote required to approve each proposal is 75% of the preference shares present at the meeting. Each of the members of our supervisory board and our management board, none of whom beneficially owns more than 1% of our outstanding preference shares, intends to vote any shares they hold in favor of each of the proposals. If our preference shareholders do not approve the conversion, we may nevertheless determine to complete the transformation.

For more information regarding the proposals and the meetings, see [The Meetings](#).

**The Conversion and Transformation**

If the transformation of legal form is approved, the Company's legal form will be changed from an AG, which is a German stock corporation, to a KGaA, which is a German partnership limited by shares. The Company as a KGaA will be the same legal entity under German law, rather than a successor to the stock corporation. Fresenius Medical Care Management AG, a subsidiary of Fresenius AG, will be the general partner of the Company. We intend that the general partner will have substantially the same provisions in its articles of association concerning the relationship between the management board and the supervisory board of the general partner and substantially the same rules of procedure for the general partner's executive bodies as are currently in effect for Fresenius Medical Care AG. In this information statement/prospectus, we refer to this transformation of our legal form as the [transformation](#). For more information, see [The Meetings](#), [The Conversion and Transformation Proposals](#), [The Conversion and Transformation Structure of the Conversion and Transformation](#) and [The Legal Structure of Fresenius Medical Care KGaA](#).

We intend to offer our preference shareholders the opportunity to convert their preference shares into ordinary shares on a one-to-one basis pursuant to a conversion offer to be conducted after the shareholder meetings. The right to convert preference shares into ordinary shares will be available only during a specific period. The details of the conversion process will be determined by the management board with the approval of the supervisory board, and announced with the conversion period. Preference shareholders who decide to convert their shares will be required to pay a premium of 12.25 per preference share and will lose their preferential dividend rights. In this information statement/prospectus, we refer to this conversion of our preference shares into ordinary shares as the [conversion](#).

We believe that the conversion and transformation will increase our financial and operative flexibility by increasing the number of publicly held ordinary shares (which we refer to as our [free float](#)), which we expect will increase the liquidity of our ordinary shares and strengthen our position on the DAX, the index of 30 major German stocks, while still maintaining our existing corporate governance. We also believe that our increased liquidity will allow us to attract equity financing so that we may pursue our

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long-term growth objectives and strategies, which will help us maintain and improve our position as a leading global integrated provider of dialysis products and services.

### **Description of the Securities**

After the conversion and the transformation, holders of our ordinary shares and ADSs representing our ordinary shares will continue to have substantially similar rights, but will experience a dilution of their voting rights due to the increase in the number of outstanding ordinary shares. Preference shareholders who choose to convert their shares into ordinary shares will no longer have preference rights. Preference shareholders who do not choose to convert their shares will retain their preference rights but may suffer financial disadvantages due to the overall reduced liquidity of their preference shares. **We cannot assure holders of preference ADSs that we will be able to maintain an American Depositary Receipt facility or a New York Stock Exchange Listing for the preference shares after the conversion and the transformation.** For more information, see Description of the Shares of Fresenius Medical Care KGaA, Descriptions of American Depositary Receipts, Description of the Proposed Pooling Arrangements, Effects on and Comparison of Shareholder Rights and Stock Exchange Listing and Trading.

### **Certain Tax Consequences**

Neither we nor our shareholders will recognize gain or loss as a result of the transformation under either German or United States federal tax law. For more information, see Certain Tax Consequences.

### **Interests of Certain Persons in the Conversion and Transformation**

Currently, Fresenius AG owns approximately 50.8% of our ordinary shares and, therefore, controls the management of the Company. Fresenius AG also consolidates the Company in its financial statements. In connection with the transformation, Fresenius Medical Care Management AG, a wholly-owned subsidiary of Fresenius AG, will assume the management of the Company through its position as general partner. Therefore, Fresenius AG will continue to control the Company and consolidate the Company in its financial statements after the transformation, notwithstanding the likely loss of its majority ownership of our ordinary shares due to the increased number of outstanding ordinary shares expected as a result of the conversion.

The members of our management board will become the members of the management board of the general partner, and will enter into service contracts and compensation arrangements on the same terms after the transformation as are currently in effect. Most or all of the members of our supervisory board will become the members of the general partner's supervisory board and (other than Dr. Ulf M. Schneider), will also become the members of the supervisory board of the Company in its KGaA form after the transformation. For more information, see Interests of Certain Persons in the Conversion and Transformation.

### **Stock Exchange Listing and Trading**

The ordinary shares issued in connection with the conversion of our preference shares into ordinary shares will, together with the other ordinary and preference shares of the Company in its new legal form as a KGaA, be admitted to the Frankfurt Stock Exchange on the official market. The conversion and transformation will not affect the Company's listing section, Prime Standard. The Company will continue to be included in the electronic trading system Xetra and, if the relevant criteria are fulfilled, on the German Index DAX.

We intend to apply to list ADSs representing ordinary shares and preference shares in Fresenius Medical Care KGaA on the New York Stock Exchange. However, a U.S. trading market for the preference ADSs may cease to be available if the preference ADSs are not eligible for New York Stock Exchange listing due to a substantial decrease in the number of outstanding preference shares, if the depositary resigns as depositary for the preference shares and we are unable to designate a replacement depositary, or if we otherwise terminate the preference share deposit agreement.

**We cannot assure holders**



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**of preference ADSs that we will be able to maintain an American Depositary Receipt facility for our preference shares or that preference ADSs will continue to be eligible for listing on the New York Stock Exchange after the conversion and transformation.** For more information, see [Stock Exchange Listing and Trading](#).

**Appraisal Rights**

The holders of preference shares and ordinary shares do not have any appraisal rights in connection with the transformation under German law. The German Stock Corporation Act provides expressly that no offer of compensation to shareholders is required in connection with a transformation from a stock corporation (AG) to a partnership limited by shares (KGaA). Under German law, in principle, an action may be brought to set aside a resolution of the shareholders' general meeting based on a violation of law or the articles of association. Any such action must be commenced within one month after adoption of the resolution.

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**RISK FACTORS**

*You should carefully consider the risk factors set forth below, as well as the other information contained in this information statement/prospectus, any supplement to this information statement/prospectus and the documents incorporated by reference in this information statement/prospectus. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial may also materially and adversely affect our business operations.*

**Risks Relating to Litigation and Regulatory Matters in the U.S.**

***If we do not comply with the many governmental regulations applicable to our business or with the corporate integrity agreement between us and the U.S. government, we could be excluded from government health care reimbursement programs or our authority to conduct business could be terminated, either of which would result in a material decrease in our revenue.***

Our operations in both our provider business and our products business are subject to extensive governmental regulation in virtually every country in which we operate. The applicable regulations, which differ from country to country, relate in general to the safety and efficacy of medical products and supplies, the operation of manufacturing facilities, laboratories and dialysis clinics, the rate of, and accurate reporting and billing for, government and third-party reimbursement, and compensation of medical directors and other financial arrangements with physicians and other referral sources. We are also subject to other laws of general applicability, including antitrust laws.

Fresenius Medical Care Holdings, Inc. ( FMCH ), our North American subsidiary, is party to a corporate integrity agreement with the U.S. government. This agreement requires that FMCH staff and maintain a comprehensive compliance program, including a written code of conduct, training programs, regulatory compliance policies and procedures, annual audits and periodic reporting to the government. The corporate integrity agreement permits the U.S. government to exclude FMCH and its subsidiaries from participation in U.S. federal health care programs if there is a material breach of the agreement that FMCH does not cure within thirty days after FMCH receives written notice of the breach. We derive approximately 38% of our consolidated revenue from U.S. federal health care benefit programs. Consequently, if FMCH commits a material breach of the corporate integrity agreement that results in the exclusion of FMCH or its subsidiaries from continued participation in those programs, it would significantly decrease our revenue and have a material adverse effect on our business, financial condition and results of operations.

While we rely upon our management structure, regulatory and legal resources, and the effective operation of our compliance program to direct, manage and monitor these activities, if employees, deliberately or inadvertently, fail to adhere to these regulations, then our authority to conduct business could be terminated or our operations could be significantly curtailed. Any such terminations or reductions could materially reduce our revenues with a resulting adverse impact on our business, financial condition and results of operations.

In October 2004, FMCH and its Spectra Renal Management subsidiary received subpoenas from the U.S. Department of Justice, Eastern District of New York, in connection with a civil and criminal investigation, which requires production of a broad range of documents relating to our operations, with specific attention to documents relating to laboratory testing for parathyroid hormone ( PTH ) levels and vitamin D therapies. We are cooperating with the government s requests for information. While we believe that we have complied with applicable laws relating to PTH testing and use of vitamin D therapies, an adverse determination in this investigation could have a material adverse effect on our business, financial condition, and results of operations.

On April 1, 2005, FMCH was served with a subpoena from the office of the United States Attorney for the Eastern District of Missouri in connection with a joint civil and criminal investigation of our company. The subpoena requires production of a broad range of documents relating to the Company s operations, including documents related to, among other things, clinical quality programs, business

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development activities, medical director compensation and physician relations, joint ventures and our anemia management program. The subpoena covers the period from December 1, 1996 through the present. We are unable to predict whether proceedings might be initiated against us, when the investigation might be concluded or what the impact of this joint investigation might be.

***A reduction in U.S. government reimbursement for dialysis care could materially decrease our revenues and operating profit.***

For the twelve months ended December 31, 2004, approximately 38% of our consolidated revenues resulted from Medicare and Medicaid reimbursement. Legislative changes may affect the reimbursement rates for the services we provide, as well as the scope of Medicare and Medicaid coverage. A decrease in Medicare or Medicaid reimbursement rates or covered services could have a material adverse effect on our business, financial condition and results of operations. In December 2003, the Medicare Prescription Drug Modernization and Improvement Act was enacted. For information regarding the effects of this legislation on reimbursement rates, see Business Overview Regulatory and Legal Matters Reimbursement in our Annual Report on Form 20-F for the year ended December 31, 2004 (our 2004 Form 20-F ), which has been incorporated by reference into this information statement/ prospectus.

***A change in reimbursement for or utilization of EPO could materially reduce our revenue and operating profit.***

Reimbursement and revenue from the administration of erythropoietin, or EPO, accounted for approximately 23% of dialysis care revenue in our North America segment for the year ended December 31, 2004. EPO is produced by a single source manufacturer, Amgen Inc. Our current contract with Amgen covers the period from January 1, 2004 to December 31, 2005. A reduction in reimbursement for EPO, a significant change in utilization of EPO, a reduction of the current overfill amount in EPO vials, an interruption of supply or our inability to obtain satisfactory purchase terms for EPO after our current contract expires could reduce our revenues from, or increase our costs in connection with, the administration of EPO, which could materially adversely affect our business, financial condition and results of operations. In July 2004, the Centers for Medicare and Medicaid Services ( CMS ) proposed certain changes with respect to its EPO reimbursement and utilization guidelines. Business Overview Regulatory and Legal Matters Reimbursement in our 2004 Form 20-F.

***Creditors of W.R. Grace & Co. Conn. have asserted claims against us.***

We were formed in 1996 as a result of a series of transactions with W.R. Grace & Co. that we refer to as the merger. At the time of the merger, W.R. Grace & Co.-Conn. had, and continues to have, significant liabilities arising out of product-liability related litigation (including asbestos), pre-merger tax claims and other claims unrelated to its dialysis business. In connection with the merger, W.R. Grace & Co.-Conn. and other Grace entities agreed to indemnify Fresenius Medical Care AG and its subsidiaries against all liabilities of W.R. Grace & Co., whether relating to events occurring before or after the merger, other than liabilities arising from or relating to the operations of National Medical Care, a subsidiary of W.R. Grace & Co. which became our subsidiary in the merger. W.R. Grace & Co. and certain of its subsidiaries filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code (the Grace Chapter 11 Proceedings ) on April 2, 2001.

Pre-merger tax claims or tax claims that would arise if events were to violate the tax-free nature of the merger could ultimately be our obligation. In particular, W.R. Grace & Co. has disclosed in its filings with the SEC that: its tax returns for the 1993 to 1996 tax years are under audit by the Internal Revenue Service (the Service ); W.R. Grace & Co. has received the Service s examination report on tax periods 1993 to 1996; that during those years W.R. Grace & Co. deducted approximately \$122 million in interest attributable to corporate owned life insurance ( COLI ) policy loans; that W.R. Grace & Co. has paid \$21 million of tax and interest related to COLI deductions taken in tax years prior to 1993; that a U.S. District Court ruling has denied interest deductions of a taxpayer in a similar situation. In October 2004, W.R. Grace & Co. obtained bankruptcy court approval to settle its COLI claims with the Service.

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In January 2005, W.R. Grace and Co., FMCH and Sealed Air Corporation executed a settlement agreement with respect to the Service's COLI related claims and other tax claims. On April 14, 2005, W.R. Grace & Co. paid the Service approximately \$90 million in connection with taxes owed for the tax periods 1993 to 1996 pursuant to a bankruptcy court order directing W.R. Grace & Co. to make such payment. Subject to certain representations made by W.R. Grace & Co., the Company and Fresenius AG, W.R. Grace & Co. and certain of its affiliates agreed to indemnify us against this and other pre-merger and merger-related tax liabilities.

Prior to and after the commencement of the Grace Chapter 11 Proceedings, class action complaints were filed against W.R. Grace & Co. and FMCH by plaintiffs claiming to be creditors of W.R. Grace & Co.-Conn., and by the asbestos creditors' committees on behalf of the W.R. Grace & Co. bankruptcy estate in the Grace Chapter 11 Proceedings, alleging among other things that the merger was a fraudulent conveyance, violated the uniform fraudulent transfer act and constituted a conspiracy. All such cases have been stayed and transferred to or are pending before the U.S. District Court as part of the Grace Chapter 11 Proceedings.

In 2003, we reached an agreement with the asbestos creditors' committees and W.R. Grace & Co. in the Grace Chapter 11 Proceedings to settle these fraudulent conveyance and tax claims. The settlement agreement has been approved by the U.S. District Court. The proposed settlement is subject to confirmation of a final plan of reorganization of W.R. Grace & Co. that meets the requirements of the settlement agreement or is otherwise satisfactory to us. If the proposed settlement with the asbestos creditors' committees and W.R. Grace & Co. is not confirmed in such a final plan of reorganization, the claims could be reinstated. If the claims are reinstated and the merger is determined to be a fraudulent transfer and if material damages are proved by the plaintiffs and we are not able to collect, in whole or in part, on the indemnity from any of our indemnitors, a judgment could have a material adverse effect on our business, financial condition and results of operations. We recorded a pre-tax accrual of \$172 million at December 31, 2001 to reflect our estimated exposure for liabilities and expenses related to the Grace Chapter 11 Proceedings. See Note 6 to our consolidated financial statements in our 2004 Form 20-F. For additional information concerning the Grace Chapter 11 Proceedings and the settlement agreement see "Legal Proceedings" in our 2004 Form 20-F.

***As health maintenance organizations and other managed care plans grow, amounts paid for our services and products by non-governmental payors could decrease.***

We obtain a significant portion of our revenues from reimbursement provided by non-governmental third-party payors. Although non-governmental payors generally pay at higher reimbursement rates than governmental payors, managed care plans generally negotiate lower reimbursement rates than indemnity insurance plans. Some managed care plans and indemnity plans also utilize a capitated fee structure or limit reimbursement for ancillary services.

As the managed care industry continues to consolidate, there could be increased pressure to reduce the amounts paid for our services and products. These trends may be accelerated if future changes to the U.S. Medicare ESRD program require private payors to assume a greater percentage of the total cost of care given to dialysis patients over the term of their illness, or if managed care plans otherwise significantly increase their enrollment of renal patients.

If managed care plans reduce reimbursements, our revenues could decrease, and our financial condition and results of operations could be materially adversely affected.

***Proposals for health care reform could decrease our revenues and operating profit.***

Proposals to modify the current health care system in the U.S. to improve access to health care and control its costs are continually being considered by the federal and certain state governments. See "Regulatory and Legal Matters - Reimbursement - U.S." in our 2004 Form 20-F for a discussion of the Medicare Prescription Drug Modernization and Improvement Act of 2003 and proposed changes to CMS's EPO Reimbursement guidelines. We anticipate that the U.S. Congress and state legislatures will continue

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to review and assess alternative health care reforms, and we cannot predict whether these reform proposals will be adopted, when they may be adopted or what impact they may have on us. Any spending decreases or other significant changes in the Medicare program could reduce our revenues and profitability and have a material adverse effect on our business, financial condition and results of operations.

Other countries, especially those in Western Europe, have also considered health care reform proposals and could materially alter their government-sponsored health care programs by reducing reimbursement payments. Any reduction could affect the pricing of our products and the profitability of our services, especially as we expand our international business. This potential development could have a material adverse effect on our business, financial condition and results of operations.

### **Risks Relating to our Business**

#### ***Our competitors proposed combination could foreclose certain business opportunities.***

On December 6, 2004, DaVita Inc. ( DaVita ), the second largest provider of dialysis services in the U.S., agreed to acquire Gambro Healthcare, Inc. ( Gambro Healthcare ), the third largest provider of dialysis services in the U.S., and to purchase a substantial portion of its dialysis product supply requirements from Gambro Healthcare's parent company during the next ten years. These agreements are subject to regulatory review and/or approval, and DaVita announced in February 2005 that it has received a request for additional information regarding the transaction from the United States Federal Trade Commission. If the proposed product supply contract is consummated, DaVita's purchases of our products may decrease substantially. Any such reduction in DaVita's purchases will decrease our product revenues and could result in a material adverse effect on our business, financial condition and results of operations.

#### ***Our growth depends, in part, on our ability to continue to make acquisitions.***

The health care industry has experienced significant consolidation in recent years, particularly in the dialysis services sector. Our ability to make acquisitions depends, in part, on our available financial resources and limitations imposed under our credit agreements. If we make future acquisitions, we may issue ordinary shares of Fresenius Medical Care KGaA that could dilute the holdings of our shareholders, incur debt, assume significant liabilities or create additional expenses relating to intangible assets, any of which might reduce our reported earnings or reduce earnings per share and cause our stock price to decline. In addition, any financing that we might need for future acquisitions might be available to us only on terms that restrict our business. Acquisitions that we complete are also subject to the risks that we might not successfully integrate the acquired businesses or that we might not realize anticipated synergies from the combination. If we are not able to effect acquisitions in the dialysis care business on reasonable terms, there could be an adverse impact on growth in our business and on our results of operations.

On May 3, 2005, we entered into a definitive merger agreement for the acquisition of RCG for an all cash purchase price of approximately \$3.5 billion. The acquisition is subject to approval by the shareholders of RCG and other conditions, including expiration or termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and other regulatory approvals. See Recent Developments. We cannot assure you that we will receive the required antitrust and other regulatory approvals required to consummate this acquisition.

#### ***Our competitors could develop superior technology or impact our product sales.***

We face numerous competitors in both our dialysis services business and our dialysis products business, some of which may possess substantial financial, marketing or research and development resources. Competition could materially adversely affect the future pricing and sale of our products and services. In particular, technological innovation has historically been a significant competitive factor in the dialysis products business. The introduction of new products by competitors could render one or more of our products obsolete.

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We are engaged in both manufacturing dialysis products and providing dialysis services. We compete in the dialysis services business with many customers of our products business. As a result, independent dialysis clinics, those operated by other chains and dialysis centers acquired by other products manufacturers may elect to limit or terminate their purchases of our dialysis products so as to avoid purchasing products manufactured by a competitor. In addition, as consolidation in the dialysis services business continues and other vertically integrated dialysis companies expand, the external market for our dialysis products could be reduced. Possible purchase reductions could decrease our product revenues, with a material adverse effect on our business, financial condition and results of operations.

We also compete with other dialysis products and services companies in seeking selected acquisitions. If we are not able to continue to effect acquisitions in the provider business upon reasonable terms there could be an adverse impact on the growth of our business and our future growth prospects.

***We face products liability and other claims which could result in significant liability.***

Health care companies are subject to claims alleging negligence, products liability, breach of warranty, malpractice and other legal theories that may involve large claims and significant defense costs whether or not liability is ultimately imposed. Health care products may also be subject to recalls. Although product liability claims and recalls have not had a material adverse effect on our businesses in the past, we cannot assure that we will not suffer one or more significant claims or product recalls in the future. Product liability claims or recalls could result in judgments against us or significant compliance costs, which could materially adversely affect our business, financial condition and results of operations.

While we have been able to obtain liability insurance in the past, it is possible that such insurance may not be available in the future either on acceptable terms or at all. A successful claim in excess of the limits of our insurance coverage could have a material adverse effect on our business, results of operations and financial condition. Liability claims, regardless of their merit or eventual outcome, also may have a material adverse effect on our business and reputation, which could in turn reduce our revenues and profitability.

***If physicians and other referral sources cease referring patients to our dialysis clinics or cease purchasing our dialysis products, our revenues would decrease.***

Our dialysis services business is dependent upon patients choosing our clinics as the location for their treatments. Patients may select a clinic based, in whole or in part, on the recommendation of their physician. We believe that physicians and other clinicians typically consider a number of factors when recommending a particular dialysis facility to an end-stage renal disease patient, including, but not limited to, the quality of care at a clinic, the competency of a clinic's staff, convenient scheduling, and a clinic's location and physical condition. Physicians may change their facility recommendations at any time, which may result in the movement of our existing patients to competing clinics, including clinics established by the physicians themselves. At most of our clinics, a relatively small number of physicians account for the referral of all or a significant portion of the patient base. If a significant number of physicians ceased referring their patients to our clinics, this would reduce our dialysis care revenue and could materially adversely affect our overall operations. Our operations are also affected by referrals from hospitals, managed care plans and other sources.

The decision to purchase our dialysis products and other services or competing dialysis products and other services will be made in some instances by medical directors and other referring physicians at our dialysis clinics and by the managing medical personnel and referring physicians at other dialysis clinics, subject to applicable regulatory requirements. A decline in physician recommendations or purchases of our products or ancillary services would reduce our dialysis product and other services revenue, and could materially adversely affect our business, financial condition and results of operations.

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### ***If we are unable to attract and retain skilled medical, technical and engineering personnel, we may be unable to manage our growth or continue our technological development.***

Our continued growth in the provider business will depend upon our ability to attract and retain skilled employees, such as highly skilled nurses and other medical personnel. Competition for those employees is intense and the current nursing shortage in North America has increased our personnel and recruiting costs. Moreover, we believe that future success in the provider business will be significantly dependent on our ability to attract and retain qualified physicians to serve as medical directors of our dialysis clinics.

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

### ***We face additional costs and uncertainties from international operations.***

We intend to expand our international presence. Revenues from international operations are subject to a number of risks, including the following:

Worsening of the economic situation in Latin America;

Fluctuations in exchange rates could adversely affect profitability;

We could face difficulties in enforcing and collecting accounts receivable under some countries' legal systems;

Local regulations could restrict our ability to obtain a direct ownership interest in dialysis clinics or other operations;

Political instability, especially in developing countries, could disrupt our operations;

Some customers and governments could have longer payment cycles, with resulting adverse effects on our cash flow; and

Some countries could impose additional taxes or restrict the import of our products.

Any one or more of these factors, or any difficulty in integrating businesses we acquire into our operations, could increase our costs, reduce our revenues, or disrupt our operations, with possible material adverse effects on our business, financial condition and results of operations.

### **Risks Relating to our Securities**

#### ***Capital markets may be unfamiliar with the KGaA form, which may affect our share price. In addition, if most of our preference shares are converted into ordinary shares, ADSs representing our preference shares may not be eligible for listing on the New York Stock Exchange after the conversion and transformation.***

We are presently aware of only a few companies organized in KGaA form in Germany whose shares are publicly traded, and no such companies' shares are listed on any national stock exchange in the United States or quoted in the Nasdaq Stock Market. The lack of familiarity of capital markets with the KGaA form, plus other factors, such as the lesser degree of shareholder influence on management and the inability to effect a takeover without the consent of Fresenius AG, could adversely affect the price of our shares after the conversion and the transformation. We will apply to list the ordinary shares of Fresenius Medical Care KGaA on the Frankfurt Stock Exchange and we will apply to list ADSs representing such

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ordinary shares on the New York Stock Exchange. We believe that, if most of our preference shares are converted into ordinary shares in the conversion offer that we intend to make immediately prior to completing the transformation, the public float of our ordinary shares and, therefore, the liquidity of our ordinary shares will increase. We cannot give any assurances as to the level of capital market acceptance of our securities after the transformation or the prices at which our ordinary shares or ADSs representing ordinary shares will trade after the conversion and the transformation.

We also intend to apply to list the preference shares of Fresenius Medical Care KGaA on the Frankfurt Stock Exchange and ADSs representing the preference shares of Fresenius Medical Care KGaA on the New York Stock Exchange. However, we expect that, if most of our preference shares are converted into ordinary shares in the conversion offer that we intend to make immediately prior to completing the transformation, the number of preference shares of Fresenius Medical Care KGaA that would remain outstanding after completion of the transformation and the distribution of ownership of those shares would not satisfy the listing criteria of the New York Stock Exchange. Without a New York Stock Exchange or a Nasdaq Stock Market listing, we might not be able to maintain an American Depositary Receipt facility for the preference shares of Fresenius Medical Care KGaA. In addition, if substantially all of the preference shares are converted, we may terminate the deposit agreement for the preference shares, or the depository may resign due to the substantially reduced compensation it is likely to receive for its services in such circumstances and we may not be able to find a suitable replacement. If there is a high acceptance rate of the conversion offer, any public market that may be available for the preference shares of Fresenius Medical Care KGaA after the transformation is likely to be limited and highly illiquid.

***Our significant indebtedness may limit our ability to pay dividends or implement certain elements of our business strategy.***

We have a substantial amount of debt. As of December 31, 2004, our total consolidated liabilities were \$4.33 billion, including obligations with respect to all our trust preferred securities of approximately \$1.28 billion, our total consolidated assets were \$7.96 billion and our shareholders' equity was \$3.63 billion. If we complete the acquisition of RCG (see "Recent Developments"), on a pro forma basis our total consolidated liabilities will increase to approximately \$8.59 billion and our total consolidated assets to approximately \$12.29 billion. Our substantial level of debt and the higher level of debt to be incurred in connection with the RCG acquisition present the risk that we might not generate sufficient cash to service our indebtedness or that our leveraged capital structure could limit our ability to finance acquisitions and develop additional projects, to compete effectively or to operate successfully under adverse economic conditions.

Our senior credit agreement and the indentures relating to our trust preferred securities include covenants that require us to maintain certain financial ratios or meet other financial tests. Under our senior credit agreement, we are obligated to maintain a minimum consolidated net worth and a minimum consolidated interest coverage ratio (ratio of consolidated earnings before interest, taxes, depreciation and amortization (EBITDA) to consolidated net interest expense) and a certain consolidated leverage ratio (ratio of consolidated funded debt to EBITDA).

Our senior credit agreement and our indentures include other covenants which, among other things, restrict or have the effect of restricting our ability to dispose of assets, incur debt, pay dividends, create liens or make capital expenditures, investments or acquisitions. These covenants may otherwise limit our activities. The breach of any of the covenants could result in a default under the credit agreement or the indentures, which could, in turn, create additional defaults under the agreements relating to our other long-term indebtedness.

In connection with our proposed acquisition of RCG, we will enter into a new credit agreement to refinance outstanding indebtedness under our existing senior credit facility, to pay the purchase price and related expenses for the acquisition of RCG, and for working capital. For additional information with respect to the anticipated terms of the new credit agreement, including the restrictive covenants to be included in that agreement, see "Recent Developments - New Senior Credit Facility."



**Table of Contents*****Fresenius AG will own 100% of the general partner of the Company after the transformation and will continue to be able to control our management and affairs.***

Fresenius AG currently holds approximately 50.8% of our voting securities. Accordingly, Fresenius AG currently possesses the ability to elect the members of the supervisory board (*Aufsichtsrat*) of the Company and, through its voting power, to approve many actions requiring the vote of the shareholders of the Company. This controlling ownership has the effect of, among other things, preventing a change in control and precluding a declaration or payment of dividends without the consent of Fresenius AG.

After the transformation, Fresenius AG will no longer possess a majority of the outstanding ordinary shares with voting power of the Company and will be precluded from voting on certain matters that will be submitted to the shareholders of the Company. See *Effects on and Comparison of Shareholder Rights*. However, Fresenius AG will own 100% of the outstanding shares of the general partner of the Company and will have the sole right to elect the supervisory board of the general partner which, in turn, will elect the management board of the general partner. The management board of the general partner will be responsible for the management of the Company, but the actions and decisions of the general partner's management board will be reviewable only by the supervisory board of the general partner. However, actions of the management board that currently require the consent or approval of the supervisory board of Fresenius Medical Care AG, elected by all of the shareholders, will require only the approval of the supervisory board of the general partner. Accordingly, through its ownership of the general partner, Fresenius AG will be able to exercise substantially the same degree of control over the management and policies of Fresenius Medical Care KGaA as it currently exercises over Fresenius Medical Care AG, notwithstanding that it will no longer own a majority of the outstanding voting shares.

***Because we are not organized under U.S. law, we are subject to certain less detailed disclosure requirements under U.S. federal securities laws.***

Under pooling agreements that we have entered into for the benefit of minority holders of our ordinary shares and holders of our preference shares (including, in each case, holders of American Depositary Receipts representing beneficial ownership of such shares), we have agreed to file quarterly reports with the SEC, to prepare annual and quarterly financial statements in accordance with U.S. generally accepted accounting principles, and to file information with the SEC with respect to annual and general meetings of our shareholders. These pooling agreements also require that the supervisory board of Fresenius Medical Care AG include at least two members who do not have any substantial business or professional relationship with Fresenius AG and require the consent of those independent directors to certain transactions between us and Fresenius AG and its affiliates. We intend to enter into similar arrangements with Fresenius AG in connection with the transformation, including requirements that the supervisory board of the general partner include independent directors.

We are a foreign private issuer, as defined in the SEC's regulations, and consequently we are not subject to all of the same disclosure requirements applicable to domestic companies. We are exempt from the SEC's proxy rules, and our annual reports contain less detailed disclosure than reports of domestic issuers regarding such matters as management, executive compensation and outstanding options, beneficial ownership of our securities and certain related party transactions. Also, our officers, directors and beneficial owners of more than 10% of our equity securities are exempt from the reporting requirements and short-swing profit recovery provisions of Section 16 of the Securities Exchange Act of 1934. We are not obligated to comply with the Commission's rules regarding internal control over financial reporting until 2006 and we are also generally exempt from most of the governance rule revisions recently adopted by the New York Stock Exchange, other than the obligation to maintain an audit committee in accordance with Rule 10A-3 under the Securities Exchange Act of 1934, as amended. These limits on available information about our company and exemptions from many governance rules applicable to domestic issuers may adversely affect the market prices for our securities.

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**RECENT DEVELOPMENTS**

**Acquisition of Renal Care Group, Inc.**

On May 3, 2005, we entered into a definitive merger agreement for the acquisition of RCG for an all cash purchase price of approximately \$3.5 billion. At December 31, 2004, RCG provided dialysis and ancillary services to over 29,700 patients through 418 outpatient dialysis centers in 33 states, in addition to providing acute dialysis services to more than 200 hospitals. Completion of the acquisition is subject to governmental approvals (including termination or expiration of the waiting period under the Hart-Scott Rodino Antitrust Improvements Act of 1976, as amended), third-party consents, and approval by RCG's stockholders. We expect to complete the acquisition during the second half of 2005 but we cannot offer any assurance that the acquisition will be completed during this time or that it will be completed at all.

**New Senior Credit Facility**

In connection with our proposed acquisition of RCG, we have entered into a commitment letter pursuant to which Bank of America, N.A. ( BofA ) and Deutsche Bank AG New York Branch ( DB ) have agreed, subject to the satisfaction of certain conditions, to underwrite an aggregate of \$5.0 billion in principal amount of term and revolving loans (the Senior Credit Facilities ) to be syndicated to other financial institutions by Banc of America Securities LLC and Deutsche Bank Securities Inc., as joint lead arrangers and joint book running managers, and BofA has agreed to act as administrative agent. The loans under the Senior Credit Facilities will be available to us, among other things, to pay the purchase price and related expenses for the acquisition of RCG, to refinance the outstanding indebtedness under our existing senior credit facility and certain indebtedness of RCG, and to utilize for working capital purposes. The Senior Credit Facilities will consist of a 5-year \$1.0 billion revolving credit facility, a 5-year \$1.5 billion term loan A facility, and a 7-year \$2.5 billion term loan B facility. Interest on the Senior Credit Facilities will be at the option of the borrowers at a rate equal to either (i) LIBOR plus an applicable margin, or (ii) the higher of BofA's prime rate or the Federal Funds rate plus 0.5% plus the applicable margin. The applicable margin is variable and depends on the consolidated leverage ratio of the borrowers.

The Senior Credit Facilities will include financial covenants that require us to maintain a certain consolidated leverage ratio and a certain consolidated fixed charge coverage ratio. The Senior Credit Facilities will also include covenants that are substantially the same as those under our existing senior credit facility, with modifications as required in the context of the transaction. Among other covenants, there will be limitations on liens, mergers, consolidations, sale of assets, incurrence of debt and capital expenditures, prepayment of certain other debt, investments and acquisitions, and transactions with affiliates.

The Senior Credit Facilities will be guaranteed by the Company and FMCH and certain of their respective subsidiaries and secured by pledges of the stock of certain of the Company's material subsidiaries. The borrowers and guarantors under the Senior Credit Facilities will provide liens on substantially all of their personal property and material real property if the non-credit enhanced senior secured debt rating of the borrowers falls below a certain level, to the extent a grant of security interests is determined appropriate by a cost-benefit analysis.

The closing of the Senior Credit Facilities will be subject, among other things, to the negotiation and execution of definitive documents, the non-occurrence of a material adverse effect in relation to RCG, and the refinancing of the indebtedness under our existing senior credit facility and certain indebtedness of RCG. DB and BofA also have the right to approve any material modification to the merger agreement and any waiver of any material conditions precedent under that agreement. The commitment letter for the Senior Credit Facilities expressly permits us to consummate the conversion and the transformation. However, completion of the conversion and the transformation while our existing credit facility is in effect could require that we obtain the consent of the lenders under that facility.

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**CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING STATEMENTS**

This information statement/ prospectus including the information incorporated by reference contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, which are based upon our current expectations, assumptions, estimates and projections about us and our industry that address, among other things:

Our business development, operating development and financial condition;

Our expectations of growth in the patient population regarding renal dialysis products and services;

Our ability to remain competitive in the markets for our products and services;

The effects of regulatory developments, legal and tax proceedings and any resolution of government investigations into our business;

Changes in government reimbursement policies and those of private payors;

Changes in pharmaceutical administration patterns or reimbursement policies;

Our ability to develop and maintain additional sources of financing; and

Other statements of our expectations, beliefs, future plans and strategies, anticipated development and other matters that are not historical facts.

When used in this information statement/ prospectus, the words *expects*, *anticipates*, *intends*, *plans*, *believes*, *seeks*, *estimates* and similar expressions are generally intended to identify forward-looking statements. Although we believe that the expectations reflected in such forward-looking statements are reasonable, forward-looking statements are inherently subject to risks and uncertainties, many of which cannot be predicted with accuracy and some of which might not even be anticipated. Future events and actual results, financial and otherwise, could differ materially from those set forth in or contemplated by the forward-looking statements contained elsewhere in this information statement/ prospectus. These risks and uncertainties include: general economic, currency exchange and other market conditions, litigation and regulatory compliance risks, changes in government reimbursement for our dialysis care and pharmaceuticals, the investigations by the United States Attorneys for the Eastern District of Missouri and the Eastern District of New York, and changes to pharmaceutical utilization patterns.

This information statement/ prospectus contains or incorporates by reference patient and other statistical data related to end-stage renal disease and treatment modalities, including estimates regarding the size of the patient population and growth in that population. These data have been included in reports published by organizations such as the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services, the Japanese Society for Dialysis Therapy and the German registry Quasi-Niere. While we believe these surveys and statistical publications to be reliable, we have not independently verified the data or any assumptions on which the estimates they contain are based.

Our business is also subject to other risks and uncertainties that we describe from time to time in our public filings. Developments in any of these areas could cause our results to differ materially from the results that we or others have projected or may project.

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**THE MEETINGS**

**The Extraordinary General Meeting**

An extraordinary general meeting of our shareholders will be held at \_\_\_\_\_ on \_\_\_\_\_, 2005 at \_\_\_\_\_. Each of our shareholders is entitled to attend the extraordinary general meeting although only ordinary shareholders will be entitled to vote. Those shareholders who deposit their shares during normal business hours no later than on \_\_\_\_\_, 2005 with the Company, a notary public in the Federal Republic of Germany, a securities clearing and depository bank, or Dresdner Bank AG and its branches, and keep their shares deposited through the close of the extraordinary general meeting will be entitled to attend the extraordinary general meeting.

In case of deposit with a German notary public or a securities clearing and depository bank, you must submit the certificate to be issued by them to the cash office of the Company no later than on the first workday after the deadline for deposit, i.e. by \_\_\_\_\_, 2005. Shares will be deemed properly deposited if, with the consent of the depository, the shares are blocked in favor of such depository at a credit institution through the close of the extraordinary general meeting.

Shareholders may also exercise their voting rights and/or their rights of attendance at the extraordinary general meeting by engaging a party to act as a proxy for him or her, such as the depository bank, an association of shareholders or another person of his or her choice.

**The Separate Meeting of Preference Shareholders**

A separate meeting of our preference shareholders will be held in the same location immediately following the extraordinary general meeting. The purpose of the separate meeting is to submit to the consideration and approval of the preference shareholders the proposals relating to the conversion of our outstanding preference shares into ordinary shares.

**Votes Required for Approval**

Each ordinary share is entitled to one (1) vote at the extraordinary general meeting. Preference shares are not entitled to vote at the extraordinary general meeting. Each of the proposals on the agenda is being presented as a resolution for which the vote required for approval is 75% of the ordinary shares present at the extraordinary general meeting. Fresenius AG, which owns approximately 50.8% of our ordinary shares, intends to vote its ordinary shares in favor of each of these resolutions.

Each preference share is entitled to one (1) vote at the separate meeting of preference shareholders. Ordinary shares are not entitled to vote at the separate meeting. The conversion requires the approval of 75% of the preference shares present at the separate meeting.

Approval of all of the proposals is a condition to completing both the conversion and transformation. However, if our preference shareholders do not approve the conversion, we may nevertheless determine to complete only the transformation.

**Proxies**

As a special service, shareholders (other than holders of American Depositary Shares) can authorize a party who will be appointed by the Company prior to the general meeting to act as a proxy for them. If a shareholder wishes to nominate such party to act as proxy for him or her at a shareholder meeting, the shareholder must obtain an entrance card to attend the meeting and therefore must deposit his or her shares as described above. Proxies must be transmitted in text form. The necessary documents and information for this proxy procedure will be distributed to shareholders together with the entrance card.

Shareholders who hold American Depositary Shares evidenced by American Depositary Receipts are being furnished, together with this information statement/ prospectus, a form on which they may instruct the depository for the American Depositary Shares with respect to voting their shares at the extraordinary general meeting and the separate meeting of preference shareholders. Holders of American Depositary

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Shares who wish to have their shares voted should complete such request and return it to the depositary in accordance with the instructions accompanying the request.

### **Counter Proposals**

Counter proposals to a proposal of the management board and supervisory board on a particular item on the agenda may be made to:

Fresenius Medical Care AG  
Attention: Investor Relations  
Else-Kröner-Strasse 1  
61352 Bad Homburg v.d.H., Germany  
Telefax: ++49-6172-609-2301  
e-mail: [ir-fms@fmc-ag.de](mailto:ir-fms@fmc-ag.de)

Counter proposals received no later than two weeks before the date of the extraordinary general meeting at this address will be made accessible to other shareholders on [www.fmc-ag.com](http://www.fmc-ag.com) as soon as practicable upon receipt. Counter proposals that are sent to any other address will not be considered.

### **The Conversion and the Transformation Proposals**

The following are the proposals with respect to the conversion of non-voting bearer preference shares (referred to as preference shares ) into voting bearer ordinary shares (referred to as ordinary shares ) and the transformation of the legal form of Fresenius Medical Care AG from a stock corporation into a partnership limited by shares under German law, a *Kommanditgesellschaft auf Aktien* ( KGaA ). Ordinary shareholders will vote on proposals 1 through 4 below at the extraordinary general meeting and preference shareholders will vote on a consent to the ordinary shareholders resolutions regarding proposals 1 and 2 at the separate meeting.

1. *Conversion of Preference Shares into Ordinary Shares.* The management board and the supervisory board propose that the general meeting and thereafter the ordinary shareholders by special resolution in accordance with the German Stock Corporation Act, resolve that:

a) Out of 26,296,086 existing preference shares as of December 31, 2004 up to all of these shares may be converted into ordinary shares. In addition, of the preference shares issued over and above the existing number of preference shares up to the end of the period for conversion, those preference shares that have been deposited with the Company in accordance with b) of this resolution will be converted into ordinary shares. The dividend preference provided by the articles of association to the preference shares to be converted will be cancelled. The right to dividends on the converted preference shares with respect to the Company's profits shall be the same as that for ordinary shares, effective as of January 1, 2005.

b) Only preference shares that are deposited with the Company for conversion within the time period allowed and in accordance with the conditions specified in the conversion offer, together with a conversion declaration and the conversion premium of EUR 12.25 per deposited share will be converted into ordinary shares.

c) The management board is authorized, with the approval of the supervisory board, to determine and announce further details of the conversion process in a conversion offer, including the period for conversion and the conditions of conversion. The period for conversion will be between four and six weeks (i.e., not less than 20 U.S. business days).

d) The supervisory board is authorized to amend the articles of association in accordance with this resolution to reflect the number of ordinary and preference shares after the conversion.

e) The management board is instructed to file the amendment to the articles of association in connection with the conversion of the preference shares into ordinary shares with the commercial

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register only when the management board is satisfied that the transformation of legal form to a KGaA proposed by the management board and supervisory board will also occur.

f) This resolution will be invalid if the amendment to the articles of association described in paragraph e) is not registered with the commercial register prior to the end of the general meeting which resolves on the ratification of the actions of the management board and supervisory board for the 2005 financial year, unless that general meeting renews or confirms the resolution.

The management board has prepared a conversion report on the conversion of the preference shares into ordinary shares. This report is available at the German offices of the Company, Else-Kröner-Strasse 1, 61352 Bad Homburg v.d.H., Germany, for inspection by shareholders. On request, each shareholder will receive a copy of the report free of charge. The report will also be available at the extraordinary general meeting. A copy of this report has also been furnished to the SEC under cover of a report on Form 6-K and is available at the public reference rooms of the SEC.

**THIS INFORMATION STATEMENT/PROSPECTUS IS BEING DISTRIBUTED SOLELY TO ENABLE OUR SHAREHOLDERS TO VOTE AT THE SHAREHOLDER MEETINGS ON THE AMENDMENTS TO OUR ARTICLES OF ASSOCIATION REQUIRED TO PERMIT THE CONVERSION OF OUR PREFERENCE SHARES INTO ORDINARY SHARES AND THE TRANSFORMATION OF THE LEGAL FORM OF THE COMPANY. IT DOES NOT CONSTITUTE AN OFFER TO ISSUE ORDINARY SHARES UPON CONVERSION INTO PREFERENCE SHARES OR A SOLICITATION OF OFFERS TO CONVERT PREFERENCE SHARES INTO ORDINARY SHARES. ANY SUCH OFFER WILL BE MADE BY A SEPARATE PROSPECTUS TO BE DISTRIBUTED AFTER THE SHAREHOLDER MEETINGS.**

2. *Conversion of Interests Held Under the Employee Participation Programs.* In connection with the proposed conversion, we intend to offer employees and members of our management board, as well as employees and members of the management of affiliated companies, that hold convertible bonds or stock options under our employee participation programs the right to receive ordinary shares upon conversion or exercise, rather than preference shares. Our management board and supervisory board propose the following resolutions:

*a) The 1996/1998 Employee Participation Programs*

i) The 1996/1998 Employee Participation Programs approved on September 24, 1996 by the general meeting will be changed as follows as a result of the conversion of our outstanding preference shares into ordinary shares:

We will make an offer to the holders of convertible bonds convertible into preference shares to change a portion of the convertible bonds granted to them out of a tranche of grants of such bonds so that they are convertible into ordinary shares. The number of convertible bonds to be changed is calculated for each tranche of grants by the formula:

Average price of preference shares (EUR 45.82)	×	Number of convertible bonds issued	=	Number of amended convertible bonds
Average price of ordinary shares (EUR 64.21)				

The result will be rounded up or down to whole figures. The remaining, unchanged convertible bonds of each holder will be returned to us at their nominal value.

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The conversion price of the convertible bonds of each tranche will be adjusted according to the following formula:

$$\begin{array}{rclcl}
 \text{Average price of} & & & & \\
 \text{ordinary shares (EUR 64.21)} & & & & \\
 & \times & \text{Old option price for} & = & \text{New option price} \\
 & & \text{relevant tranche} & & \text{for relevant tranche} \\
 \text{Average price of} & & & & \\
 \text{preference shares (EUR 45.82)} & & & & 
 \end{array}$$

The average price on which both calculations will be based will correspond to the weighted average stock exchange price of the past three months in the final auction in the Xetra trading system of the Deutsche Börse AG through and including May 3, 2005, the day before the date of the Company's first announcement of the conversion and transformation of legal form, and will be EUR 64.21 for the ordinary shares and EUR 45.82 for the preference shares.

Holders of convertible bonds will be able to accept our conversion and adjustment offer only for all convertible bonds they hold.

If holders of convertible bonds do not consent to the adjustment, their bonds will continue to be convertible into preference shares and the conversion price will not change.

The management board is authorized, with the consent of the supervisory board, to specify details of the conversion process.

ii) The conditional capital of the Company under our articles of association will be adjusted in accordance with the above resolution to ordinary shares and will read as follows:

The capital of the Company is conditionally increased by up to Euro 5,628,725.76 (in words: five million six hundred twenty-eight thousand seven hundred twenty-five Euro and seventy-six Euro cents) by the issue of up to 2,198,721 (in words: two million, one hundred ninety-eight thousand seven hundred twenty-one) new non-voting bearer preference shares and by up to 0 new bearer ordinary shares. The conditional capital increase will be implemented only to the extent that, in accordance with the employee participation program approved by the general meeting on September 24, 1996, convertible bonds relating to non-par value bearer shares have been issued and the holders of convertible bonds exercise their right of conversion. The new non-voting bearer preference shares and bearer ordinary shares shall participate in profits from the beginning of the financial year in which they arise by exercise of the right of conversion.

iii) The supervisory board is authorized to amend our articles of association consistent with this resolution.

*b) The 1998 Employee Participation Program*

i) The 1998 Employee Participation Program approved on June 10, 1998 and modified on May 30, 2000, will be changed as follows as a result of the proposed conversion of our outstanding preference shares into ordinary shares:

We will make an offer to the holders of stock options to change a portion of the stock options granted to them out of a tranche of grants of such options exercisable to acquire

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preference shares so that they are exercisable to acquire ordinary shares. The number of stock options to be changed will be calculated for each tranche by the formula:

$$\begin{array}{l} \text{Average price of} \\ \text{preference shares (EUR 45.82)} \end{array} \times \begin{array}{l} \text{Number of} \\ \text{options issued} \end{array} = \begin{array}{l} \text{Number of changed} \\ \text{options} \end{array}$$

$$\begin{array}{l} \text{Average price of} \\ \text{ordinary shares (EUR 64.21)} \end{array}$$

The result will be rounded up or down to whole figures. The remaining, unchanged stock options of each holder will be cancelled.

The exercise price for the options will be adjusted according to the following formula:

$$\begin{array}{l} \text{Average price of} \\ \text{ordinary shares (EUR 64.21)} \end{array} \times \begin{array}{l} \text{Old option price} \\ \text{for relevant} \\ \text{tranche} \end{array} = \begin{array}{l} \text{New option price} \\ \text{for relevant tranche} \end{array}$$

$$\begin{array}{l} \text{Average price of} \\ \text{preference shares (EUR 45.82)} \end{array}$$

The average price on which both calculations will be based will correspond to the weighted average stock exchange price of the past three months in the final auction in the Xetra trading system of the Deutsche Börse AG through and including May 3, 2005, the day before the date of our first announcement of the conversion and transformation of legal form, and shall be EUR 64.21 for the ordinary shares and EUR 45.82 for the preference shares.

The performance target under the option plan fixed in the general meeting resolution of June 10, 1998 will not change.

Holder of stock options will be able to accept our conversion and adjustment offer only for all options they hold.

If holders of stock options do not consent to the adjustment, their options will continue to be exercisable to acquire preference shares and the exercise price will not change.

The management board is authorized, with the consent of the supervisory board, to specify details of the adjustment process.

ii) Our conditional capital under our articles of association will be adjusted, in accordance with the above resolution, to ordinary shares and will now read as follows:

The capital of the Company is conditionally increased by up to Euro 2,848,235.52 (in words: two million eight hundred forty-eight thousand two hundred thirty-five Euro and fifty-two Euro cents) by the issue of up to 1,112,592 (in words: one million one hundred twelve thousand five hundred ninety-two) new non-voting bearer preference shares and by up to 0 new bearer ordinary shares. The conditional capital increase will be implemented only to the extent that, in accordance with the share option program approved by the general meetings of June 10, 1998 and May 30, 2000, share options relating to non-par value bearer shares have been issued and the holders exercise their options. The new non-voting bearer preference shares and bearer ordinary shares shall participate in profits from the beginning of the financial year in which they are issued.

iii) The supervisory board is authorized to amend the articles of association consistent with this resolution.



*c) The 2001 Employee Participation Program*

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i) The 2001 Employee Participation Program approved on May 23, 2001 will be changed as follows as a result of the proposed conversion of our outstanding preference shares into ordinary shares:

We will make an offer to the holders of convertible bonds convertible into preference shares to change a portion of the convertible bonds granted to them out of a tranche of grants of such bonds so that they are convertible into ordinary shares. The number of convertible bonds to be changed will be calculated for each tranche by the formula:

$$\begin{array}{rclcl} \text{Average price of} & & & & \\ \text{preference shares (EUR 45.82)} & & & & \\ & \times & \text{Number of} & = & \text{Number of} \\ & & \text{convertible} & & \text{amended} \\ \text{Average price of} & & \text{bonds issued} & & \text{convertible bonds} \\ \text{ordinary shares (EUR 64.21)} & & & & \end{array}$$

The result will be rounded up or down to whole figures. The remaining, unchanged convertible bonds of each holder will be returned to us at their nominal value.

The price at which the conversion right may be exercised will be adjusted according to the following formula:

$$\begin{array}{rclcl} \text{Average price of} & & & & \\ \text{ordinary shares (EUR 64.21)} & & & & \\ & \times & \text{Old} & = & \text{New option price} \\ \text{Average price of} & & \text{option price for} & & \text{for relevant tranche} \\ \text{preference shares (EUR 45.82)} & & \text{relevant tranche} & & \end{array}$$

The average price on which both calculations are to be based will correspond to the weighted average stock exchange price of the past three months in the final auction in the Xetra trading system of the Deutsche Börse AG through and including May 3, 2005, the day before the date of our first announcement of the conversion and transformation of legal form, and shall therefore be EUR 64.21 for the ordinary shares and EUR 45.82 for the preference shares.

The performance target which the general meeting resolution of May 23, 2001 set for the convertible bonds will, for converted bonds, from the day of our first announcement of the conversion and transformation of legal form (May 4, 2005), refer to ordinary shares. Any partial achievement of the target in relation to preference shares will be taken into account up to the day of the announcement.

Holders of convertible bonds will be able to accept our conversion and adjustment offer only for all convertible bonds that they hold.

If holders of convertible bonds do not consent to the adjustment, their bonds will continue to be convertible into preference shares, the conversion price will not change and the performance targets set by the resolution of May 23, 2001 will not change.

The management board is authorized, with the consent of the supervisory board, to specify details of the conversion process.

ii) Our conditional capital under our articles of association will be adjusted, in accordance with the above resolution to ordinary shares and will now read as follows:

The capital of the Company is conditionally increased by up to Euro 10,215,170.56 (in words: ten million two hundred fifteen thousand one hundred seventy Euro and fifty-six Euro cents) by the issue of up to

3,990,301 (in words: three million nine hundred ninety thousand

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three hundred one) new non-voting bearer preference shares and by up to 0 new bearer ordinary shares. The conditional capital increase will be implemented only to the extent that, in accordance with the international employee participation program approved by the general meeting of May 23, 2001, convertible bonds relating to non-par value bearer shares have been issued and the holders of convertible bonds exercise their right of conversion. The new non-voting bearer preference shares and bearer ordinary shares shall participate in profits from the beginning of the financial year in which they arise by exercise of the right of conversion.

iii) The supervisory board is authorized to amend our articles of association consistent with this resolution.

d) The management board is instructed to file amendments reflecting the new version of the articles of association with the commercial register only when the management board is satisfied that the transformation of legal form to a KGaA proposed by the management board and supervisory board will occur.

3. *The Creation of Authorized Capital.* Our articles of association currently provide for Authorized Capital I and Authorized Capital II, which authorize the management board with the approval of the supervisory board, to increase the share capital by up to Euro 30,720,000.00 by issuing new preference shares for cash (Authorized Capital I) and up to Euro 20,480,000.00 by the issue of preference shares for cash and/or contributions in kind (Authorized Capital II). We anticipate that after the conversion and transformation, we will raise equity capital by issuing ordinary shares. Therefore, Authorized Capital I and Authorized Capital II, which provide for the issuance of new preference shares, will no longer be appropriate, and the management board and supervisory board propose canceling the existing Authorized Capital I and Authorized Capital II and replacing them with the following resolutions, which provide for the issuance of new ordinary shares:

a) A new Authorized Capital I in the articles of association will be created as set forth below:

The management board is authorized, with the approval of the supervisory board, to increase, on one or more occasions during the period ending \_\_\_\_\_, 2010, the share capital of the Company by up to a total of Euro 35,000,000.00 for cash by the issue of new ordinary shares (Authorized Capital I).

The number of shares must be increased in the same proportion as the capital.

The management board is further authorized, with the approval of the supervisory board, to decide on the exclusion of shareholders' pre-emption rights.

Exclusion of pre-emption rights is permissible, however, only for fractional amounts.

The new shares may also be taken up by credit institutions to be specified by the management board, with the obligation to offer them to our shareholders (indirect pre-emption rights).

The management board is further authorized, with the approval of the supervisory board, to determine the further details of the implementation of the capital increase out of Authorized Capital I.

The supervisory board is authorized to amend the articles of association after complete or partial implementation of a capital increase out of Authorized Capital I or after the expiry of the authorized period of in accordance with the amount of the capital increase out of Authorized Capital I.

Our articles of association will be amended to reflect the points set forth above and will now read as follows:

The management board is authorized, in the period up to \_\_\_\_\_, 2010, with the approval of the supervisory board, to increase, on one or more occasions, the capital of the company by

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up to a total of Euro 35,000,000.00 (thirty five million Euro) for cash by the issue of new ordinary bearer shares (Authorized Capital I). The number of shares must increase in the same proportion as the capital. The management board is further authorized, with the approval of the supervisory board, to decide on the exclusion of shareholders' pre-emption rights. Exclusion of pre-emption rights is admissible, however, only for fractional amounts. The new shares may also be taken up by credit institutions to be specified by the management board, with the obligation to offer them to the shareholders (indirect rights). The management board is further authorized, with the approval of the supervisory board, to determine the further details of the implementation of the capital increase out of Authorized Capital I. The supervisory board is authorized to amend the articles of association after complete or partial implementation of the capital increase out of Authorized Capital I or after the expiry of the authorized period in accordance with the amount of the capital increase out of Authorized Capital I.

b) A new Authorized Capital II in our articles of association will be created as set forth below:

The management board is authorized, with the approval of the supervisory board, to increase, on one or more occasions during the period ending \_\_\_\_\_, 2010, the share capital of the Company by up to a total of Euro 25,000,000.00 for cash and/or contributions in kind by the issue of new ordinary shares (Authorized Capital II).

The number of shares must be increased in the same proportion as the capital.

The management board is further authorized, with the approval of the supervisory board, to decide on the exclusion of shareholders' pre-emption rights.

Pre-emption rights may be excluded, however, only if:

1) in the case of a capital increase for cash the amount of capital attributable to the new shares does not exceed 10% of the nominal value of our share capital at the time of the issue of the new shares and the issue price for the new shares is not significantly lower than the stock exchange price of listed shares of the same class and rights at the time of the final determination of the issue price by the management board, or

2) in the case of a capital increase for contributions in kind the grant of shares should be for the purpose of acquiring an enterprise, parts of an enterprise or an interest in an enterprise.

The management board is further authorized, with the approval of the supervisory board, to determine the further details of the implementation of the capital increase out of Authorized Capital II.

The supervisory board is authorized to amend the articles of association after complete or partial implementation of the capital increase out of Authorized Capital II or after the expiry of the authorized period in accordance with the amount of a capital increase out of Authorized Capital II.

Our articles of association will be amended to reflect the points set forth above and will read as follows:

The management board is authorized, in the period up to \_\_\_\_\_, 2010, with the approval of the supervisory board, to increase, on one or more occasions, the capital of the company by up to a total of Euro 25,000,000.00 (twenty five million Euro) for cash and/or contributions in kind by the issue of new ordinary bearer shares (Authorized Capital II). The number of shares must increase in the same proportion as the capital. The management board is further authorized, with the approval of the supervisory board, to decide on the exclusion of shareholders' pre-emption rights. Exclusion of pre-emption rights is admissible, however, only if

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in the case of a capital increase for cash the amount of capital attributable to the new shares does not exceed 10% of the capital at the time of the issue of the new shares and the issue price for the new shares is not significantly lower than the stock exchange price of the listed shares of the same class and rights at the time of the final determination of the issue price by the management board, or

in the case of a capital increase for contributions in kind the grant of shares should be for the purpose of acquiring an enterprise, parts of an enterprise or a participation in an enterprise.

The management board is further authorized, with the approval of the supervisory board, to determine the further details of the implementation of the capital increase out of Authorized Capital II. The supervisory board is authorized to amend the articles of association after complete or partial implementation of the capital increase out of Authorized Capital II or after the expiry of the authorized period in accordance with the amount of the capital increase out of Authorized Capital II.

The management board has issued a report in accordance with the German Stock Corporation Act as to the reasons for the exclusion of pre-emption rights in connection with any capital increase using Authorized Capital II. The report will be made available at the Company for inspection by the shareholders. Shareholders will be entitled to receive a copy of the report free of charge upon request. The report will also be available at the extraordinary general meeting.

The management board is instructed to file the above resolutions with the commercial register only when the management board is satisfied that the transformation of legal form to a KGaA proposed by the management board and supervisory board will also occur.

*4. Transformation of the Legal Form of the Company to a KGaA with Fresenius Medical Care Management AG as Sole General Partner.*

a) Resolution on the transformation of Fresenius Medical Care AG into Fresenius Medical Care KGaA. The management board and supervisory board propose the following resolutions.

i. Fresenius Medical Care AG will be transformed into a partnership limited by shares under German law (a KGaA ).

ii. The name of the KGaA will be Fresenius Medical Care AG & Co. KGaA, referred to herein as Fresenius Medical Care KGaA.

iii. The share capital of Fresenius Medical Care AG of EUR 246,517,980 will become the share capital of Fresenius Medical Care KGaA, and the persons and companies who are shareholders of Fresenius Medical Care AG at the time of the registration of the transformation in the commercial register will become shareholders in Fresenius Medical Care KGaA. They will participate in Fresenius Medical Care KGaA to the same extent and with the same number of shares as they held in Fresenius Medical Care AG prior to the transformation. The ordinary shareholders and the preference shareholders will receive the same number of ordinary shares and preference shares in Fresenius Medical Care KGaA, respectively, as they held in Fresenius Medical Care AG prior to the transformation.

iv. The general partner of Fresenius Medical Care KGaA will be Fresenius Medical Care Management AG, which will be registered in Hof an der Saale. The general partner will not make a capital contribution and therefore will not participate in the assets, profits or losses of the Company.

v. Special Rights

*Preference Shares.* The holders of preference shares in the Company will continue to receive for each preference share held by them an annual dividend based on the Company's profits for the year in an amount EUR 0.06 per share higher than the dividend



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paid on the ordinary shares, and a minimum dividend of EUR 0.12 for each preference share. If the Company's profits in one or more financial years is not adequate to enable payment of EUR 0.12 per preference share, any deficits will be paid in arrears, without interest, in the following years, after distribution of the minimum dividend on the preference shares for that financial year and before the payment of a dividend on the ordinary shares. The right to such payment in arrears is an integral part of the right to dividends for the financial year in respect of which the dividend payment on the preference shares is made.

*Employee Participation Programs.* In the course of the transformation, the conditional capital to cover the shares to be issued under the employee participation programs of 1996, 1998 and 2001 will continue to exist in the KGaA and the right to convert convertible bonds or exercise options to acquire shares of the AG will refer to shares in the KGaA. The performance target for convertible bonds set by the general meeting of June 10, 1998 will remain unchanged. The performance target for convertible bonds set by the general meeting of May 23, 2001 will, for convertible bonds as of May 4, 2005, refer to ordinary shares in the KGaA, and any partial achievement of the performance target will be taken into account. Holders of convertible bonds and stock options under the existing employee participation programs will be offered the opportunity to change the terms of their convertible bonds and stock options so that they will be convertible into or exercisable for ordinary shares rather than preference shares as more fully set forth above under proposal 2.

vi. An English translation of the form of the articles of association of Fresenius Medical Care KGaA is attached as Appendix A to this information statement/ prospectus. The supervisory board is authorized to make amendments to the articles of association before registration with the commercial register, to the extent necessary to implement the approved resolutions and to issue shares out of existing conditional capital in order to adjust the number of preference shares and ordinary shares as a result of the conversion. The supervisory board is further authorized to amend the articles of association prior to the filing of the transformation in the commercial register in order to amend the amount of the conditional capital in connection with the above resolutions.

vii. No offer of compensation will be made to shareholders objecting to the transformation.

viii. There are no consequences for the employees or their representatives arising out of the transformation of legal form. It does not involve a change of employer. Each employee's employment contract will continue in force unchanged. After the transformation of legal form, the employer's right to issue instructions will be exercised by the management board of the general partner, Fresenius Medical Care Management AG. No change for the employees and their representatives will arise therefrom. The composition of the works council and its rights and entitlements will not be altered by the transformation of legal form. Works agreements will remain in force in their present form unchanged. There are no effects on co-determination or collective bargaining in relation to the Company and its subsidiaries.

ix. KPMG Deutsche Treuhand-Gesellschaft Aktiengesellschaft Wirtschaftsprüfungsgesellschaft, Frankfurt am Main, will be our auditor for the 2005 fiscal year.

b) Consent of Management AG to join as general partner of Fresenius Medical Care KGaA and consent of Management AG to the articles of association of Fresenius Medical Care KGaA, an English translation of which is attached as Appendix A to this information statement/ prospectus.

If validly adopted, the management board shall file the amendments to the articles of association described under proposals 1 through 3 under the caption "The Conversion and the Transformation" with the commercial register only in such manner as will assure that these amendments will be registered prior to registration of the transformation of legal form.





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**THE CONVERSION AND TRANSFORMATION**

The description of the material terms of the conversion and transformation set forth below is not intended to be a complete description of the conversion and transformation. We qualify this description by reference to the proposed resolutions set forth above under "The Meetings - The Conversion and Transformation Proposals" and to the proposed articles of association of Fresenius Medical Care KGaA, an English translation of which is attached as Appendix A to this information statement/ prospectus and which we incorporate in this information statement/ prospectus by reference. We urge all shareholders to read these documents in their entirety.

**Structure of the Conversion and Transformation**

The management board and the supervisory board of Fresenius Medical Care AG propose the conversion of our outstanding preference shares into ordinary shares and the transformation of the legal form of the Company from a stock corporation into a partnership limited by shares, a *Kommanditgesellschaft auf Aktien* ( KGaA ). German law requires that our ordinary shareholders approve the transformation and that our ordinary and preference shareholders approve the conversion.

Currently, our outstanding share capital consists of ordinary shares and non-voting preference shares that are issued only in bearer form. Fresenius AG owns approximately 50.8% of our ordinary shares. Fresenius AG's ordinary shares represent approximately 37% of our total share capital. In connection with the transformation, Management AG will assume the management of the Company through its position as general partner. Fresenius AG, which currently controls the Company as holder of a majority of our ordinary shares, will continue to do so after the transformation as sole shareholder of the general partner.

***The Conversion***

Prior to the transformation, we intend to offer our preference shareholders the opportunity to convert their preference shares into ordinary shares on a one-to-one basis pursuant to a conversion offer to be conducted after the shareholder meetings. The right to convert preference shares into ordinary shares will be available only during a specific period which will be held open for four to six weeks but not less than 20 U.S. business days. The details of the conversion process will be determined by the management board with the approval of the supervisory board, and announced together with the conversion period.

Preference shareholders who decide to convert their shares into ordinary shares will be required to pay a premium of EUR 12.25 per converted share for the conversion. The premium corresponds to approximately two-thirds of the difference between the weighted average stock exchange price of the ordinary shares and the weighted average stock exchange price of the preference shares on the Frankfurt Stock Exchange as calculated for the three months through and including May 3, 2005, the last trading day before our first announcement of the proposed conversion and transformation.

In the conversion process, preference shares submitted for conversion will lose the preferential dividend right provided for under our articles of association and German law. The conversion will increase the number of ordinary shares outstanding held by persons other than Fresenius AG, which we refer to in this information statement/ prospectus as the "outside shareholders" or "free float" of our ordinary shares, as the context requires. Under the applicable rules of Deutsche Börse AG with regard to index weighting, an increase in the number of ordinary shares in free float would lead to a strengthening of our DAX position because this position, among other criteria, is determined by reference to the market capitalization of the free float of the largest class of shares. DAX is an index that measures the performance of the Prime Standard's 30 largest German companies in terms of order book volume and market capitalization. We believe that membership in the DAX is advantageous to us because many institutional investors utilize inclusion in the DAX index as a decisive investment criterion. Some fund investors reproduce a selected index such as the DAX and, therefore, rely exclusively on index participations. The index is based on prices generated in the electronic trading system Xetra. Assuming that most of our outstanding preference shares are converted into ordinary shares, the preference shares will have limited trading volume after the conversion.

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Those persons who hold convertible bonds or stock options entitling them to preference shares under our employee participation programs will be offered the opportunity to receive convertible bonds or stock options entitling them to receive ordinary shares.

The conversion requires that we amend our articles of association for the purpose of allotting the shares as between ordinary and preference. The final version of the articles of association can be determined, however, only upon final determination of the number of preference shares submitted to the Company for conversion in proper form within the time allowed, together with the applicable conversion premium. As a result, the supervisory board will be authorized to amend the wording of the articles of association after the conversion offer has been completed to reflect the final allotment between classes of shares.

Approval of the conversion requires the affirmative vote of 75% of the preference shares present at the separate meeting of preference shareholders. The conversion also requires approval by the affirmative vote of 75% of our ordinary shares present at the extraordinary general meeting. Fresenius AG, which holds approximately 50.8% of our ordinary shares, intends to vote in favor of the conversion.

**THIS INFORMATION STATEMENT/ PROSPECTUS IS BEING DISTRIBUTED SOLELY TO ENABLE OUR SHAREHOLDERS TO VOTE AT THE SHAREHOLDER MEETINGS ON THE AMENDMENTS TO OUR ARTICLES OF ASSOCIATION REQUIRED TO PERMIT THE CONVERSION OF OUR PREFERENCE SHARES INTO ORDINARY SHARES AND THE TRANSFORMATION OF THE LEGAL FORM OF THE COMPANY. IT DOES NOT CONSTITUTE AN OFFER TO ISSUE ORDINARY SHARES UPON CONVERSION OF PREFERENCE SHARES OR A SOLICITATION OF OFFERS TO CONVERT PREFERENCE SHARES INTO ORDINARY SHARES. ANY SUCH OFFER WILL BE MADE BY A SEPARATE PROSPECTUS DISTRIBUTED AFTER THE SHAREHOLDER MEETINGS.**

### *The Transformation*

If the transformation is approved by the required shareholder vote, it will become effective upon registration with the commercial register that has jurisdiction over the Company, i.e., the commercial register of the local court (*Amtsgericht*) Hof an der Saale. Upon registration of the transformation, the Company's legal form will be changed by operation of law from an AG, which is a German stock corporation, to a KGaA, which is a German partnership limited by shares, and it will continue to exist in that legal form. In connection with the transformation, the Company will not transfer any assets to another entity, merge into or with or consolidate with any entity, or acquire the shares of any other entity. The Company as a KGaA will be the same legal entity under German law, rather than a successor to the stock corporation. Upon effectiveness of the transformation, Management AG, a subsidiary of Fresenius AG, will become the general partner of the Company. Legal relationships existing between the Company and third parties will continue unchanged. If public registers become inaccurate by the change of name, they will be amended on the application of the entity in its new legal form.

The offices of the members of the management board of Fresenius Medical Care AG will terminate by operation of law but the service agreements of the members of the management board will continue in force after effectiveness of the transformation. The members of the management board, however, have declared that their service agreements will be rescinded by agreement without compensation. The members of the management board will, subject to the election by the supervisory board of Management AG, become members of the management board of the general partner, Management AG, effective upon the transformation. We intend to propose that they enter into new service agreements with the general partner on the same terms as they had with Fresenius Medical Care AG before the transformation. The service agreements of the members of the management board will thereby in effect pass to Management AG on the same conditions.

Management AG will be reimbursed for all of its costs in conducting the business of Fresenius Medical Care KGaA, including the compensation of the members of the supervisory board and the

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management board of Management AG. The exclusive purpose of Management AG is to conduct the business of the Company.

Approval of the transformation requires the affirmative vote of 75% of the ordinary shares present at the extraordinary general meeting. Fresenius AG, which holds approximately 50.8% of our outstanding ordinary shares, intends to vote in favor of the transformation.

### *The Shareholders*

Our share capital will become the share capital of the Company in its new legal form after the transformation. Shareholders in Fresenius Medical Care AG at the time of the registration of the transformation of legal form in the commercial register will be shareholders in Fresenius Medical Care KGaA. They will participate to the same extent and with the same number of shares in Fresenius Medical Care KGaA as they did in Fresenius Medical Care AG prior to the transformation becoming effective. Ordinary shareholders will receive the same number of voting ordinary shares which they had in Fresenius Medical Care AG prior to the transformation and non-voting preference shareholders will receive the same number of non-voting preference shares as they had in Fresenius Medical Care AG prior to the transformation. Holders of convertible bonds and stock options issued under the Company's employee participation programs will not experience any change in their legal position due to the transformation of legal form.

### *The General Partner*

Management AG, a wholly-owned subsidiary of Fresenius AG, will be the general partner of Fresenius Medical Care KGaA. Management AG will not make a capital contribution to Fresenius Medical Care KGaA in connection with the transformation of legal form and therefore will not receive dividends or other distributions from Fresenius Medical Care KGaA. However, the general partner will receive a fee for management of Fresenius Medical Care KGaA and for acting as general partner and thereby assuming the liabilities of the partnership limited by shares.

### *Employees*

The transformation of legal form will have no effect on our employees because it will not involve a change of employer. Employment contracts between us and our employees will continue. Our right to issue directions to our employees will be exercised after the transformation by the management board of the general partner, Management AG. In addition, the composition of the works council under German law and their rights and authorities will not be changed by the transformation. All works agreements will remain in effect in their present form unchanged. The transformation will not affect our status under the German codetermination law, which, under certain circumstances, requires labor representation on the supervisory boards of German companies. There will be no effect on German collective bargaining agreements in relation to us and our subsidiaries.

### *Supervisory Board*

Under German law, after a transformation of legal form the members of a company's supervisory board remain in office for the remainder of their terms as members of its supervisory board if the supervisory board of the company in its new legal form is formed in the same way and with the same composition. That will occur in the transformation of Fresenius Medical Care AG into Fresenius Medical Care KGaA.

Dr. Ulf M. Schneider, chairman of the management board of Fresenius AG, has notified us, however, that he will resign from the supervisory board effective upon entry of the transformation in the commercial register. As chairman of the management board of Fresenius AG, the sole shareholder of the general partner, Dr. Schneider may be ineligible to serve on the supervisory board of Fresenius Medical Care KGaA. Fresenius Medical Care KGaA will apply for a court appointment of a sixth member of the

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supervisory board to replace Dr. Schneider after the transformation has become effective in accordance with German law.

**Reasons for the Conversion and Transformation**

Our management board and supervisory board believe that the conversion of our outstanding preference shares into ordinary shares and the transformation of the legal form of the Company are in the overall interest of the Company and its shareholders, taking into account the existing rights of our shareholders. We believe the conversion and transformation will increase our financial and operative flexibility, which will allow us to pursue our long-term growth objectives and strategies and will help us maintain and improve our position as the leading global integrated provider of dialysis products and services. We believe that the transformation and conversion are in the interests of the Company and its shareholders overall for the following reasons:

*Ability to Issue New Ordinary Shares.* Our current articles of association provide only for the issuance of new non-voting preference shares. Fresenius AG, which holds approximately 50.8% of our voting ordinary shares, has advised us that it will not approve an issuance of new ordinary shares that would dilute its ownership below 50% because such dilution would cause Fresenius AG to lose its control over the management of the Company under the current corporate structure. The loss of control would preclude Fresenius AG from consolidating our financial statements with its own. Although Fresenius AG has the right to participate proportionately in any new issuances of ordinary shares in order to prevent such dilution, it may be unable or unwilling to do so. Therefore, our ability to issue additional equity capital is generally limited to the issuance of preference shares, which are not as attractive to investors as ordinary shares. In our new legal form as a partnership limited by shares under German law, or a KGaA, the management of the Company will be controlled by a general partner rather than the voting majority of our ordinary shares. Fresenius AG will own the general partner of the Company and, therefore, will continue to control the management of the Company after the transformation, notwithstanding the resulting decrease in Fresenius AG's percentage ownership of our ordinary shares. Therefore, our new capital structure will allow us to issue ordinary shares without causing Fresenius AG to lose control over the management of the Company. We believe that our ability to issue new ordinary shares will help us attract equity financing so that we may pursue our long-term growth objectives and strategies.

*Improved Liquidity.* We anticipate that the conversion of the preference shares into ordinary shares will lead to an increase in the free float of our ordinary shares. Currently, the free float of our shares is divided between preference shares and ordinary shares. If all of our preference shares are converted into ordinary shares, the free float of ordinary shares will increase from approximately 34.5 million shares to approximately 60.8 million shares, which is an increase of approximately 76.5%. We believe that the new free float of our ordinary shares will lead to an increase in the daily trading volume of our ordinary shares and will improve the liquidity of our ordinary shares, which will create more value for our existing ordinary shareholders and make our ordinary shares more attractive to large investors. We also believe that the increased free float and liquidity will allow us to raise more capital because the market will be more receptive to new ordinary shares from future capital increases. Equity financing opportunities will allow us to pursue our long-term growth objectives and strategies, including pursuit of acquisitions using ordinary shares as consideration.

*Improved DAX Position.* We expect that the conversion of our outstanding preference shares into ordinary shares will improve our position on the German share index, DAX, which is an index that measures the performance of the Prime Standard's 30 largest German companies in terms of order book volume and market capitalization. Under the rules of the Frankfurt Stock Exchange, only one class of a company's shares may be considered in determining order book volume and market capitalization for purposes of DAX position. We believe that the conversion of our outstanding preference shares into ordinary shares will increase our order book volume and our market

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capitalization as described above and, therefore, our position on DAX. We believe that a stronger position on DAX will allow us to attract more institutional investors.

*Maintenance of the Existing Levels of Corporate Governance and Transparency.* Our proposed new structure will include corporate governance arrangements that are substantially similar to our current corporate governance arrangements. As described above, a subsidiary of Fresenius AG will serve as the general partner of the Company after the transformation. We intend that the general partner will have substantially the same provisions in its articles of association concerning the relationship between its management board and its supervisory board and substantially the same rules of procedure for its executive bodies. For example, under the articles of association of the general partner, the supervisory board of the general partner will be required to consent to the same major transactions that currently require the consent of the supervisory board of Fresenius Medical Care AG. We plan to arrange for all or most current members of the supervisory board of Fresenius Medical Care AG and all members of the management board to become members of the supervisory board or the management board of the general partner. Also, Fresenius AG will continue to be obligated to elect to the supervisory board of the general partner persons who have no significant business relationships with Fresenius AG. As a result, we believe that Fresenius AG's ability to control the Company through its ownership of the general partner will not differ significantly from its ability to control the Company through ownership of a majority of our ordinary shares.

*Acquisition of New Capital.* We will acquire new capital when we convert our outstanding preference shares into ordinary shares because we intend to require that our preference shareholders who choose to convert their shares pay a premium per share to us in connection with the conversion. The payments that we receive from preference shareholders in the conversion will be placed in our capital reserves, which will improve our capital ratio.

*Benefits to our Ordinary Shareholders.* Ordinary shareholders will experience dilution of their voting rights and possibly a dilution of the value of their shares as a result of the conversion of preference shares into ordinary shares. We believe, however, that the benefits that our ordinary shareholders will receive as a result of the conversion and transformation outweigh these factors. First, approximately two-thirds of the difference in value between the ordinary shares and the preference shares will be covered by the conversion premium that our preference shareholders will be required to pay, which will strengthen our capital base. Further, the ordinary shares will become more attractive investments due to their increased liquidity and stronger DAX position. Finally, the preference dividend that is paid to preference shareholders will be cancelled in connection with the preference shares that are converted into ordinary shares, which will allow us to retain more capital.

*Benefits to our Preference Shareholders That Choose to Convert Their Preference Shares.* Holders of our outstanding preference shares will have the opportunity to convert their shares into ordinary shares, but will not be required to do so. We believe that the conversion is an opportunity for holders of preference shares to obtain ordinary shares on favorable terms. Although preference shareholders who choose to convert their shares will be required to pay a premium per share of EUR 12.25 to us for the conversion, the premium consists of approximately two-thirds of the difference between the weighted average price of the preference shares and the weighted average price of the ordinary shares over the three months prior to the announcement of the planned conversion offer and transformation. Based on such prices, holders of preference shares who elect to convert will acquire ordinary shares at a discount of EUR 6.14 per ordinary share or 10% of the weighted average stock exchange price of the ordinary shares for the three-months prior to the announcement. (On [redacted], 2005, the day prior to the date of this prospectus, the closing prices of our preference shares and our ordinary shares on the Frankfurt Stock Exchange were EUR [redacted] and EUR [redacted], respectively.) Additionally, while the matter is not entirely free from doubt, it is believed that the conversion of the preference shares into ordinary shares will not result in any taxable income for U.S. federal income tax purposes.

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Holders of preference shares that do not choose to convert their preference shares into ordinary shares will continue to hold preference shares in the new legal form of the Company after the transformation and will continue to be entitled to receive preference dividends. However, holders of preference shares will likely experience reduced liquidity of their shares. We anticipate that the preference shares will continue to trade on the Frankfurt Stock Exchange after the conversion and transformation but we cannot offer any assurances that the preference ADSs will continue to be eligible for listing on the New York Stock Exchange if the number of outstanding preference shares decreases substantially due to the conversion of preference shares into ordinary shares. If substantially all of the preference shares are converted, we may terminate the deposit agreement for the preference shares or the depositary may resign due to the substantially reduced compensation it is likely to receive for its services in such circumstances. Our management board and supervisory board have considered the disadvantages to the holders of preference shares that do not choose to convert their shares into ordinary shares as a result of the conversion and transformation but have concluded that the conversion and transformation are nevertheless in the interest of the Company and its shareholders overall.

**Background of the Conversion and Transformation**

Our management board extensively considered possible alternatives to the proposed measures and, after careful consideration of the arguments for and against, determined that there is no comparable alternative to the proposed measures that would achieve the results to be achieved through the conversion and the transformation. Specifically, the management board reviewed the following options:

*Refraining from Implementation of the Entire Transaction.* The management board discussed whether we could have refrained from the entire transaction, but concluded that we would not be able to achieve our intended goals if we did so. We would lose the opportunity to standardize our share classes and thereby arrive at what we believe is a more attractive capital structure. First, implementing the entire transaction will enable us to issue new ordinary shares, which we believe will facilitate future equity financing. Second, the entire transaction will result in an increase in the free float of ordinary shares and is thereby expected to lead to an increase in the liquidity of the ordinary shares and a consolidation in our DAX position. This measure, which is important both for us and our shareholders, would not be possible if we refrained from taking any action. In the opinion of the management board, refraining from the entire transaction is not a viable alternative.

*Conversion of Preference Shares into Ordinary Shares without Transformation of Legal Form.* The management board considered implementing the conversion of preference shares into ordinary shares and the corresponding amendment to the articles of association, without the transformation of the Company into a KGaA. This would have increased the number of outstanding voting ordinary shares and resulted in the loss of Fresenius AG's voting majority in the general meeting of the Company. Fresenius AG would then no longer possess the absolute ability to appoint our supervisory board and thereby influence the management of the Company. As a result, Fresenius AG would no longer be able to fully consolidate our financial results in its own group financial statements. Fresenius AG indicated that it was not prepared to consent to any standardization of share classes that would result in its losing control of the Company and its ability to consolidate our financial statements with its own. Because it is the holder of a majority of our voting shares, Fresenius AG's consent is required for any proposal to revise our share capital.

*Acquisition of Capital by Issue of Additional Preference Shares.* The management board also considered as a possible alternative whether additional preference shares could be issued in the absence of the implementation of the conversion of preference into ordinary shares, the transformation of legal form into a KGaA, or both. The management board determined that this alternative would not have achieved the objectives to be achieved by implementing the entire transaction. First, our ability to issue additional preference shares is limited. Under the German Stock Corporation Act, preference shares may be issued only up to half of our share capital. This limit on the issue of additional preference shares would, at least in the long term, restrict the growth of the Company. Fresenius AG's intention, as owner of Management AG, the general





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partner, to maintain ownership of more than 25% of Fresenius Medical Care KGaA's shares capital could similarly limit Fresenius Medical Care KGaA's ability to issue ordinary shares unless Fresenius AG were to participate in capital increases pursuant to pre-emption rights or otherwise acquire additional ordinary shares. However, such limiting effects are not likely to be felt in the near term. Secondly, the issue of preference shares alone would increase, rather than diminish, the division between ordinary shares and preference shares. The issuance of additional preference shares would not increase the free float and liquidity of our ordinary shares, which is the only class considered in our DAX valuation, and therefore would not improve our DAX position.

*Merger with a KGaA Founded by Fresenius AG.* The management board also considered a merger of the Company with a KGaA founded for that purpose by Fresenius AG in lieu of a transformation of our legal form. In the course of such a merger, our shareholders would become shareholders in the acquiring KGaA, so that ultimately a similar result would be achieved as with the transformation of legal form into a KGaA. After reviewing the additional costs of such a proposal, including the costs of the valuation report and independent audit required by German law in connection with a merger, and the absence of any additional benefit for the Company or its shareholders, the management board rejected this alternative.

**The Legal Structure of Fresenius Medical Care KGaA**

A partnership limited by shares ( KGaA ) is a mixed form of entity under German corporate law, which has elements of both a partnership and a corporation. Like a stock corporation, the share capital of the KGaA is held by shareholders. The KGaA is similar to a limited partnership because there are two groups of owners, the general partner on the one hand, and the KGaA shareholders on the other hand.

A KGaA's corporate bodies are its general partner, supervisory board and the general meeting of shareholders. A KGaA may have one or more general partners who conduct the business of the KGaA. They are appointed as executive bodies on the basis of the articles of association and, therefore, are so-called inherent executive bodies of the partnership under German law. However, in contrast to the appointment of the management board of a stock corporation, the supervisory board of a KGaA has no influence on appointment of the general partner. Likewise, the removal of the general partner from office is subject to very strict conditions, including the necessity of a court decision. The general partners may, but are not required to, purchase shares of the KGaA. The general partners are personally liable for the liabilities of the KGaA in relations with third parties subject, in the case of corporate general partners, to applicable limits on liability of corporations generally.

The status of the members of the two groups of owners, i.e., the group of KGaA shareholders on the one hand, and the general partner or partners, on the other hand, varies within the KGaA due to the structure of a KGaA. The KGaA shareholders exercise influence in the general meeting through their voting rights but, in contrast to a stock corporation, the general partner of a KGaA has a veto right with regard to material resolutions. The members of the supervisory board of a KGaA are elected by the general meeting as in a stock corporation. However, since the supervisory board of a KGaA has less powers than the supervisory board of a stock corporation, the indirect influence exercised by the KGaA shareholders on the KGaA via the supervisory board is also less significant than in a stock corporation. For example, the supervisory board is not usually entitled to issue rules of procedure for management or to specify business management measures that require the supervisory board's consent. The status of the general partner or partners in a KGaA is stronger than that of the shareholders based on: (i) the management powers of the general partners, (ii) the existing veto rights regarding material resolutions adopted by the general meeting and (iii) the independence of the general partner from the influence of the KGaA shareholders as a collective body.

In the articles of association of a KGaA, the relationship between the general partners and the KGaA shareholders can be structured to a certain extent without restrictions. This means that the articles of association of a KGaA can be adjusted to the specific needs of the partners at the time the KGaA is founded or at the time a company is transformed into such a partnership limited by shares. Since the

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articles of association of a KGaA may be amended subsequently only through a resolution of the general meeting adopted by a qualified 75% majority and with the consent of the general partner, neither group of owners (i.e., the KGaA shareholders and the general partners) can unilaterally amend the articles of association without the consent of the other group. Fresenius AG will, however, continue to be able to exert significant influence over amendments to the articles of association of Fresenius Medical Care KGaA through its ownership of a significant percentage of our ordinary shares after the transformation, since such amendments require a 75% vote of the shares present at the meeting rather than three quarters of the outstanding shares. See Effects on and Comparison of Shareholder Rights Comparison of the Rights of Shareholders in Fresenius Medical Care AG and Fresenius Medical Care KGaA.

The corporate legal structure of Fresenius Medical Care KGaA is intended to retain the essential elements of Fresenius AG's existing power to control the Company, but, to the extent legally feasible, not to expand such influence. We intend to ensure that Fresenius AG's controlling position is conditioned upon ownership of a substantial amount of our share capital. Therefore, under the proposed articles of association, Management AG has to withdraw as general partner if Fresenius AG's holdings decrease to 25% or less of our share capital. At the same time, we intend to ensure that our business operations remain unaffected by the transformation of legal form as much as possible.

***Management and Oversight of Fresenius Medical Care KGaA***

The management structure of Fresenius Medical Care KGaA is illustrated as follows:

***General Partner***

A subsidiary of Fresenius AG, Management AG, a stock corporation, will be the sole general partner of Fresenius Medical Care KGaA. We chose a stock corporation as the legal form of the general partner principally because it enables us to maintain a management structure substantially similar to Fresenius

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Medical Care AG's existing management structure by means of the general partner entity. The internal structure of the general partner will be substantially similar to the current structure at Fresenius Medical Care AG. In particular, we intend that the general partner will have substantially the same provisions in its articles of association concerning the relationship between the management board and the supervisory board and, subject to applicable statutory law, substantially the same rules of procedure for its executive bodies. We also plan to arrange for all current members of the management board and all or most members of the supervisory board of Fresenius Medical Care AG to become members of the management board or supervisory board of the general partner after the transformation of our legal form.

The general partner will not make a capital contribution and, therefore, will participate in neither the assets nor the profits and losses of the KGaA. However, the general partner will be compensated for all outlays in connection with conducting the business of the partnership, including the remuneration of members of the management board and the supervisory board. See *The Conversion and Transformation – The Legal Structure of Fresenius Medical Care KGaA* *The Articles of Association of Fresenius Medical Care KGaA – Organization of the Company* below. Management AG was founded on April 8, 2005 and registered with the commercial register on May 10, 2005. Fresenius AG is the sole shareholder of Management AG.

The sole purpose of Management AG is to serve as the general partner of Fresenius Medical Care KGaA and to manage the business of Fresenius Medical Care KGaA. Management AG has the same duties of care to Fresenius Medical Care KGaA as the management board of a stock corporation has to the corporation. The supervisory board and management board of Management AG must carefully conduct the business of Fresenius Medical Care KGaA and are liable for any breaches of its obligations.

The statutory provisions governing a partnership, including a KGaA, provide in principle that the consent of the KGaA shareholders at a general meeting is required for transactions that are not in the ordinary course of business. However, as permitted by statute, the proposed articles of association of Fresenius Medical Care KGaA permit such decisions to be made by Management AG as general partner without the consent of the KGaA shareholders primarily for the following reasons:

It is difficult to clearly distinguish between transactions that are in the ordinary course of business and those that are not, and consequently the distinction is rather uncertain under German law;

The convening of a general meeting to obtain consent to individual transactions entails substantial organizational effort and expense; and

Potential lawsuits challenging transactions or resolutions could paralyze a partnership limited by shares for a long time.

The negation of the statutory restrictions on the authority of Management AG as general partner is intended to replicate governance arrangements in Fresenius Medical Care AG, in which the shareholders of Fresenius Medical Care AG do not presently have any such veto right regarding determinations of the management board. This does not affect the general meeting's right of approval with regard to measures of unusual significance, such as a sale of a substantial part of a company's assets, as developed in German Federal Supreme Court decisions.

The relationship between the supervisory board and management board of Management AG is comparable to the existing governance provisions at Fresenius Medical Care AG. In particular, under the articles of association of Management AG, the same transactions are subject to the consent of the supervisory board of Management AG as currently require the consent of the supervisory board of Fresenius Medical Care AG. These transactions include, among others:

The acquisition, disposal and encumbrance of real property if the value or the amount to be secured exceeds a specified threshold;

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The acquisition, formation, disposal or encumbrance of an equity participation in other enterprises if the value of the transaction exceeds a specified threshold;

The adoption of new or the abandonment of existing lines of business or establishments; and

Certain inter-company legal transactions.

The members of the management board and all or most members of the supervisory board of Management AG will initially be the same as the current members of our management board and supervisory board.

*Supervisory Board*

The supervisory board of a KGaA is similar in certain respects to the supervisory board of a stock corporation. Like the supervisory board of a stock corporation, the supervisory board of a KGaA is under an obligation to oversee the management of the business of the Company. However, the supervisory board is not usually entitled to issue rules of procedure for the management board or to specify types of business management measures that require its consent. The supervisory board is elected by the KGaA shareholders at the general meeting. Shares in the KGaA held by the general partner or its affiliated companies are not entitled to vote for the election of the supervisory board members of the KGaA. Accordingly, Fresenius AG will not be entitled to vote its shares for the election of Fresenius Medical Care KGaA's supervisory board. In theory, this means that Fresenius AG will have no influence on the composition of the supervisory board of Fresenius Medical Care KGaA, and that the change in legal form into Fresenius Medical Care KGaA entails an increase in the control rights for the outside shareholders.

However, under the articles of association of Fresenius Medical Care KGaA, a resolution for the election of members of the supervisory board will require the affirmative vote of 75% of the votes cast at the general meeting. Such a high vote requirement could be difficult to achieve, which could result in the court appointment of members to the supervisory board after the end of the terms of the members initially in office at the time the transformation becomes effective. In addition, because (i) the current members of the Fresenius Medical Care AG supervisory board will initially continue as the members of the supervisory board of Fresenius Medical Care KGaA (except for Dr. Ulf M. Schneider, who may not be eligible to serve on the supervisory board of Fresenius Medical Care KGaA due to his position on the management board of Fresenius AG), and (ii) in the future, the Fresenius Medical Care KGaA supervisory board will propose future nominees for election to its supervisory board (subject to the right of shareholders to make nominations), Fresenius AG is likely to retain certain influence over the selection of the supervisory board of Fresenius Medical Care KGaA. The supervisory board of Fresenius Medical Care KGaA will have less power and scope for influence than the supervisory board of the Company as a stock corporation. The supervisory board of Fresenius Medical Care KGaA is not entitled to appoint the general partner or its executive bodies. Nor may the supervisory board subject the management measures of the general partner to its consent, or issue rules of procedure for the general partner. The KGaA shareholders will approve Fresenius Medical Care KGaA's annual financial statements at the general meeting. Except for making a recommendation to the general meeting regarding such approval, this matter is not within the competence of the supervisory board.

*General Meeting*

The general meeting is the resolution body of the KGaA shareholders. The rights of the KGaA shareholders as a collective body are exercised through the general meeting. Among other matters, the general meeting of a KGaA will approve its annual financial statements. The internal procedure of the general meeting corresponds to that of the general meeting of a stock corporation. The agenda for the general meeting is fixed by the general partner and the KGaA supervisory board except that the general partner cannot propose nominees for election as members of the KGaA supervisory board or proposals for the Company auditors. Any proposals for the election of members of the supervisory board that are proposed by the supervisory board at the general meeting are non-binding. Any shareholder may submit his or her proposal. To the extent that shareholders whose holdings in the aggregate equal or exceed 10%

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of the share capital represented at the meeting so request, the general meeting has to vote on the nominees of such shareholders prior to voting on the nominees proposed by the supervisory board.

The transformation itself does not affect voting rights or required votes at the general meeting. However, if relative few preference shares are converted into ordinary shares, Fresenius AG will lose its voting majority at the general meeting of Fresenius Medical Care KGaA. It is possible, therefore, that after the transformation and the conversion, resolutions of the general meeting could be adopted over the objection of Fresenius AG or that resolutions supported by Fresenius AG could be defeated. However, under German law, resolutions may be adopted by the vote of a majority of the shares present at the meeting. Therefore, even if substantially all of our preference shares are converted into ordinary shares, as long as less than approximately 74% of our shares are present at a meeting, Fresenius AG will continue to possess a controlling vote on most matters presented to the shareholders, other than election of the supervisory board and the matters subject to a ban on voting as set forth below, at least until we issue additional ordinary shares in a capital increase in which Fresenius AG does not participate.

After the transformation, Fresenius AG will be subject to various bans on voting at general meetings due to its ownership of the general partner. Fresenius AG will be banned from voting on resolutions concerning the election and removal from office of the supervisory board, ratification of the actions of the general partner and members of the supervisory board, the appointment of special auditors, the assertion of compensation claims against members of the executive bodies, the waiver of compensation claims, and the selection of auditors of the annual financial statements.

Certain matters requiring a resolution at the general meeting will also require the consent of the general partner after the transformation, such as amendments to the articles of association, consent to inter-company agreements, dissolution of the partnership limited by shares, mergers, a change in the legal form of the partnership limited by shares and other fundamental changes. The general partner will therefore have a veto right on these matters. Annual financial statements will be subject to approval by both the KGaA shareholders and the general partner.

***The Articles of Association of Fresenius Medical Care KGaA***

The proposed articles of association of Fresenius Medical Care KGaA are based on our current articles of association, particularly with respect to capital structure, the supervisory board and the general meeting. Other parts of the proposed articles of association, such as provisions dealing with management of the KGaA, have been adjusted to the new legal form. Certain material provisions of the articles of association are explained below, especially variations from our current articles of association. The following summary is qualified in its entirety by reference to the complete proposed form of articles of association of Fresenius Medical Care KGaA, an English translation of which is attached as Appendix A.

***General Provisions***

The general provisions of the proposed articles of association are essentially based upon our current articles of association. For the sake of clarity they provide that neither the publication of abbreviated English versions of invitations to the general meetings nor other announcements constitute a prerequisite for the validity of such announcements.

***Share Capital and Shares***

The authorized capital of the proposed articles of association of Fresenius Medical Care KGaA provides for ordinary shares, in contrast to the provisions in our current articles of association, under which all authorized but unissued shares are preference shares. The conditional capital of Fresenius Medical Care KGaA includes both preference shares and ordinary shares. The amounts in the proposed articles of association, especially regarding the division between preference shares and ordinary shares, will be adjusted by the supervisory board to reflect the final results of the conversion of preference shares into ordinary shares and with respect to the participation of stock option holders when the stock option schemes under our employee participation programs are converted.

**Table of Contents***Organization of the Company*

The provisions relating to the management board in our current articles of association will be replaced in the proposed articles of association of Fresenius Medical Care KGaA by new provisions relating to the general partner of Fresenius Medical Care KGaA. The general partner will be Management AG. Management AG will not make a capital contribution to the partnership and will not participate in the profit or loss of the partnership limited by shares.

Under the proposed articles of association, possession of the power to control management of the KGaA through ownership of the general partner is conditioned upon ownership of a specific minimum portion of our share capital. Under German law, Fresenius AG could significantly reduce its holdings in our share capital while at the same time retaining its control over us through ownership of the general partner. Under our current capital structure, assuming that half of the share capital were issued in the form of preference shares, a shareholder would have to hold more than 50% of the ordinary shares, i.e., more than 25% of the total share capital, to exercise a controlling influence. This absolute threshold of 25% of the total share capital is the basis for the provision in the proposed articles of association of Fresenius Medical Care KGaA requiring that a parent company within the group hold an interest of more than 25% of the share capital of Fresenius Medical Care KGaA. As a result, the general partner will be required to withdraw from the KGaA if its shareholder no longer holds, directly or indirectly, more than 25% of the share capital of Fresenius Medical Care KGaA. The effect of this provision is that the parent company within the group may not reduce its capital participation in Fresenius Medical Care KGaA below such amount without causing the withdrawal of the general partner. However, the articles of association also permit a transfer of all shares in the general partner to us, which would have the same effect as withdrawal of the general partner.

In addition, our articles of association provide that the general partner must withdraw if the shares of the general partner are acquired by a person who does not make an offer under the German Takeover Act to acquire the shares of our other shareholders within three months of the acquisition of the general partner. The consideration to be offered to shareholders must include any portion of the consideration paid for the general partner's shares in excess of the general partner's equity capital, even if the parties to the sale allocate the premium solely to the general partner's shares. Our proposed articles of association provide that the general partner can be acquired only by a purchaser who at the same time acquires more than 25% of the KGaA's share capital. Thus, this provision would trigger a takeover offer at a lower threshold than the German Takeover Act, which requires that a person who acquires at least 30% of a company's shares make an offer to all shareholders. The provision will enable shareholders to participate in any potential control premium payable for the shares of the general partner, although the obligations to make the purchase offer and extend the control premium to shareholders could also have the effect of discouraging a change of control.

In the event that the general partner withdraws from the partnership as described above or for other reasons, the proposed articles of association provide for continuation of the partnership as a so-called unified KGaA (*Einheits-KGaA*), i.e., a KGaA in which the general partner is a wholly-owned subsidiary of the KGaA. Upon the coming into existence of a unified KGaA, the Fresenius Medical Care KGaA shareholders would ultimately be restored to the status as shareholders in a stock corporation, since the shareholding rights in the general partner would be exercised by the supervisory board pursuant to the proposed articles of association. If the KGaA is continued as a unified KGaA, an extraordinary or the next ordinary general meeting would vote on a change in the legal form of the partnership limited by shares into a stock corporation.

The general partner of Fresenius Medical Care KGaA will conduct its business and will represent Fresenius Medical Care KGaA in external relations. However, the Company will be represented by its supervisory board in transactions with its general partner. The general meeting will not be entitled to vote on business measures which are outside the ordinary course of business. Our current articles of association do not include a right to vote on such matters and we do not intend to include such a provision in the articles of association of Fresenius Medical Care KGaA. This does not affect the general meeting's right of

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approval with regard to measures of unusual significance, such as a sale of a substantial part of a company's assets, as developed in German Federal Supreme Court decisions.

The general partner must be compensated by the partnership for all outlays in connection with conducting the business of the partnership, including the compensation of members of the management board and the supervisory board. Fresenius Medical Care KGaA itself is to bear all expenses of its administration. Management AG is to devote itself exclusively to the management of Fresenius Medical Care KGaA. In addition, the general partner will receive compensation amounting to 4% of its capital for assuming the liability and the management of the KGaA. This payment constitutes a guaranteed return on Fresenius AG's investment in the share capital of Management AG, which will amount to 60,000 per annum. This payment is required for tax reasons, to avoid a constructive dividend by the general partner to Fresenius AG in the amount of reasonable compensation for undertaking liability for the obligations of the KGaA.

The proposed articles of association of Fresenius Medical Care KGaA do not contain a list of business management measures which require the consent of its supervisory board. Due to the legal differences between a stock corporation and a KGaA, the supervisory board of Fresenius Medical Care KGaA will not be entitled to create or enact such a list.

The provisions of the proposed articles of association of Fresenius Medical Care KGaA on the general meeting correspond for the most part to the provisions of our current articles of association. In anticipation of certain forthcoming amendments to the German Stock Corporation Act through the Act on Corporate Integrity and Modernization of the Law on Shareholder Claims, the articles provide that from the outset of the general meeting the chairperson may place a reasonable time limit on the shareholders' right to speak and ask questions, insofar as is permitted by law. This provision will not take effect until the corresponding amendment to the German Stock Corporation Act becomes effective.

The proposed articles of association provide that to the extent legally required, the general partner must declare or refuse its consent to resolutions adopted by the meeting directly at the general meeting.

*Annual Financial Statement and Allocation of Profits*

The proposed articles of association of Fresenius Medical Care KGaA on rendering of accounts require that the annual financial statement and allocation of profits of Fresenius Medical Care KGaA be submitted for approval to the general meeting of the KGaA.

*Miscellaneous*

The proposed articles of association of Fresenius Medical Care KGaA also contain a safeguard clause in case a provision in the articles of association should subsequently prove to be invalid in whole or in part or subsequently loses its validity. In this case, the remaining provisions of the articles of association will remain unaffected and a provision is to apply which best fits the meaning and purpose of the articles of association.

*Articles of Association of Management AG*

The articles of association of Management AG are expected to be based essentially on our existing articles of association. In particular, the current provisions of our articles of association on relations between our management board and our supervisory board have been incorporated into the new articles of association of Management AG. The amount of Management AG's share capital is EUR 1,500,000 to be issued as 1,500,000 registered shares without par value. By law, notice of any transfer of Management AG's shares must be provided to the management board of Management AG in order for the transferee to be recognized as a new shareholder by Management AG.

**Table of Contents****Accounting Treatment*****Conversion of Our Preference Shares into Ordinary Shares***

Our preference shareholders participating in the conversion will be required to pay a premium to convert their preference shares into ordinary shares on a one-to-one basis. The conversion premium has been calculated as a percentage of the difference between the weighted average stock exchange price of the ordinary shares and the weighted average stock exchange price of the preference shares on the Frankfurt Stock Exchange as calculated for the three month period prior to our first announcement of the conversion and the transformation. The conversion premium will be placed in our capital reserves without affecting our statement of operations. The amount of our subscribed capital will not be affected by the conversion. The total number of shares issued, i.e. the total of ordinary shares and preference shares, will remain unchanged. However, the conversion of our preference shares is expected to have an impact on the earnings (or loss) per share available to the holders of our ordinary shares upon conversion of our preference shares into ordinary shares.

***Conversion of the Interests Held and Related Adjustments under the Employee Participation Programs***

Our proposed offer to convert the interests held under the terms of various employee participation programs is expected to result in a new measurement date for the intrinsic value of awards issued in exchange for the awards converted and may result in variable accounting in interim and annual periods subsequent to the conversion of the award in accordance with the regulations set forth in Accounting Principles Board Opinion No. 25. The Financial Accounting Standards Board issued its final standard on accounting for share-based payments, Statements of Financial Accounting Standards No. 123R (revised 2004), *Share-Based Payment* ( SFAS 123R ), that requires companies to expense the cost of employee stock options and similar awards. SFAS 123R requires determining the cost that will be measured at fair value on the date of the share-based payment awards based upon an estimate of the number of awards expected to vest. We are obliged to adopt SFAS 123R no later than the beginning of 2006.

***Transformation of Legal Form***

The transformation of our legal form from a stock corporation into a partnership limited by shares will not represent a transaction that would result in measurement of the fair value of the shares of the KGaA. The carrying amounts of the assets and liabilities on our books will be carried over to the books of Fresenius Medical Care KGaA without adjustment as a result of the transformation of the legal form. The costs of the transformation transaction, estimated to be approximately, 2,225,000 will be expensed under both U.S. and German GAAP.

**Appraisal Rights**

The holders of preference shares and ordinary shares do not have any appraisal rights in connection with the transformation under German law. The German Stock Corporation Act provides expressly that no offer of compensation to shareholders is required in connection with a transformation from a stock corporation (AG) to a partnership limited by shares (KGaA). Under German law, an action may be brought to set aside a resolution of the shareholders' general meeting based on a violation of law or the articles of association. Any such action must be commenced within one month after adoption of the resolution.

**United States Federal Securities Laws Consequences**

The transformation of our ordinary shares and preference shares held by United States persons into ordinary shares and preference shares of Fresenius Medical Care KGaA has been registered under the United States Securities Act of 1933, as amended. Shares of Fresenius Medical Care KGaA held by persons who may be deemed affiliates of the Company may be sold by such persons only in accordance with the provisions of Rule 145 under the Securities Act, pursuant to an effective registration under the Securities Act, or in transactions that are exempt from registration under the Securities Act including the



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exemption for offshore transactions pursuant to Regulation S under the Securities Act. Rule 145 provides, in general, that our ordinary and preference shares may be sold by an affiliate only if there is available adequate public information with respect to the Company for the period specified in Rule 145 and only if (a) the number of shares sold within any three-month period does not exceed the greater of (i) 1% of the total number of outstanding shares of the applicable class, (ii) the average weekly trading volume of such shares on the New York Stock Exchange during the four calendar weeks immediately preceding the date on which notice of the sales is filed with the SEC or (iii) the average weekly volume of trading in such securities reported through the consolidated transaction reporting system during such four-week period, (b) certain current public information is available regarding our Company (that information will be available as long as we continue to file annual reports and furnish other periodic reports with the SEC), and (c) the shares are sold in transactions directly with a market maker or in brokers transactions within the meaning of Rule 144 under the Securities Act.

The foregoing discussion applies solely to the ordinary shares and preference shares of Fresenius Medical Care KGaA which may be deemed to be issued in connection with the transformation of the legal form, and not the ordinary shares of Fresenius Medical Care KGaA that are expected to be offered in connection with the conversion of preference shares into ordinary shares. **THIS INFORMATION STATEMENT/ PROSPECTUS DOES NOT CONSTITUTE AN OFFER OF ORDINARY SHARES UPON CONVERSION OF PREFERENCE SHARES OR A SOLICITATION OF OFFERS TO CONVERT PREFERENCE SHARES INTO ORDINARY SHARES. ANY SUCH OFFER WILL BE MADE ONLY BY A SEPARATE PROSPECTUS TO BE DISTRIBUTED FOLLOWING THE SHAREHOLDER MEETINGS.**

**INTERESTS OF CERTAIN PERSONS IN THE CONVERSION AND TRANSFORMATION****Interest of Fresenius AG**

Fresenius AG currently holds approximately 35.53 million of our ordinary shares, constituting approximately 50.8% of our outstanding ordinary shares. As the holder of a majority of our voting shares, Fresenius AG is in a position to determine the results of general meeting resolutions which require only a simple majority, without regard to the vote of or attendance by other shareholders. This applies, for example, to resolutions on the election of members to the supervisory board and the appointment of our auditors. We are therefore controlled by Fresenius AG.

Because of its majority voting rights, Fresenius AG is entitled and obliged to consolidate our financial statements completely in its group financial statements. The ability to consolidate is of major significance for Fresenius AG because it provides comparable group financial statements on a consistent basis and capital markets transparency. If the conversion of preference shares into ordinary shares were implemented without the transformation and Fresenius AG acquiring the general partner interest, even a minimal participation of the preference shareholders in the conversion process would lead to Fresenius AG losing its voting majority in our general meeting. Consequently, Fresenius AG would no longer be entitled to fully consolidate our financial statements in its own financial statements, since it would no longer control us. As a result, Fresenius AG would be adversely affected by the conversion and dilution of its voting rights in a manner that differs from the effects on other ordinary shareholders. The benefits to the other ordinary shareholders that arise from the conversion, such as potentially increased liquidity and termination of the dividend preference, do not fully compensate Fresenius AG, since Fresenius AG does not presently intend to reduce its shareholdings. Fresenius AG has informed us that it is willing to implement the conversion of our outstanding preference shares only in conjunction with the transformation of Fresenius Medical Care AG into Fresenius Medical Care KGaA and acquisition of the general partnership interest in Fresenius Medical Care KGaA, which will enable it to continue to control us and to continue to consolidate our financial statements in its financial statements. However, if our preference shareholders do not approve the conversion, we may nevertheless determine to complete only the transformation.

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Maintenance of its controlling influence on us is also an important component of Fresenius AG's business philosophy. Fresenius AG and the Else Kröner-Fresenius Stiftung, a charitable foundation into which the Fresenius Group was incorporated by inheritance and which indirectly holds a majority of the ordinary shares of Fresenius AG, consider themselves obligated by the testamentary disposition of the founder, which provides that the business of the Fresenius Group of companies should remain and continue together as long as possible. The dialysis business now operated by us was a significant business division of the Fresenius Group of companies at the time of the testamentary deposition to the Else Kröner-Fresenius Stiftung. Accordingly, both Fresenius AG and its controlling shareholder, the Else Kröner-Fresenius Stiftung, believe that we should continue to be an integral part of the Fresenius Group under the control of Fresenius AG.

In addition to retaining its control of us, the various transactions and relationships to which Fresenius AG and we are parties will continue in effect after the transformation. For information with respect to such matters, see **Major Shareholders and Related Party Transactions** **Related Party Transaction** in our 2004 Form 20-F.

Under the proposed articles of association of Fresenius Medical Care KGaA, Fresenius AG will receive a guaranteed return on its capital investment in the general partner. See **The Conversion and Transformation** **The Legal Structure of Fresenius Medical Care KGaA** **The Articles of Association of Fresenius Medical Care KGaA**.

**Interest of the Management Board and the Supervisory Board**

The members of our management board will become the members of the management board of the general partner. Their service contracts and compensation arrangements will contain the same terms and conditions after the transformation. The KGaA will reimburse the general partner for its expenses in connection with the management and administration of the partnership, including compensation paid to the general partner's management board.

All or most of the members of our supervisory board will become the members of the general partner's supervisory board and (other than Dr. Ulf M. Schneider) will also become the members of the supervisory board of the KGaA. At our general meeting in May 2005, our articles of association were amended to increase the compensation of the members of our supervisory board. The members of our supervisory board will receive additional remuneration for their service on the supervisory board of the general partner. However, the articles of association of Management AG provide that if a member of its supervisory board is also a member of the supervisory board of Fresenius Medical Care KGaA and receives compensation for such service from Fresenius Medical Care KGaA, his compensation as a member of the supervisory board of Management AG will be reduced by half of the compensation received for his service in Fresenius Medical Care KGaA.

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**CERTAIN TAX CONSEQUENCES**

The discussion below is a summary of certain United States federal and German tax consequences generally applicable to U.S. holders (as defined below) of the receipt and ownership of ADSs representing preference shares and ordinary shares of Fresenius Medical Care KGaA. A U.S. holder is

any citizen or resident of the U.S.;

a corporation, partnership, or other entity created or organized in or under the laws of the U.S. or any political subdivision thereof; or

an estate or trust the income of which is subject to U.S. federal income taxation regardless of source of income.

This discussion is based on the Internal Revenue Code of 1986, as amended (the Code), the U.S. Treasury regulations promulgated thereunder, Internal Revenue Service rulings, interpretations and judicial decisions, and German tax law, as currently in effect. All of these statutes, regulations and interpretations are subject to change at any time. Any change may be applied retroactively to the transactions described herein.

The discussion below is not a complete analysis of all of the potential U.S. federal and German tax consequences of receiving and holding ADSs of Fresenius Medical Care KGaA. In addition, the U.S. federal and German tax consequences to particular U.S. holders, such as insurance companies, tax-exempt entities, investors holding ADSs through partnerships or other fiscally transparent entities, investors liable for the alternative minimum tax, investors that hold ADSs as part of a straddle or a hedge, investors whose functional currency is not the U.S. dollar, financial institutions and dealers in securities, and to non-U.S. holders may be different from that discussed herein. **Investors should consult their own tax advisors with respect to the particular United States federal and German tax consequences applicable to receiving and holding ADSs of Fresenius Medical Care KGaA.**

**German Tax Consequences of the Transformation**

***Consequences to the Company***

We will not recognize any gain or loss upon consummation of the transformation, because no assets will be transferred and no special provisions as to taxation are applicable. Because our existing shareholders will become shareholders of Fresenius Medical Care KGaA and will not take the position of general partners, no system change from a capital corporation into a partnership will occur for tax purposes. The transformation of our legal form into a KGaA does not involve a transfer of assets and therefore value added tax is not payable. Because the transformation of legal form does not involve a change of legal entity, no real estate transfer tax arises. As the transformation does not result in an assignment of assets by us, it does not result in either a detrimental change of shareholders in subsidiary partnerships which would be subject to real estate transfer tax or a detrimental transfer of shareholdings which would also be subject to real estate transfer tax.

***Consequences to Shareholders***

Because the transformation of our legal form into a KGaA does not constitute a sale, our shareholders will not realize any capital gain. Our shareholders who reflect their shareholdings in us on their balance sheets will continue to do so with respect to their holdings in Fresenius Medical Care KGaA.

**German Tax Consequences of the Conversion**

***Consequences to the Company***

Under German income tax law, the conversion of preference shares into ordinary shares and the discounted premium payments should be tax neutral for the Company. The premium payments will be shown in our contribution account for tax purposes.

**Table of Contents*****Consequences to the Shareholders***

Under German income tax law, the conversion of our outstanding preference shares into ordinary shares and the discounted premium payments should not have a tax effect for our shareholders. The conversion premium payable by shareholders will constitute subsequent costs of acquisition for the ordinary shares.

**U.S. Tax Consequences of the Transformation*****Consequences to the Company and U.S. Holders***

We believe that the transformation of our legal form to Fresenius Medical Care KGaA constitutes a tax-free reorganization within the meaning of Section 368(a) of the Code for U.S. federal income tax purposes, in which case U.S. holders of our ADSs will not recognize gain or loss upon their receipt of ADSs of Fresenius Medical Care KGaA solely in exchange for their ADSs of Fresenius Medical Care AG. (As further discussed below, different rules apply to cash received in lieu of fractional shares.) The aggregate tax basis of Fresenius Medical Care KGaA ADSs received in the transformation will be the same as the aggregate tax basis of the Fresenius Medical Care AG ADSs surrendered therefor (decreased by the amount of any tax basis allocable to Fresenius Medical Care AG ADSs for which cash is received). The holding period of the Fresenius Medical Care KGaA ADSs will include the holding period of the Fresenius Medical Care AG ADSs exchanged therefor.

If a U.S. holder of our ADSs receives cash in lieu of a fractional Fresenius Medical Care KGaA ADS, the cash amount will be treated as received in exchange for the fractional Fresenius Medical Care AG ADS. The difference between the cash amount received in lieu of the fractional Fresenius Medical Care KGaA ADS and the proportion of the U.S. holder's tax basis in Fresenius Medical Care AG ADS exchanged and allocable to the fractional Fresenius Medical Care KGaA ADS will be capital gain or loss. The capital gain or loss will be long-term capital gain or loss with respect to Fresenius Medical Care AG ADSs held for more than 12 months at the effective time of the transformation.

***Consequences to Non-U.S. Holders***

Non-U.S. holders will not recognize gain or loss for U.S. federal income tax purposes upon their receipt of Fresenius Medical Care KGaA ADSs in exchange for Fresenius Medical Care AG ADSs pursuant to the transformation. In addition, no gain or loss will be recognized by non-U.S. holder for U.S. federal income tax purposes on the receipt of cash in lieu of a fractional Fresenius Medical Care AG ADS pursuant to the transformation, unless (i) the gain is effectively connected with the conduct of a trade or business of the non-U.S. holder in the U.S., or, if a tax treaty applies, is attributable to a permanent establishment maintained by the non-U.S. holder in the U.S., or (ii) the non-U.S. holder is an individual who is present in the U.S. for 183 days or more in the taxable year of disposition, and certain other conditions are met.

**U.S. and German Tax Consequences of Holding ADSs*****Tax Treatment of Dividends***

Currently, German corporations are required to withhold tax on dividends paid to resident and non-resident shareholders. The required withholding rate applicable is 20% plus a solidarity surcharge of 5.5% thereon, equal to 1.1% of the gross dividend (i.e., 5.5% of the 20% tax). Accordingly, a total German withholding tax of 21.1% of the gross dividend is required. A partial refund of this withholding tax can be obtained by U.S. holders under the U.S.-German Tax Treaty. For U.S. federal income tax purposes, U.S. holders are taxable on dividends paid by German corporations subject to a foreign tax credit for certain German income taxes paid. The amount of the refund of German withholding tax and the determination of the foreign tax credit allowable against U.S. federal income tax depend on whether the U.S. holder is a corporation owning at least 10% of the voting stock of the German corporation.

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In the case of any U.S. holder, other than a U.S. corporation owning our ADSs representing at least 10% of our outstanding voting stock, the German withholding tax is partially refunded under the U.S.-German Tax Treaty to reduce the withholding tax to 15% of the gross amount of the dividend. Thus, for each \$100 of gross dividend that we pay to a U.S. holder, other than a U.S. corporation owning our ADSs representing at least 10% of our outstanding voting stock, the dividend after partial refund of \$6.10 of the \$21.10 withholding tax under the U.S.-German Tax Treaty will be subject to a German withholding tax of \$15. For U.S. foreign tax credit purposes, the U.S. holder would report dividend income of \$100 (to the extent paid out of current and accumulated earnings and profits) and foreign taxes paid of \$15, for purposes of calculating the foreign tax credit or the deduction for taxes paid.

Subject to certain exceptions, dividends received by a non-corporate U.S. holder will be subject to a maximum U.S. federal income tax rate of 15%. The lower rate applies to dividends only if the ADSs in respect of which such dividend is paid have been held by you for at least 61 days during the 121 day period beginning 60 days before the ex-dividend date. Periods during which you hedge a position in our ADSs or related property may not count for purposes of the holding period test. The dividends would also not be eligible for the lower rate if you elect to take dividends into account as investment income for purposes of limitations on deductions for investment income. U.S. holders should consult their own tax advisors regarding the availability of the reduced dividend rate in light of their own particular circumstances.

In the case of a corporate U.S. holder owning our ADSs representing at least 10% of our outstanding voting stock, the 21.1% German withholding tax is reduced under the U.S.-German Tax Treaty to 5% of the gross amount of the dividend. Such a corporate U.S. holder may, therefore, apply for a refund of German withholding tax in the amount of 16.1% of the gross amount of the dividends. A corporate U.S. holder will generally not be eligible for the dividends-received deduction generally allowed to U.S. corporations in respect of dividends received from other U.S. corporations.

Subject to certain complex limitations, a U.S. holder is generally entitled to a foreign tax credit equal to the portion of the withholding tax that cannot be refunded under the U.S.-German Tax Treaty.

Dividends paid in Euros to a U.S. holder of ADSs will be included in income in a dollar amount calculated by reference to the exchange rate in effect on the date the dividends, including the deemed refund of German corporate tax, are included in income by such a U.S. holder. If dividends paid in Euros are converted into dollars on the date included in income, U.S. holders generally should not be required to recognize foreign currency gain or loss in respect of the dividend income.

Under the U.S.-German Tax Treaty the refund of German tax, including the withholding tax, Treaty payment and solidarity surcharge, will not be granted when the ADSs are part of the business property of a U.S. holder's permanent establishment located in Germany or are part of the assets of an individual U.S. holder's fixed base located in Germany and used for the performance of independent personal services. But then withholding tax and solidarity surcharge may be credited against German income tax liability.

***Refund Procedures***

To claim a refund under the U.S.-German Tax Treaty, the U.S. holder must submit, either directly or, as described below, through the depositary, a claim for refund to the German tax authorities, with the original bank voucher, or certified copy thereof issued by the paying entity documenting the tax withheld within four years from the end of the calendar year in which the dividend is received. Claims for refund are made on a special German claim for refund form, which must be filed with the German tax authorities: Bundesamt für Finanzen, 53221 Bonn-Beuel, Germany. The claim refund forms may be obtained from the German tax authorities at the same address where the applications are filed, or from the Embassy of the Federal Republic of Germany, 4645 Reservoir Road, N.W., Washington, D.C. 20007-1998, or from the Office of International Operations, Internal Revenue Service, 1325 K Street, N.W., Washington, D.C. 20225, Attention: Taxpayer Service Division, Room 900 or can be downloaded from the homepage of the Bundesamt für Finanzen ([www.bff-online.de](http://www.bff-online.de)).

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U.S. holders must also submit to the German tax authorities certification of their last filed U.S. federal income tax return. Certification is obtained from the office of the Director of the Internal Revenue Service Center by filing a request for certification with the Internal Revenue Service Center, Foreign Certificate Request, P.O. Box 16347, Philadelphia, PA 19114-0447. Requests for certification are to be made in writing and must include the U.S. holder's name, address, phone number, social security number or employer identification number, tax return form number, and tax period for which certification is requested. The Internal Revenue Service will send the certification back to the U.S. holder for filing with the German tax authorities. In accordance with arrangements under the deposit agreement, the depository, or a custodian as its designated agent, will hold the deposited shares and receive and distribute dividends to U.S. holders of ADSs, and perform administrative functions necessary to obtain the treaty refund when applicable. These arrangements are provided by the German tax authorities and may be amended or revoked at any time in the future.

Under the arrangements currently in effect, in order for the depository to file the claim refund forms, the depository will mail to eligible U.S. holders, who will be requested to sign and return to the depository, (a) a statement authorizing the depository to perform these procedures and agreeing that the German tax authorities may inform the Internal Revenue Service of any refunds of German taxes, and (b) a written authorization to remit the refund of withholding to another account than that of the U.S. holder. The depository will attach the signed statement, the Internal Revenue Service certification, the claim refund form and a certified statement issued by the bank or broker paying the dividend to the U.S. holder, documenting the dividend paid and the tax withheld and file them with the German tax authorities. The depository will also file the signed request for certification with the appropriate Internal Revenue Service Center. The depository will charge a fee to the U.S. holder for provision of these services.

To the extent U.S. holders hold ADSs registered with brokers participating in the Depository Trust Company, it is expected that such brokers will assist the depository in performing the procedures described above, and, in particular, prepare and forward the claim refund forms together with the required documentation to the depository. The depository will then file the claim refund forms and any attachments thereto with the German tax authorities.

The German tax authorities will issue the refunds which will be denominated in Euros in the name of the depository. The depository will convert the refunds to dollars and issue corresponding refund checks to the U.S. holders of ADSs and brokers. The brokers, in turn, will remit corresponding refund amounts to the U.S. holders holding ADSs registered with such brokers. U.S. holders of ADSs who receive a refund attributable to reduced withholding taxes under the U.S.-German Tax Treaty may be required to recognize foreign currency gain or loss, which will be treated as ordinary income or loss, to the extent that the dollar value of the refund received by the U.S. holders differs from the dollar equivalent of the refund on the date the dividend on which such withholding taxes were imposed was received by the depository or the U.S. holder, as the case may be.

***Taxation of Capital Gains***

Under the U.S.-German Tax Treaty, a U.S. holder who is not a resident of Germany for German tax purposes will not be liable for German tax on capital gains realized or accrued on the sale or other disposition of ADSs unless the ADSs are part of the business property of a permanent establishment located in Germany or are part of the assets of a fixed base of an individual located in Germany and used for the performance of independent personal services.

Upon a sale or other disposition of the ADSs, a U.S. holder will recognize gain or loss for U.S. federal income tax purposes in an amount equal to the difference between the amount realized and the U.S. holder's tax basis in the ADSs. Such gain or loss will generally be capital gain or loss if the ADSs are held by the U.S. holder as a capital asset, and will be long-term capital gain or loss if the U.S. holder's holding period for the ADSs exceeds one year. Individual U.S. holders are generally taxed at a maximum 15% rate on net long-term capital gains.

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***Gift and Inheritance Taxes***

The U.S.-Germany estate tax treaty provides that an individual whose domicile is determined to be in the U.S. for purposes of the estate tax treaty will not be subject to German inheritance and gift tax, the equivalent of the U.S. f