Company FRESENIUS MEDICAL CARE | Issue 2008
Content ANNUAL REPORT | Chapter 01–06

00001

# *living* CONFIDENCE

Fresenius Medical Care

*Table 01* **OPERATING DATA**

| *$ in millions* | *2008* | *2007* | *Change in %* |
|---|---|---|---|
| **Selected key figures** | | | |
| Net revenue | **10,612** | 9,720 | 9 % |
| Earnings before interest and taxes, depreciation and amortization (EBITDA) | **2,088** | 1,943 | 7 % |
| Earnings before interest and taxes (EBIT) | **1,672** | 1,580 | 6 % |
| Net income | **818** | 717 | 14 % |
| Net cash flow from operating activities | **1,016** | 1,200 | (15 %) |
| Free Cash Flow[1] | **343** | 657 | (48 %) |
| Capital expenditure (net) | **673** | 543 | 24 % |
| Acquisitions, investments and purchases of intangible assets (net) | **218** | 234 | (7 %) |
| Earnings per ordinary share *in $* | **2.75** | 2.43 | 13 % |
| Dividend per ordinary share[2] *in €* | **0.58** | 0.54 | 7 % |
| EBIT margin *in %* | **15.8** | 16.3 | – |
| Return on invested capital (ROIC) *in %* | **8.6** | 8.4 | – |
| Equity to assets *in %* | **40.0** | 39.3 | – |
| **Other data** | | | |
| Employees (full-time equivalents) | **64,666** | 61,406 | 5 % |
| Patients | **184,086** | 173,863 | 6 % |
| Clinics | **2,388** | 2,238 | 7 % |
| Treatments *in millions* | **27.9** | 26.4 | 5 % |

[1] *Before acquisitions and dividends*
[2] *2008: Proposal for approval at the Annual General Meeting on May 7, 2009.*

*Chart 01* **NET REVENUE**

*$ in millions*


*Chart 02* **NET INCOME**

*$ in millions*


*Chart 03* **EARNINGS PER SHARE**

*in $*


*All figures in this report are stated in U.S.-$ and in conformity with U.S. GAAP, if not indicated otherwise.*
*Unless specified, all charts refer to fiscal year 2008. For more details please look to the 5-year-summary at the end of the financial report.*

our VISION

# CREATING A FUTURE WORTH LIVING. FOR PEOPLE. WORLDWIDE. EVERY DAY.

More than three decades of experience in dialysis, innovative research, the global leader in dialysis services and products – that is Fresenius Medical Care. Patients with kidney disease can now look ahead with much more confidence thanks to our innovative technologies and treatment concepts. We give them a future, one that offers them the best-possible quality of life.

We use the increasing demand for modern dialysis methods to our advantage and work consistently to enhance the Company's growth. Together with our employees, we focus on pursuing strategies that will enable us to uphold our technological leadership. As a vertically integrated company, we offer products and services for the entire dialysis value chain.

The highest medical standards are our benchmark. This is our commitment to our patients, our partners in the healthcare system and our investors, who trust in the reliable performance and the future of Fresenius Medical Care.

*Bad Homburg v. d. H., March 2009*

## Dear ladies and gentlemen,

I am delighted to inform you that 2008 was another successful year for Fresenius Medical Care. This is the twelfth year of our existence and we again achieved record sales and earnings. Our company continued to grow in a difficult business environment and we were able to reach our ambitious targets. The field in which we work is not as dependent on the overall economic environment as other sectors. However, we too had to make some fundamental changes and master a number of challenges in these volatile economic conditions.

I think you will see that 2008 proved to be an extremely challenging yet successful year for Fresenius Medical Care. Last year, we were able to demonstrate once again that our company's business model is a robust, profitable, and sustainable one that, even in turbulent times, is able to generate continuous growth, with a worldwide increase in patients of 6 % per year. But one thing has become apparent: in order to continue our past performance, we now have to make an even greater effort.

Here I would like to extend my heartfelt thanks and appreciation to all of our employees around the world with the highest credit they deserve. Our performance in 2008 was not a foregone conclusion; it reflects the dedication and extraordinary efforts of our staff to help promote our company. Of course, my compliments also go to my colleagues on the Management Board and the members of the Supervisory Board. I would like to thank them sincerely for the constructive collaboration and mutual trust.

Please allow me to take a brief look at our results in the last financial year. In 2008, we augmented our revenue by 9 % to $10.6 billion. For the first time in our history, we surpassed the $10 billion mark. This significant revenue increase was due to a strong organic growth of 7 %. As in the previous years, our net income grew at an even higher rate than our revenue to $818 million, up 14 %. As we have done every year in the past, we would like to share our success with you, our shareholders. Therefore, we will propose a dividend increase of around 7 % at the Annual General Meeting, raising it to €0.58 per

ordinary share. This would be the twelfth consecutive rise and would mean that we have increased our dividend every year throughout our company's history.

Our share held its own in a very difficult environment. Although this was not reflected in its absolute price, it performed extremely well in relative terms. With a price drop of just 9 %, the development of our share was among the best in the DAX index, keeping in mind that many international stock indexes, such as the DAX and Dow Jones, were down more than 40 % in 2008.

As a vertically integrated supplier with a clear focus on chronic kidney failure, we expanded both our products and services portfolio in 2008. Our goal remained steadfast to further improve the living conditions of our patients and we kept our sights set firmly on our strategy for 2010.

In 2008, we continued to invest in the research and development of new products, expanded our product spectrum, and extended existing production capacities to ensure the future growth of our company and to take advantage of opportunities. We reached another milestone last year in production, with some 80,000,000 dialyzers and fiber bundles being produced worldwide.

In addition to very strong organic growth, selective acquisitions will continue to play a key role in our company's strategy. These should further strengthen our global presence, particularly in our dialysis care segment, that is to say, our worldwide dialysis clinic network.

In the future, one of the biggest challenges we will face is adapting to changing reimbursement models in dialysis. Here, in particular, we need to find and pursue innovative paths. Starting in January 2011, a new lump-sum reimbursement system for dialysis will be introduced in our largest market, the U.S. Our company will doubtlessly be ideally equipped for this change.

Not only opportunities, but also new risks will nonetheless arise and we will face them as we have in the past.

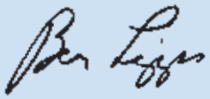
We have set ourselves ambitious goals again for 2009. We intend to boost sales to more than $11.1 billion and achieve a net income of $850 million to $890 million.

I believe that 2009 will be another successful year for Fresenius Medical Care. This is based on my confidence in our long-term strategy, in our strong operating business, in our innovativeness, and in the fact that we have the courage and possibilities to take new paths.

I would like to express my gratitude and appreciation again to you, the shareholders of Fresenius Medical Care, for your support and your trust in us.

In the following pages of the corporate report, you can read more about how important confidence is for us, how instrumental it is for our company's success, and how it continues to motivate us to achieve outstanding performance.

Yours sincerely,



*Dr. Ben J. Lipps*
*Chief Executive Officer*

Company FRESENIUS MEDICAL CARE
Issue 2008
Content ANNUAL REPORT
Chapter PROFILE

# *living* CONFIDENCE

Fresenius Medical Care

*our* **VISION**

# CREATING A FUTURE WORTH LIVING. FOR PEOPLE. WORLDWIDE. EVERY DAY.

More than three decades of experience in dialysis, innovative research, the global leader in dialysis services and products – that is Fresenius Medical Care.

Patients with kidney disease can now look ahead with much more confidence thanks to our innovative technologies and treatment concepts. We give them a future, one that offers them the best-possible quality of life.

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The highest medical standards are our benchmark. This is our commitment to our patients, our partners in the healthcare system and our investors, who trust in the reliable performance and the future of Fresenius Medical Care.

## FACTS AND FIGURES

*Table 01* **OPERATING DATA**

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| Equity to assets *in %* | 40.0 | 39.3 | – |

[1] *Before acquisitions and dividends*
[2] *2008: Proposal for approval at the Annual General Meeting on May 7, 2009.*

*Chart 01* **REVENUE BY REGION**

*$ in millions*

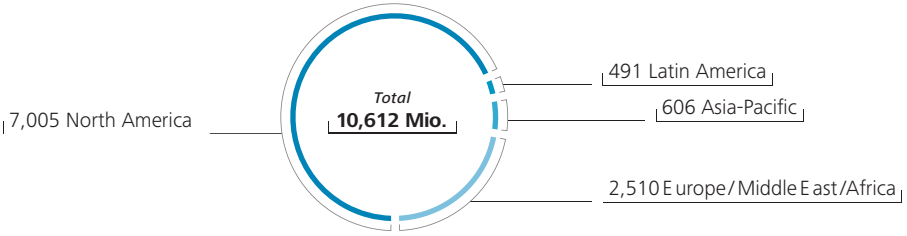
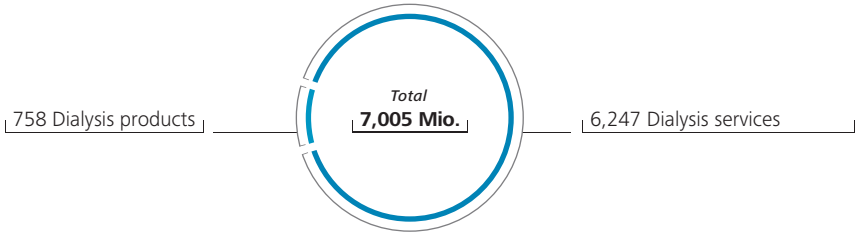


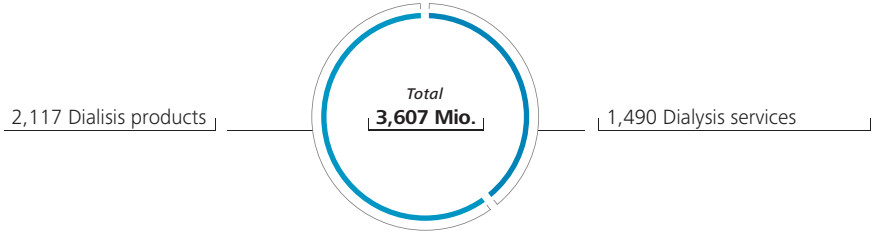
*Chart 02* **REVENUE BY SEGMENT**

*$ in millions*

**North America**




**International**



## FACTS AND FIGURES

*Chart 03* **FRESENIUS MEDICAL CARE'S PATIENTS WORLDWIDE**

*Patients*

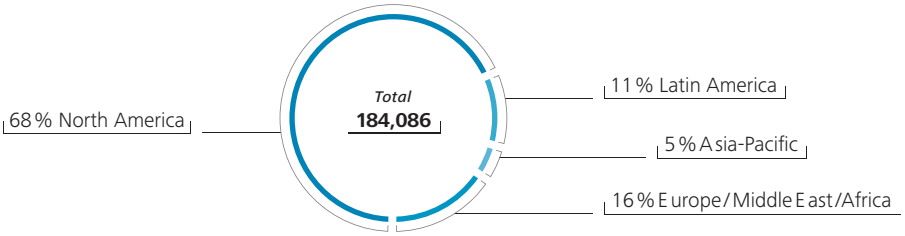



*Table 02* **FRESENIUS MEDICAL CARE'S CLINICS WORLDWIDE**

| *Number* | *2008* | *2007* | *Change* |
|---|---|---|---|
| North America | 1,686 | 1,602 | 5 % |
| Europe/Middle East/Africa | 400 | 362 | 10 % |
| Latin America | 177 | 169 | 5 % |
| Asia-Pacific | 125 | 105 | 19 % |
| **TOTAL** | **2,388** | **2,238** | **7 %** |

*Chart 04* **DIALYSIS SERVICES WORLDWIDE**

*Patients*

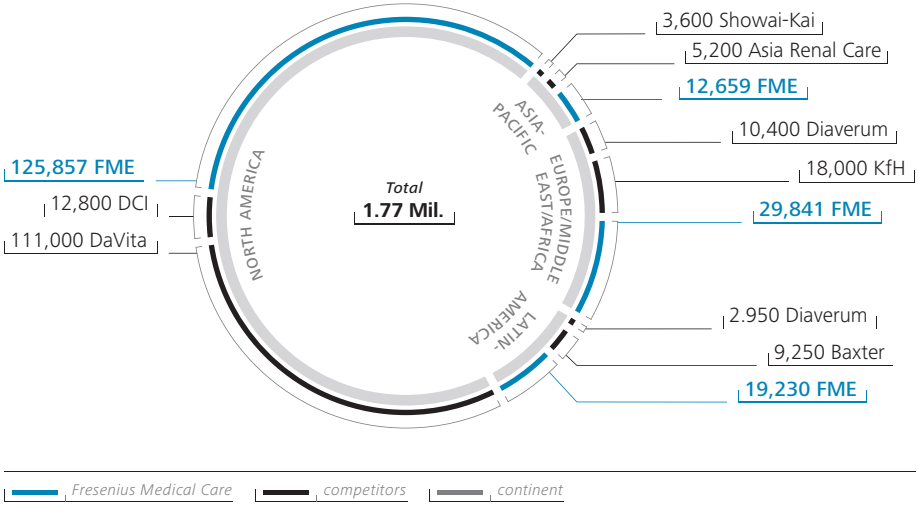
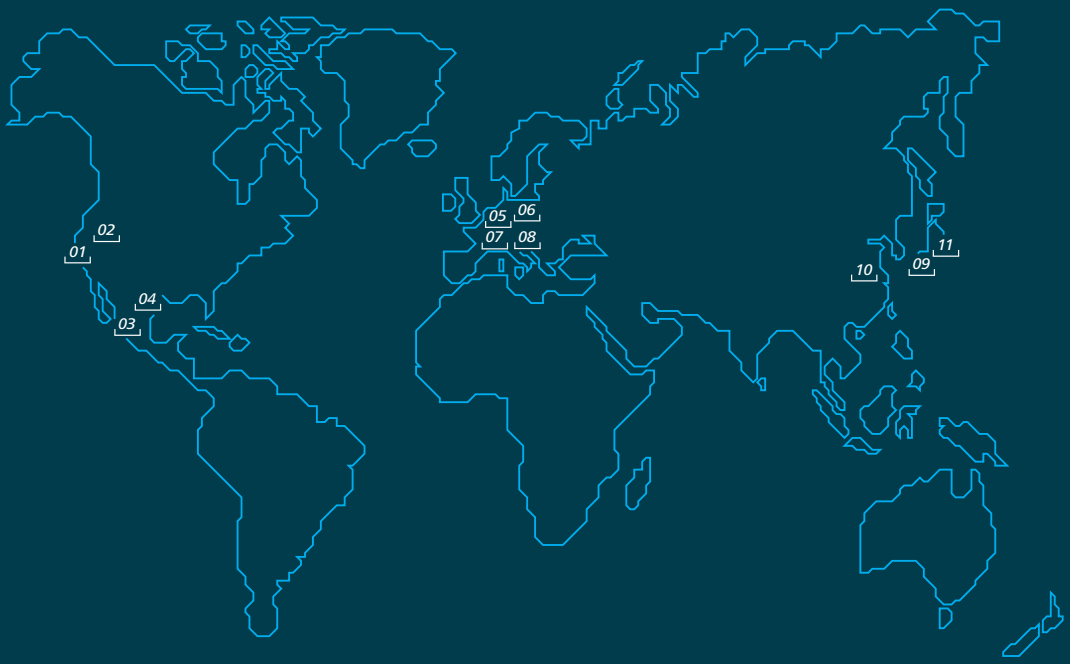



*Table 03* **MARKET POSITION IN MAJOR PRODUCT GROUPS**

| | *Rank 1* | *Rank 2* | *Rank 3* |
|---|---|---|---|
| Dialyzers | Fresenius Medical Care | Gambro | Asahi |
| Dialysis machines | Fresenius Medical Care | Gambro | Nikkiso |
| Hemodialysis concentrates | Fresenius Medical Care | Fuso | Gambro |
| Bloodlines | Fresenius Medical Care | Gambro | Kawasumi |
| Peritoneal dialysis products | Baxter | Fresenius Medical Care | Pisa |

## *Chart 05* MAJOR PRODUCTION SITES




| | | | |
|---|---|---|---|
| *01* US WALNUT CREEK | *04* MX REYNOSA | *07* FR L'ARBRESLE | *10* CN JIANGSU |
| *02* US OGDEN | *05* DE ST. WENDEL | *08* IT CREMONA | *11* JP BUZEN |
| *03* MX GUADALAJARA | *06* DE SCHWEINFURT | *09* JP INUKAI | |

*our* COMPANY PROFILE

Fresenius Medical Care is the world's largest integrated provider of products and services for individuals undergoing dialysis because of chronic kidney failure, a condition that affects more than 1.770 million individuals worldwide.

Fresenius Medical Care is also the world's leading provider of dialysis products such as hemodialysis machines, dialyzers and related disposable products. Fresenius Medical Care is listed on the Frankfurt Stock Exchange (FME, FME3) and the New York Stock Exchange (FMS, FMS/P).

**64,666**
EMPLOYEES WORLDWIDE

**OVER 30**
PRODUCTION SITES WORLDWIDE

**184,086**
PATIENTS WORLDWIDE

**2,388**
CLINICS WORLDWIDE

**ROUND ABOUT 27.87 MILLIONS**
DIALYSIS TREATMENTS

## our FINANCIAL CALENDER 2009

APRIL 30, 2009

### REPORT ON THE FIRST QUARTER 2009

MAY 7, 2009

### ANNUAL GENERAL MEETING, FRANKFURT/MAIN

MAY 8, 2009

### PAYMENT OF DIVIDEND

*Subject to the approval of the Annual General Meeting*

AUGUST 4, 2009

### REPORT ON THE SECOND QUARTER 2009

NOVEMBER 3, 2009

### REPORT ON THE THIRD QUARTER 2009

## CONTACT

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Fax + 49 6172 609 23 01
E-Mail: ir@fmc-ag.de

## IMPRINT

Subject to change.

Fresenius Medical Care AG & Co. KGaA
Registered seat and commercial register: Hof an der Saale (Germany), HRB 4019
Chairman of the Supervisory Board: Dr. Gerd Krick
General partner: Fresenius Medical Care Management AG
Registered seat and commercial register: Hof an der Saale (Germany), HRB 3894
Management Board: Dr. Ben Lipps (Chairman), Roberto Fusté,
Dr. Emanuele Gatti, Rice Powell, Lawrence A. Rosen, Dr. Rainer Runte, Mats Wahlstrom
Chairman of the Supervisory Board: Dr. Ulf M. Schneider

# *living* CONFIDENCE

Fresenius Medical Care

# CONFIDENCE IS ONE OF THE MOST WONDERFUL HUMAN EMOTIONS. AT FRESENIUS MEDICAL CARE WE TAKE PRIDE IN BUILDING A SPECIAL WORK ENVIRONMENT THAT WE CALL "LIVING CONFIDENCE".

# LIFE IS NOT THE SAME AS QUALITY OF LIFE. AND WHO UNDERSTANDS THIS BETTER THAN WE DO?

*– About the importance placed on quality of life at Fresenius Medical Care –*

Our dedicated team of employees develops products and therapies of the highest standard. We do all we can to further improve that quality – and take pride in helping to make life better for dialysis patients around the world.

# IT TAKES A CORPORATE CULTURE THAT IS STEEPED IN CONFIDENCE TO FOSTER GENUINE TEAMWORK AND COMMITMENT TO THE HIGHEST POSSIBLE GOALS. AND THAT IS EXACTLY WHAT WE HAVE ACHIEVED AT FRESENIUS MEDICAL CARE.

*– Living confidence at Fresenius Medical Care –*

Living confidence means a lot to us. Everyone in our company has the space and independence he or she needs to realize ideas and find solutions to problems. Our common goal – to keep improving the lives of dialysis patients – is the key to the special dedication, the special creativity and the special sense of responsibility shared by everyone at Fresenius Medical Care.

And it is this common goal that drives us to excellence in dialysis therapy, excellence that results from our vertically integrated business model and enables us to provide the best possible therapy for our patients during every phase of their treatment.

At the heart of this concept lies our belief that people perform best when they are given the maximum leeway to release their energies and unleash their creativity. At the same time they are able to assume greater responsibility and are encouraged and supported in their aspirations. Through them, we create quality products, solutions and processes, always looking for that little bit more. We believe that quality, even at the highest level, can take another step. Our success confirms this confidence in our people.

*living* **CONFIDENCE**

LIVING CONFIDENCE ALSO MEANS SEEKING DIALOG AND FOSTERING SCIENTIFIC EXCHANGE.

DR. TANJA MAIER, A PHYSICIAN AT THE NEPHROLOGICAL CLINIC AT THE UNIVERSITY OF MARBURG IN GERMANY, SPEAKS TO DR. BEN J. LIPPS, CHIEF EXECUTIVE OFFICER OF FRESENIUS MEDICAL CARE, TO LEARN MORE ABOUT THE MANY FACETS OF THIS SPECIAL AND SUCCESSFUL CORPORATE CULTURE.

*developing* **CONFIDENCE**

WE SHOW HOW FRESENIUS MEDICAL CARE PLACES USABILITY AT THE CENTER OF ITS DEVELOPMENT EFFORTS FOR ITS INCREASINGLY COMPLEX DIALYZERS AND DIALYSIS MACHINES. AND WHY THIS MAKES BUSINESS SENSE.

*justifying* **CONFIDENCE**

WE LOOK AT HOW FRESENIUS MEDICAL CARE TIME AND TIME AGAIN FINDS NEW AVENUES FOR MAKING IMPROVEMENTS IN PRODUCTION.

*experiencing* **CONFIDENCE**

WE EXPLORE HOW FRESENIUS MEDICAL CARE CREATES A BETTER LIFE FOR PATIENTS, WHILE MAKING SURE THAT OPTIMUM CARE REMAINS AFFORDABLE.

*creating* **CONFIDENCE**

WE REVEAL HOW FRESENIUS MEDICAL CARE EXPANDS ITS KNOWLEDGE EDGE THROUGH TRAINING AND CONTINUING PROFESSIONAL DEVELOPMENT.

*living* CONFIDENCE

**Why is quality so decisive for Fresenius Medical Care? And what does the future of dialysis look like – both from a business and medical point of view? Dr. Tanja Maier, a nephrologist from Marburg in Germany talked to Dr. Ben J. Lipps, CEO of Fresenius Medical Care.**

*Dr. Ben J. Lipps*
*Chief Executive Officer*

Dr. Ben J. Lipps (68) has been Chief Executive Officer and Chairman of the Management Board of Fresenius Medical Care since 1999. From 1985 to 1999 – he held several positions at Fresenius Medical Care. As U.S. citizen, Dr. Lipps has worked in the field of dialysis for more than 40 years. His name is closely associated both with the evolution of dialysis technology as it is today and with Fresenius Medical Care's lead in the US market as well as other countries. Even after decades in management, Dr. Lipps still takes a unique personal interest in the well-being of patients who are treated in Fresenius Medical Care's clinics or use the company's products and services.

*Dr. Tanja Maier*
*Nephrologist at the University of Marburg*

Dr. Tanja Maier (41) is a clinical nephrologist at the University of Marburg in Germany. After studying medicine and earning her doctorate at Berlin's Free University, she worked for eight years in the Department of Nephrology at the Charité, Campus Benjamin Franklin. While there, she completed her training to become a consultant in internal medicine with an emphasis on nephrology and internistic intensive care. Since 2004 she has been head of the Department of Nephrology at Marburg University's hospital and responsible senior physician at the Marburg Transplant Center. Even in times of increasing economic and administrative requirements in her profession and the challenge of forging a network between hospitals, teaching and research, Dr. Maier sees the focus of her work in caring for and supporting patients.

*living* CONFIDENCE

*T. Maier* DR. LIPPS, WOULD YOU MIND TAKING A BRIEF TRIP DOWN MEMORY LANE WITH ME? WHAT WAS IT LIKE WHEN DIALYSIS WAS IN ITS INFANCY?

*B. Lipps* During the early years of the mid 70s our research team made some breakthroughs in the treatment of kidney patients that paved the way for dialysis as it is today. Back then, more than 40 years ago, nephrology, the treatment of kidney disease, was still a very new branch of medicine. A few years later, we manufactured the first artificial hollow fiber membrane. I remember the close contact with patients at the time as being very special. In those days, we worked with a very small number of kidney patients.

*T. Maier* SINCE WHEN HAS QUALITY BEEN THE TOP PRIORITY FOR YOU AND FRESENIUS MEDICAL CARE?

*B. Lipps* It probably began back then. Since there were so few patients at the beginning, we doctors and engineers could offer them very intensive care, which resulted in a very close community. We were able to evaluate technological progress straight away; if we made mistakes, they happened in our immediate environment, and so quality became our most important consideration. And things have remained that way up to the present day.

*T. Maier* HOW DID YOU EXPERIENCE THE DEVELOPMENT OF KIDNEY TREATMENT?

*B. Lipps* It was a godsend for me to be able to participate in the construction of some of the first dialysis machines. At that time, we had very modest goals compared to today. You have to consider that up to the early 1970s, kidney failure was a death sentence. Over time, we were able to increase the life expectancy of patients by a month with the help of dialysis. One month became two, then three months, then years. Today it can even be decades.

*T. Maier* DO YOU MEASURE YOUR SUCCESS SOLELY IN TERMS OF HOW MANY YEARS OF LIFE YOUR PATIENTS GAIN?

*B. Lipps* No. Our goal is to make the lives of dialysis patients worth living. At first, of course, the focus was on prolonging their lives. But after the initial results, we could concentrate on making dialysis treatment as gentle as possible. The quality of the machines, drugs and methods at our disposal today are – to use a sports term – in a completely different league to those available to us a few decades ago, if they existed at all. While kidney failure is no longer a death sentence today, it is still a burden for dialysis patients. Our aim is to reduce this burden, and we are still working to achieve this, every day and every hour.

*T. Maier* WHAT IS MORE IMPORTANT TO YOU: TECHNOLOGICAL PROGRESS OR MEDICAL RESEARCH?

*B. Lipps* Our focus has shifted over the course of the decades, too. At the beginning, we were primarily interested in perfecting the technology, and concentrated our attention on electronics, material science and production technology. Production technology is still a concern today, because we have to keep our costs under control. That means we have to increase the production volume while maintaining the level of quality. The technological foundations have been laid in the meantime, and the machines work reliably. That's why we can now concentrate on making their use as comfortable as possible for patients. The machines have to be easy to operate, but they must also be adaptable to individual patients and their treatment. So it's a question of ergonomics – or user-friendliness, if you will.

*T. Maier* HOW DO YOU DECIDE WHICH INNOVATION TO BRING ONTO THE MARKET WHEN?

*B. Lipps* There are two simple questions that help us assess whether an innovation is ready for the market. Does it improve the quality of life patients? And, is it economical? Quality is the most important criterion, followed by efficiency.

*T. Maier* WHO COMES UP WITH THE IDEAS FOR INNOVATIONS IN YOUR COMPANY?

*B. Lipps* As far as innovation in the production process is concerned, many ideas are coming from our factories – and we are pleased about that because this is where our know-how is. It's a joy to see how dedicated our employees are to finding new ways of optimizing production. The ideas for product innovations primarily come from three areas of our organization: from research and development, from marketing, and from our medical community.

*T. Maier* AND WHAT HAPPENS THEN? HOW ARE THE OTHER AREAS INCORPORATED?

*B. Lipps* Each idea generated by one of the groups is presented to the others. Then we form a project team that accompanies the idea from that point on. The team consists of representatives from all of the departments affected, without hierarchies playing too great a role.

# HOW FRESENIUS MEDICAL CARE FOCUSED ON THE PATIENT FROM THE EARLIEST STAGES OF DEVELOPMENT.

*Dr. Gail-Suzanne Brown*
*Senior Vice President*
*Research and Development*
*at Fresenius Medical Care*

# HOW QUALITY COMES ABOUT. RESEARCH AND DEVELOPMENT TALKS WITH MARKETING.

*G. Brown* Some people say that our respective departments each have their own distinct view on things. I can't say I agree. Here at research and development, the patient is always at the focus of our work. We do all we can to create products that improve his quality of life, that are safe, and allow better treatment. Isn't that true for you? Doesn't marketing put the patient first, too?

*W. Wehmeyer* Yes, of course. What we do is to respond to customers' wishes, and that includes patients, as well as clinics and physicians. We also deal with market mechanisms. Hm, that sounds a bit technical. You know, really, our job is to dream. We are driven by the question of what our customers consider an ideal product to be. To find the answer to this question, we like to dream. And we get impatient when the market demands an innovation and we think it is taking too long to get one ready.

*G. Brown* And we are the ones who can tell you what is technologically feasible. We at R&D deal more with the scientific and engineering side of things, but of course we are also tuned into the market. However, we will only release a product when it is technologically sound and safe to use. But in the end, we both put the patient's well-being first, don't we?

*W. Wehmeyer* Definitely. In the medium to long term, our success will always depend on progress as the patient sees it. After all, we're talking about what is most precious to him – his life, and its quality.

*G. Brown* And our aim is to improve that. It has to do with the reliability of our machines and the confidence that patients rightly place in their treatment. Today, our machines are built so that, if they were cars, they would only need to be serviced once every 130,000 miles – that's not even one-sixth of what today's cars demand. But are our customers aware of that? Are we telling them that clearly enough?

*W. Wehmeyer* I think so. Remember, most of them have used our products for years. That means they have seen for themselves that the quality of our machines is second to none.

*G. Brown* So what we have to do now is to produce this kind of quality at an affordable price. I think we manage that fairly well already. At present, we can say we are the best in the world, both in terms of quality itself and in the ratio of cost to quality.

*W. Wehmeyer* But we aren't going to rest on our laurels …

*G. Brown* No, absolutely not! It's not as if there's nothing left to be improved. Ideally, patients should be able to undergo dialysis without noticing anything at all. We're still a long way from that, but the roadmap is clear. It's a matter of compatibility and machines that can automatically adapt the treatment to individual patients.

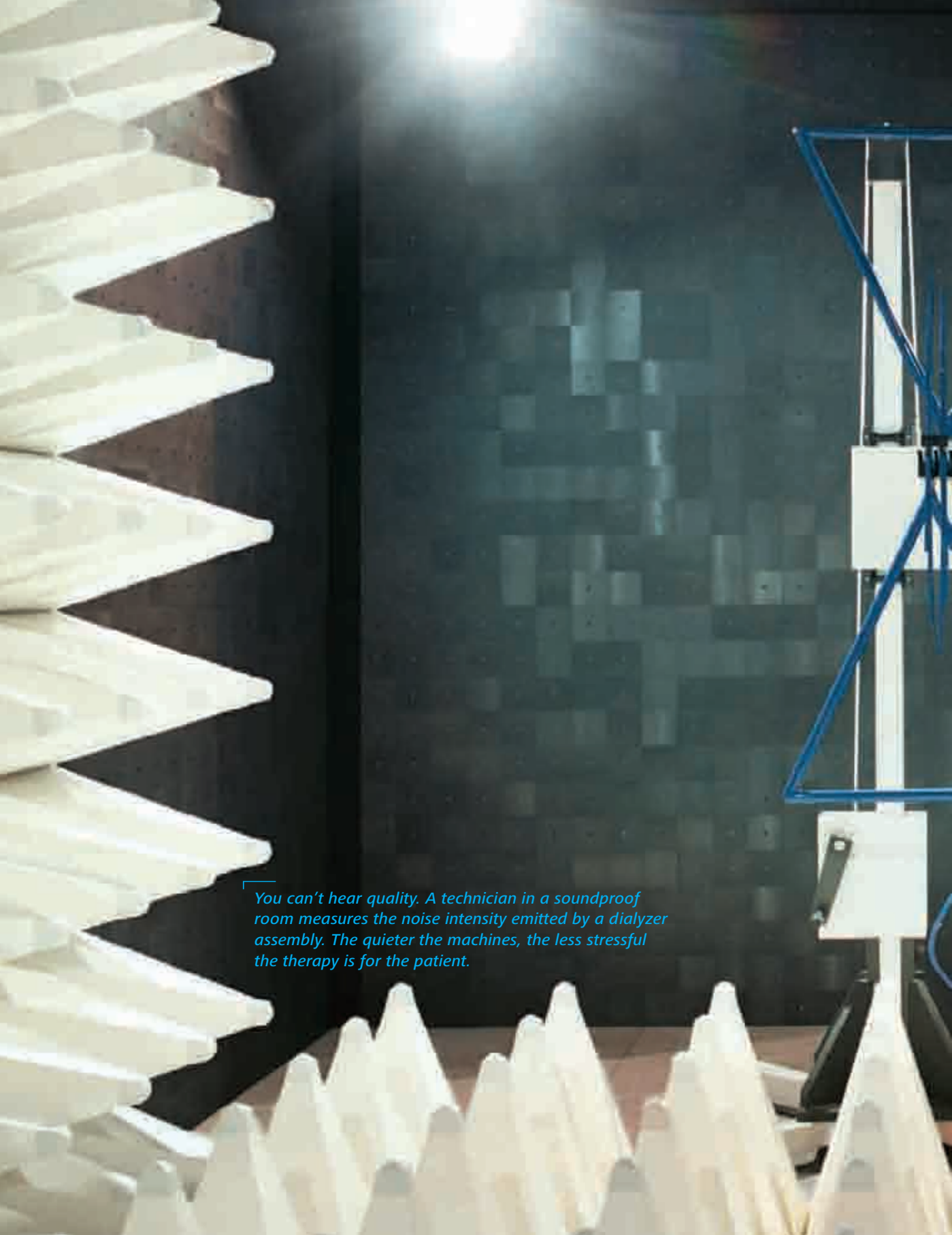
*W. Wehmeyer* Another important factor is that our products should work equally well the world over: in poor countries, where there often aren't enough nurses, especially in outlying areas, or in regions with water shortages or bad water quality as well as in rich countries. No matter where they live, patients have a right to expect outstanding quality from us.

*G. Brown* Which brings us back to quality. It doesn't come for free, and our efforts to achieve and improve it are enormous.

*W. Wehmeyer* But customers do pay for our quality, simply by buying our products and services. They know that poor quality leads to follow-up costs, even though these may go unnoticed for a while. But somewhere down the line, it will hit back like a boomerang.

*G. Brown* … and the patient will suffer. But we won't let that happen.

*W. Wehmeyer* That's what our customers rely on. And it's what all our teams work to achieve, whether in R&D, production or marketing.



*You can't hear quality. A technician in a soundproof room measures the noise intensity emitted by a dialyzer assembly. The quieter the machines, the less stressful the therapy is for the patient.*

*Wolfgang Wehmeyer*
*Senior Vice President International*
*Marketing and Medicine*
*at Fresenius Medical Care*

The health of our patients is our main concern.
Therefore, our goal in the long term is to improve their quality of life by continuously optimizing dialysis treatment.

*– our contribution –*

RESEARCH AND DEVELOPMENT EXPENDITURE IN 2008

**$ 80 MILLION**

NUMBER OF EMPLOYEES IN RESEARCH AND DEVELOPMENT WORLDWIDE

**415**

NUMBER OF PATENTS AND PATENT APPLICATIONS IN 2008

**2,402**

*Further information on this topic can be found from page 76 onwards.*

*T. Maier* WOULD YOU SAY THAT THIS KIND OF FREEDOM IS TYPICAL OF FRESENIUS MEDICAL CARE?

*B. Lipps* **Definitely. I'm convinced that a company like Fresenius Medical Care can only remain successful if it encourages every employee to excel. And that can only happen if each one of them is given leeway and responsibility – and that's what we try to do.**

*T. Maier* LOOKING BACK, HOW HAS THE BUSINESS CHANGED? ISN'T IT TRUE THAT DIRECT FEEDBACK FROM PATIENTS HAS TAKEN A BACK SEAT AND THAT YOU TEND TO COMMUNICATE AND WORK MORE WITH DOCTORS AND NEPHROLOGISTS INSTEAD?

*B. Lipps* **That's true, and it's a good thing. It reflects the fact that the number of patients we treat has grown, and continues to grow. Today, we associate with 5,000 to 6,000 doctors under contract who treat tens of thousands of patients. And the patients can now lead longer and better lives thanks to our products and services.**

*T. Maier* BUT IS QUALITY THE SAME FOR A DOCTOR AS FOR A PATIENT? FOR EXAMPLE, I KNOW THAT MY PATIENTS WOULD PREFER ME TO BE WITH THEM MORE OFTEN INSTEAD OF HAVING TO DEAL WITH ECONOMIC AND ADMINISTRATIVE MATTERS. BUT DOCTORS HAVE OBLIGATIONS TOWARDS HOSPITALS AND INSURANCE COMPANIES, AND THESE GAUGE THEM BASED ON OTHER CRITERIA.

*B. Lipps* **Ultimately, everyone desires to provide a better quality of life for the patients – so we generally concur on what quality is. But I agree with you: different interests come into play depending on which part of the system you talk to. For us, that's a reason to integrate further services into our offer; in that way we can take on more comprehensive responsibility for quality and try to meet more demands.**

*T. Maier* DO YOU THINK THAT YOUR COMPETITORS WILL SIMPLY TAKE THIS LYING DOWN?

*B. Lipps* **We never underestimate the competition. But I know that we are relatively unique in what we do. We have specialized in nephrology and have built a vertically integrated business model in this field. In other words, we not only provide machines, but also consumables, drugs, the skills of our care personnel, and so on.**

*T. Maier* DOESN'T SUCH SPECIALIZATION ALSO HAVE DISADVANTAGES, BECAUSE IT MAKES THE COMPANY ONE-SIDED?

*B. Lipps* **This model has a major strength. Managers at Fresenius Medical Care know that they have to be successful in nephrology – or in the subarea they are responsible for. Because ultimately, that is the only field of activity this company works in.**

*T. Maier* DOESN'T THAT LIMIT THEIR CAREER PERSPECTIVES?

*B. Lipps* **As we continue to enhance our business model to the present day, there is increasing potential within the company. You have to consider the fact that we started as an equipment manufacturer. Then we started producing consumables. Later services were added.**

*T. Maier* BUT EVERYTHING REVOLVES AROUND NEPHROLOGY.

*B. Lipps* **That's true. That's our area of expertise, after all. And we've been successful because we focus on one important disease. It's a matter of offering excellent treatment to patients week after week, month after month, year after year. Dialysis combines state-of-the-art technology with an exceptional proximity to patients, and that**

# HOW QUALITY ASSURANCE AND PRODUCTION WORK TOGETHER AT FRESENIUS MEDICAL CARE.

*Glenn Slater (left),*
*Senior Vice President*
*Production North America*

*Mike Saraceno (right),*
*Senior Vice President*
*Quality Systems North America*

# HOW FRESENIUS MEDICAL CARE FINDS EVER-NEW AVENUES FOR IMPROVEMENTS IN PRODUCTION.

Quality assurance and Production are two functions that are naturally crucial to the success of Fresenius Medical Care. In many other companies these are often established as distinct entities that may not always share common goals. Fresenius Medical Care North America, though, does not separate the two, having forged instead an alliance between them to ensure best quality. Mike Saraceno, who is responsible for quality systems in Fresenius Medical Care's North American operations: "The life and health of patients depend on the quality of our products, so we always have to get this factor right, even when we increase production numbers."

With a market expectation of higher than average quality from Fresenius Medical Care and a position as "best cost" leader, the company has seen demand expand its volumes to the point where it became necessary to form a partnership between Quality and Production and thus combine common goals. Acceptance of a certain amount of rejected products was no longer affordable. Glenn Slater, responsible for manufacturing at Fresenius Medical Care North America, underlines the importance of the partnership: "Each of us knows that we can only reach our goal if we work together to accomplish it. Cooperation is the key and the partnership between Quality Assurance and Production has made it possible to achieve the highest degree of quality."

The resulting quality programs have enabled the Company to reach Six Sigma levels of 3.4 defects per million opportunities. Management acknowledges that the implementation of these programs requires enormous effort and, where opportunities exist, a complete rethink of processes. Saraceno and Slater have taken advantage of the freedom to realign processes for maximum quality output and encouraged their employees to follow this practice.

The focus on quality has also been allied to a focus on environmental practices, with one goal being to use as little landfill as possible. At the plant in Utah, for example, the past two years have seen a reduction in hazardous substances of 84 % as well as a reduction of landfill waste of 66 %.

The entire organization of Fresenius Medical Care is based on the principle of common values. "This concept enables each of us to go beyond our achievements," summarizes Saraceno. The results are endorsed by Slater: "I've never seen the quality that is produced at Fresenius Medical Care anywhere else and I've been working in the industry for 35 years."

*A dialyzer is born – Lean Six Sigma is the magic formula for unmatched quality in production.*

*Fresenius Medical Care dialyzers go through a final check before shipping: certified quality creates confidence.*

*Hand-tested: production technicians examine dialyzer parts.*

Thanks to efficient production processes, we are the cost leader. We have raised output while simultaneously improving quality. At the same time, we conserve global resources and reduce the environmental impact.

*– our contribution –*

# PRESERVING THE ENVIRONMENT IN FRESENIUS MEDICAL CARE'S PRODUCTION PLANTS IN OGDEN AND WALNUT CREEK IN 2008

## WATER CONSUMPTION
**– 12 %**

## ELECTRICITY CONSUMPTION
**– 8.3 %**

## GAS CONSUMPTION
**– 48 %**

*Further information on this topic can be found from page 86 onwards.*

makes this area unique in my eyes. There's nothing like it in the health industry or in any other branch of industry for that matter. Of course, you could offer dialysis as part of a wide spectrum of health services (and others have tried this), but I don't think that can ever really work. Conversely, it seems to me that our success is proof of the fact that the dialysis business requires specialization. And we've abided by that up to now.

*T. Maier* BUT THE CONDITIONS HAVEN'T ALWAYS BEEN IN YOUR FAVOR. FOR EXAMPLE, IN NORTH AMERICA THEY HAVEN'T RAISED YOUR REIMBURSEMENTS FOR 17 YEARS. HOW DO YOU SURVIVE IN THIS KIND OF ENVIRONMENT?

*B. Lipps* In fact, these adverse circumstances have made us even stronger. Naturally, we would like to see the health authorities in many more countries in which we are active regulate the reimbursement of nephrological services more comprehensively, or at least take inflation into account. But as most of them have not done so, we had to think of something else. First of all, of course, we made sure that the costs were not too high …

*T. Maier* … WHICH CAN RESULT IN LOWER QUALITY.

*B. Lipps* That was never an issue.

*T. Maier* BUT HOW DO YOU WITHSTAND THE PRESSURE?

*B. Lipps* Put very simply, because we see our patients. As you know, in our field of work, relationships with patients can last for years, sometimes decades. People come for dialysis three times a week, and while we do what we can to make their lives more pleasant, we know that a dialysis patient has a rough time even with the ideal prerequisites.

*T. Maier* BUT HOW DO CLOSE AND LONG-TERM RELATIONSHIPS WITH YOUR PATIENTS HELP YOU CONTINUE TO IMPROVE THE QUALITY OF YOUR PRODUCTS?

*B. Lipps* **For us, the quality of our products is synonymous with improvements in the quality of our patients' lives. We can see whether that is the case straight away, for example, during treatment in our clinics. If an employee in production suggests a way of making something at a lower cost, but this could result in patients being worse off, we don't implement the suggestion. Plain and simple.**

*T. Maier* ONE OFTEN HEARS FROM OTHER COMPANIES ABOUT CONFLICTS BETWEEN COST-CUTTING MEASURES AND QUALITY ASSURANCE. WHAT'S THE SITUATION WITH YOUR COMPANY? HOW DO THE EMPLOYEES IN PRODUCTION GET ALONG WITH THOSE IN QUALITY ASSURANCE?

*B. Lipps* **Very well, in fact. Of course, there are differences in opinion, and there should be, as long as an agreement is reached in the end. And we make sure that this happens by coordinating the goals of our production managers with those of our quality control managers, for example. When a decision has to be made on an innovation, both sides sit down together and develop a document that serves as a basis for the decision.**

*T. Maier* HOW DO YOU DEFINE "EXCEPTIONAL"?

*B. Lipps* **For us, it means that we achieve our goals the first time around without having to do additional work. That's what we understand by "exceptional". And we achieve this with Lean Six Sigma. We are currently introducing this management concept throughout the company. Our goal is to reach a level of quality where we have no more than three defects per one million pieces produced.**

# HOW FRESENIUS MEDICAL CARE RAISES EFFICIENCY AND QUALITY AT THE SAME TIME.

*Dr. Andrea Stopper*
*Senior Vice President*
*Dialysis Services Coordination*
*for Europe, Middle East, Africa*
*at Fresenius Medical Care*

# HOW FRESENIUS MEDICAL CARE CREATES A BETTER LIFE FOR PATIENTS AND, AT THE SAME TIME, DOES EVERYTHING TO ENSURE OPTIMUM CARE REMAINS AFFORDABLE.

There hardly is a country in the world that does not debate on which services the public healthcare system should provide and what these services should cost. What a relief when solutions can be found to improve treatment for patients – solutions that do not strain the healthcare system but reduce its costs.

Fresenius Medical Care has found one such solution and has adopted a comprehensive therapy approach in Portugal. For years the country's healthcare system lagged behind in the way it paid for dialysis treatment. As of January 1, 2009, Portugal introduced new reimbursement rules – a real paradigm shift. "It was a win-win situation," says Andrea Stopper, Head of Dialysis Services Coordination (for Europe, Middle East and Africa) at Fresenius Medical Care, "but not everybody realized that from the outset." Today, Fresenius Medical Care provides the state-run insurer with a vastly improved service that costs less.

How is that possible? "The key was to expand the scope of our services. Today, we are responsible for the entire treatment process instead of just individual steps, as it used to be," says Dr. Stopper. "We have managed to persuade our partners that we could offer a better overall quality if we were in charge of the entire process, including all dialysis services and products. That's why we are currently discussing the inclusion of Vascular Access Management (VAM) into our offering." As a part of dialysis medicine VAM allows a direct access to the dialysis system on the patient's body. "Until now, VAM was often performed somewhere else, for example in general hospitals. There, a catheter was simply inserted instead of a surgical vessel access being performed. Catheters, however, often cause infections and therefore add to costs. When we carry out the VAM ourselves we avoid such follow-up costs. We are thus able to provide a more cost-effective treatment, while still improving quality."

This was made possible only because Fresenius Medical Care had been operating its own VAM center in Portugal for years. At the center Fresenius Medical Care physicians acquired the necessary expertise. "We ventured into this direction without receiving a single euro of public funds in return – we simply realized that this was the right way to improve quality," says Dr. Stopper. The achieved success proves this strategy right: not only do the new standards increase patients' longevity, patients also return to the hospital less often – what an obvious progress towards quality of life!

*Regular gatherings:*
*marketing executives at Fresenius Medical Care's*
*headquarters in Bad Homburg, Germany.*

*Finding out about the latest developments at Fresenius Medical Care: Dr. Andrea Stopper chats with marketing executives from all over the world.*

*Personal meetings enable experts from all parts of the world to get together and talk – all for the patient's benefit.*

Quality improvements can also be the result of cost pressure. The reimbursement model in Portugal is a role model for healthcare markets worldwide.

*– our contribution –*

PATIENTS IN CARE
IN PORTUGAL
**4,200**

PATIENTS IN PORTUGAL
TREATED WITH ONLINE-HDF
**65 %**

DIALYSIS CLINICS
IN PORTUGAL
**34**

*Further information on this topic can be found from page 102 onwards.*

*T. Maier* AND DOES LEAN SIX SIGMA REDUCE YOUR COSTS?

*B. Lipps* **In a process like this, of course, you first have to invest in training and documentation. In the long term, however, we are convinced that Lean Six Sigma will make us cost leaders in the dialysis product segment. And that's the only way to stay at the top. But what's more important is that it helps us to improve our quality.**

*T. Maier* SO DOES EFFICIENCY LEAD TO QUALITY?

*B. Lipps* **That's exactly right. By the way, we notice this in other areas, too, for example in the case of bundling, or lump-sum reimbursement for complex services.**

*T. Maier* IS THAT THE COMPREHENSIVE APPROACH YOU JUST SPOKE ABOUT?

*B. Lipps* **That's right.**

*T. Maier* SO YOU NO LONGER WANT TO JUST PROVIDE DIALYSIS MACHINES AND MATERIAL, BUT TO COVER THE ENTIRE DIALYSIS PROCESS?

*B. Lipps* **Yes. We believe that it's in everyone's interest if we cost efficiently provide products and services which focus on delivering the best renal therapy.**

*T. Maier* WHICH SERVICES MIGHT THOSE BE?

*B. Lipps* **Vascular access management (VAM), for instance. You probably know that the way in which patients are prepared for dialysis differs from country to country. While some doctors routinely give patients an artificial access to their blood stream, others opt for a more natural solution – for example, a fistula. This requires greater skill because it means interfering with the structure of the blood vessel, but it leads to better results. We have assisted the physicians by developing a method to monitor the patients that are on fistulas.**

*T. Maier* WHAT MAKES YOU SO CONFIDENT THAT YOU CAN SUCCESSFULLY PROVIDE SUCH COMPLEX MEDICAL SERVICES?

*B. Lipps* **The fact that we have practiced vascular access surgery for several years now. In recent years, we have gained a lot of experience in this area and have been able to provide our specialists with comprehensive training. In addition, we see this as a way of cutting payers' costs.**

*T. Maier* THEN YOU WOULD BE CHEAPER AND BETTER AT THE SAME TIME?

*B. Lipps* **Yes, that's the great thing about our approach. We believe that in this case efficiency gives rise to quality.**

*T. Maier* BUT NOT MANY SHARE THE VIEW.

*B. Lipps* **True. There is the widespread belief that when money is scarce, quality will inevitably suffer. But that doesn't apply in our area, provided that the authorities and payers agree with us about where to cut costs without adversely affecting quality and act accordingly. Fortunately, we see that payers in more and more countries are beginning to share our opinion.**

*T. Maier* WHAT CONVINCES THE PAYERS – OTHER THAN THE PROSPECT OF SAVING MONEY?

*B. Lipps* **We have developed with our physicians and associates a very efficient system of indicators. It enables us to monitor the well-being of a patient, and the payers respect us for keeping these indicators within certain limits. In other words, it's about meeting standards.**

*T. Maier* SO YOU WANT TO ASSUME MORE COMPREHENSIVE RESPONSIBILITY FOR THE PATIENT. WHAT IS THE STRATEGY BEHIND EXPANDING YOUR ACTIVITIES IN THIS WAY?

*B. Lipps* **We're expanding, but exclusively in the field of nephrology. That's our company's focus, and we see growth opportunities in this area for the future.**

# HOW FRESENIUS MEDICAL CARE TRAINING GOES HAND IN HAND WITH QUALITY MANAGEMENT.

*Dr. Kümmerle*
*Senior Vice President*
*Quality Management International*
*at Fresenius Medical Care*

# HOW FRESENIUS MEDICAL CARE EXPANDS ITS KNOWLEDGE EDGE THROUGH ITS TRAINING AND EDUCATION SYSTEM.

In his responsibility for quality management systems in the International segment of Fresenius Medical Care, Wolfgang Kümmerle does not normally need to start from scratch:

"Our staff works in healthcare and thus needs to comply with diverse legal regulations regarding education, training and skills. Anyone applying for a job needs to fulfil these requirements. However, for Fresenius Medical Care to maintain and constantly enhance its quality standards, additional and very different prerequisites need to be in place. It is therefore essential that training exercises are effective. A successful final exam alone is not good enough. Not all of our training modules end with an exam. And, even with an exam we cannot know how someone will put theory into practice in day-to-day work, for example in a dialysis ward," says Dr. Kümmerle.

Therefore, his department developed a holistic training management system. It covers all business processes and determines the effectiveness of training measures. "We make use of multiple-choice tests, and we hold specific workshops for this purpose. We get the best results when people know what happens both upstream and downstream from their station in the work process." This has led to the creation of a training matrix which reflects the entire product life cycle, from purchasing via production and application all the way to waste disposal.

"Fresenius Medical Care's exceptional business model has made this possible. In other industries that is quite seldom. Certainly, we invest a lot of effort in this area. We want to make sure that each employee looks beyond the limits of the respective processes and becomes aware of the importance of quality for his or her specific job," says Wolfgang Kümmerle. "Our staff needs to feel as an integral part of the whole – this is the best motivation. It is also the key for all trainings and a prerequisite for quality."

*A holistic management system guarantees high-quality training throughout the Company.*

*Trainees learn how to operate a dialysis machine.*

*Are our training courses up to the mark? Special workshops gauge and assess their effectiveness.*

The development of a holistic training management system as an important element of quality management is a cross departmental approach that goes far beyond conveying knowledge about individual products or services.

*– our contribution –*

CERTIFIED DIALYSIS CLINICS
IN 2008
**300**

QUALITY TRAININGS
IN 2008
**57**

PARTICIPANTS
IN 2008
**578**

*Further information on this topic can be found from page 88 onwards.*

*T. Maier* YOU SOUND VERY CONFIDENT.

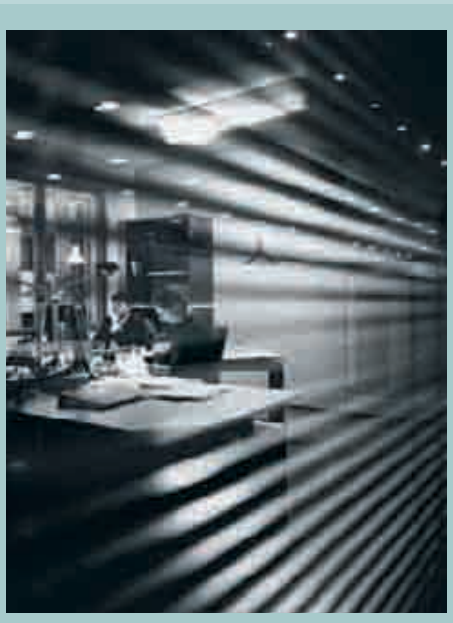
*B. Lipps* **I am, as is the rest of the Management Board. We are concentrating on this one clinical picture and are convinced that our business model is sustainable.**

*T. Maier* HOW DO YOU MOTIVATE YOUR EMPLOYEES TO FOLLOW YOU ON THIS PATH?

*B. Lipps* **Monetary incentives certainly play a role, but as a successful company we have to do more than that. For me, it is important that managers act with emotional intelligence. To be successful as a manager, you have to like your coworkers. This is not a sufficient condition, of course, but a necessary one.**

*T. Maier* YOU'VE BEEN IN THE FRONT LINE OF NEPHROLOGY FOR MANY YEARS. WHAT WILL BE THE MOST IMPORTANT CHALLENGES IN THE NEXT FEW YEARS, IN YOUR OPINION?

*B. Lipps* **In the near future, it is likely that we will reach the point where we can continually monitor patients' vital parameters, for example their water content. We carried out intensive work in this area long before it was reimbursed. Just last year, we introduced our Body Composition Monitor, the BCM, a device that enables doctors to measure not just the relative but also the absolute water content of a patient. This has enhanced the quality of treatment enormously.**



*T. Maier* OVERHYDRATION IS ONE OF OUR MOST URGENT PROBLEMS. AND IT IS NOT ALWAYS EASY TO FIND OUT WHAT CAUSES IT, ESPECIALLY IN PATIENTS WITH OTHER ILLNESSES, SUCH AS HEART DISEASE. SOME PATIENTS LACK THE NECESSARY DISCIPLINE AND DRINK TOO MUCH ALTHOUGH THEY KNOW THAT IT IS DETRIMENTAL FOR THEIR HEALTH WHEN THEY ARE OVERHYDRATED.

*B. Lipps* **And that's why we think it is so important to constantly monitor the patient's hydration status. Fortunately, due to advancements in mobile data technology we will soon be able to do this in a non-invasive manner.**

*T. Maier* AND IN THE LONGER TERM – WHAT CHALLENGES ARE YOU PLANNING ON MEETING?

*B. Lipps* **I have two main aims: one is to launch a program for comprehensive reimbursement that enables us to organize treatment in such a way that the patient takes front and center at all times. The other is to develop a wearable dialysis machine.**

*T. Maier* HOW LONG DO YOU THINK WILL IT TAKE BEFORE AN EFFICIENT, PORTABLE DEVICE HAS BEEN DEVELOPED THAT IS EASY TO USE?

*B. Lipps* **It's hard to say, but I'd say five to ten years at the most.**

*T. Maier* FRESENIUS MEDICAL CARE HAS BEEN SUCCESSFUL FOR SO LONG NOW. HOW DO YOU MAKE SURE THAT YOUR COMPANY DOESN'T GET CARRIED AWAY?

*B. Lipps* **That's really very easy. Top management just has to see the patient and ask: is his life good? And by "top management" I mean that this attitude has to come from the top, but of course it applies throughout the company. That's why we invite our patients to come to us and talk with our people. We believe that nothing motivates an employee in production more than when a patient tells him how important our products and services are.**

*T. Maier* AND WHAT ABOUT YOU? DO YOU STILL TALK WITH PATIENTS?

*B. Lipps* **Certainly. We have a large number of patients who've used our products for 30 years or more, and we talk on the phone and write to each other regularly. As I said at the beginning: these people are like family to us.**

*living* **CONFIDENCE**

# FRESENIUS MEDICAL CARE WOULD LIKE TO THANK ITS STAFF AND PARTNERS THE WORLD OVER FOR THEIR DEDICATION AND ITS PATIENTS FOR ANOTHER YEAR OF THEIR CONFIDENCE IN US AND OUR PRODUCTS AND SERVICES. IT IS THE KIND OF CONFIDENCE WE ARE GRATEFUL FOR BECAUSE IT INSPIRES US TO BECOME EVEN BETTER, EVERY DAY.

*– Living confidence at Fresenius Medical Care –*
Thanks to our excellent dialysis machines, drugs and therapies, we grew our business worldwide yet again in the past year.

Thanks to our staff – who have more than earned the confidence we place in them – we were able to improve the quality of our products and services. After all, only a company that embodies and enhances quality reliably and sustainably can provide quality of life to all those who so urgently desire it.

# 2008 WAS ANOTHER SUCCESSFUL YEAR: OUR SHARES DEVELOPED POSITIVELY IN A WEAK ENVIROMENT. FURTHERMORE, WE WILL PROPOSE THE TWELFTH CONSECUTIVE DIVIDEND INCREASE.

*Employee* **BORRIES VON MÜLLER**
*Job Title* **CORPORATE VICE PRESIDENT HUMAN RESOURCES**
*Age* **48 YEARS**
*Nationality* **GERMAN**
*Joined* **IN JANUARY 2008**

## HOW CAN HUMAN RESOURCES WORK BOOST QUALITY?

"Good human resources work means having confidence in our employees to enable them to take responsibility for their own actions, discover their personal strengths and apply these to their work. When people are inspired by what they do, quality and excellent performance are logical consequences." *living* CONFIDENCE

# 01.1 OUR YEAR 2008

### 01 JANUARY | INFORMATION INITIATIVE LAUNCHED

Information Initiative Launched. Fresenius Medical Care was instrumental in the foundation of the German Kidney Alliance initiative with the aim of increasing awareness of the role played by dialysis in treating and improving the quality of life of kidney patients.

### 02 FEBRUARY | HOME DIALYSIS MACHINE PRESENTED

At the 28th Dialysis Conference in Orlando, Florida, Fresenius Medical Care presents its new home dialysis machine: the Liberty Cycler. With this wearable, easy-to-operate device, dialysis patients can perform automated peritoneal dialysis treatment at home.

### 03 MARCH | PRODUCTION EXPANDED

Due to strong global demand, Fresenius Medical Care expands its dialysis product manufacturing capacities at its St. Wendel plant in Germany. Thanks to two new fiber spinning facilities that produce hollow fibers, the most important component of dialyzers, production capacity at the St. Wendel site grows by about 30 %.

### 04 APRIL | ACTIVITIES IN GERMANY STEPPED UP

Fresenius Medical Care increases its activities in Germany and expands its dialysis machine production capacity at its Schweinfurt factory. As a result, the plant will be able to increase the annual production of hemodialysis machines by 7 % to 10 % by 2015.

### 05 MAY | FAST HELP

Within the space of 24 hours, we deliver nearly 100 dialysis machines to the earthquake region in Sichuan, China. A crisis intervention team makes this possible so that patients in the crisis area can be cared for.

### 06 JUNE | ETHICAL BUSINESS PRACTICES RECOGNIZED

The Ethisphere Institute includes Fresenius Medical Care on its list of the "World's Most Ethical Companies". The evaluation committee honored our Company for its "impressive and meaningful ethical business practices", recognizing it as one of the outstanding representatives in our industry.

### 07 JULY | DISTRIBUTION CENTER BUILT

Fresenius Medical Care erects a new distribution center in Biebesheim, Germany. The new building, which has space for more than 55,000 pallets, caters to the Company's future growth.

### 08 AUGUST | HELP FOR ABORIGINES

Fresenius Medical Care provides care to Aborigines in Australia who are in need of dialysis. Instead of having to make long journeys to dialysis clinics in larger cities, the aborigines are treated in their tribal areas in the desert.

### 09 SEPTEMBER | CRISIS PROGRAM EXTENDED

In 2008, our employees again help provide emergency care to patients during the devastating storms "Ike" and "Gustav" in the U.S. Thanks to a comprehensive crisis program, patients in endangered areas can continue to receive life-saving dialysis treatment.

### 10 OCTOBER | INVESTOR RELATIONS WORK AWARDED

In the course of 2008, Fresenius Medical Care again receives numerous awards for its investor relations work – these are published on our website www.fmc-ag.com in the "Investor Relations" section.

### 11 NOVEMBER | TRAINING CENTER OPENS IN BRAZIL

Fresenius Medical Care opens a training center for care personnel in Brazil to pass on technological know-how and expertise. Only thanks to their sound knowledge of all aspects of dialysis treatment can the employees provide comprehensive care to patients.

### 12 DECEMBER | PRODUCTS AWARDED WITH NORDIC ECOLABEL

Many of Fresenius Medical Care's products for peritoneal dialysis are now certified with the Nordic Ecolabel. This makes us the first company to receive this award for medical products. The label is proof of the good environmental compatibility of our products.


01
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07

# 01.2 MANAGEMENT BOARD

### 01 DR. BEN J. LIPPS | CHAIRMAN

Dr. Ben J. Lipps (68) was appointed Chief Executive Officer and Chairman of the Management Board of Fresenius Medical Care in 1999. Prior to that, he was CEO of Fresenius Medical Care North America from 1996 to 1999 and of Fresenius USA from 1985 to 1996. Ben Lipps has worked in the field of dialysis for about 40 years. After earning his master's and doctoral degrees in chemical Engineering at the Massachusetts Institute of Technology, he led the research team at Dow Chemical that developed the first commercial hollow-fiber artificial kidney at the end of the 1960s.

### 02 LAWRENCE A. ROSEN | FINANCES

Lawrence A. Rosen (51) joined Fresenius Medical Care in November 2003 as Chief Financial Officer. Prior to that, he worked for Aventis S.A. in Strasbourg, France, and one of its predecessor companies, Hoechst AG for almost 20 years. His most recent position there was Group Senior Vice President for Corporate Finance and Treasury. Lawrence Rosen holds a Bachelor of Science in Economics from the State University of New York at Brockport and an MBA from the University of Michigan.

### 03 DR. EMANUELE GATTI | EUROPE, LATIN AMERICA, MIDDLE EAST AND AFRICA

Dr. Emanuele Gatti (53) is Chief Executive Officer for Europe, Latin America, Middle East and Africa. After completing his studies in bioengineering, Dr. Gatti lectured at several biomedical institutions in Milan. He continues to be involved in comprehensive research and development activities. At present he is Visiting Professor and Chairman of the University Board at the Danube University in Krems, Austria. Dr. Gatti has been with the company since 1989. Before being appointed to the Management Board of Fresenius Medical Care in 1997, he was responsible for the dialysis business in Southern Europe.

### 04 ROBERTO FUSTÉ | ASIA-PACIFIC

Roberto Fusté (57) is Chief Executive Officer for Asia-Pacific. After completing his degree in Economic Sciences at the University of Valencia, the Spaniard founded the company Nephrocontrol S.A. in 1983. Nephrocontrol was acquired by the Fresenius Group in 1991, where Mr. Fusté has worked since. Before being appointed to the Management Board of Fresenius Medical Care in 1999, Mr. Fusté held several senior positions within the Company in the Latin America and Asia-Pacific regions.

### 05 DR. RAINER RUNTE | LAW & COMPLIANCE

Dr. Rainer Runte (49) is Member of the Management Board for Law & Compliance at Fresenius Medical Care and has been working for the Fresenius Group for 18 years already. In 1997, he assumed the position of Senior Vice President for Law at Fresenius Medical Care and was appointed to the Management Board in 2002. Prior to that, Rainer Runte worked as a scientific assistant in the law department of the Johann Wolfgang Goethe University in Frankfurt and as an attorney in a firm specialized in economic law.

### 06 MATS WAHLSTROM | DIALYSIS SERVICES NORTH AMERICA

Mats Wahlstrom (54) was appointed Member of the Management Board in early 2004. He is also co-CEO of Fresenius Medical Care North America and CEO of Fresenius Medical Services. Mats Wahlstrom looks back on 26 years of experience in the healthcare industry and has worked in the renal field for 23 years. Prior to joining Fresenius Medical Care in 2002, he held various positions, for example at Gambro AB in Sweden, including President and CEO of Gambro U.S. as well as CFO of the Gambro Group.

### 07 RICE POWELL | RENAL THERAPIES GROUP NORTH AMERICA

Rice Powell (53) is CEO of the Renal Therapies Group of Fresenius Medical Care in North America. He joined Fresenius Medical Care in 1997 and was appointed co-CEO of the Company and Member of the Management Board of Fresenius Medical Care North America in January 2004. Rice Powell has 30 years of experience in the healthcare industry. From 1978 to 1996 he held various positions, among others at Baxter International Inc., Biogen Inc., and Ergo Sciences Inc. in the U.S.

You can find more information about the directorships of our Management Board members *on page 125.*

# 01.3 REPORT OF THE SUPERVISORY BOARD

The supervisory board was centrally engaged in the year 2008 with the company's long term strategic objectives, the regional growth concepts, the technical development possibilities for dialysis treatment and the expansion of business activities in the pharmaceutical area in the course of dialysis treatment and the position of the company against the background of the general economic developments.

## PARTICULARS

In the expired fiscal year, the Supervisory Board dealt intensively with the position and perspectives of the company and various special issues while performing the tasks assigned to it by statute and the Articles of Association and the German Corporate Governance Code. We regularly advised the management of the company i.e. the Managing Board of the general partner on the management of the company and supervised the management of the company in line with our liability as Supervisory Board of the partnership limited by shares. The management informed us regularly in written and oral reports, promptly and comprehensively on all material questions of business policy, of company planning and strategy, the course of business, the profitability, the situation of the group and the risk situation and risk management. We again reviewed, as in previous years, the business development of the companies acquired in the previous years and compared this with the plans and projections at the time of each acquisition.

## MEETINGS

Four meetings of the Supervisory Board took place in the fiscal year 2008. No member took part in less than half of the meetings. Between meetings, written information was provided. The Supervisory Board discussed urgent matters several times in telephone conferences. In addition, the chairman of the Supervisory Board maintained close contact between meetings with the Managing Board of the general partner. The Supervisory Board continued in the year under report the tradition of getting to know senior executives in the course of presentations on selected themes.

## PRINCIPAL TOPICS DISCUSSED BY THE SUPERVISORY BOARD

The Supervisory Board in 2008 repeatedly dealt with the patent law situation of the company, in particular including against the background of disputes with the competitors Gambro and Baxter.

The Supervisory Board again in a one and a half day strategy meeting in autumn together with the management discussed the medium and long-term perspectives of the company. The central issue was home hemodialysis, both the further development of its technological basis and the services associated with home care.

The Supervisory Board discussed the medium and long-term development opportunities in the various regions with the Managing Board and obtained reports – frequently country-specific – on the situations of cost reimbursement by public bodies and private insurers.

## THE AUDIT AND CORPORATE GOVERNANCE COMMITTEE

The Audit and Corporate Governance Committee which is presided over by Dr. Walter L. Weisman held a total of four meetings and also held several telephone conferences in the reporting year. It dealt with the annual and group financial statements, the proposed appli-

cation of profits and the Report 20-F for the American Securities and Exchange Commission (SEC). The Audit and Corporate Governance Committee also discussed each of the quarterly reports with the management. The Audit and Corporate Governance Committee satisfied itself on the independence of the auditing company, granted the audit assignment, concluded the fee agreement and dicussed and determined the main issus in the audit with it.

Representatives of the auditor participated in all meetings of the Audit and Corporate Governance Committee and reported in each case on the audit work and the audit review of the quarterly financial statements.

The effectiveness of the internal controlling system and risk management in the company was discussed several times. KPMG AG Wirtschaftprüfungsgesellschaft, in the course of the audit, reviewed the structure and function of the risk management and raised no objections thereto. The Managing Board of the general partner reported periodically on individual major risks. The Managing Board of the general partner also reported to the Committee on the compliance situation of the company regularly in all ordinary meetings of the Audit and Corporate Governance Committee.

In 2008, the Audit and Corporate Governance Committee was again intensively concerned with the checking of the company's internal controlling system according to the Sarbanes Oxley Act ("SOX 404"). On 12 February 2009, the company received the unqualified audit certificate of KPMG AG Wirtschaftsprüfungsgesellschaft, Frankfurt am Main, for the implementation of the provisions of SOX 404 in fiscal year 2008.

The Audit and Corporate Governance Committee also again checked the legal and business relations of the company with Fresenius SE and its affiliates. In that respect, it was confirmed that these relations correspond to those between unrelated third parties (at arms' length).

The Audit and Corporate Governance Committee informed the entire Supervisory Board in each case of the results of its discussions.

## JOINT COMMITTEE

The Joint Committee which was established according to the Articles of Association in 2006 and the approval of which is required for certain significant transactions between the company and Fresenius SE or its affiliates, did not meet in 2008 since no transactions which required approval were undertaken.

## CORPORATE GOVERNANCE

The Supervisory Board reviewed its efficiency and the flow of information between the Managing Board of the general partner and the Supervisory Board and between the latter and the Audit and Corporate Governance Committee. There were no complaints on this issue.

The Audit and Corporate Governance Committee also met regularly, after its personal meetings, with representatives of the auditors in the absence of members of the Managing Board of the general partner.

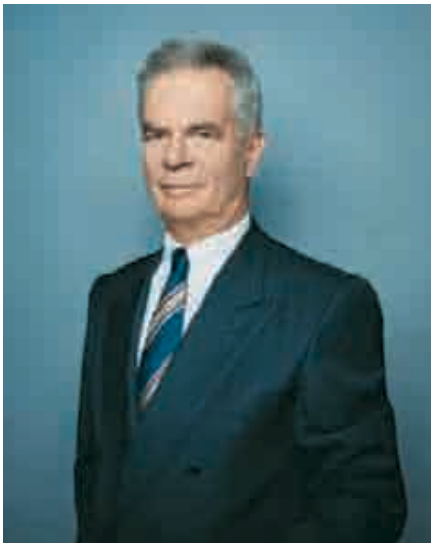
At its meeting on 18 November 2008, the Supervisory Board discussed and passed the declaration of conformity of the company pursuant to Section 161 German Stock Corporation Act (AktG) on the German Corporate Governance Code. The said declaration applies in the version of December 2008 permanently accessible on the company's Internet site. The only exceptions from the recommendations of the Code remain the (absence of) age limits for members of the Managing Board and the Supervisory Board and the remuneration of the Supervisory Board which contains no performance-oriented element.

The Corporate Governance Report of the general partner and the Supervisory Board is provided *from page 91* onwords of the annual report.

## ANNUAL AND GROUP FINANCIAL STATEMENTS

The annual financial statements of Fresenius Medical Care AG & Co. KGaA and the management report were prepared in accordance with the German Commercial Code (HGB), the group financial statements and group management report in accordance with the "International Financial Reporting Standards" (IFRS). The bookkeeping, the annual financial statements and the management report of Fresenius Medical Care AG & Co. KGaA and the group financial statements and the group management report of Fresenius Medical Care AG & Co. KGaA for the fiscal year 2008 in each case were audited by KPMG AG Wirtschaftsprüfungsgesellschaft (formely KPMG Deutsche Treuhandgesellschaft Aktiengesellschaft Wirtschaftprüfungsgesellschaft, Frankfurt am Main) auditors appointed by General Meeting resolution of 20 May 2008 and instructed by the Audit and Corporate Governance Committee of the Supervisory Board; they each carry the unqualified audit certificate. The auditor's reports were presented to the Audit and Corporate Governance Committee and the Supervisory Board. The Audit and Corporate Governance Committee taking account of the audit report of the auditor of the annual and group financial statements and in discussion with the auditor, reviewed the annual and group financial statements and the management report and reported on same to the Supervisory Board.

The Supervisory Board reviewed the annual financial statements, the management report and the proposal for the application of the balance sheet profit, the group financial statements and the group management report, in each case for the fiscal year 2008. The documents were presented to him timely. The Supervisory Biard agrees with the result of the audit of the annual financial statements and the group financial statements by the auditor. Even after the final outcome of its own review by the Supervisory Board, which itself, like the Audit and Corporate Governance Committee, heard the representatives of the auditors of the annual and group financial statements who signed the audit report, no objections to the annual financial statements and management report of the company or against the group financial statements and group management report arise. At its meeting on 18 February 2009, the Supervisory Board approved the annual financial statements and management report of Fresenius Medical Care AG & Co. KGaA for 2008, presented by the general partner. At this meeting, the draft of the report pursuant to form 20-F to be filed with the Securities and Exchange Commission (SEC), which, besides other information, contains the group annual financial statements and group management report according to the U.S. Generally Accepted Accounting Principles (US GAAP) with the US dollar as the reporting currency, was also discussed. The group financial statements and group management report were approved by the Supervisory Board at its meeting on 12 March 2009. The Supervisory Board also approved the general partner's proposal for the appropriation of profit, which provides for a dividend of € 0.58 for common shares and € 0.60 for preference shares.



## DEPENDENCY REPORT

The general partner, Fresenius Medical Care Management AG has, in accordance with Section 312 German Stock Corporation Act, prepared a report for the fiscal year 2008 on relations with affiliated companies. The report contains the concluding declaration of the general partner that the company received reasonable consideration in the course of each of the legal transactions and measures listed in the report taking account of the circumstances known to the general partner at the time the legal transactions were conducted or the measures taken or not taken and that the company was not disadvantaged by the fact that measures were taken or not taken. The Supervisory Board and the Audit and Corporate Governance Committee reviewed the report. The auditor participated in the corresponding negotiations and reported on the essential results of the audit. The Supervisory Board and the Audit and Corporate Governance Committee share the opinion of the auditor who, on 12 February 2009, certified the report as follows:

"Based on our audit and the conclusions reached, we confirm that (1) the disclosures made in the report are factually correct, (2) the consideration received or paid by the Company for each legal transaction disclosed in the report was not unreasonably high, (3) there are no other circumstances relating to the transactions and measures disclosed in the report which would lead to a conclusion different to the one reached by the personally liable shareholder (General Partner)".

The Supervisory Board thanks the members of the Managing Board of the general partner and all employees for their commitment and the work commitment contributed in 2008.

*Bad Homburg v.d.H, 12 March 2009*

*The Supervisory Board*
*Dr. Gerd Krick*

# 01.4 CAPITAL MARKET AND STOCK

## STOCK MARKET

In 2008, the stock markets showed a very weak development, triggered by the real estate crisis in the U.S. in mid-2007 and heightened by the related bank crisis and the negative effects on the real economy. After declining very sharply at the beginning of the year, the stock market briefly recovered starting in March. From May, further strong declines followed with only short phases of stabilization. All in all, the leading stock indexes, including the German DAX, the U.S. Dow Jones, and Japan's Nikkei, underwent parallel developments in the course of the year, suffering loses of more than 30 %. 2008 was marked not only by price drops but also by massive price fluctuations

Of the world's leading stock indexes, the U.S. Dow Jones index fared best. The Dow Jones performed somewhat better than some European stock indexes partially due to the advantageous exchange rate between the U.S. dollar and other currencies, which benefited exporting companies. Another likely reason was that the Federal Reserve Bank reduced key interest rates faster and more strongly than other reserve banks, which fueled expectations that the U.S. stock market would improve. The Dow Jones index closed 2008 at 8,776 points, 34 % lower than at the beginning of the year, when it reached its high for the year. After five consecutive years of increases, the German DAX index dropped by 40 %. However, it was one of the indexes that showed the best development in 2008. The DAX's 8,067 points at the beginning of 2008 were its high for the year, analogous to the development of the Dow Jones index. This was followed by a sharp downswing. Within just a few trading days, the DAX fell to 6,500 points. The subsequent lateral movement in a wide spectrum from 6,200 to 7,000 points was followed from September 2008 by an additional significant and

*Table 01.4.1* **STOCK INDEX / STOCK**

| | *Country / Region* | *Jan. 1, 2008* | *Dec. 31, 2008* | *Change* | *High* | *Low* |
|---|---|---|---|---|---|---|
| DAX | Germany | 8,067 | 4,810 | −40 % | 8,067 | 4,127 |
| Dow Jones | U.S. | 13,265 | 8,776 | −34 % | 13,265 | 7,552 |
| Nikkei | Japan | 15,308 | 8,860 | −42 % | 15,308 | 7,163 |
| CAC | France | 5,614 | 3,218 | −43 % | 5,614 | 2,881 |
| FTSE | Great Britain | 6,457 | 4,434 | −31 % | 6,479 | 3,781 |
| STOXX 50 | Europe | 4,400 | 2,451 | −44 % | 4,400 | 2,166 |
| DJ EURO STOXX Healthcare | Europe | 394 | 320 | −19 % | 414 | 296 |
| Fresenius Medical Care ordinary share *in €* | Germany | 36.69 | 33.31 | −9 % | 39.10 | 29.73 |
| Fresenius Medical Care ADS *in $* | U.S. | 52.75 | 47.18 | −11 % | 59.01 | 39.84 |

*Source: REUTERS data, own calculations*

rapid decline, this time by more than 30 % in just a few weeks. The DAX recovered somewhat towards the end of 2008, closing the year at 4,810 points.

The trend was also very negative on the other European stock markets, with some dropping even more strongly than the Dow Jones and the DAX indexes. The initial hope that the Asian markets could detach themselves from the development in Europe and the U.S. came to an end quickly as economic data got weaker and weaker starting in mid-2008. When the smaller economies, which are more dependent on outer influences, showed particularly strong declines, their stock markets also came under pressure. The Singapore Straits Times and Hong Kong Hang Seng indexes dropped by more than 50 % in 2008. The Japanese Nikkei index closed the year at 8,860 points, down 42 %.

Different industries developed very differently in 2008. The prices of shares of bank and insurance companies dropped substantially due to the financial and bank crisis. Shares of mining and oil companies also plummeted on account of the economic downturn and the resulting decreases in the price of their products. The same could be observed with shares generally considered cyclical, such as shares of companies in the strong export-oriented sectors. On the other hand, the shares of companies in the healthcare sector were among the top performers. An increasing aversion to risks on the part of investors could be observed again in 2008. Many market participants were worried that smaller companies would be affected more by the recession. As a reaction to this, they sold their shares, particularly small and mid cap shares.

## SHARE DEVELOPMENT

Against the background of the difficult business environment and the increasing uncertainty on the financial markets – especially on the stock markets – Fresenius Medical Care's share developed positively in 2008. While some of the world's leading stock indexes fell by more than 40 %, Fresenius Medical Care's ordinary share did relatively well, with the price decreasing only moderately.

The price of the ordinary share fell by 9 %, closing the year at €33.31. With this performance, it was among the leading shares in the German DAX index (– 40 %) The share also fared very well in comparison with the closer reference group, the healthcare sector. For instance, the value of the Dow Jones EURO STOXX Healthcare index, consisting of Europe's leading and largest companies in the industry, decreased by 19 % last year. Fresenius Medical Care's ordinary share reached its year-high on January 9, 2008 and its year-low on March 19, 2008. Many investors still view Fresenius Medical Care's share as being a defensive share. This is reflected by the low fluctuation intensity of our share. The range in which the share was traded in 2008 was very narrow, with the difference between the lowest and highest price being only 24 %. Daily fluctuations, too, were lower in terms of percentage points than the average on the DAX index.

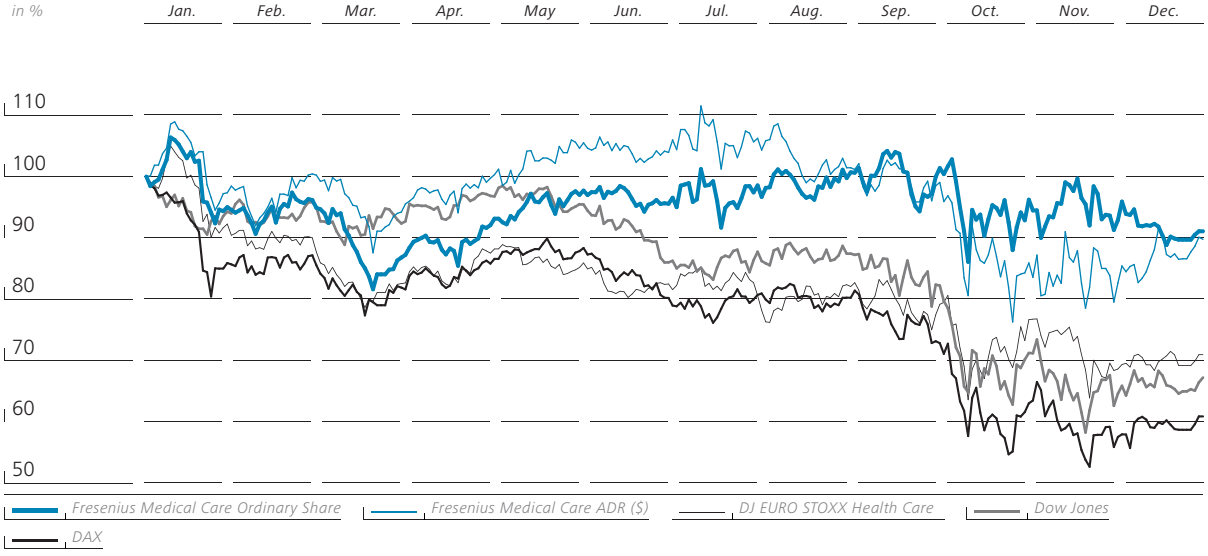
The price of preference shares normally parallels that of the ordinary shares. However, since the large majority of preference shareholders took advantage of the offer to convert their preference shares into ordinary shares in February 2006, the number of outstanding prefer-

ences shares, and thus the volume of shares traded, has been very low. As a result, any further statements on the price development would be speculative.

At the beginning of the year, Fresenius Medical Care's share fell victim to the sharp downswing on the stock markets. During this period, some investors sold shares in a panic. Investors all over world resorted to alternative kinds of investments. As the year progressed, our share then showed a very stable development. The subsiding debate about medically adequate treatment of anemia in dialysis patients in the U.S. with so-called erythropoesis stimulating agents (ESA), such as EPO, had a favorable impact on the development of our share. The discussion had a detrimental effect on the share price development in the previous year, as reimbursement of ESA accounted for a significant portion of Fresenius Medical Care's North American sales. Furthermore, the share price was influenced by conjecture about a change in the reimbursement structure for dialysis treatment in the U.S., which was then passed by lawmakers. Many investors regard the new system of bundling, the lump-sum reimbursement, as being a good opportunity for Fresenius Medical Care's business model, but have difficulties making an exact assessment. The new reimbursement system will be implemented as of 2011. Beforehand, however, the legislators have to specify a number of details. (See also the section "New Reimbursement Models" starting *on page 101*.) In a market environment increasingly marked by uncertainty, our constant revenue and profit development in the course of 2008 also contributed to stabilizing the share price.

The appreciation of the euro against the U.S. dollar again played an important role in the development of

*Chart 01.4.1* **RELATIVE SHARE PRICE PERFORMANCE, INDEXED; JAN. 1, 2008 UNTIL DEC. 31, 2008**



the share price. A strong euro constitutes a financial advantage for Fresenius Medical Care, as we maintain our financial accounting in U.S. dollars and so our operating results achieved in euros are higher. However, compared to other companies which do their accounting in euros, a strong euro tends to be unfavorable for us, because when our results are converted from dollars to euros their value is lower if the euro is strong.
Our shares are traded on the New York Stock Exchange (NYSE) in the form of American Depositary shares (ADS) and quoted in U.S. dollars. Each ordinary or preference share corresponds to one Fresenius Medical Care ordinary or preference share. The development of the ADS is generally tied to the development of the ordinary and preference shares, taking into account the development of the euro-U.S. dollar exchange rate. At the end of 2008, the price of the ADS ordinary share was $47.18, 11 % lower than at the beginning of the year.
At December 31, 2008, Fresenius Medical Care's market capitalization was €9.92 million (2007: €10.88 million). The average trading volume of our shares was 1.49 million per trading day (2007: 1.68 million). The trading volume of preference shares was 1,697 per trading day. Thus, the liquidity of the ordinary shares was significantly higher.

*Chart 01.4.2* **SHARE PRICE DEVELOPMENT, ABSOLUTE; JAN. 1, 2008 UNTIL DEC. 31, 2008**


*Table 01.4.2* **MARKET CAPITALIZATION**

| At December 31 | 2008 | 2007 | 2006 | 2005 | 2004 |
|---|---|---|---|---|---|
| Market capitalization € in millions | 9,919 | 10,876 | 9,928 | 8,416 | 5,266 |
| Market capitalization $ in millions | 13,787 | 16,010 | 13,075 | 9,929 | 7,173 |
| Exchange rate $ to € | 1.3900 | 1.4720 | 1.3170 | 1.1798 | 1.3621 |

In 2008, our ordinary share improved significantly in the rankings published by the German Stock Exchange, which serve as a basis for deciding which companies are in the DAX index. The lists are drawn up monthly based on the volume of stocks traded and the market capitalization (related to free float). In terms of market capitalization, Fresenius Medical Care moved from 25th place at the beginning of the year to 17th place in December 2008. As regards stock market trading volume, we went down one position and are now in 31st place. The index weight increased from 0.86 % to 1.41 %. As a result, our position in the DAX improved considerably last year.

## DIVIDEND

As a result of the company's performance in 2008, we will propose to the Annual General Meeting on May 7, 2009 the twelfth consecutive dividend increase: the dividend is set to increase to €0.58 from €0.54 per ordinary share and to €0.60 from €0.56 per preference share. The dividend increase of 7 % is in keeping with our profit-oriented dividend policy of recent years. Based on the proposed dividend and the closing prices of our shares at the end of 2008, this would be equivalent to a dividend yield of 1.7 % for our ordinary shares, about 1.5 % more than in the previous year.

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*Table 01.4.3* **BASIC SHARE DATA**

| | *Ordinary share* | *Preference share* |
|---|---|---|
| **Ticker Symbols** | | |
| Frankfurt Stock Exchange | FME | FME3 |
| New York Stock Exchange | FMS | FMS / P |
| **Security Identification Numbers** | | |
| WKN | 578 580 | 578 583 |
| ISIN | DE 0005785802 | DE 0005785836 |
| CUSIPN o.( NYSE) | 358029106 | 358029205 |
| **Stock Markets** | | |
| Germany | Frankfurt (Prime Standard) | |
| United States | New York Stock Exchange (NYSE) | |
| **Reuters** | | |
| Xetra | FMEG.DE | FMEG_p.DE |
| Frankfurt Stock Exchange | FMEG.F | FMEG_p.F |
| ADS New York Stock Exchange | FMS.N | FMES_p.N |
| **Bloomberg** | | |
| Xetra | FME GY | FME3 GY |
| Frankfurt Stock Exchange | FME GR | FME3 GR |
| ADS New York Stock Exchange | FMS US | FMS/P US |

If the Annual General Meeting accepts the proposal, total dividends of some €173 million will be distributed for 2008. Related to an exchange rate of $1.3900 to the euro at the end of the year under review, this represents total dividends of approximately $240 million. Based on our net income of $818 million, this is a payment rate of about 30%.

## SHAREHOLDER STRUCTURE

Fresenius Medical Care's subscribed capital amounted to €297.7 million as of December 31, 2008. There were 293.93 million ordinary shares outstanding, and 3.81 million preference shares in circulation.

At the beginning of 2009, we again conducted a shareholder identification survey. We present the results in the following. We have intentionally abstained from comparing the figures with those from the previous year, as the data and categories used by the new service provider are not identical with those used last year. The total number of Fresenius Medical Care outstanding shares was 297,742,576 on December 31, 2008. 191,139,550 shares, or 64.2%, were in free float at the end of the reporting year. In the survey we were able to attribute 271,607,967 shares to their owners: 106,603,026 were identified as belonging to Fresenius SE, which accounts for 35.8% of total capital – almost the same as in the previous year. 165,004,941 shares, representing 86.3% of the shares in free-float, were held by other

*Table 01.4.4* **NUMBER OF IDENTIFIED SHARES**

| | *of shares* | *in %* | *in % of Free Float* |
|---|---|---|---|
| Total shares outstanding, *Dec. 31, 2008* | 297,742,576 | 100.0 | – |
| of which Ordinary shares | 293,932,036 | 98.7 | – |
| of which Preference shares | 3,810,540 | 1.3 | – |
| Shares identified incl. Fresenius SE | 271,607,967 | 91.2 | – |
| Shares not identified | 26,134,609 | 8.8 | 13.7 |
| Fresenius SE, *Dec. 31, 2008* | 106,603,026 | 35.8 | – |
| Free Float | 191,139,550 | 64.2 | – |
| **SHARES IDENTIFIED** | **165,004,941** | **55.4** | **86.3** |

*Table 01.4.5* **GEOGRAPHICAL DISTRIBUTION OF SHARES IDENTIFIED**

| | *Shares* | *in %* |
|---|---|---|
| North America (incl. Canada) | 47,931,998 | 29.0 |
| Germany | 21,184,539 | 12.8 |
| United Kingdom | 40,182,577 | 24.4 |
| France | 11,197,265 | 6.8 |
| Ireland | 3,694,310 | 2.2 |
| Rest of Europe | 13,738,743 | 8.3 |
| Retail Investors | 23,816,450 | 14.4 |
| Asia-Pacific/Middle East | 3,259,059 | 2.0 |
| **TOTAL** | **165,004,941** | **100.0** |

investors. Just 26,134,609 shares or 8.8 % of the outstanding capital could not be identified. Overall, we identified 656 institutional investors.

The top 20 institutional investors in our company held about 30 % or around 50 million of the identified shares. Four of them are based in Germany, seven are in the United Kingdom, four in the United States and two are based in France. The remaining three investors come from Norway, Ireland and Canada.

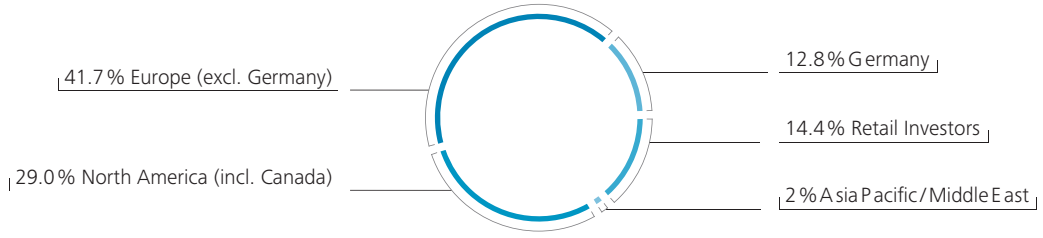
At the time of the survey, private investors accounted for 23,816,450 shares or 14.4 % of the shares identified, while retail brokers (ADR) held 4,411,383 shares in total, or 2.7 %.

In terms of geographical distribution, 47,931,998 shares were held by institutions in North America (incl. Canada). This represents 29.0 % of the shares identified. A total of 68,636,260 shares, or 41.7 % of the identified shares, were held in Europe, excluding Germany, with U.K. institutions controlling 40,182,577 shares or 24.4 %. German institutional ownership accounted for 21,184,539 shares, or 12.8 %.

*Table 01.4.6* **SHAREHOLDER DISTRIBUTION OF SHARES IDENTIFIED**

| | *Shares* | *in % of identified shares* |
|---|---|---|
| Institutional Investors | 136,590,408 | 82.8 |
| Retail Investors | 23,816,450 | 14.4 |
| Retail Broker( ADR) | 4,411,383 | 2.7 |
| Prime Brokerage Accounts | 186,700 | 0.1 |
| **TOTAL** | **165,004,941** | **100.0** |

*Chart 01.4.3* **GEOGRAPHICAL DISTRIBUTION OF SHARES IDENTIFIED**



Looking at our shareholder structure we feel that we have a well balanced portfolio of shareholders both from a geographical point of view and in terms of private and institutional investors. For 2009 and 2010 we see the regional focus of our investor relations activities being in North America as well as selected European countries.

In July 2008 Fresenius SE issued an offering of €554 million in mandatory exchangeable bonds (MEB), which are exchangeable into ordinary shares of Fresenius Medical Care upon redemption. The bonds issued have a maturity of three years. Upon maturity, a maximum of 16.8 million and a minimum of 14.24 million Fresenius Medical Care shares will be deliverable, representing approximately 5.7 % or 4.8 % of Fresenius Medical Care's total subscribed capital. The holding of Fresenius SE of currently 35.8 % will therefore be reduced by at least 4.8 %.

## INVESTOR RELATIONS

Comprehensive, transparent and timely information about the capital markets remained at the center of our investor relations activities in 2008. We provide market participants with extensive information to enable them to make a fair assessment of the Company's situation.

We issue detailed quarterly and annual reports with comprehensive segment reporting and extensive notes. We publish our reports promptly and fulfil the requirements of the various guidelines we are held to observe in both the U.S. and Germany. These include the German Corporate Governance Code, the Sarbanes-Oxley Act, and the regulations of Deutsche Börse and the New York Stock Exchange. More information on corporate governance can be found starting *on page 91*.

We broadcast analyst conferences on the publication of our quarterly reports live on the Internet and offer web casts of these meetings for replay online. Our shareholders can also watch the speech given by the Chairman of the Management Board at the Annual General Meeting live on our website.

In 2008, we further intensified our contact with financial analysts as well as with institutional and private investors worldwide. We introduced Fresenius Medical Care in a total of 1,176 one-on-ones with analysts and investors – 34 % more than in 2007 – and answered questions about our business development and the Company's future. In addition, we presented the Company and its perspectives at 24 roadshows and 28 investment conferences around the globe. Private investors also play an important role. For this reason, we were present several times at events staged by Germany's leading association of private investors, the Deutsche Schutzvereinigung für Wertpapierbesitz (DSW).

2008 was also a highly successful year for the Investor Relations department. Our company received several awards for its investor relations work. The magazine "Capital" and the Society of Investment Professionals in Germany (Deutsche Vereinigung für Finanzanalyse und

Asset Management, DVFA) awarded Fresenius Medical Care for the best IR work of all the companies in the DAX 30 index. The U.S. magazine "Institutional Investor" ranked our company number one in the "healthcare" category in Europe. Our annual report 2007 won second place in the DAX 30 in a competition held by "manager-magazin" and received several awards from the U.S. League of American Communications Professionals (LACP). Furthermore, our company was presented with the Thomson Extel Pan-European IR Excellence Award in the Medtech & Services category for its outstanding investor relations work.

If you would like to contact Fresenius Medical Care Investor Relations or find out about key dates in our financial calendar 2009, please take a look *at page 134* of the corporate report – or visit us at www.fmc-ag.com.

*Table 01.4.7* **KEY FIGURES OF FRESENIUS MEDICAL CARE SHARES**

| | | *2008* | | *2007* | |
|---|---|---|---|---|---|
| | | *Ordinary share* | *Preference share* | *Ordinary share* | *Preference share* |
| Authorized capital | *$ in thousands* | 363,076 | 4,240 | 361,384 | 4,191 |
| Number of shares | *millions* | 293.93 | 3.81 | 292.79 | 3.78 |
| **Closing prices (Xetra trading)** | | | | | |
| High | € | 39.10 | 37.60 | 38.67 | 36.78 |
| Low | € | 29.73 | 28.31 | 33.05 | 31.32 |
| Year-end | € | 33.31 | 33.50 | 36.69 | 35.39 |
| Average daily trading volume | *Shares* | 1,498,696 | 1,698 | 1,691,393 | 4,421 |
| **Closing price (ADS – NYSE)** | | | | | |
| High | $ | 59.01 | 55.00 | 56.70 | 53.50 |
| Low | $ | 39.84 | 31.00 | 43.69 | 40.00 |
| Year-end | $ | 47.18 | 43.00 | 52.75 | 51.34 |
| **Market capitalization** | | | | | |
| Year-end | *€ in billions* | 9.79 | 0.13 | 10.74 | 0.13 |
| Total | *€ in billions* | 9.92 | | 10.87 | |
| **Index weight** | | | | | |
| DAX | % | 1.41 | – | 0.86 | – |
| **Dividend** | | | | | |
| Per share[1] | € | 0.58 | 0.60 | 0.54 | 0.56 |
| Dividend yield | % | 1.7 | 1.8 | 1.5 | 1.6 |
| Distribution amount | *€ in millions* | 173 | | 160 | |
| **Earnings per share (EPS)** | | | | | |
| Number of shares[2] | *millions* | 293.23 | 3.80 | 291.93 | 3.74 |
| Earnings per share (EPS) | $ | 2.75 | 2.78 | 2.43 | 2.45 |

*[1] 2008: Proposal for approval at the Annual General Meeting on May 7, 2009.*
*[2] Weighted average of outstanding shares.*
*For a more detailed version, please refer to the 5-Year Summary on page 122 in the financial report.*

# WE ACHIEVED NEW RECORDS IN SALES AND EARNINGS, ACCOMPLISHED ALL OF OUR GOALS AND BOOSTED INVESTMENTS IN OUR FUTURE GROWTH. WE ANTICIPATE TO CONTINUE ON OUR SUSTAINABLE GROWTH PATH IN 2009.

*Employee* **THOMAS DIMT**
*Job Title* **SENIOR VICE PRESIDENT FINANCE & LOGISTICS EUROPE, MIDDLE EAST, AFRICA**
*Age* **42 YEARS**
*Nationality* **GERMAN**
*Joined* **IN MARCH 1996**

## WHAT IMPACT DOES QUALITY HAVE ON TREATMENT?

"By trusting in the quality of our products and services, our customers – patients, nephrologists and nurses alike – are able to concentrate fully on the dialysis treatment. Our expertise and quality at all levels of the supply chain help us to ensure consistent quality in dialysis treatment. And give our customers the good feeling that they can rely on us." *living* CONFIDENCE

# 02.1 OPERATIONS AND BUSINESS ENVIRONMENT

## GROUP STRUCTURE AND BUSINESS

Fresenius Medical Care is the world's leading vertically integrated provider of products and services for people with chronic kidney failure. When the kidney function of patients with this disease fails, dialysis takes over the vital task of cleansing the blood. In healthy people toxins are discarded via the urine and surplus water is removed from the body. However, as patient's kidneys can no longer fulfill these tasks they require dialysis treatment. At the end of 2008, about 1.770 million patients regularly underwent dialysis worldwide. Fresenius Medical Care provided treatments to 184,086 patients in a network of 2,388 dialysis clinics in North America, Europe, Asia, Latin America, and Africa.

Fresenius Medical Care runs a network of more than 30 manufacturing facilities on all continents. The Company's most important production sites in terms of production output are in the U.S., Germany, and Japan. We also operate plants in other European and Asian countries, as well as in Latin America. An overview of our major manufacturing facilities can be found in the "production" section beginning *on page 86*. Fresenius Medical Care's headquarters are in Bad Homburg v.d.H. near Frankfurt / Main in Germany.

Fresenius Medical Care's activities are organized on a regional level and divided into three operating segments: North America, International, and Asia-Pacific. For reporting purposes, the International and Asia-Pacific segments are grouped into the International segment as they are subject to similar economic conditions. This not only applies to the products sold, patient structures, and methods of distributing products and services, but also the economic environment. Our North American headquarters are located in Waltham, Massachusetts, U.S., the International operating segment is based in Bad Homburg v.d.H., and the regional administrative headquarters for Asia-Pacific are in Hong Kong.

## MANAGEMENT AND CONTROL

Since February 2006, Fresenius Medical Care has taken on the legal form of a partnership limited by shares (Kommanditgesellschaft auf Aktien, KGaA). The corporate structure of Fresenius Medical Care AG & Co. KGaA as well as the Company's management and supervisory structure are discussed in the corporate governance report starting *on page 91*.

## KEY PRODUCTS, SERVICES AND BUSINESS PROCESSES

Fresenius Medical Care provides dialysis services in its own dialysis clinics in more than 30 countries. The most important products in the dialysis product business are dialyzers (artifical kidneys) and dialysis machines. Our dialysis products are used in both, hemodialysis and peritoneal dialysis, within and outside our own network of dialysis clinics. We offer our product and services range in more than 115 countries worldwide and are therefore a global acting company.

## MAJOR MARKETS AND COMPETITIVE POSITION

Our key markets are North America and Europe, where we generate approximately 66 % and 24 % of our sales, respectively. Fresenius Medical Care is the world's leading provider of dialysis services, with a market share of about 14 % based on revenue. We provide care for most dialysis patients worldwide and operate more dialysis clinics than any of our competitors.

*Chart 02.1.1* **FRESENIUS MEDICAL CARE – WORLDWIDE**

| | FRESENIUS MEDICAL CARE | | |
|---|---|---|---|
| **Reporting segments** | **North America** | **International** | |
| **Operating segments** | **North America** | **International** | **Asia-Pacific** |
| | U.S. | Europe | Asia |
| | Canada | Latin America | Australia |
| | Mexico | Middle East | |
| | | Africa | |

Our dialysis products accounted for a market share of around 32 % in 2008, which means that we are the unchallenged market leader in this area, too. The market share of our key products, dialyzers and dialysis machines, was significantly higher with more than 45 % and over 55 %, respectively. Further information on the dialysis market and the position of Fresenius Medical Care can be found in the "Sector-Specific Conditions – Dialysis Market" section starting *on page 52*.

### LEGAL AND ECONOMIC FACTORS

Fresenius Medical Care provides life-saving products and therapies for chronically ill patients and is therefore only exposed to economic cycles to a relatively small extent. In this respect, we are different from manufacturers of consumer goods, for example, that are exposed to a more cyclical demand for their products.

Furthermore, the dialysis market is continuing to grow on account of demographic factors, including the aging population and the increasing incidence of diabetes and hypertension, which frequently precede the onset of end-stage renal disease (ESRD). In recent years, forecasts regarding the occurrence of these two diseases have been continually adjusted upwards. The "International Diabetes Federation" expects the number of people with diabetes to almost double – from 194 million in 2003 to 380 million in 2025. In addition, the life expectancy of dialysis patients is increasing thanks to continual improvements in the quality of treatment and higher standards of living, also in developing countries.

Dialysis reimbursement structures differ from country to country, and often even within one country. In the U.S., costs for the majority of dialysis treatments are reimbursed by public healthcare programs such as Medicare. As a result, Fresenius Medical Care's business is impacted by reimbursement rates and methods specified by government. Further information can be found starting *on page 101* in the "New Reimbursement Models" section.

In 2008, the legal conditions for Fresenius Medical Care remained largely unchanged and therefore did not have a significant influence on the company's operating business.

### ACCOUNTING

Fresenius Medical Care reports on the basis of U.S. GAAP (United States Generally Accepted Accounting Principles) and in U.S. dollars.

## STRATEGY, OBJECTIVES, AND CORPORATE MANAGEMENT

Our long-term strategy is geared towards continuously increasing our Company's value. We focus our business activities on the health of patients, improving the quality of their lives, and raising their life expectancy. The Management Board uses a number of different instruments and key figures to evaluate the Company's business performance, develop the corporate strategy, and make investment decisions. Overall, we see ourselves in an excellent position to achieve our growth goals and stay ahead of the competition in the long term.

### CONTROL CRITERIA

The Management Board operates the Company using various financial ratios and follows its growth strategy for the future, GOAL 10, which Fresenius Medical Care has been pursuing since the spring of 2005. GOAL 10 stands for "Growth Opportunities to Assure Leadership in 2010" and defines our scope for growth in the years to come. Fresenius Medical Care is pursuing four paths in parallel to successfully capture a broader spectrum of the worldwide dialysis market and achieve its growth objectives (see the "Growth Strategy" section *on the following page*).

In our view, EBIT (earnings before interest and taxes) is one of the most useful yardsticks for measuring the profitability of the Company. Consequently, we control the activities of our business segments based on their EBIT. Another good indicator to assess Fresenius Medical Care's ability to achieve positive financial results is EBITDA (earnings before interest, taxes, depreciation and amortization). The Management Board evaluates each segment based on target figures that reflect all of the segment's controllable revenues and expenses. Financing is a corporate function, over which the Company's segments have no control. Therefore, interest expenditure for financing is not included in the segments' target figures. Neither are "corporate costs", which relate primarily to headquarters' outlays in the areas of accounting and finance, professional services, etc., or tax expenses, as the Company believes that these costs are also not within the control of the individual segments.

Fresenius Medical Care evaluates its operating cash flow based on days sales outstanding (DSO). The number of DSO is used to assess the extent to which a company

can generate the necessary cash to maintain the assets depicted in the balance sheet and to make expansion investments.

The debt/EBITDA ratio is another important criterion for assessing corporate performance. This ratio compares the Company's debt to its EBITDA and other non-cash charges. The debt/EBITDA ratio is an indicator of the amount of debt and the length of time needed to service it. It provides more reliable information about the extent to which a company is able to meet its payment obligations than simply taking absolute debt into account. Fresenius Medical Care is active in the dialysis industry and has a strong position in a global, growing, and largely non-cyclical market. The industry is characterized by stable and sustained cash flows that can be planned, as most of the Company's customers have a high credit rating. This means that we can draw on a relatively large share of debt capital, in comparison to companies in other industries.

We also gear our corporate management towards operational ratios such as ROIC (return on invested capital), ROOA (return on operating assets) as well as ROE (return on equity). ROIC rose from 8.4 % in 2007 to 8.6 % in 2008. ROOA decreased slightly in the same period from 12.5 % to 12.3 %. ROE (after tax) improved from 12.9 % to 13.7 % in the last business year.

Our investments are generally controlled in a detailed coordination and evaluation process. In a first step, the Management Board sets the complete investment budget for the group, as well as investment targets based on investment proposals. Subsequently, the operating units and an internal Acquisition Investment Committee (AIC) examine the individual projects and measures taking into account the overall strategy, the total budget, as well as the return on investment and potential yield. The investment projects are evaluated based on commonly used methods such as internal interest rate and incremental capital methods.

Details on the development of these financial indicators as well as other financial figures can be found in the "Results of Operations, Financial Situation, Assets and Liabilities" section starting *on page 63* as well as in the Financial Report.

*Table 02.1.1* **IMPORTANT KEY FIGURES**

| | *2008* | *2007* |
|---|---|---|
| EBIT *in $ millions* | 1,672 | 1,580 |
| EBITDA *in $ millions* | 2,088 | 1,943 |
| Debt/EBITDA | 2.69 | 2.84 |
| Return on Invested Capital (ROIC) | 8.6 % | 8.4 % |
| Return on Operating Assets (ROOA) | 12.3 % | 12.5 % |
| Return on Equity (ROE) | 13.7 % | 12.9 % |

*Table 02.1.2* **PARAMETERS FOR ACQUISITION AND INVESTMENT DECISIONS (EXCERPT)**

| | |
|---|---|
| Internal interest rate | > FME discount rate[1] |
| Internal interest rate | > 15 % |
| Amortization period | ≤ 10 years |
| EBITDA multiplier | ≤ 5.5 |
| Incremental capital | > 0 (only applies to investment decisions) |

[1] *The discount rate varies depending on the region or country in which the acquisition or investment is made.*

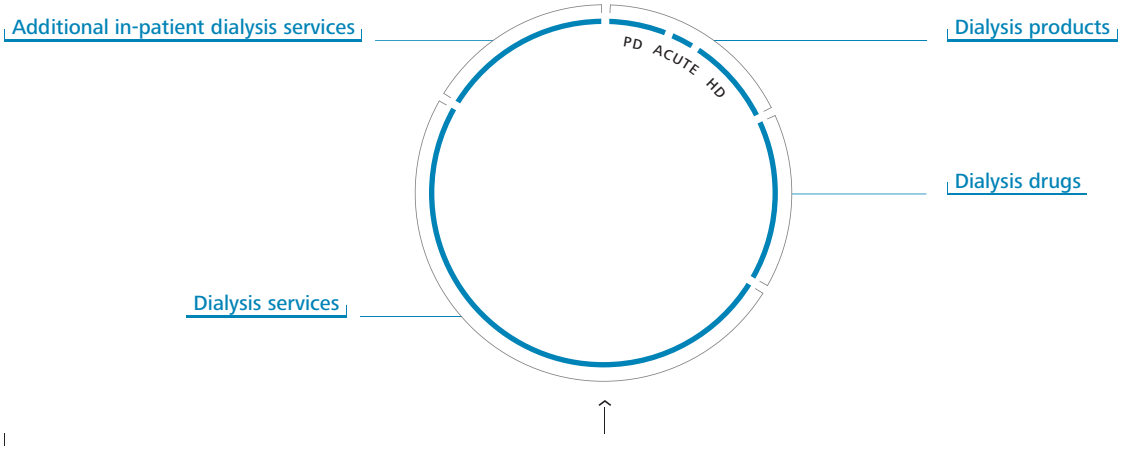
## GROWTH STRATEGY

We presented GOAL 10, a long-term strategy with defined objectives, back in the spring of 2005. GOAL 10 stands for Growth Opportunities to Assure Leadership in 2010 and describes four paths (see below) that Fresenius Medical Care intends to follow in order to boost its success across the broadest possible spectrum of the global dialysis market and to achieve its long-term growth objectives. We aim to pursue the four paths of GOAL 10 in a financially responsible way and bolster our position as the world's market leader in dialysis. In addition to expanding our production capacities and significantly enlarging our clinic network, one of the most important measures we took in 2008 was to enter into alliances in the field of intravenously administered iron preparations, a move that will help us ensure long-term growth. We have elaborated on the GOAL 10 strategy in detail in previous annual reports and will therefore limit ourselves here to discussing a few important aspects.

PATH 1: ORGANIC GROWTH. By introducing dialysis services and innovative dialysis products such as the newly developed 5008 and 5008S series dialysis machines, we intend to achieve organic growth of between 5 % and 6 % annually in the years to come. We are planning to expand our clinic network in all important markets and growth regions worldwide to maintain and even improve our leading market position. At the same time, we aim to grow our range of integrated, innovative treatment concepts such as Ultracare (see glossary *on page 128* onwards) and cardioprotective dialysis and combine them with dialysis drugs, for example. We believe that this strategy will make us stand out significantly against our competitors.

PATH 2: ACQUISITIONS. With our long-term growth goals and our aim to boost profitability in mind, we regularly investigate possible acquisitions to selectively expand our dialysis clinic network. In doing this, we

*Chart 02.1.2* **$ 65 BILLION DIALYSIS MARKET 2008**




| Path 1<br>Organic growth | Path 2<br>Acquisitions | Path 3<br>Horizontal expansion | Path 4<br>Home dialysis |
|---|---|---|---|
| Strong organic growth | U.S. – Renal Care Group | EPO | Peritoneal dialysis |
| Superior patient care | Eastern Europe | Phosphate binders | Hemodialysis |
| Cost leadership | Asia-Pacific (non Japan) | Vitamin D | Innovative therapy options |
| | | Iron | |

concentrate on particularly attractive regions, although investments in future acquisitions in North America should be on a smaller scale than in previous years due to the fact that the consolidation of the North American dialysis market is proceeded farthest. However, we assume that most of our future growth will be generated organically. Acquisitions should help us achieve our long-term objectives. Further information on acquisitions could be found in the "Investments and Acquisitions" section on page 71.

PATH 3: HORIZONTAL EXPANSION. Last year, we added intravenously administered iron preparations to our range of dialysis drugs. We did this through alliances, which enabled us to extend our range of products expediently and in keeping with our strategy. A detailed report on our activities related to dialysis drugs can be found on page 100 in the "Portfolio Expansion and General Factors" section.

PATH 4: HOME DIALYSIS As in the past, a relatively small percentage of dialysis patients (11 %) performs dialysis at home. Most patients receive their treatments in specialized dialysis clinics. We aim to assume an important global position in the home therapies market, which includes peritoneal dialysis as well as home hemodialysis, in the long term. To achieve this goal, we intend to combine our comprehensive and innovative product portfolio with our expertise in the area of dialysis services. More information can be found in the "Portfolio Expansion and General Factors" section beginning on page 100.

Our strategy encompasses concrete and measurable growth objectives. At the same time, it takes into account long-term trends that we forecast for the dialysis market. In addition to a growth in patient numbers, we expect the quality of dialysis services and available products to become more important. Thus, compensation for dialysis care should in the future depend to a greater extent on certain quality criteria being met. More information on this can be found in the "Quality and Environmental Management" section from page 88 onwards as well as in the "New Reimbursement Models" section from page 101 onwards.

Moreover, we are convinced that in future there will be a growing need for integrated care of kidney patients. As a result, our business will not only focus on individual services or dialysis products, but will combine the different areas of application related to dialysis.

*Table 02.1.3* **GOAL 10 OBJECTIVES**

| | *Goal 10* | *2008* | *2007* | *2006* | *2005* |
|---|---|---|---|---|---|
| Revenue *in $ millions* | > 11,500 | 10,612 | 9,720 | 8,499 | 6,772 |
| Annual revenue growth at constant currency | ~ 6 – 9 % | 8 % | 14 % | 25 % | 8 % |
| Share of dialysis market[1] | ~18 % | 16.3 % | 15.7 % | 15.5 % | 12.9 % |
| Market volume[1] *in $ billions* | ~ 67 | ~ 65 | ~ 62 | ~ 55 | ~ 52,5 |
| Annual net income growth[2] | > 10 %[3] | 14 % | 25 % | 24 % | 17 % |

[1] *Company estimates*
[2] *2005 excluding one-time effects, 2006 excluding one-time effects and effects from SFAS 123R*
[3] *On the basis of constant currencies for 2009 and 2010*

### GROWTH OBJECTIVES

We have set ourselves ambitious goals again for the years to come. Overall, we expect to boost our revenue by 6 % to 9 % on average per year at constant currency as a result of strategic measures – the horizontal expansion of our product portfolio through dialysis drugs and the further development of our home therapies products – as well as through organic growth. Our revenue goal for 2010 remains unchanged at over $11.5 billion. Annual net income should increase by more than 10 % per year, in case the exchange rate relations remain constant in 2009 and 2010.

Financial prudence will guide us along all four paths of GOAL 10 to enable us to service our debt and make investments. The operating cash flow should comprise at least 10 % of revenue. A continued increase in earnings and improved management of our current assets should contribute to this development. Furthermore, we aim to sustain the tax rate at the present level of between 36 % and 37 % by 2010. Expenditures for investments and acquisitions as part of ordinary operating activities should be at around 8 % of revenue.

Our GOAL 10 objectives can be found in the table below. For further information phase refer to the "Outlook" section starting *on page 112*.

## ECONOMIC ENVIRONMENT

The economic environment worsened noticeably in 2008. Rising prices for raw materials and energy coupled with increasing inflation rates overall had a slightly negative impact on the results of our operations. In the second half of the year, the strong depreciation of many currencies against the U.S. dollar within a short period of time had an adverse effect. We were able to largely compensate for this with improved efficiency and a positive operational development. Economic fluctuations usually have a more moderate effect on the development of the dialysis market than in other industries.

### GENERAL ECONOMIC ENVIRONMENT

2008 began with a strong start for the German economy. However, as the year progressed, rising raw materials prices and the appreciation of the euro along with the financial crisis put a damper on business activity. Since the middle of 2008 the global economy has been in an economic slump. The main reasons for the downturn are the collapse of the U.S. real-estate market, the worldwide crisis in the banking sector and in the financial markets, as well as higher inflation due to the rise in prices for various raw materials. Due to the positive development in the first half of the year, the leading German research institutes expected the worldwide gross domestic product to increase by 3 % after an increase of 5 % in 2007.

In many industrialized countries, the economy is already in a recession (see glossary *on page 118*). Many indicators suggest that the underlying economic trend in the U.S. and Western European countries will be extremely weak. In Japan, too, economic conditions worsened in the last months. Only in emerging countries has production

*Table 02.1.4* **QUARTERLY DEVELOPMENT OF USD EXCHANGE RATES VERSUS THE EURO**

| *$ / €* | *1st Quarter* | *2nd Quarter* | *3rd Quarter* | *4th Quarter* | ***Average*** |
|---|---|---|---|---|---|
| **2008** | 1.4981 | 1.5623 | 1.5036 | 1.3185 | **1.4705** |
| 2007 | 1.3098 | 1.3484 | 1.3753 | 1.4486 | **1.3708** |

*Source: REUTERS, average rates*

increased considerably in recent months, but even there the rate of expansion has declined considerably.

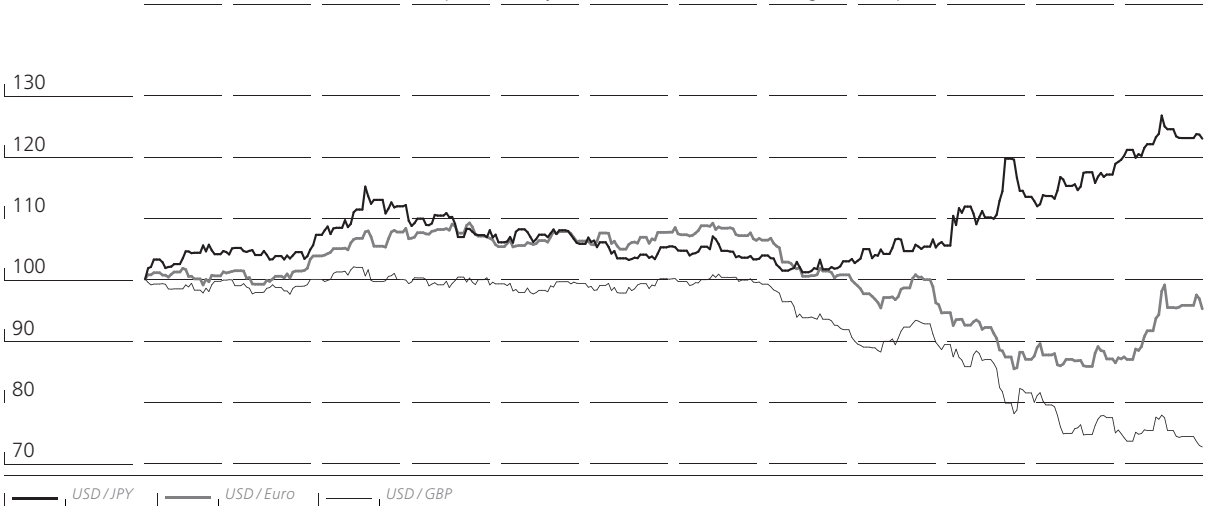
A primary reason for the economic downturn is the ongoing crisis in the financial sector, triggered by solvency problems in the U.S. mortgage market. Most financial institutions had to make significant value adjustments in the course of 2008. As a result, business relations between banks deteriorated substantially as they made less cash and cash equivalents available to each other. Many banks reacted to their own tight liquidity situation by restricting the credits they gave to companies. The complexity of the problems grew considerably in the course of the year, also with a view towards the overall economy. In response, governments and central banks introduced comprehensive programs in a concerted effort to stabilize the financial sector. These included liquidity and trust-building measures such as direct equity injections, capital guarantees for the issue of new bonds, purchasing programs for non-performing assets, as well as interest rate cuts by central banks on a broad basis.

As in the previous years, the worldwide economic situation varied in 2008. However, the economic growth spread was much wider than in 2007. Of the industrialized countries, the U.S. and Germany developed at the same pace, while growth in Great Britain and Japan slowed down. Among emerging countries, China's strong growth stood out again.

## EXCHANGE RATE DEVELOPMENT

Analogous to the financial markets, developments on the currency markets were marked on the whole by high volatility, i.e. pronounced and rapid fluctuations. The global economic trend was influenced by developments in exchange rates to different degrees over the course of the year. In the first half of 2008, the most important monetary parities were relatively stable. The strong appreciation of a number of these currency rates versus the U.S. dollar benefited exports from the U.S in the first months of the year. But from September, this changed unexpectedly quickly. Within a short period, the U.S. dollar appreciated substantially against a large number of

*Chart 02.1.3* **USD INDEXED AGAINST EURO, YEN AND POUND; DEVELOPMENT JAN. 1, 2008 UNTIL DEC. 31, 2008**



currencies. This could be seen above all in the reassessment of the economic situation in the individual regions. On the cut-off date on December 31, 2008, the U.S. dollar / euro exchange rate was 4.9 % lower than a year before, while the average for 2008 was 7.3 % higher than in the previous year.

The U.S. dollar and the euro in particular and their relation to each other are important for Fresenius Medical Care, because we earn a large part of our revenue in the U.S. and in the euro zone. In reporting terms, an appreciation of the euro is advantageous for us, as our functional currency is the U.S. dollar and thus the balance sheet values achieved in euros are higher.

Our production sites are predominantly decentralized to enable us to meet the demand in our dialysis product business. Due to our plants in the U.S., Japan, and Europe, we are less affected by long-term currency fluctuations; transaction risks are kept to a minimum as costs and revenue are generated in the same currency. But significantly more volatile exchange rates mean that even Fresenius Medical Care is more affected by the sensitivity to these exchange rates. In the field of dialysis care, which accounts for a larger share of business than dialysis products, the transaction risk is minimal as business is local and thus conducted in the respective currency area.

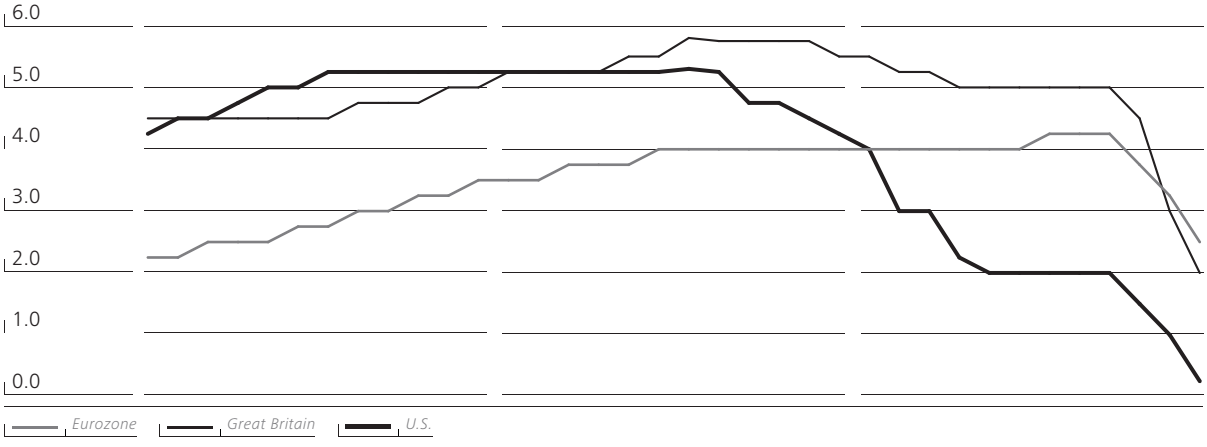
## UNITED STATES

In the U.S., growth slowed down slightly in year-to-year terms. The gross domestic product increased by 1.3 %, driven by public investments and in particular by ongoing strong export activity. In addition to a significant reduction in stocks, investment in housing construction again had an adverse effect. Price trends were influenced to a high degree by fluctuations in the price of raw materials, particularly oil. The inflation rate climbed from 2.9 % in 2007 to 3.9 % in the year under review. In the course of 2008, the Federal Reserve slashed the key interest rate, the Federal Funds Rate, by a total of around 400 basis points in several steps to an almost historic low and a new target corridor of 0 % to 0.25 %.

## EUROPE

In Europe, the real gross domestic product declined substantially in the second half of 2008, after moderate growth had been recorded in the first six months. For the year as a whole, Europe's GDP rose slightly by 0.9 %, compared to an increase of 2.6 % in the previous year. The inflation rate soared to a historic high due to the higher cost of raw materials coupled with the depreciation of the U.S. dollar against the euro. The European Central Bank (ECB) countered the pessimistic economic outlook in connection with the financial crisis by taking numerous measures to boost liquidity. In the space of a few weeks, the ECB lowered its key interest rates by 200

*Chart 02.1.4* **DEVELOPMENT OF KEY INTEREST RATES OF IMPORTANT CENTRAL BANKS JAN. 1, 2008 TO DEC. 31, 2008**



basis points in the last four months of the year, after the inflation risk had abated as a result of falling prices for energy and other raw materials as well as the negative economic forecast.

After a flying start to the year, the German economy lost momentum as the year progressed. This was due to the financial crisis, rising prices for raw materials and the appreciation of the euro in comparison to other currencies. Export demand, which previously had been one of the main pillars of growth, declined significantly, not only as a result of the adverse exchange rate situation, but also due to the downturn in the global economy in general. Despite the marked reluctance of companies to invest, employment in Germany rose slightly in 2008, with unemployment figures dropping from 3.4 million in 2007 to 3.3 million in 2008.

In Great Britain, economic growth tailed off sharply due to the country's high dependency on the financial sector. The GDP grew by 0.8 %, compared to 3.0 % the year before. The new European EU member countries generally showed a positive economic development, with an average growth of 4.5 %, although the growth rate in the individual countries varied considerably. Russia continued to post very dynamic growth. Driven by strong domestic demand as well as high income from the oil and gas business, Russia's GDP climbed by 6.8 %. At the same time, however, inflation increased substantially.

## ASIA

The Japanese economy continued to deteriorate. Due to a lack of impetus from abroad, domestic demand declined further. Higher energy and food prices also had an adverse effect. The GDP rose by just 0.1 % in 2008, following a 2 % increase the previous year.

Emerging countries in Asia showed comparatively robust growth, although at a significantly slower rate. China's growth rate of the GDP had been declining constantly, albeit moderately, since the middle of 2007. The country's sluggish economic growth reflects the slight drop in demand on the main markets and the ongoing appreciation of the Chinese currency against other currencies. Growth is driven by private consumption and increasing investments in infrastructure. China's GDP rose by 9.6 % in 2008, compared to 11.9 % in the previous year. The economies of the remaining countries in East Asia also grew: by 4.4 % in 2008 compared to 4.8 % in 2007.

## LATIN AMERICA

Latin America displayed steady economic growth. Its GDP rose to 4.4 %, almost reaching the previous year's

*Table 02.1.5* **REAL GROSS DOMESTIC PRODUCT**

| *Change over previous year in %* | *2008* | *2007* |
|---|---|---|
| United States | 1.3 | 2.0 |
| Germany | 1.3 | 2.5 |
| Euro zone | 0.9 | 2.6 |
| Great Britain | 0.8 | 3.0 |
| New EU member states | 4.5 | 6.2 |
| EU 27 | 1.2 | 2.9 |
| Russia | 6.8 | 8.1 |
| Japan | 0.1 | 2.0 |
| China and Hong Kong | 9.6 | 11.9 |
| East Asia | 4.4 | 5.8 |
| Latin America | 4.4 | 5.6 |
| **WORLDWIDE** | **3.6** | **5.0** |

*Source: Institut für Weltwirtschaft an der Universität Kiel „Weltkonjunktur im Winter 2008; 19. Dezember 2008, monthly reports of the Deutsche Bundesbank and European Central Bank, German Federal Statistical Office*

growth rate. However, the economies of the different countries in the region developed in a highly heterogeneous way. As raw materials producers and energy suppliers, most of the countries in the region continued to profit from the high raw materials prices. The economic outlook seems stable in many countries, only in Mexico is the outlook clouded due to the country's strong dependence on the development of the U.S. economy.

Further information can be found *from page 61* in the "Comparison of the Actual Business Results with Forecasts" section and in the "Outlook" section starting *on page 112*.

## DIALYSIS MARKET

**In 2008, we consolidated our worldwide leading position in the steadily growing dialysis market. As a vertically integrated provider, we are ideally placed and have the best opportunities to sustainably strengthen our position and expand both our product and services business in the future.**

### THE DIALYSIS MARKET – SECTOR-SPECIFIC CONDITIONS

As a global market leader in dialysis products and dialysis services, Fresenius Medical Care considers it important to possess accurate and current information on the status and development of the global, regional and national dialysis patient population and markets for dialysis products and services. This patient population and market information is used for a variety of Company-internal and external purposes.

In order to obtain this information, Fresenius Medical Care created an internal information tool called Market & Competitor Survey (MCS). The MCS is designed to collect, analyze and communicate relevant market and competitor data on the global dialysis market. The Company determined that most other sources of information of this kind were not timely, detailed or consistent enough to fulfill the Company's information needs in this area. Many countries offer valuable information on various aspects of ESRD and dialysis patient demographics as well as related trends through renal registries and other official organizations, such as the United States Renal Data System (USRDS) or the Japanese Society for Dialysis Therapy (JSDT). In addition, multinational renal registries such as the registry of the European Renal Association (ERA) – European Dialysis and Transplant Association (EDTA) publish data about patient demographics.

However, the following shortcomings can be observed when using renal registry data to analyze the development of dialysis patient numbers on a global scale:

- Not all countries have a national renal registry or other organization that analyzes and publishes the number of renal patients. In 2008 only 37 countries published information either directly through a national renal registry or indirectly through a multinational organization, while more than 145 countries are reported to treat dialysis patients.

- Some national registries that publish information on the number of dialysis patients do not cover the complete country but selected regions only.

- A time lapse between data collection and publication by the registries is unavoidable and can be significant. A Company-internal analysis performed in August 2008 revealed that by this date only 1 out of the 37 countries with registry data had already published 2007 data, 30 had published 2006 data and 6 had published data only from 2005 or earlier.

This means that it is impossible to derive a complete and current global picture of the number of dialysis patients by consolidating renal registry data. Furthermore, renal products used for dialysis, such as dialyzers or peritonal dialysis solution bags, are generally not tracked by renal registries. As far as the Company is aware, the renal medicinal product industry does not have an offering comparable to that of databases compiled by private companies such as IMS Health for example, which supplies the pharmaceutical industry with generally accepted sales statistics on pharmaceutical products.

The MCS is therefore used within the Company as a tool to retrieve current, accurate and essential information on the dialysis market, developing trends, the market position of Fresenius Medical Care and that of its competitors. The country-by-country surveys performed at

the end of each calendar year focus on the total number of patients treated for ESRD, the treatment modality selected, products used, treatment location and ESRD patient care structure. The survey has been refined over the years to facilitate access to more detailed information and to reflect changes in the development of therapies and products. Its modular design allows the information from different countries to be consolidated. The questionnaires are distributed to professionals in the field of dialysis who are in a position to provide ESRD-relevant country specific information themselves or who can coordinate appropriate input from contacts with the relevant know-how in each country. The surveys are then centrally validated by cross-referencing them with the most recent sources of national ESRD information (e.g. registry data or publications if available) and with the results of earlier surveys performed in previous years. In addition, replies are subjected to a validation process whereby input fields with related information are linked and checked for consistency. All information received is consolidated at a global and regional level as well as analyzed and reported together with publicly available information published by our competitors.

## PATIENTS – A GLOBAL APPROACH

If not indicated otherwise, data are based on internal estimates based on the Market Competitor Survey (MCS) described above.

End-stage renal disease (ESRD) has a global dimension. By the end of 2008, approximately 2.300 million patients received treatment for ESRD. Around 1.770 million patients in more than 145 countries on all continents received renal replacement therapy in the form of dialysis. Approximately 530,000 kidney patients live with a transplanted kidney.

Patient numbers in different countries can be compared by using prevalence values, which express the relative number of ESRD patients per million population (p.m.p.). The country prevalence values vary significantly, spanning a range from well under 100 to more than 2,000 p.m.p.

ESRD prevalence is highest in Taiwan with around 2,420 p.m.p., closely followed by Japan with around 2,380 p.m.p. and then the USA with around 1,780 p.m.p. It averages about 960 p.m.p. in the 27 countries that make up the European Union (EU).

*Table 02.1.6* **PATIENTS WITH END-STAGE RENAL DISEASE (ESRD)**

*Number in million*

| | |
|---|---|
| **ESRD patients** | 2.300 |
| of which dialysis | 1.770 |
| Hemodialysis( HD) | 1.580 |
| Peritoneal Dialysis (PD) | 0.190 |
| of which transplants | 0.530 |

*World population 6.7 billion*

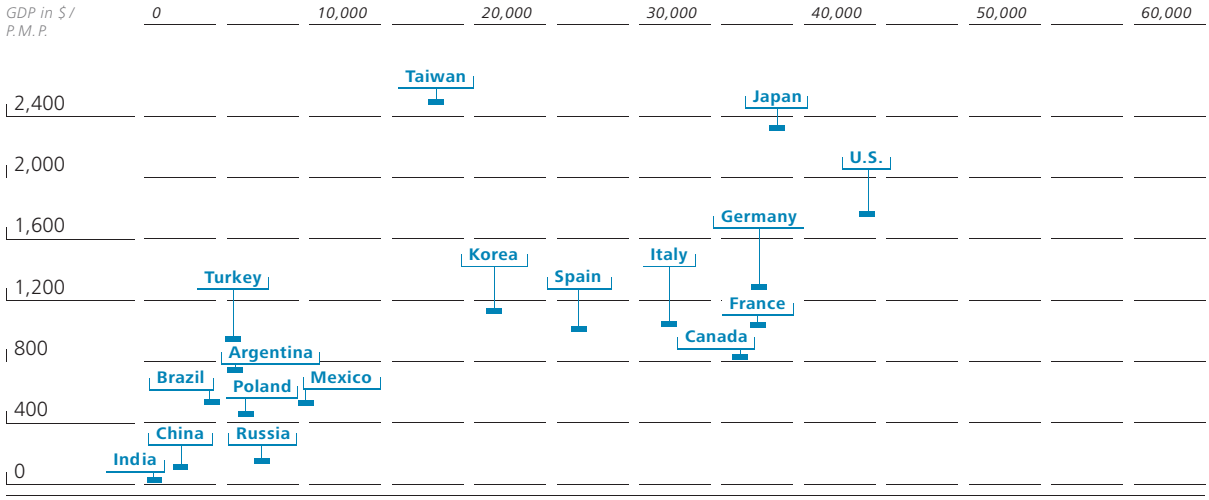
*Table 02.1.7* **GLOBAL PREVALENCE RATES**

| *Patients per million population (p.m.p.)* | *2008* | *2007* | *2006* | *2005* | *2004* | *2003* | *2002* | *2001* | *2000* | *1999* | *1998* |
|---|---|---|---|---|---|---|---|---|---|---|---|
| ESRD | 342 | 326 | 310 | 295 | 280 | 265 | 251 | 237 | 224 | 212 | 200 |
| Dialysis | 263 | 249 | 236 | 224 | 213 | 202 | 192 | 182 | 172 | 163 | 155 |

The much lower global average of around 340 p.m.p. is due to a variety of reasons. On the one hand we see differences in the demographics of the individual countries with respect to age, distribution of renal risk factors such as diabetes and hypertension, genetic pre-disposition towards kidney diseases and cultural habits such as diet. On the other hand access to treatment is still limited in many countries and a number of individuals with terminal renal failure do not receive treatment and therefore are not included in the p.m.p. calculation.

Mounting global prevalence values over the years indicate a relative increase in the number of people receiving care for ESRD. This may be linked to a number of factors, including an increase in diseases leading to kidney damage such as diabetes and hypertension, a general aging of populations as well as a gradual improvement in access to treatment. A comparison between national economic strength expressed as gross domestic product (GDP) and the prevalence of ESRD suggests that economic factors not only influence the demographics of the population but may also impose restrictions on treatment. There is an indication that access to treatment is restricted in countries where the GDP per capita is below a limiting value of around $10,000 per person per year. In countries with economies performing above this value, there is no correlation between economic strength and ESRD prevalence.

*Chart 02.1.5* **ESRD PREVALENCE OF SELECTED COUNTRIES**




*GDP: gross domestic product*
*P.M.P.: patients per million population*

*Table 02.1.8* **PATIENTS – REGIONAL DEVELOPMENT**

| | *2008* | *Change* |
|---|---|---|
| **North America** | **445,000** | **4–5%** |
| U.S. | 370,000 | 3 – 4 % |
| **Europe / Middle East / Africa** | **520,000** | **5–6%** |
| EU | 300,000 | 3 – 4 % |
| **Asia-Pacific** | **620,000** | **10–11%** |
| Japan | 290,000 | 3 – 4 % |
| **Latin America** | **185,000** | **7–8%** |
| **WORLDWIDE** | **1,770,000** | **7%** |

## PATIENTS – REGIONAL DEVELOPMENT

By the end of 2008, the number of ESRD patients undergoing dialysis treatment had reached 1.770 million worldwide. Of these patients, approximately 21 % were treated in the U.S., 17 % in the EU and 16 % in Japan. The remaining 46 % of all dialysis patients were distributed among 120 countries in different geographical regions.

The number of dialysis patients worldwide increased by approximately 7 % in 2008 and met the growth rate we had expected. Significant regional differences remained: patient numbers grew at a below-average pace in the U.S. and Japan, as well as in Western and Central Europe. In all these regions, the prevalence of terminal kidney failure is already relatively high and patients generally have secured access to treatment, usually dialysis. Annual growth rates in economically weaker regions, however, were above average, reaching double-digit figures.

The relatively high growth in these areas indicates that accessibility to treatment is still somewhat limited, albeit gradually improving.

## PATIENTS – TREATMENT MODE DEVELOPMENT

Of the 1.770 million patients that underwent dialysis treatment by the end of 2008, 1.580 million were treated with hemodialysis (see glossary *on page 131*) and about 190,000 received peritoneal dialysis (see glossary *on page 132*). In a global comparison of treatment methods, hemodialysis therefore clearly dominates. More than 89 % of all dialysis patients were treated with this method in 2008. Within the group of the 15 largest dialysis countries accounting for more than three quarters of the world dialysis population, hemodialysis is the predominant treatment method in all countries except in Mexico.

*Chart 02.1.6* **HEMODIALYSIS PATIENTS 2008**

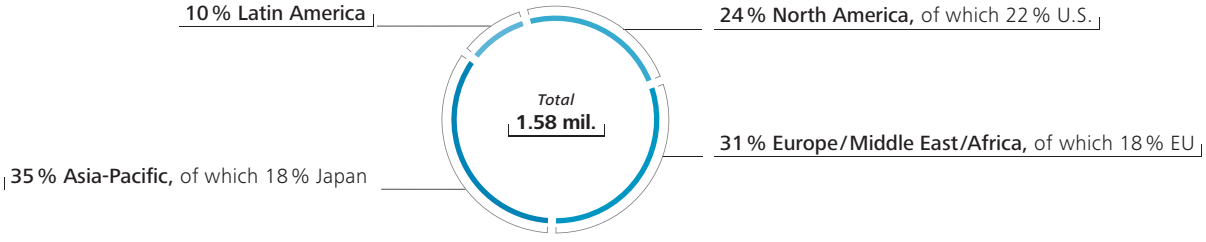
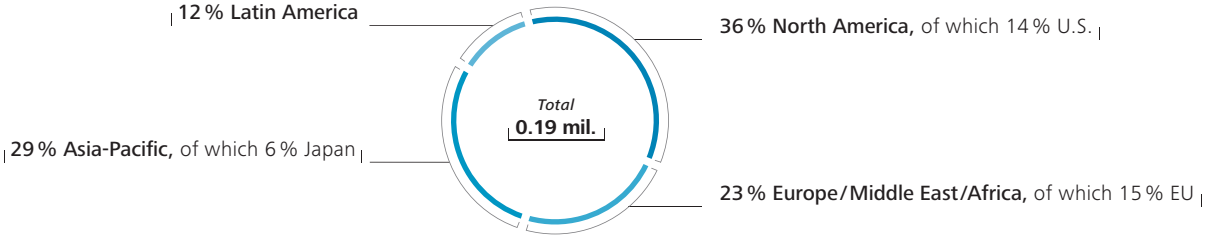



*Chart 02.1.7* **PERITONEAL DIALYSIS PATIENTS 2008**



In addition to these two dialysis therapies, an alternative method for treating patients with terminal kidney failure is kidney transplantation. Approximately 530,000 kidney patients lived with a transplanted kidney at the end of 2008. However, for many years the number of donated organs worldwide has continued to be significantly lower than the number of patients on transplant waiting lists. Consequently, less than one quarter of the global ESRD population lives with a donor organ. Despite ongoing efforts by many regional initiatives to increase awareness of and willingness for kidney donation, the distribution of patients between the various treatment modes has remained nearly unchanged over the past ten years.

## DIALYSIS PROVIDER BUSINESS

The global dialysis market for both the provider and product business grew by approximately 5 % to about $65 billion in 2008. The market can be segmented into dialysis products accounting for around $10.5 billion and dialysis services (including renal pharmaceuticals) valued at around $55 billion.

In 2008, the majority of all hemodialysis patients were treated in 28,000 dialysis centers worldwide, at an average of some 55 patients per center. Clear differences exist in the organizational structure of dialysis center operations, depending on whether a country's health system is predominantly private or public. The U.S. and the European Union have 5,000 dialysis centers each. Whereas around 1 % of these dialysis centers are publicly operated in the U.S., in the EU this number is about 62 %.

In Japan, however, private nephrologists play a key role, running about 75 % of all facilities. In Eastern Europe, the last few years have seen a significant increase in the number of company-owned clinics, possibly reflecting the fact that private companies are more likely to invest in modernization and capacity extension than government bodies are.

In the U.S., the degree of concentration is already relatively high. Fresenius Medical Care and the second-largest competitor DaVita now provide dialysis care to approximately 63 % of all dialysis patients in the U.S. Fresenius Medical Care maintained its leading position in 2008 and treated more than 122,000 patients, representing about 33 %.

*Chart 02.1.8* **DIALYSIS SERVICES WORLDWIDE**

*Patients*

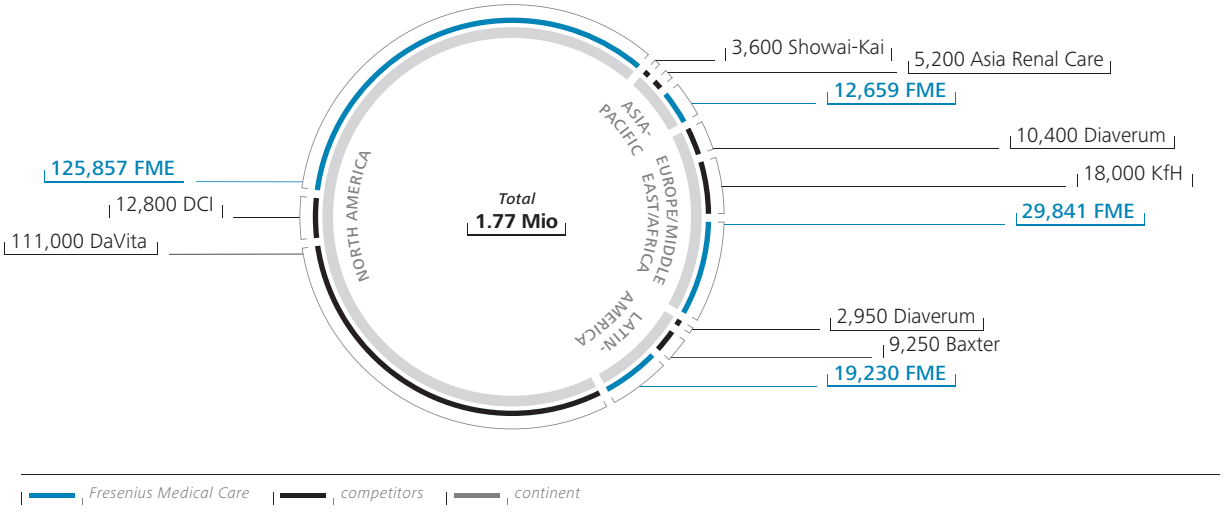


Chart 02.1.9 DIALYSIS CLINIC OPERATORS 2008

Number of patients treated

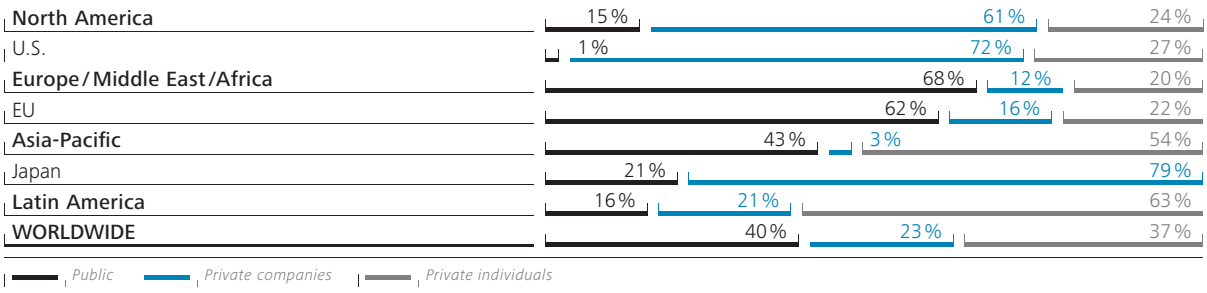



Chart 02.1.10 DIALYSIS CLINIC OPERATORS IN EASTERN EUROPE

Number of patients treated

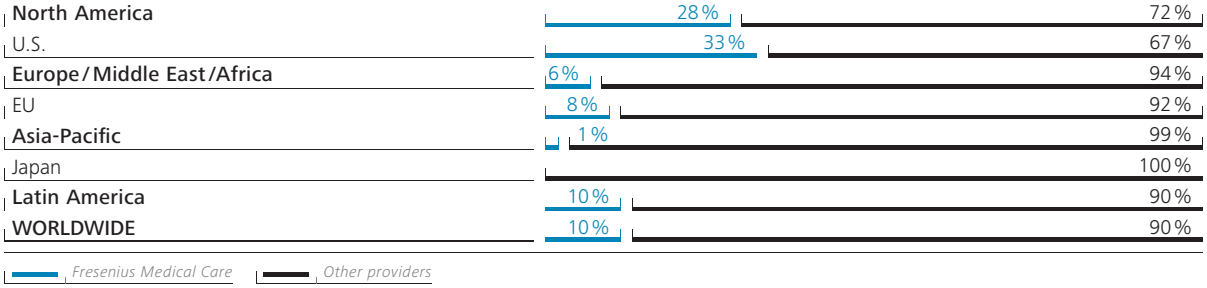

Chart 02.1.11 TOP 5 DIALYSIS PROVIDERS WORLDWIDE 2008

Number of patients treated

| | |
|---|---|
| **Fresenius Medical Care** | **184,086** |
| DaVita | 111,000 |
| Kuratorium für Dialyse | 18,000 |
| Diaverum | 13,500 |
| Baxter | 13,250 |

Chart 02.1.12 FRESENIUS MEDICAL CARE 2008

Number of patients



The dialysis market outside the U.S. is much more fragmented. With more than 700 centers in over 30 countries treating more than 60,000 patients, Fresenius Medical Care has by far the largest and most international dialysis center network.

As in previous years, many healthcare systems continued to face increasing pressure to contain healthcare expenditure while simultaneously striving to improve treatment standards for patients. Under these conditions, reliable product supply and quality as well as innovative

*Chart 02.1.13* **DIALYSIS PRODUCTS 2008**

*Market shares*

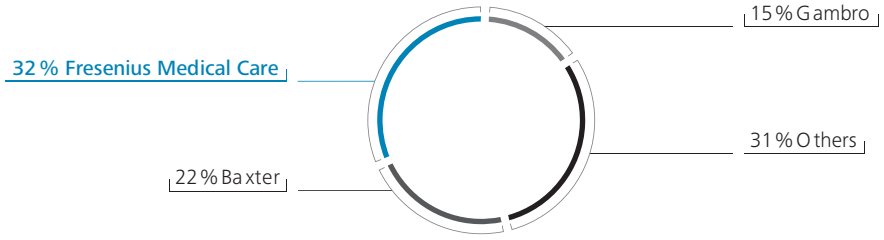



*Chart 02.1.14* **HEMODIALYSIS PRODUCTS 2008**

*Market shares*

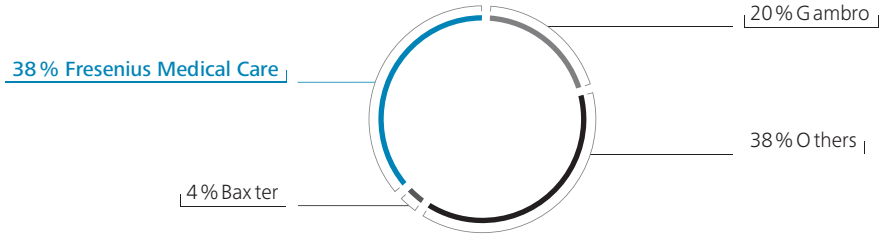
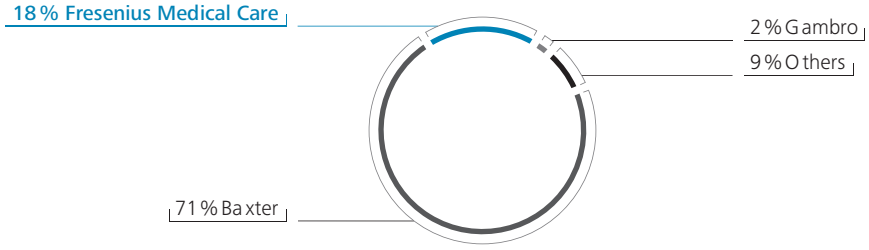



*Chart 02.1.15* **PERITONEAL DIALYSIS PRODUCTS 2008**

*Market shares*



approaches toward optimizing patient care are key success factors for market participants. A vertically integrated dialysis provider like Fresenius Medical Care that offers not only the entire product spectrum in the dialysis sector but also high-quality treatment in dialysis clinics worldwide has excellent opportunities to continually expand its position in the current and future dialysis market. In 2008, Fresenius Medical Care continued to uphold its clear leadership as the largest private provider of dialysis care worldwide, treating 184,086 dialysis patients in 2,388 clinics.

Dialysis reimbursement systems differ from country to country and often even vary within countries. Among the factors determining reimbursement are regional conditions, the kind of treatment provided, regulatory issues and the type of care provider (public or private). Establishing reimbursement structures based on treatment quality remains a focus of discussion. The goal of this reimbursement method is to uphold the treatment quality while maintaining the current level of costs for the treatment of a dialysis patient. Fresenius Medical Care provides dialysis in more than 30 countries with different healthcare systems and reimbursement schemes. Our international experience puts us in a position to support national health systems in their endeavors to customize structures, to adapt our business according to local needs and regulations, and to act profitably.

## DIALYSIS PRODUCT BUSINESS

From the entire volume of the worldwide dialysis market, which amounts to around 65 billion U.S. dollars, more than 16 %, or about 10.5 billion U.S. dollars, are generated on the market for dialysis products. The key products offered in this market include dialyzers, hemodialysis machines, concentrates and solutions, as well as peritoneal dialysis products. The three largest suppliers of dialysis products taken together held a worldwide market share of nearly 70 % in 2008. With a market share of approximately 32 %, Fresenius Medical Care was the market leader, followed by Baxter and Gambro. The market share of the remaining, mainly Japanese, product providers was in the single-digit range for each company.

The largest single product group in this market is dialyzers, of which about 180 million were needed by dialysis patients worldwide in 2008. The fact that more than 80 million of these dialyzers were produced by Fresenius Medical Care underlines our leadership in this market.

Dialyzers can be categorized as cellulose-based or synthetic-based, depending on the material used for the production of the dialysis membrane. The trend towards the use of dialyzers containing membranes made from synthetic material prevailed in 2008. At the end of 2008, the share of synthetic-membrane dialyzers in the dialyzer market was more than 80 %. Cutbacks in production capacity for cellulose-based dialyzers suggest that sales of synthetic dialyzers will grow further in the years to come. Our pioneering work in the development and production of synthetic dialyzers laid the foundation and defined the course that is now being followed by other major competitors.

Dialysis machines constitute another key segment of Fresenius Medical Care's product business, in which we also hold a leading position. Of about 65,000 new dialy-

*Table 02.1.9* **MARKET POSITION IN MAJOR PRODUCT GROUPS**

| | *Rank 1* | *Rank 2* | *Rank 3* |
|---|---|---|---|
| Dialyzers | Fresenius Medical Care | Gambro | Asahi |
| Dialysis machines | Fresenius Medical Care | Gambro | Nikkiso |
| Hemodialysis concentrates | Fresenius Medical Care | Fuso | Gambro |
| Bloodlines | Fresenius Medical Care | Gambro | Kawasumi |
| Peritoneal dialysis products | Baxter | Fresenius Medical Care | Pisa |

sis machines sold in 2008, more than 55 % were produced by Fresenius Medical Care. We continued this development with the introduction of the series of hemodialysis machines – the 5008 in 2005 and the 5008S in 2008 – in the international market. Thanks to their innovative user interface and technologies that set new standards in dialysis, the 5008 and the 5008S found a high level of acceptance. The new machines not only reinforce our strong market position, but also provide excellent prospects for future market share growth.

In the U.S., our largest business region, our market share in these two product groups – dialyzers and dialysis machines – exceeded 70 % of the independent market. We define the independent market as all dialysis clinics that do not belong to a major U.S.-wide dialysis care provider, such as Fresenius Medical Care or DaVita. Sales of our 2008K dialysis machine grew by more than 14 % in 2008. This dialysis machine is the leading dialysis system in the U.S.; we have sold more than 15,000 units of this machine there. Again, dialyzers also outpaced average growth in the U.S., where we achieved record figures by selling more than 30 million dialyzers.

The number of peritoneal dialysis patients grew by about 7 % to around 190,000 worldwide; the number of patients treated with our products increased to more than 35,000. Worldwide, we hold an 18 % share of this market, which is still dominated by Baxter. Our market share in the U.S. was 26 %. Further information on our position in the home therapies market, which comprises peritoneal dialysis and home hemodialysis, can be found in the "Home Dialysis" section beginning *on page 100*.

## EVENTS SIGNIFICANT FOR BUSINESS DEVELOPMENT

### ACQUISITIONS AND DIVESTMENTS

Our investment strategy remained largely unchanged in the last financial year. We further invested in our future growth by expanding our clinic network and production capacities. In 2008 we spent a total of $218 million on acquisitions; investments totaled $673 million. Individual acquisitions and disinvestments play a secondary role in this part.

### COLLABORATIONS

In July 2008, we concluded two special and independent licensing and sales agreements enabling us to market and sell Galencia Ltd.'s and Luitpold Pharmaceuticals, Inc.'s intravenous iron preparations Venofer and Ferinject for dialysis treatment in the U.S. and in certain European and Middle Eastern countries. The drugs are used to treat anemia in dialysis patients. Venofer is the world's top-selling iron preparation. The contracts encompass all corresponding activities for the two products in the field of dialysis and took effect as of January 1, 2009. On the basis of our ten-year contract for North America, Luitpold will produce the products for Fresenius Medical Care. Galenica and its partners will retain sole responsibility for marketing the products in other medical areas. The market volume for intravenous iron preparations in 2008 is estimated at more than $800 million worldwide. Further information can be found in the section "Renal Drugs" *on page 100*.

### BUSINESS ENVIRONMENT

The business environment as well as the legal conditions that are particularly relevant to our business remained virtually unchanged in 2008. A special situation arose in the U.S. with the drug Heparin, an anticoagulant substance. In February 2008, one of the manufacturers of Heparin, the U.S. company Baxter, began taking the product off the market after impurities were found in the production process. In the following months, the sole remaining manufacturer of the product, APP Pharmaceuticals, raised the price of Heparin significantly. The higher prices were not offset by higher reimbursement rates, and so the price increase had a direct negative effect on the earnings situation of our clinics and on our margins.

In Portugal, a new reimbursement model was introduced at the beginning of the second quarter. "Comprehensive Price Payment" is an integrated, quality-driven approach that bundles a variety of dialysis-related services and products. It requires the successful implementation of an integrated disease management model in order to provide comprehensive patient care while at the same time improving quality and boosting the efficiency of the health system. Including the new additional services in this reimbursement model, the Company expects the reimbursement rate to increase significantly. For more information please refer to the section "New Reimbursement Models" *on page 101*.

## SUMMARY

There were no further major events in 2008 with a significant influence on the operating business or the legal structure of Fresenius Medical Care. In the year under review, Fresenius Medical Care continued its extraordinarily positive development from last year, achieving record revenues and earnings. All regions and segments contributed to this result.

## COMPARISON OF THE ACTUAL BUSINESS RESULTS WITH FORECASTS

Fresenius Medical Care can look back on another very successful business year. We improved our results again in all key performance indicators and achieved record revenue and earnings. As a result, we reached or in some cases even exceeded our ambitious targets for 2008, although the business environment changed significantly and even worsened in part. For example, our operating business was impacted more than usual by the strong fluctuations in the currency exchange rate.

2008 was a very successful year for Fresenius Medical Care. At the beginning of the year, we expected revenue of about $10.4 billion, 7 % more than in 2007. In fact, we grew our revenue to more than $10.6 billion, up 9 % year on year and thus above our target.

Originally, we expected our net income for 2008 to be in the range from $805 million to $825 million, which would have meant a growth of 12 % to 15 % on a year-to-year basis. At the end of 2008, our net income totaled $818 million, at the upper end of the envisaged spectrum. As expected, there were no one-time effects in 2008.

The effective tax rate was 36.6 % in the year under review, better than we had anticipated. The expected continuous growth of the dividend is reflected in our dividend proposal: pending approval by the General Meeting, the dividend per ordinary share will increase by 7 % to €0.58. More information on this can be found in the "Dividend" section *from page 37* onwards.

At the beginning of the year, we expected our capital expenditures and acquisition spending to total approximately $800 million to $1 billion. $650 million to $750 million were to be used for capital expenditures, and the remaining amount for acquisitions. In line and as planned, we spent $891 million on capital expenditures and acquisitions in 2008; $673 million were used for capital expenditures and $218 million for acquisitions.

The operating cash flow – driven by earnings performance and ongoing good management of accounts receivable – was expected to be within the target range of 10 % of total revenue. In 2008, the operating cash flow totaled about $1.02 billion or approximately 10 % of total revenue, thus meeting our expectations.

According to our forecast, the debt / EBITDA ratio was to reach a level below 2.8 by the end of 2008. We already achieved this target in the third quarter. The debt / EBITDA ratio was 2.69 at the end of 2008.

At the end of the year under review, the number of employees at Fresenius Medical Care (full-time equivalents) had increased to 64,666 from 61,406 at the end of 2007, thus almost reaching our forecast figure of 65,000. The continued strong organic growth of the dialysis services business in all regions and the numerous acquisitions in Europe and Asia were key contributing factors.

Research and development expenditures – to boost and enhance Fresenius Medical Care's ability to adapt to future requirements – were at about $80 million and within our expectations. The field of dialysis products is generally characterized by ongoing efforts to develop existing product groups. Details can be found *from page 76* onwards in the "Research and Development" section.

The development of the general economy was marked by a moderate upswing in the first half of the year, followed by a significant downswing. The net gross domestic product in all important regions grew compared to the previous year. The economies of emerging markets grew more strongly than the U.S. and European markets, which are most important for us in terms of their share of our sales volume. However, Fresenius Medical Care's dialysis business is less dependent on economic cycles than other industries. The dialysis market developed positively as we expected: the market volume was up by approximately 5 %, and the

number of patients grew by around 7 %. In terms of the distribution of dialysis patients according to treatment method, there was no significant changes vis-à-vis the previous year. Hemodialysis remained by far the most important method used to treat chronic kidney failure.

## THE MANAGEMENT'S GENERAL ASSESSMENT OF BUSINESS PERFORMANCE

2008 was an exceptionally successful year for our company. Revenue and earnings climbed to record levels. We achieved, and in same cases surpassed, all our main objectives set at the beginning of the year.

Our company experienced stronger growth than the dialysis industry as a whole. As a result, we managed to increase our share of the market. We maintained our position as market leaders in North America, our biggest market by far. We also recorded significant revenue growth in Europe, Latin America and Asia, reinforcing our market position in these regions.

Fresenius Medical Care's profitability continued to increase in the year under review. There were improvements in all relevant key figures. This has to be seen in conjunction with our ongoing high investment in our company: we maintained existing clinics, equipped new ones and expanded production capacities. In addition, important cooperative ventures in the field of intravenous iron preparations, were an important milestone for our dialysis drug strategy.

*Table 02.1.10* **OBJECTIVES AND RESULTS FOR 2008**

| | *Results 2008* | *Objectives 2008* | *Objective reached* |
|---|---|---|---|
| Revenue | +9 % to $10.6 bil. | +7 % to >$10.4 bil. | ✓ |
| Net income | +14 % to $818 mil. | +12 % – 15 % to $805 – 825 mil. | ✓ |
| Dividend | 7 % per ordinary share to €0.58[1] | Continuous increase | ✓ |
| Capital expenditures | $673 mil. | $650 – 750 mil. | ✓ |
| Acquisitions | $215 mil. | $150 – 250 mil. | ✓ |
| Tax rate | 36.6 % | 38 % – 39 % | ✓ |
| Debt/EBITDA ratio | 2.69 | <2.8 | ✓ |
| Number of employees[2] | 64,666 | More than 65,000 | |
| Research and development expenditures | $80 mil. | ~$80 mil. | ✓ |
| Product innovations | e.g. 5008S dialysis machine | Further expansion of product and service range | ✓ |

[1] *Proposal for approval at the Annual General Meeting on May 7, 2009.*
[2] *Full-time equivalents*

# 02.2 RESULTS OF OPERATIONS, FINANCIAL SITUATION, ASSETS AND LIABILITIES

## RESULTS OF OPERATIONS

2008 was another successful business year, especially considering the generally difficult economic situation worldwide. We achieved and partially exceeded our annual targets, yielding record numbers in revenue and income. Every region and segment contributed to our growth and consequently to our consolidated market position in nearly every business area.

### REVENUE

In 2008, Fresenius Medical Care once again achieved a significant gain in revenue of 9 % to $10.61 billion. In constant currency, the gain was 8 %; organic revenue increased by 7 % and acquisitions grew by 1 %.

In 2008, dialysis services, with 73 % (2007: 74 %), accounted for the majority of revenue. Meanwhile, 27 % of our revenue went to dialysis products (2007: 26 %).

We gained 7 % in worldwide revenue for dialysis services ($7.74 billion) in 2008. The revenue increase resulted from organic growth of 6 % and exchange rate effects of 1 %.

The core of our dialysis services is the provision of high-quality treatments in our dialysis clinics. Therefore, the number of dialysis treatments provided is a key indicator in the revenue development of this business segment. At the end of 2008, we operated about 2,400 dialysis clinics, 7 % more than at the end of 2007. At the same time, Fresenius Medical Care treated more than 184,000 patients, up 6 % from the previous year. The number of treatments in 2008 grew by 5 % to approximately 27.87 million.

Revenue from dialysis products rose by 15 % (11 % in constant currency) to $2.87 billion. The main reasons for the gain were increased sales of hemodialysis machines, dialyzers, blood lines, concentrates, products for peritoneal dialysis as well as higher revenues from the phosphate binding drug PhosLo and revenue from intravenous iron products, which are the subject of the new license agreements. Including sales to our own dialysis clinics, revenue from dialysis products rose by 14 % to $3.73 billion.

As in previous years, the majority of dialysis services by far were provided in North America (89 %). Due to the

*Table 02.2.1* **REVENUE BY SEGMENT**

| *in $ millions* | *2008* | *2007* | *Change* |
|---|---|---|---|
| **North America** | | | |
| Dialysis products | 758 | 661 | 15 % |
| Dialysis services | 6,247 | 6,002 | 4 % |
| **TOTAL** | **7,005** | **6,663** | **5 %** |
| **International** | | | |
| Dialysis products | 2,117 | 1,846 | 15 % |
| Dialysis services | 1,490 | 1,211 | 23 % |
| **TOTAL** | **3,607** | **3,057** | **18 %** |
| **Worldwide** | | | |
| Dialysis products | 2,875 | 2,507 | 15 % |
| Dialysis services | 7,737 | 7,213 | 7 % |
| **TOTAL** | **10,612** | **9,720** | **9 %** |

strong expansion of our clinic network, the focus of the International segment experienced a slight shift to the services business; however, product sales still dominate this segment with 59 % of revenue. The revenue distribution of dialysis services and products in North America differs from that of the International region due to several reasons. One of the main reasons is the different development and structure of local healthcare systems. For example, in major dialysis markets such as Germany and Japan, extensive legal restrictions are imposed on the operation of dialysis clinics by private companies such as Fresenius Medical Care. This limits the expansion of our clinic network in these countries. Furthermore, we accelerated the expansion of our dialysis service business in North America since Fresenius Medical Care was founded in 1996 and the aquisition of National Medical Care (NMC).

Both segments – North America and International – contributed to revenue growth in 2008.

Revenue in North America rose by 5 % to $7.01 billion. Organic revenue growth was also 5 %. North America remains the most important business region for Fresenius Medical Care. In 2008, 66 % of our total revenue was derived from this region; in 2007, it was 69 %.

Revenue from the dialysis services business in North America increased by 4 % to $6.25 billion. Organic growth was 4 %. The average reimbursement rate per treatment in the U.S. – our main market – rose from $327 to $330 in 2008. The main reason for this rise was an increase in commercial payer revenue.

*Table 02.2.2* **PATIENTS**

| | *2008* | *2007* | *Change* |
|---|---|---|---|
| North America | 125,857 | 121,431 | 4 % |
| Europe / Middle East / Africa | 29,841 | 26,902 | 11 % |
| Latin America | 19,230 | 17,741 | 8 % |
| Asia-Pacific | 9,158 | 7,789 | 18 % |
| **TOTAL** | **184,086** | **173,863** | **6 %** |

*Table 02.2.3* **TREATMENTS**

| *in millions* | *2008* | *2007* | *Change* |
|---|---|---|---|
| North America | 19.15 | 18.45 | 4 % |
| Europe / Middle East / Africa | 4.46 | 4.07 | 10 % |
| Latin America | 2.92 | 2.71 | 8 % |
| Asia-Pacific | 1.34 | 1.21 | 11 % |
| **TOTAL** | **27.87** | **26.44** | **5 %** |

*Table 02.2.4* **CLINICS**

| | *2008* | *2007* | *Change* |
|---|---|---|---|
| North America | 1,686 | 1,602 | 5 % |
| Europe / Middle East / Africa | 400 | 362 | 10 % |
| Latin America | 177 | 169 | 5 % |
| Asia-Pacific | 125 | 105 | 19 % |
| **TOTAL** | **2,388** | **2,238** | **7 %** |

Sales development of dialysis products was also extremely successful. In the North America segment, this includes products for hemodialysis and peritoneal dialysis, as well as the dialysis drug PhosLo and newly licensed intravenous iron products. Revenue from dialysis products grew by 15 % to $758 million, which was due to strong sales of nearly all products in our product portfolio.

The International segment is comprised of all business regions except North America. In 2008, Fresenius Medical Care generated approximately 34 % of its total revenue in this segment. This represents a significant increase from the previous year (31 %). Revenue grew by 18 % (13 % in constant currency) to $3.61 billion in 2008. Organic revenue growth was 12 % and acquisitions accounted for 1 % of revenue growth.

Dialysis services revenue in the International segment increased by 23 % (18 % in constant currency) to $1.49 billion. Dialysis products sales rose by 15 % to $2.12 billion (10% in constant currency), due to continued high demand for dialysis machines, dialyzers and peritoneal dialysis products.

The largest business region in the International segment is Europe / Middle East / Africa. Revenue in this region rose by 19 % to $2.51 billion. In constant currency, revenue growth was 12 %. The region accounted for 24 % of total revenue (2007: 22 %). Thanks to our positive business performance in Europe, we have confirmed and expanded our position as the region's largest provider of dialysis services and products. At the end of the 2008, we provided dialysis services to nearly 30,000 pa-

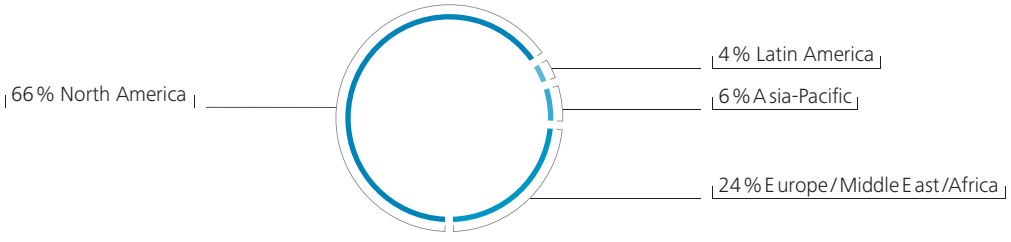
*Table 02.2.5* **REVENUE DEVELOPMENT BY SEGMENT**

| *in $ millions* | *2008* | *2007* | *Change* | *Organic growth* | *Currency translation effects* | *Acquisitions / Divestments* | *Percentage of total revenue* |
|---|---|---|---|---|---|---|---|
| North America | 7,005 | 6,663 | 5 % | 5 % | – | – | 66 % |
| International | 3,607 | 3,057 | 18 % | 12 % | 5 % | 1 % (net) | 34 % |
| **TOTAL** | **10,612** | **9,720** | **9 %** | **7 %** | **1 %** | **1 % (net)** | **100 %** |

*Table 02.2.6* **REVENUE BY REGION**

| *in $ millions* | *2008* | *2007* | *Change* |
|---|---|---|---|
| North America | 7,005 | 6,663 | 5 % |
| Europe / Middle East / Africa | 2,510 | 2,116 | 19 % |
| Latin America | 491 | 400 | 23 % |
| Asia-Pacific | 606 | 541 | 12 % |
| **TOTAL** | **10,612** | **9,720** | **9 %** |

*Chart 02.2.1* **REVENUE BY REGION 2008**



tients in 400 dialysis clinics; an increase of nearly 3,000 patients (+11 %) compared to the previous year. In 2008, our revenue from dialysis services was $948 million, up 25 % from the previous year. Adjusted for exchange rate effects, revenue rose by 18 %. Revenue from dialysis products was $1.56 billion, an increase of 15 % (9 % in constant currency).

Business performance in Latin America was also positive. Revenue grew by 23 % to $491 million, 19 % in constant currency. Revenue generated in Latin American accounted for 4 % of our total revenue, as in the previous year. Dialysis services revenue rose by 25 % (22 % in constant currency) to $330 million. We generated $161 million from dialysis product sales, an increase of 18% over 2007 (12 % in constant currency). At the end of 2008, we treated more than 19,000 patients in 177 dialysis clinics in this business region.

The Asia-Pacific region recorded revenue growth of 12 % to $606 million. In constant currency, growth was 11 %. This region accounted for 6 % of Fresenius Medical Care's total revenue (2007: 5 %). Revenue from dialysis services increased by 13 % (10 % in constant currency) to about $212 million. In 2008, dialysis product revenue in this region increased by 11 % (11 % in constant currency) to $394 million.

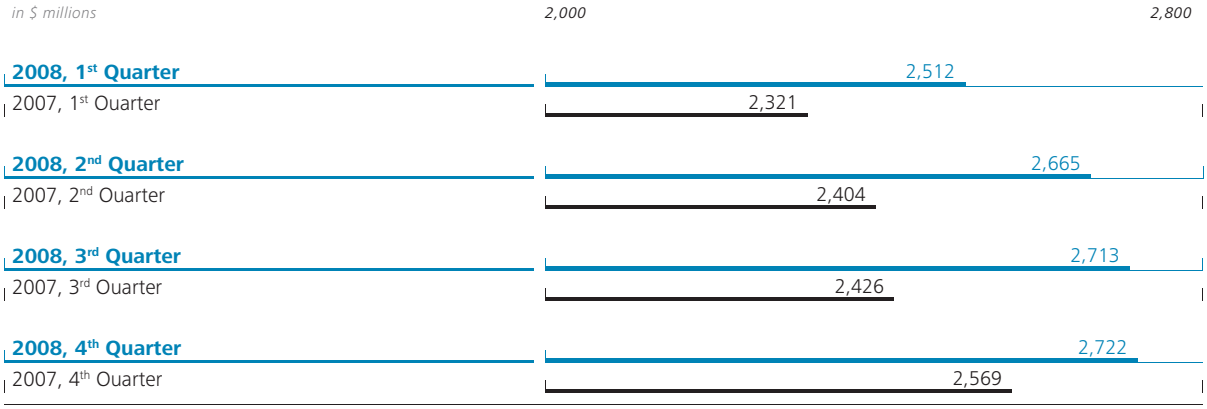
Order volume is not a significant indicator for Fresenius Medical Care since nearly 75 % of its business model consists of regularly provided services. In addition, our product business mainly covers single-use products, whereas project-related orders could lead to significant changes in order volumes in the reporting period. As a result, Fresenius Medical Care does not report on the basis of this indicator.

## EARNINGS

EBITDA. Earnings before interest, taxes, depreciation and amortization (EBITDA) increased by 7 % to $2.09 billion in 2008 (2007: $1.94 billion).

OPERATING INCOME. (EBIT, earnings before interest and taxes). Operating income also increased in 2008 by 6 % to $1.67 billion. The operating margin was 15.8 % and lower than the previous year's figure of 16.3 %. The decline was among others due to higher personnel costs, lower reimbursement rates for EPO, start-up costs for new clinics and unfavorable exchange rate effects. Furthermore, depreciation increased as we expanded our production capacities due to continuous high demand for our products. Due to these additional capacities, we were able to perform our regular maintenance program at our European plants during the summer break of this year. Whereas last year, the program had to be shortened because capacity limits had been reached, and resulted in a positive effect on the operating margin. The strong revenue growth impacted operating margins positively which, was driven by higher reimbursement rates for dialysis services, as well as continued above market growth rates for dialysis product sales.

*Chart 02.2.2* **QUARTERLY DEVELOPMENT OF REVENUE**



In the North America segment, operating income rose by 3 % to $1.17 billion in 2008. The operating margin was 16.7 % compared to 17 % in 2007. The moderate decrease is mainly due to increased personnel costs and other operating costs as well as lower reimbursement rates for. This was partially compensated by increased commercial payor revenue.

In the International segment, we increased our operating income by 13 % to $616 million. This mainly resulted from an increase in product sales and treatment volumes as well as higher revenue per treatment. The operating margin was 17.1 %, which was also below previous year's figure of 17.8 %. This was primarily due to accelerated growth in the dialysis services business with lower margins, start-up costs for new clinics, higher depreciation due to capacity expansion, as well as foreign currency transaction effects.

Corporate costs for our central administration also increased, primarily as the result of the Renal Solutions, Inc. acquisition because such costs are not accounted for in the EBITDA and EBIT of the International and North America business segments. As such costs are not controlled by and are not under the cognizance of the individual business segments, Fresenius Medical Care is of the opinion that these costs are not controlled by the individual business segments. They mainly account for corporate expenses such as for accounting and finance as well as business segment, research and development costs. The total corporate operating costs amounted to $112 million in 2008 compared to $94 million in 2007.

*Table 02.2.7* **OPERATING INCOME (EBIT)**

| *in $ millions* | *2008* | *2007* | *Change* |
|---|---|---|---|
| North America | 1,168 | 1,130 | 3 % |
| International | 616 | 544 | 13 % |
| Corporate | (112) | (94) | 19 % |
| **TOTAL** | **1,672** | **1,580** | **6 %** |

*Table 02.2.8* **ABBREVIATED INCOME STATEMENT**

| *in $ millions* | *2008* | *2007* | *Change* |
|---|---|---|---|
| Net revenue | 10,612 | 9,720 | 9 % |
| Costs of revenue | 6,983 | 6,364 | 10 % |
| **GROSS PROFITS** | **3,629** | **3,356** | **8 %** |
| in % of revenue | 34.2 | 34.5 | – |
| **OPERATING INCOME (EBIT)** | **1,672** | **1,580** | **6 %** |
| Intereste xpense( net) | 336 | 371 | –9 % |
| **EARNINGS BEFORE TAXES** | **1,336** | **1,209** | **10 %** |
| **NET INCOME** | **818** | **717** | **14 %** |

EARNINGS BEFORE TAXES. Increased to $1.34 billion, up 10 % from the previous year ($1.21 billion).

NET INCOME. In 2008, net income rose by 14 % to $818 million (2007: $717 million).

## DEVELOPMENT OF OTHER MAJOR ITEMS IN THE INCOME STATEMENT

GROSS PROFIT. Increased to $3.63 billion in 2008, up 8 % compared to 2007. During the same period, the gross profit margin fell from 34.5 % to 34.2 %. The slightly lower margin was mainly due to higher personnel costs and other increased costs, especially for Heparin, but also due to lower reimbursement rates for EPO and decreased dosage of EPO in North America. Both segments recorded higher depreciation due to expanded production capacities in 2008.

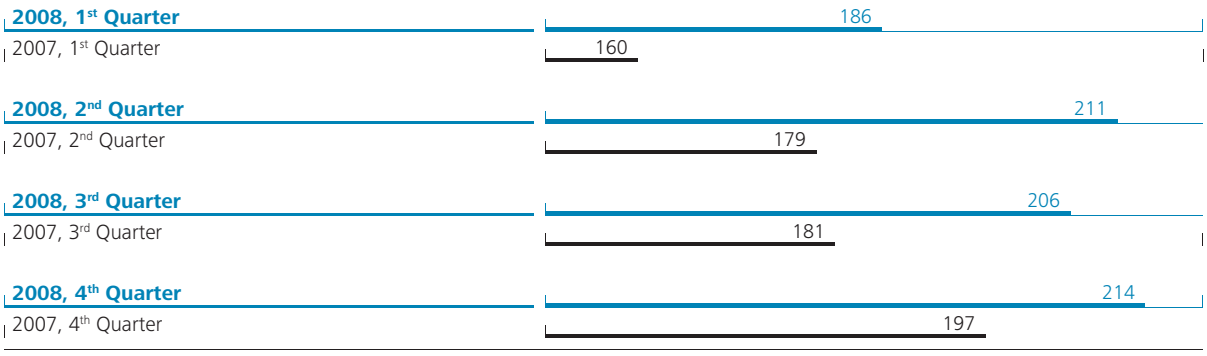
Selling, general and administrative (SG&A) expenses grew by 10 % to $1.88 billion (2007: $1.71 billion). These expenses corresponded to 17.7 % of revenue, a slight increase from the previous year (2007: 17.6 %). The increased revenue had a favorable impact, however, this was partially offset by higher personnel costs and higher Corporate costs.

Depreciation and amortization in 2008 was $416 million, compared to $363 million in the previous year. This increase resulted from higher investment activity, particularly as a result of our worldwide production capacity expansion.

In 2008, research and development expenditure was $80 million (2007: $67 million). This increase was mainly due to additional costs for research and development programs required to develop hemodialysis machines, field testing of new products as well as expenses for home dialysis research projects.

NET INTEREST EXPENSE. Net interest expense in 2008 amounted to $336 million compared to $371 million in 2007. This positive development was primarily due to lower average interest rates in connection with changes in the financing structure, resulting from the repayment of a portion of our trust preferred securities. More information on our financial situation can be found starting *on page 69* as well as in note 9 of the financial report starting *on page 70*.

*Chart 02.2.3* QUARTERLY DEVELOPMENT OF NET INCOME



TAX RATE. Income tax expense in 2008 was $489 million, compared to $466 million in the previous year. This corresponds to an effective tax rate of 36.6 % (2007: 38.5 %). The lower tax rate was mainly due to the German corporate tax reform that became effective on January 1, 2008.

EARNINGS PER SHARE. Earnings per share (EPS) grew by 13 % in 2008 to $2.75 per ordinary share compared to $2.43 in 2007. These figures also apply to our ordinary American Depository Shares (ADS), since the relationship between ordinary share and ordinary ADS has been 1:1 since the share split in 2007. The weighted average number of shares outstanding was approximately 297.03 million in 2008 (2007: 295.67 million). Of this number, 293.23 million were ordinary shares (2007: 291.93 million). The increase in the number of outstanding shares was due to the exercise of stock options. Detailed information on earnings per share is listed *on page 85* of the financial report.

## VALUE ADDED STATEMENT

The value added statement shows Fresenius Medical Care's total economic output in 2008. All goods and services purchased as well as depreciation and amortization have been subtracted. Fresenius Medical Care's value added was $5.2 billion in 2008 (2007: $4.8 billion), an increase of 8 % compared to the previous year. Of this amount, $3.5 billion or 67 % was attributable to our employees, and 9 %, was attributable for the state. About $362 million or 7 % went to lenders, while $283 million (approximately. 6 %) went to shareholders and minority interest holders. The company retained $564 million for reinvestment.

## FINANCIAL SITUATION

Despite considerable uncertainty on the financial markets, our investment and financing strategy did not change in 2008. As such our business model allows for a stable and high cash flow, thereby enabling us to have a more consistent and higher level of borrowing than other industries. In addition, we optimized our financing structure at an early stage, prior to the start of the financial crisis, by issuing senior notes and by redeeming trust preferred securities. As a result, no significant refinancing will be required before 2011. Our refinancing options remain stable and flexible and we will continue our investment plans for the current business year.

*Table 02.2.9* **VALUE ADDED STATEMENT**

| *in $ millions* | *2008* | | *2007* | |
|---|---|---|---|---|
| **Creation** | | | | |
| Company output | 10,668 | 100 % | 9,796 | 100 % |
| Materials and services purchased | (5,049) | – 47 % | (4,635) | – 47 % |
| Gross value added | 5,619 | 53 % | 5,161 | 53 % |
| Depreciation and amortization | (415) | – 4 % | (363) | – 4 % |
| **NET VALUE ADDED** | **5,204** | **49 %** | **4,798** | **49 %** |
| **Distribution**[1] | | | | |
| Employees | 3,506 | 67 % | 3,189 | 67 % |
| State | 489 | 9 % | 466 | 10 % |
| Lenders | 362 | 7 % | 400 | 8 % |
| Shareholders & minority interest holders | 283 | 6 % | 245 | 5 % |
| Company | 564 | 11 % | 498 | 10 % |
| **NET VALUE ADDED** | **5,204** | **100 %** | **4,798** | **100 %** |

[1] *Provided the profit distribution for 2008 is accepted by the Annual General Meeting.*

## FINANCIAL MANAGEMENT POLICIES AND GOALS

Ensuring our financial flexibility is key to Fresenius Medical Care's financing strategy. This is achieved through the use of a wide range of financial instruments as well as diversification of investors and banks. Our maturity profile is characterized by diversification of maturities with a high amount of medium-term and long-term financing options.

In selecting financial instruments, we consider market capacity, financing costs, investor diversification, flexibility, qualification requirements and maturities. At the same time, we focus on financing cost optimization.

Fresenius Medical Care manages its financing needs through a combination of operating cash flow as well as short, medium, and long-term debt. In addition to the financing instruments utilized, Fresenius Medical Care has a sufficient financial leverage in the form of syndicated lines of credit, which can be utilized if needed.

Fresenius Medical Care uses the debt / EBITDA ratio (leverage ratio) as a guideline for its long-term financial planning. This ratio compares the Company's financial liabilities (debt) with earnings before interest, taxes, depreciation and amortization (EBITDA) and other non-cash items. Fresenius Medical Care has a strong position in the growing global dialysis markets, which is considered non-cyclical. The dialysis industry can be characterized by stable cash flows, as most clients have high credit worthiness. Therefore, high, stable, and plannable strong cash flows can be achieved. These allow for an appropriate ratio of debt, i.e. a balanced combination of financial debt liabilities. At the end of 2008, the debt / EBITDA ratio was 2.69 compared to 2.84 in the previous year. For further information, please see the "Strategy, Objectives, and Corporate Management" section, starting *on page 44*.

Fresenius Medical Care has sufficient financial resources, due to only partially used lines of credits and the accounts receivable facility, which will be maintained in the years to come. We aim to keep committed and unutilized credit facilities of at least $500 million.

In addition, we are focusing on reducing financing instruments with our financing activities in the coming years. For this reason, the subordinated trust-preferred securities issued by Fresenius Medical Care Capital Trust II and III, which matured in February 2008, were refinanced with existing senior credit facilities instead of issuance of new subordinated securities. Our medium-term goal is to create a financing portfolio containing only of senior and unsecured debt instruments.

For detailed information on financing, please see the financial report section "Liquidity and Capital Resources", starting *on page 20*, notes 8 and 9, and in the "Outlook" report *on page 112*.

*Table 02.2.10* **MEDIUM-TERM- AND LONG-TERM FINANCING INSTRUMENTS**

| | *Year issued* | *Amount in mil.* | *Coupon in %* | *Maturity* |
|---|---|---|---|---|
| Credit Agreement Term Loan A | 2006 | 1,850 $[1] | – | 31.03.2011 |
| Credit Agreement Term Loan B | 2006 | 1,750 $[1] | – | 31.03.2013 |
| Senior Notes 2007 – 2017 | 2007 | 500 $ | 6 7/8 % | 15.07.2017 |
| Trust Preferred Securities IV | 2001 | 225 $ | 7 7/8 % | 15.06.2011 |
| Trust Preferred Securities V | 2001 | 300 € | 7 3/8 % | 15.06.2011 |
| Notes | 2005 | 200 € | – | 27.07.2009 |

[1] *At the beginning, before repayments*

## RATING

In the second quarter of 2008, the rating agency Moody's upgraded the corporate rating and credit rating of Fresenius Medical Care. Moody's ratings are all based on a stable outlook.

At the beginning of the third quarter, Standard & Poor's downgraded the outlook rating of Fresenius Medical Care from positive to negative in connection with the APP acquisition through Fresenius SE. All other ratings were confirmed.

## EFFECT OF OFF-BALANCE-SHEET FINANCING INSTRUMENTS ON THE FINANCIAL POSITION AND ASSETS AND LIABILITIES

Fresenius Medical Care is not involved in any off-balance-sheet transactions that could have a significant effect on the company's financial situation, expenses or earnings, profit and loss position, liquidity, investments, assets or capitalization.

## LIQUIDITY ANALYSIS

For detailed information on liquidity, please see the "Liquidity and Capital Resources" section of the financial report, starting *on page 20*.

## DIVIDENDS

Fresenius Medical Care will propose the twelfth consecutive dividend increase to the Annual General Meeting. A dividend of €0.58 per ordinary share (2007: €0.54) and €0.60 per preference share (2007: €0.56) will be proposed for the business year 2008. This represents an increase of 7% in both cases. The total dividend payout is expected to be approximately €173 million (2007: €160 million). For further information on dividends, please see the section "To Our Shareholders", starting *on page 37*.

## INVESTMENTS AND ACQUISITIONS

The majority of the investment expenditure went to maintenance of existing clinics and setup of new clinics. In addition, funds were invested in maintaining and expanding production facilities in North America, Germany, Japan, and France. Capitalization of dialysis machines for customers, primarily in the International segment, also took up a portion of the investment expenditure. These investments are financed through operating cash flow or through existing or new credit facilities.

In 2008, Fresenius Medical Care spent $1,011 million on investments, acquisitions and the purchase of intangible assets; of this amount, $964 million were cash transactions, of which $498 million went to the North America segment, $359 million to the International segment and the Corporate segment accounted for $107 million. This amount includes a loan granted to Fresenius SE in the amount of $50 million.

A total of $673 million in net investment went to fixed assets, compared to $543 million in the previous year. A large portion of the investment expenditure – $398 million – went to maintaining existing clinics and set up of new clinics. Additionally, $195 million in investment expenditure went to maintaining and expanding production capacities, mainly in Germany and North America as well as in Japan and France. Another $94 million was

*Table 02.2.11* **RATINGS**

| | *Standard & Poor's* | *Moody's* | *Fitch* |
|---|---|---|---|
| Corporate credit rating | BB | Ba1 | BB |
| Outlook | negative | stable | negative |
| Senior secured debt | BBB– | Baa3 | BBB– |
| Senior unsecured debt | BB+ | Ba2 | not rated |
| Subordinated debt | BB | Ba3 | B+ |

invested in the capitalization of dialysis machines provided to customers by our distribution companies, primarily in the International segment. Investments in fixed assets accounted for about 6 % of total revenue and hence remained unchanged from the previous year.

About 54 % of the net investment amount went to expansion investments, while 46 % was spent on maintaining existing production sites and dialysis clinics.

We invested approx. 57 % in North America, followed by 34 % in Europe, 5 % in the Asia-Pacific region and 4 % in Latin America.

In 2008, $225 million was spent on licenses and acquisitions, primarily in the area of dialysis clinics. Of this amount, $113 million went to North America; $57 million was spent for the International segment and $57 million in the Corporate segment. In addition, a loan of $50 million was granted to Fresenius SE. We also recorded receipts in the amount of $59 million in connection with divestitures.

Overall, approximately $891 million was spent for investment activities and acquisitions in 2008, taking into account disinvestments. An increase of $114 million compared to the previous year.

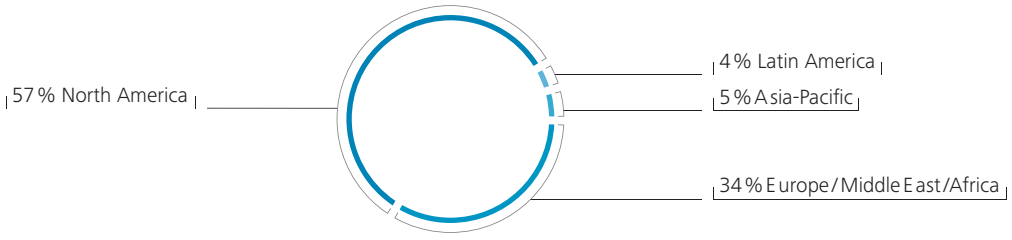
## CASH FLOW ANALYSIS

Our operating cash in 2008 was $1.02 billion, which was lower by 15 % from 2007 ($1.20 billion). The decline was due to an increase in the days sales outstanding (DSO) as well as other charges to the working capital; however, the decrease was partially offset by increased earnings. The cash inflow was used for investments (property, plant and equipment and acquisitions).

*Table 02.2.12* **NET INVESTMENTS AND ACQUISITIONS BY SEGMENT**

| *in $ millions* | *2008* | *2007* | *Thereof property, plant and equipment* | *Thereof acquisitions, intangible assets and other investments* | *Thereof divestitures* | *Change* | *% of total* |
|---|---|---|---|---|---|---|---|
| North America | 444 | 347 | 384 | 113 | 53 | 97 | 50 % |
| International | 340 | 310 | 289 | 57 | 6 | 30 | 38 % |
| Corporate | 107 | 120 | – | 107 | – | (13) | 12 % |
| **TOTAL** | **891** | **777** | **673** | **277** | **59** | **114** | **100 %** |

*Chart 02.2.4* **NET CAPITAL EXPENDITURE ON PROPERTY, PLANT AND EQUIPMENT BY REGION**



A detailed description of additional factors is listed in the financial report in the "Liquidity and Capital Resources" section, starting on page 20.

In 2008, we already saw some slight delays in the payment patterns of our clients worldwide. At the end of 2008, the days sales outstanding in North America rose by two days to 60 days; outside of North America, it rose by three days to 107 days. Overall, the days sales outstanding increased by four days to 77 days compared to the previous year. The increase in the North America segment was largely due to the launch of the in-licensed iron product Venofer as well as due to delays in reimbursement of dialysis services related to the introduction of new identification numbers for Medicare and Medicaid health care providers. The increase in the International segment mainly reflects delays in payment by state entities, which are affected by the current worldwide financial crisis. Since the majority of our reimbursement comes from public healthcare organizations and private insurers, we expect that most of our outstanding accounts will be collected in the near future, although with a slight delay. Further information is listed in the following "Assets and Liabilities" section.

In 2008, our free cash flow, excluding acquisitions and dividends, was $343 million compared to $657 million in 2007. After acquisition expenses of $218 million (less divestitures) and dividends amounted to $252 million, free cash flow was –$127 million, compared to $235 million in the previous year. For further information, please see the section "Investments and Acquisitions" on page 71.

*Table 02.2.13* **ABBREVIATED STATEMENT OF CASH FLOW**

| *in $ millions* | *2008* | *2007* | *Change* |
|---|---|---|---|
| Cash at the beginning of the year | 245 | 159 | 54 % |
| Cash from operating activities | 1,016 | 1,200 | –15 % |
| Cash used in investing activities | (891) | (777) | – |
| Cash from/used in financing activities | (156) | (341) | – |
| Effect of exchange rate changes | 8 | 4 | 100 % |
| Cash at the end of the year | 222 | 245 | –9 % |
| Free cash flow | 343 | 651 | –48 % |

*A detailed representation can be found in the consolidated financial statements in the financial report beginning on page 46.*

*Table 02.2.14* **DAYS SALES OUTSTANDING**

| *in days* | *2008* | *2007* | *Change* |
|---|---|---|---|
| North America | 60 | 58 | 2 |
| International | 107 | 104 | 3 |
| **TOTAL** | **77** | **73** | **4** |

*Chart 02.2.5* **OPERATING CASH FLOW**

*in $ millions*

## ASSETS AND LIABILITIES

In 2008, we recorded an increase in total assets and once again improved our asset situation. The key indicators of the balance sheet reflect the sustained growth and successful performance of our company.

### BALANCE SHEET AND ASSET SITUATION

The Company's total assets increased by 5 % from $14.17 billion to $14.92 billion. In constant currency, they grew by 7 %.

Fixed assets rose by 4 % (+ 5 % in constant currency) to $10.71 billion at the end of the year. This corresponds to approximately 72 % of the company's total assets, slightly below last year's number of 73 %. The absolute increase in non-current assets was primarily due to investments in property, plant and equipment, the purchase of license and distribution rights for the commercialization and the distribution of intravenous iron products of Galenica Ltd. and Luitpold Pharmaceutical Inc.. As a result, the values of license and distribution agreements shown under intangible assets have increased. For further information, please see the section "Events Significant for the Business Development" *on page 71*.

Fixed assets include goodwill of $7.31 billion, primarily related to the acquisition of Renal Care Group in 2005 and the formation of Fresenius Medical Care in 1996. The slight increase in goodwill compared to the previous year's amount of $7.25 billion was the result of acquisitions made in 2008, slightly offset by exchange rate effects.

Property, plant and equipment rose by 9 % to $2.24 billion in 2008, mainly due to capital expenditure of $687 million less depreciation amounting to $368 million and exchange rate effects of $68 million. For more information, please see the "Investments and Acquisitions" section and the financial report *on page 60*.

Current assets increased by 9 % to $4.21 billion (13 % at constant currency). This increase was mainly due to higher trade accounts receivable as well as an increase in prepaid expenses and other current assets and inventories.

In 2008, the group's inventories went up by 11 % to $707 million. In constant currency, the increase was 15 %. This rise resulted from expanding our production capacities over the course of the year. In the previous year, inventory was reduced due to capacity shortages and reached to normal levels in 2008. In addition, we built up inventory as a result of our purchase of licenses for intravenous iron products.

Accounts receivable grew by 7 % to $2.18 billion, an increase of 13 % at constant currency. This was above the revenue growth of 9 % in 2008 and reflects the increase of the days sales outstanding. For further information, please see section "Financial Situation" starting *on page 69*.

## SHAREHOLDERS' EQUITY FURTHER STRENGTHENED IN 2008

Shareholders' equity rose by 7 % to $5.96 billion compared to $5.58 billion in 2007. This increase was mainly due to net income of $818 million and proceeds from the exercise of stock options in the amount of $42 million. The dividend payout for 2007 in the amount of $252 million and exchange rate effects of $171 million partially offset the shareholders equity. The equity ratio increased slightly by one percentage point to 40 % in 2008.

Debt amounted to $8.96 billion ($8.60 billion in the previous year). Financial liabilities in the amount of $5.74 billion (2007: $5.64 billion) included short-term liabilities of $1.14 billion (2007: $974 million) as well as medium to long-term debt in the amount of $4.60 billion compared to $4.67 billion in 2007. In 2008, our financial liabilities amounted to 80 % compared to 77 % in the previous year.

For the period the group has no significant accruals. The largest single accrual – amounting to $115 million – is for the settlement of fraudulent conveyance claims and all other legal matters in connection with the National Medical Care transaction in 1996 resulting from the bankruptcy of W.R. Grace. Please *see note 18* of the financial report for further details.

*Chart 02.2.6* **BALANCE SHEET STRUCTURE - ASSETS**


*Chart 02.2.7* **BALANCE SHEET STRUCTURE – SHAREHOLDERS' EQUITY AND LIABILITIES**


*A detailed representation can be found in the consolidated financial statements in the financial report from page 44.*

# 02.3 NON-FINANCIAL PERFORMANCE INDICATORS

## RESEARCH AND DEVELOPMENT

Our Company's business activities are aimed at achieving objectives on three levels. First, we seek to enhance the safety and quality of life of every single patient, and to improve their chance of survival. Second, we intend to offer our customers high-quality, reliable products – the best treatment at the lowest possible cost. And third, based on these two objectives, on a corporate level we want to maintain and expand our leading market position. What these three goals have in common is quality. The groundwork for Fresenius Medical Care's high-quality products and services is laid in our research and development (R&D) departments. This is where quality begins. Last year, we once again enhanced the performance and quality of our products and treatments through our ongoing R&D work, thus creating a basis for sustained growth of our Company in the future.

### QUALITY IN RESEARCH AND DEVELOPMENT – A DEFINITION

High quality in dialysis treatment is not easy to guarantee, as dialysis is one of the most complex types of therapy. At the same time, it is a highly individual treatment that depends on many factors, which may be weighted differently from patient to patient. For this reason, we define quality in research and development first and foremost via the result. This includes the quality of treatment that can be achieved with our products and services in the different areas of application and takes into account important aspects such as the safety and reliability of our products to ensure patients' well-being. High-quality treatment means better results and a better quality of life for patients. Therapies that focus on quality from the outset lead to lower follow-up costs, say, for hospital treatments and stays. This ensures that quality remains affordable. Many of the products and treatment methods that stem from our development departments take this as a point of departure. Secondly, quality can also be defined in terms of the path that takes us to this result: the structures and procedures involved in the development process, and the availability of appropriately qualified staff. Company-specific regulations as well as international standards and norms, which we achieve to the full extend possible with our research and development activities, provide a framework for these two quality aspects. In this way, we can guarantee cost-efficient and high-quality product development processes.

### QUALITY OF TREATMENT AND A PARADIGM SHIFT IN REIMBURSEMENT

Quality costs money (see the "Quality and Its Costs" section *on page 78*), but quality is also reimbursed. This is particularly true in Portugal and the U.S., where a bundled reimbursement system was introduced last year. Thanks to this, patients will receive better care in the future.

For Fresenius Medical Care, these changed reimbursement structures also promise advantages, opportunities and challenges in research and development. Thanks to our integrated business model, we are not only in a position to offer all the products and services specified in the "therapy bundle" in the required quality; we can also focus even more on further developing our range of products and services. Further information can be found in the section "New Reimbursement Models" starting *on page 101*.

### QUALITY IN THE DEVELOPMENT PROCESS

Our research and development work is rooted in responsibility for our patients on the one hand, and accountability to our Company on the other. Our aim is to do all that is technologically, medically and economically possible to enhance the length and quality of life of dialysis patients, which is still very limited, by shaping the required processes so that they are as quick and effective as possible. To achieve these aims, we regularly reassess our processes and priorities in research and development. In addition, we compare our approach with that of high-tech companies in other fields of technology and cooperate with them. This collaboration benefits all those involved and helps us to continuously review and improve our development processes and benchmark them against those of market leaders in other technologically sophisticated industries.

Every new development at Fresenius Medical Care starts with an idea. This can be sparked either by a specific need on the market (market pull), or through technological advancements (technology push). Every product idea runs through a structured development process with clearly defined phases, so that only those ideas are pursued that actually create value for patients and users as well as for Fresenius Medical Care itself. Therefore, we examine and evaluate the planned product in terms of its market value, development costs, the resources required, and the technologies we need to manufacture the product. If the idea is still interesting "at second glance", but it has not yet been clarified beyond doubt that it can be implemented and is suitable for the market, a pre-development phase is added in which staff scrutinize the concept for any possible flaws. If the idea passes this test, it goes into the development phase. This involves several milestones: first, a functional model has to be approved, then in a later development phase a test model, and finally the development result, after which the go-ahead for the market launch is given by a special committee. Feedback from customers and users is also essential in the development process, as it allows us to keep their needs in view.

Our goal of guaranteeing high-quality research and development motivated us to put in place detailed guidelines for R&D at Fresenius Medical Care. These place great importance on compliance with safety norms and regulatory requirements, as well as on achieving outstanding development quality at the lowest possible cost.

A special feature of the R&D work carried out in our Company is that we have to consider the circumstances in different regions and countries – for example regulatory conditions, legal, healthcare, and financing systems, and the habits of people who live there. For this reason our work is highly decentralized. In addition, we differentiate our products and services according to the region: a dialysis machine can have a different design or differing functions in the individual countries. Therefore, quality can only be defined the same the world over at the highest level of meaning, as the quality of treatment. The actual details, however, can vary region by region.

Development and production cycles also vary in length, depending on the kind of product. For example, it normally takes at least five years to develop a new generation of dialysis machines. The machine is then on the market for at least seven to eight years. But even during this time, we continually strive to improve it and to integrate new functions. Devices already in use may be retrofitted to accommodate changes in minimum safety requirements, for example, that are specified in national and international norms.

Enhancing the process safety of dialysis machines is a separate field of development. As with all extracorporeal treatment methods (i.e. that take place outside of the body), dialysis involves a number of risks that cannot be fully ruled out, such as blood loss or air infusion. In the worst case, they can lead to the death of the patient. As part of our continuous efforts to improve our products, we therefore work on developing additional methods and devices to reduce the risk of patients being harmed by technological error or human failure.

With every dialysis treatment, not only the patient is subject to a calculated risk; we are too. Both medically and technologically, a degree of uncertainty remains during treatment. We see it as our duty to reduce this uncertainty as much as we can. To this end, we comprehensively document treatments and perform detailed error analyses. For our products to be reliable, moreover, they must function without errors and be easy to operate. Consequently, we define exactly how the machines are to be applied and provide detailed information on the intended use in the form of handbooks.

## QUALITY THROUGH QUALIFICATIONS

Innovative products and therapies at the highest level are key to Fresenius Medical Care's success. The task of our R&D departments is to continually develop and improve our products and treatments. The largest is R&D International with 250 employees, most of whom are employed at our Schweinfurt and Bad Homburg sites. Smaller teams are also located in St. Wendel and in Romania. In addition to R&D International, we have research and development departments in North America and in the Asia-

Pacific region, as well as at key production sites. All of these units are closely interlinked and cooperate on many projects.

At the end of last year, a total of 415 employees (full-time equivalents) worked on improving the quality of therapy in our research and development departments, roughly the same number as in the previous year.

The members that make up our team reflect the variety of areas in research and development as it relates to renal replacement therapy. They include people from the medical profession as well as software specialists and economists. However, engineers make up the largest group of specialists in our offices and labs. Almost half of all our research and development employees are graduates from technical universities or universities of applied sciences. Added to these are other members of staff who have completed technical apprenticeships or graduated from universities. Holistic thinking is required in all of our development departments. To design a dialysis machine, employees must first understand the underlying medical processes – regardless of their original professional background.

Fresenius Medical Care's R&D departments constantly observe medical advancements in the field of renal replacement therapy and even have a direct impact on them. The members of our R&D departments participate actively in public research discourse, attend expert scientific conferences, and cultivate direct and personal contact with customers and leading physicians.

Employees from our R&D departments sit on various committees, such as national or international committees to establish product and treatment standards, in which the legal foundations for our industry are laid. They work side by side with government organizations, medical professional associations and healthcare providers. This provides us with first-hand information on regulatory issues which we can then implement quickly in new product features or functions. Of course, it also attests to the expertise ascribed to our staff outside the company.

## QUALITY AND ITS COSTS

Our research and development activities primarily serve to ensure and enhance the value of our products and services from the customer's perspective. At the same time, the ongoing development of new and improved dialysis therapies and products is an integral part of our growth strategy. Our objective is to offer state-of-the-art products at competitive prices, to stand out significantly from other providers in the market, and ultimately to increase sales. Last year, again, we managed to further boost the efficiency and quality of our products through our continuous research and development work. However, it is impossible to calculate the exact contribution of individual developments or innovations to revenue growth or to relate them to a given business year. As a rule, new products do not replace old ones, but the latter remain on the market. It takes several years to introduce a new product on all markets. At the same time, however, our products have a life-time spanning several years.

In 2008, research and development expenditures amounted to $80 million, corresponding to around 2.8 % of our total dialysis product sales. This means that our investments in the future of our products and services grew significantly for the first time year-on-year ($67 million). The main reason for this increase in expenditure is the acquisition of Renal Solutions, Inc. (RSI).

While our research and development expenditures are rather low compared to other companies in the healthcare sector, they are well within the range typically observed in the dialysis industry. They are also sufficient, since our activities focus on continual improvements for users and patients rather than inventions.

*Table 02.3.1* **NUMBER OF EMPLOYEES IN R&D**

| *Full-time equivalents* | *2008* | *2007* |
|---|---|---|
| **TOTAL** | **415** | **372** |

## QUALITY THROUGH INNOVATION CULTURE

The Fresenius Medical Care Group is highly innovative and has tremendous creative potential. This is due to the group's typical innovation culture that has produced our current comprehensive range of technologically leading products.

A successful innovation culture necessitates certain factors: the right location, motivated and highly qualified employees from different areas of expertise (see the "Quality through Qualifications" section above), further training for staff in all relevant areas, as well as high priority being placed on innovation in the Company as a whole and particularly at management level. In addition, Fresenius Medical Care's global culture is characterized by an open and fair discussion beyond departmental boundaries. This ensures that objectives are invariably the objectives of all. A further feature of our innovation culture is that it strikes a balance between short-term, long-term, and visionary projects, and contains the right mixture of projects with low and high risks. Added to this is excellent communication between all of the Company's R&D departments, as well as between Fresenius Medical Care and its clinic partners. This enables us to fully exploit potential synergies resulting from the vertical integration of our Company.

Another element of our culture of development and innovation are the annual meetings and conferences we hold in this area, where employees from our worldwide R&D sites meet and exchange experience with one another and with representatives from the various market segments. Here, new ideas are propounded and new technologies discussed. These meetings foster personal contact between R&D staff within our international company and enable us to compare our internal projects with current market trends. This exchange goes beyond defined reporting lines and is in our view indispensable for creative and efficient research and development work.

*Chart 02.3.1* **ACADEMIC GRADE OF R&D EMPLOYEES**

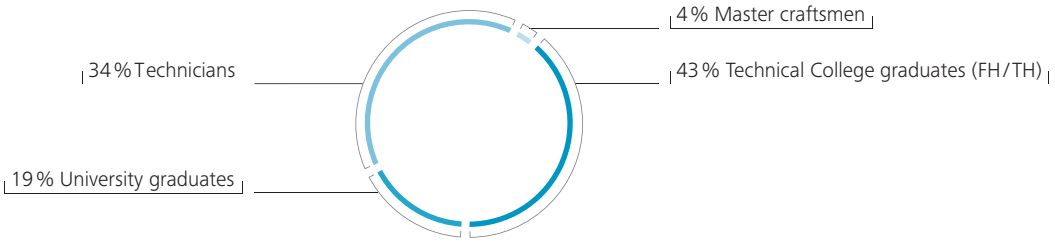
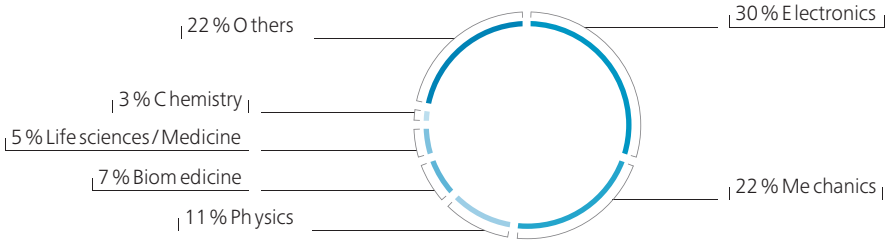



*Chart 02.3.2* **DISCIPLINE OF R&D EMPLOYEES**



Our innovativeness is reflected in the number of patents and patent applications to which Fresenius Medical Care has the rights. At the end of 2008, these encompassed 2,402 patents in around 460 patent families. Furthermore, our inventions in the year under review gave rise to additional patent families, which will protect our innovations in important dialysis products and treatment methods in the future.

In the following sections, we discuss selected focus areas for development in the year under review and provide a short overview of current research activities.

## DEVELOPMENT FOCUS: ONLINE-HDF AND 5008S HEMODIALYSIS MACHINE

With the development of the 5008 therapy system, we raised the status of online hemodiafiltration (Online-HDF) from an exclusive technology for just a few users to a standard piece of equipment. In Online-HDF, the machine automatically produces the required amounts of sterile and pyrogene-free infusion solution from standard bicarbonate dialysate. Clinical studies show that hemodiafiltration leads to a 30 % to 35 % decrease in the mortality rate of kidney patients. Hardly any other single measure in the field of renal replacement therapy has such a positive impact on the length of patients' lives. Fresenius Medical Care was one of the first providers of commercially available Online-HDF machines; we see this as a confirmation of the Company's long-term innovation and product development policy. As Online-HDF becomes increasingly widespread as a standard treatment, our R&D work will center on improving technical aspects of this treatment method.

An important milestone for our research and development activities last year was the European market launch of the 5008S hemodialysis machine at the most important event in the industry, the Congress of the European Renal Association/European Dialysis and Transplant Association in Stockholm in May. The 5008S is an upgrade of our 5008 therapy system. In developing this product, we focused our efforts on improving the interface between the machine and the operator. New features include convenient navigation as well as more automated processes, for example, data collection and documentation. As a result, nurses have more time to tend to individual patients. This and other integrated safety and control measures have raised the quality of treatment considerably compared with the basic 5008 model. The 5008S also uses resources more efficiently in standby mode, the machines use minimum amounts of dialysate and energy. We expect the dialysis system 5008S with intuitive operation to contribute to establishing Online-HDF as a treatment of choice in renal replacement therapy. We will continue to use the 5008 as the main platform for further significant improvements and extensions of our products.

*Table 02.3.2* **RESEARCH AND DEVELOPMENT EXPENDITURES**

| *in millions $* | *2008* | *2007* | *2006* | *2005* | *2004* |
|---|---|---|---|---|---|
| TOTAL | **80** | **67** | **51** | **51** | **51** |

## DEVELOPMENT FOCUS: HOME DIALYSIS

The average age of the population in industrialized countries in particular is rising. As a result, the number of people with end-stage renal disease (ESRD) is also growing significantly. The number of dialysis patients could more than double by 2025 to reach approximately 4 million.

With this in mind, we are currently pursuing two strategies that will take the pressure off hospitals' capacities in the future and improve the quality of treatment for individual patients. First, we intend to make it possible to transfer more treatments to the patient's home environment. And second, we aim to make it easier for dialysis treatment to be carried out successfully in the patient's home environment by optimizing our products.

The two current home dialysis therapy forms, peritoneal dialysis (PD) and home hemodialysis (home HD), complement each other. Fresenius Medical Care anticipated this relationship early on by pursuing a balanced product policy.

At present, an important strategy in home dialysis is to continue improving PD. In PD, the patient's peritoneum is used as the dialyzing membrane. A sterile dialysis solution is introduced and discharged through a catheter that has been surgically implanted into the patient's abdominal cavity. The solution removes toxins along with excess water. The patient administers the treatments several times a day or during the night supported by a machine, the cycler. Fresenius Medical Care possesses several types of these extremely high-quality and powerful machines for automatic peritoneal dialysis (APD). The development department has recently developed a new cycler with the aim of offering high-quality APD worldwide at an improved cost. The uniform technological platform is an important step in this direction. A cycler developed specifically for the U.S. market was approved by the Food and Drug Administration (FDA) in 2008. Customers' reactions so far have been extremely positive. We are planning on enhancing this cycler to make it one of our core products in the U.S. and contribute to gaining additional market share.

Recognized advantages of Fresenius Medical Care's PD solutions, such as balance and bicaVera, are their biocompatibility and pH-neutral properties. In addition, they contain particularly small quantities of the harmful glucose degradation products that arise from the sterilization of PD solutions. This means that the peritoneum is maintained as the dialysis membrane, which again contributes to the patient's well-being. Moreover, PD is a convenient home therapy for early treatment of kidney failure particularly if there is still residual renal function. In general, the aim in future is to begin treatment at an early stage of the disease.

*Table 02.3.3* **NUMBER OF PATENTS AND PATENT APPLICATIONS**

| | *2008* | *2007* | *2006* | *2005* | *2004* |
|---|---|---|---|---|---|
| TOTAL | **2,402** | **1,932** | **1,752** | **1,542** | **1,428** |

Using the PatientOnLine software, clinic personnel can monitor the patient's individual PD treatment, thus contributing significantly to quality assurance. In 2008, a new version of the software, PatientOnLine (5.0), was brought onto the market. It allows physicians to determine the patient's current state of health even more reliably. Furthermore, it is compatible with Windows Vista and has been further improved with additional functions. In recognition of its high quality standards, version 5.0 of PatientOnLine now bears the "CE" mark of conformity (CE = Conformité Européene) in accordance with the Medical Device Directive of the EU and is thus certified as a medical device. The CE mark of conformity obliges Fresenius Medical Care to ensure that PatientOnline fulfils the legal requirements in the EU in terms of health protection, safety and environmental protection. It helps customers to identify high-quality products in the market.

In 2008, we also stepped up work on therapy options for children with kidney disease under the motto "special solutions for special people". Last year, home therapy improvements also encompassed better patient information: we issued a brochure entitled "Kidney Options" in 25 countries for patients who had recently contracted kidney disease as well as a special user handbook for home HD patients, which we published for the first time.

## DEVELOPMENT FOCUS: BODY COMPOSITION MONITOR (BCM)

The Body Composition Monitor (BCM) was successfully introduced in many countries in 2008. An in-depth account of this highly innovative diagnostic machine can be found in last year's annual report. The BCM can determine the hydration state (water level) and body composition (body water, fat-free body mass, and fat) of a dialysis patient. Only on the basis of these data, especially the percentage of body water, is it possible to assess the exact condition of dialysis patients. In this way, the treatment can be tailored better to the individual needs of patients and dialysis therapy can be improved considerably.

The hydration state of kidney patients has an immediate influence on the state of their heart and vascular system and thus on their life expectancy – cardiovascular diseases are the most frequent cause of death of dialysis patients. With the BCM, Fresenius Medical Care has developed an easy-to-operate, inexpensive, state-of the-art measuring device that provides users with a comprehensive clinically validated program for evaluating the data collected.

In 2008, several clinical studies were completed and publications issued. These publications underscore the outstanding diagnostic importance of the BCM.

As the BCM is not yet a standard medical device, Fresenius Medical Care is cooperating closely with different international clinical experts who report on their experience with the BCM at clinics after introducing the device. Some also hold workshops and convey their findings in training programs. The findings will provide essential clues for our customer service's consulting work. Given the importance of the hydration level and the potential of the BCM method, which we are only beginning to fathom, this project will continue to be a focus of our development work in the future.

## DEVELOPMENT FOCUS: SORBENT SYSTEMS

General trends in medical technology can also be observed in the dialysis sector: new methods and materials make it possible to reduce the size, weight and energy consumption of individual components and thus entire devices, as well as integrate fundamentally new functionalities in medical technology. Fresenius Medical Care took a step in this direction with the acquisition of Renal Solutions, Inc. (RSI) in 2007. RSI is an internationally recognized and exclusive specialist in the field of dialysate regeneration using enzyme-based sorbent systems. The main objective of these systems is to reduce the amount of water needed for hemodialysis treatment from about 120 liters (37 gallons) of reverse osmosis water at present to around five to six liters of drinking water – an important contribution towards cutting costs and protecting the environment with the aim of making our treatments ecologically sustainable. Apart from the ecological and financial implications of these improvements, they may lead to a substantial reduction in the size of hemodialysis machines. The ultimate goal is for patients to be able to wear these devices, possibly directly on their bodies. The long-term use of such sorbent systems is of particular interest to the R&D department because they hold the prospect of removing specific toxins from patients' blood. Advancements in innovative dialysis solutions will be a focus in the years to come and could possibly even culminate in a wearable artificial kidney.

## QUALITY THROUGH RESEARCH COOPERATION AND FUNDING

We gauge the success of our innovations primarily on the basis of day-to-day practical experience. For this reason, cooperation between our researchers and Fresenius Medical Care's clinics and a close relationship with daily users – doctors, nurses and patients – is important to successfully research and develop innovative solutions for treating people with kidney disease. In this way, Fresenius Medical Care benefits from its position as a vertically integrated dialysis company with direct access to users in its own clinics.

Moreover, we maintain close contact with universities and research institutes in our area of expertise. We cooperate particularly intensively with the University of Michigan (on a long-term study of chronic kidney patients), University Krems in Austria (on extracorporeal methods), and the Renal Research Institute (RRI) in the United States. For our collaboration with universities and other scientific institutions in Germany and abroad, we use various financing models, some of which are publicly funded.

The RRI's network currently comprises 15 institutes in 6 U.S. states. The RRI was founded in 1997 as a joint venture between Fresenius Medical Care North America and the Beth Israel Medical Center, a hospital in New York. The idea was to create a network of clinics in which new technologies could be researched, with the aim of improving patients' quality of life and gaining a better understanding of the course of chronic kidney failure.

The RRI is widely acknowledged as the leading institute in the field of clinical treatment of chronic kidney failure. Its research program ranges from studying fundamental scientific aspects of hemodialysis to improving technologies for determining the hydration level of hemodialysis patients.

The RRI's work in 2008 focused on dialysis frequency (daily dialysis compared to thrice-weekly treatment), the hydration level of dialysis patients (see the "Development Focus: BCM" section) as well as so-called SORB technology (see the glossary *on page 128*) and the wearable kidney (see the "Development Focus: Sorbent Systems" section). Last year, clinical studies on the regulation of patients' calcium and phosphate levels also played a prominent role in RRI's work with the aim of establishing a more objective scientific basis for the prescription of calcium. To this end, laboratory data are used as well as a computer program that permits an assessment of the intake and levels of calcium and phosphate, as well as the way the two minerals are processed in the dialyzer. Based on this appraisal, recommendations can be made to doctors regarding the right dosage of the phosphate binder PhosLo (*see also page 100*) and of calcimimetics. Another project currently being carried out by the RRI focuses on the removal of toxins. A substance is introduced into the bloodstream that dissolves the toxins directly before the blood enters the dialyzer. These examples show that the studies conducted by the RRI integrate the whole group's interests and its requirements for new knowledge.

For many of our studies, we have access to RRI's extensive databases and the data compiled by Fresenius Medical Care North America. Using these, we can trace back patients' state of health for months, which in turn enables us to optimize instructions for the future treatment of kidney patients. In the evaluation of our databases, we try more stringently to use past-related data to draw conclusions on future improvements. For example, we intend to further reduce the risk of infection in dialysis patients.

The RRI publishes 15 to 25 articles a year in the industry's specialist magazines. It also takes part in numerous U.S. and international symposia with more than 30 abstracts a year. Last year, for example, the RRI was represented at the annual conference of the American Society of Nephrology (ASN), where different RRI representatives reported on their research findings to an interested audience. Furthermore, the RRI holds its own three-day international conference every year in January, at which researchers from different institutes come together to discuss specialized topics. A lively exchange is also encouraged within the Fresenius Medical Care Group, for instance on experience with the different health systems.

Some of the RRI's studies are subsidized, including the institute's research projects with the University of Michigan, the University of North Carolina, the University

of Rochester, and the University of Massachusetts together with St. Raphael's Hospital. The topics of projects that are subsidized include depression and fear among children with chronic kidney disease or the effects of dialysis on other processes in the body, for example in patients with cardiovascular diseases.

In 2009, the RRI will concentrate on evaluating technological and clinical approaches to further improve the quality of treatment and boost its success rate. In clinical projects, for example, the RRI intends to work more intensely on raising water purity standards and improving the compatibility of different drugs. SORB technology will be a predominant topic in research projects. Further research areas include factors that promote cardiovascular problems in dialysis patients, daily dialysis and its effect on the heart and the thyroid function, as well as problems that arise in connection with dialysis.

## PROCUREMENT AND LOGISTICS

The procurement of high-quality raw materials and semi-finished products as well as the punctual delivery of our products to customers – patients, dialysis clinics and hospitals – are among the most important factors for the success of Fresenius Medical Care. Naturally, the products are constantly checked during production, and the manufacturing process is precisely monitored. But the desired end quality can only be achieved if the input – raw materials or delivered materials – meets our high quality standards. Equally important are optimum logistics processes to ensure that our high-quality products reach our customers intact and on time.

Our procurement strategy aims at obtaining the necessary materials and components through a fair, long-term and sustainable cooperation with our suppliers. We thus look for optimum economic conditions and the highest quality worldwide. This is why, in October

*Table 02.3.4* **THE RRI'S MOST IMPORTANT STUDIES IN 2008**

**Zhu, F. / Kuhlmann, M. K. / Kotanko*, P. / Seibert E. / Leonard, E. F. / Levin, N. W.:**
A method for the estimation of hydration state during hemodialysis using a calf bioimpedance technique. Physiological Measurement 29: S. 503–516, 2008

**Richter A. / Kuhlmann M. K. / Seibert E. / Kotanko, P. / Levin N. W. / Handelman, G. J.:**
Vitamin C deficiency and secondary hyperparathyroidism in chronic haemodialysis patients. Nephrology Dialysis Transplantation 23: 2058–2063, 2008

**Kotanko, P. / Levin, N. W. / Zhu, F.:**
Current state of bioimpedance technologies in dialysis. Nephrology Dialysis Transplantation 23: 808–812, 2008

**Kaysen, G. A. / Kotanko, P. / Zhu, F. / Sarkar, S. R. / Heymsfield, S. B. / Kuhlmann, M. K. / Levin, N. W.:**
Estimation of adipose pools in hemodialysis patients from anthropometric measures. Journal of Renal Nutrition 18: 473–478, 2008

**Daugirdas, J. T. / Levin, N. W. / Kotanko, P. / Depner, T. A. / Kuhlmann, M. K. / Chertow, G. M. / Rocco, M. V.:**
Comparison of proposed alternative methods for rescaling dialysis dose: resting energy expenditure, high metabolic rate organ mass, liver size, and body surface area. Seminars in Dialysis 21: 377–384, 2008

** Peter Kotanko is a physician and the director of the RRI's research laboratory.*

2007, our International segment launched the "Purchasing Excellence" initiative. The aim of the initiative is to re-centralize decentralized purchasing in Europe, to streamline and standardize processes, and to achieve additional savings by means of internationally coordinated product group management. The matrix organization has been implemented since January 2009. Today, centrally located specialists are responsible for the strategic purchase of the large product groups – for example, energy, consumables, chemicals, and plastic granulates, a primary product for dialyzers. In addition, a centralized purchasing control system monitors procurement performance. The improvement approaches implemented saved some €9 million in procurement costs in 2008. As a result, we managed to largely compensate the higher prices that some of our suppliers demanded due to the raw material boom in 2008. With respect to very large single items in procurement – such as polysulfone, the material the fibers in our dialyzers are made of – we took intensive measures last year to hedge our purchasing volume. Today, we obtain 60 % of all products on the basis of outline agreements.

Under the watchword supplier management, in the International segment all suppliers are regularly categorized and evaluated on the basis of strict quality criteria and standards. The resulting ratings are one of the principal foundations for supplier development measures and future supply decisions. Supply management is not yet harmonized in all plants and regions; that will be one of our tasks this year.

In the logistics area, our biggest project last year was preparing our new distribution center in Biebesheim, Hesse, for operation. The distribution center meets all modern logistics standards. Among other things, all processes are controlled electronically by using bar codes. In December 2008, Fresenius Medical Care acquired the center from an investor who built it to our specifications. In Biebesheim, we combine the former main warehouses of Gernsheim (the integration started last December and should be fully concluded by the end of the second quarter 2009) and Darmstadt (the move will take place in the fourth quarter 2009). The new high rack warehouse will initially cater for 55,000 pallets. Its capacity can, however, be increased to up to 75,000 pallets. This completely covers the forecast volume growth for the coming years. The new distribution center will reduce our annual logistics costs in Europe by €1.5 million as from 2010.

In 2008, we launched a second, cross-functional initiative called "P.XL – Packaging Excellence" to improve product packaging and packaging units. The new, standardized packaging should ensure a problem-free, cost-effective handling along the entire supply chain while meeting our customers' requirements. Our standardized cardboard boxes give us the edge to better plan and utilize warehouse space. Simultaneously, the more efficiently used loading spaces bring down our transport costs.

The aim of our project "Supply Chain Landscape 2015", introduced last year, is to develop a sustainable strategy for the Europe/Middle East/Africa region until the year 2015 that also takes Fresenius Medical Care's growth expectations into account. The very core of the project is the creation of a flexible and cost-effective supply chain (particularly in terms of transport volume) for single-use products from our factories, distribution centers and warehouses to the end customer. Apart from the long-term improvement goals, we have identified measures for short-term optimizations and cost savings.

In the U.S., we primarily focused on optimizing processes and cutting costs in procurement last year. Still, quality remains one of our top priorities. Therefore, we always examine insourcing possibilities.

We operate 14 distribution centers in the U.S., and supply more than 6,000 clinics and around 7,800 home dialysis patients. Last year, 300 trucks moved 86 % of our transport volume – more than ever before. Our own fleet is not only more cost-effective, but offers a better transport quality than any external service provider. The fact that we continue to operate a fleet of trucks is one of the results of the Lean Six Sigma quality initiative launched almost four years ago. It allows us to analyze and better coordinate processes in logistics, among other areas. We recently started offering our

transport infrastructure to external customers to improve the load capacity of our trucks. Now we can sell load capacity to more than 160 freight brokers – for example, when returning from the customer to the distribution center.

Due to the financial crisis, we have to contend with rising prices in both procurement and logistics. Our challenge is to find new suppliers to further enhance the safe supply of strategically important products. Another challenge is posed by the increasing costs for the transport of liquids such as dialysis concentrates and peritoneal dialysis solutions, which weigh more than, for example, bloodlines or dialyzers.

In an effort to counter rising procurement prices we intensively pursued an approach in 2008 to increasingly coordinate our procurement activities to meet the demand in North America, Europe and the Asia-Pacific region. To this end, we standardized a number of (raw) materials across regions. Moreover, we make greater use of supply sources in regions with favorable exchange rates. However, material savings and insourcing remain proven measures to counteract rising prices.

## PRODUCTION

Fresenius Medical Care's customers justifiably expect to receive all of our products in the required number at a constantly high quality and on the specified delivery date. In our view, quality in production means meeting these requirements reliably. For us, manufacturing quality therefore comprises much more than just producing an end product that fulfils pre-defined specifications. The goods and raw materials must also have been supplied in the appropriate quality, and the production chains must be error-free. In addition, supply chain management has to be coordinated (see the glossary *on page 133*). Here the Fresenius Medical Care Group's vertical integration is an important lever for success. As all of these processes are largely internal, we are able to control the quality of such ourselves.

One of the ways in which we can achieve quality is by ensuring that we only resort to outsourcing when a supplier convinces us that it can provide better quality than we can. As a result, we produce the main components of a dialysis machine in-house. Core components that are not only decisive for the quality and reliability of our products but also determine costs are always manufactured in our own plants. Our employees also play an important role in ensuring reliable production quality: experience shows that our teams that are used to working together deliver particularly consistent quality. In our production sites in North America, for example, the workforce in 2008 was 100 % identical to that in the previous year. As a result, Fresenius Medical Care was able to retain the know-how of its experienced production team.

In 2008, our production activities again centered on expanding capacities in our plants worldwide. This has enabled us to meet the continous growing demand for our products.

At our plant in St. Wendel, Germany, we invested around € 39 million from March 2008 and into the first quarter of 2009 in expanding our production capacities. Approximately € 23 million were spent on a production building and two new fiber spinning lines with which we manufacture hollow fibers, the most important component of our dialyzers. These fibers are also delivered from St. Wendel to other production sites where dialyzers are manufactured. As a result of this investment, production capacity for these fibers grew by almost a third. About € 16 million were allocated to increasing the production of bags for peritoneal dialysis, enabling us to expand the capacity in this area by around a quarter. In the year under review, moreover, additional facilities for manufacturing single-use dialyzers went into operation, for which € 36 million were earmarked at the beginning of 2007. As a result, 35 million of these "artificial kidneys" are now produced in St. Wendel every year.

The following example illustrates the scale of our fiber production. In our International segment we produced approximately 158 million kilometers of fiber last year – enough to reach the sun (distance earth / sun about 150 million kilometers). If we added the fibers produced in North America, we would make our way back, too.

We expanded the capacity of our plant in Ogden, Utah, from 32 million dialyzers in 2007 to 36 million last year, an increase of 12 %. We achieved this, among other things, by upgrading two production lines. Now all five production lines are at the same high technical level. We plan to operate additional production lines in Ogden by 2010. Our total investment budget for the expansion of production here will amount to $ 72 million in 2008 and 2009.

Hemodialysis machines are manufactured mainly at two sites: in Schweinfurt, Germany, and in Walnut Creek, California. While the German plant manufactures components as well as machines, the U.S. plant is specialized in assembling and testing of dialysis machines for the North American market.

Every second dialysis machine manufactured worldwide comes from our plant in Schweinfurt. In Schweinfurt, we further expanded production capacity for hemodialysis machines in 2007 and 2008 with a total investment budget of € 25 million. We intend to increase the production volume there by 7 % to 10 % annually until 2015. A new building has been constructed with 3,600 square meters of space, where the machines can be checked directly after they come off the production line, and where software tests can be performed and dialysis treatments simulated. In the logistics area, which occupies a large part of the factory space, the machines c an be subsequently packed and prepared for shipment.

In 2008, we produced a total of around 80 million dialyzers and fiber bundles worldwide. With this production capacity, we achieved a market share of 44 % compared to 40 % in 2007. This means that Fresenius Medical Care remains the uncontested leader in the dialyzer market. This also applies to dialysis machines: 90 % of all of the dialysis machines sold in the U.S. came from our plants.

China is the growth engine in the Asia-Pacific region. The Chinese market continues to hold enormous business potential for Fresenius Medical Care: in view of the size of the population, the economic growth, and the healthcare measures planned in China, we expect the number of dialysis patients in the country to increase.

The production site in Jiangsu, China, which we took over in the summer of 2007, is only a two-hour drive from Shanghai, giving us good access to qualified personnel and well-developed transport routes. The main products manufactured at the site are tubing systems and other single-use dialysis products for the Chinese market. As a result of the expanded capacities, we will be able to supply other markets in the region from Jiangsu in future and thus partake in the extremely dynamic growth in the region.

In Japan, we operate two plants in Inukai and in Buzen and have increased the capacity of both of these. The plants primarily manufacture single-use products needed for peritoneal dialysis. We also started producing FX generation dialyzers in Japan in 2008. These products are in high demand in Asia.

Our manufacturing processes, especially in our eight production sites in North America and in five major sites in Europe, are geared toward the Lean Six Sigma management system that combines Lean Manufacturing and Six Sigma approaches. Lean Six Sigma is used to analyze and optimally coordinate all production processes. Our aim is to achieve better production results, and in particular reduce defect rates, while shortening manufacturing cycle times. In 2008, we held further training sessions at the plants to heighten employees' awareness of the opportunities that Lean Manufacturing and Six Sigma offer to positively impact product quality and thus help us to achieve our goals. In North America we also use the CAPA (Corrective And Preventive Action) program to help prevent problems from occurring. This involves identifying possible sources of error by observing processes before problems arise. CAPA is therefore an integral element of the management systems in all of our production sites.

Our technical customer service also plays a key role in ensuring quality. It is responsible for installing, maintaining and repairing our dialysis machines, and instructing users on how to use them – in more and more regions around the world even 24 hours a day, seven days a week. It is therefore a reliable interface between the Company and our customers. In 2008, the focus was on introducing the new TAM (Technical Assistant

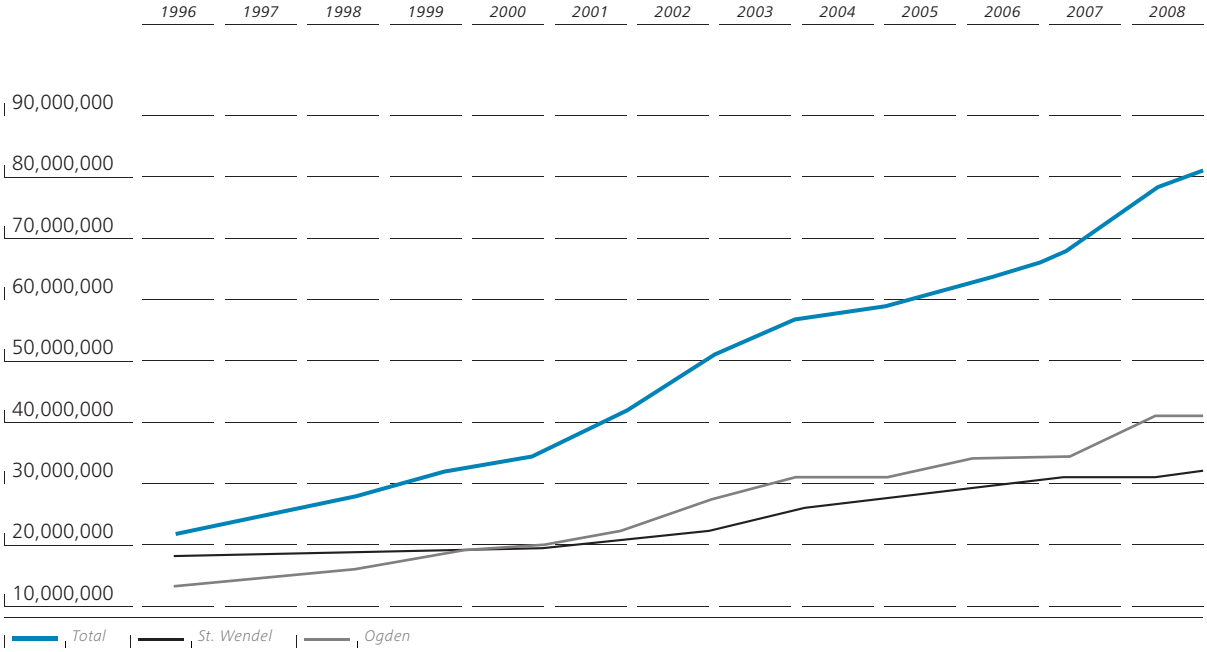
Management), which can be used to make all customer service processes electronic and thus more efficient. Visit reports made by service technicians, for example, can be transmitted directly to Fresenius Medical Care's SAP system and from there passed on to the personnel department where work hours are recorded to finally reach the finance department where customer invoices are issued. Spare parts orders are also fed directly into the SAP system in question, where they are processed immediately.

## QUALITY AND ENVIRONMENTAL MANAGEMENT

At Fresenius Medical Care, quality and environmental management are an essential part of the Integrated Management System (IMS), which we developed with the primary aim of meeting our own high quality standards. As a provider of products and services for the treatment of kidney failure, we bear a particular responsibility for our patients and for upholding our level of quality. The IMS complies with the legal guidelines for products and services, and is at the same time geared to our operational workflows. It fulfils the ISO 9001:2000 requirements for quality management systems in combination with the ISO 14001:2004 standard for environmental management systems. At the same time, it conforms to the special requirements for medical devices specified by the ISO 13485:2003 standard. Our quality and environmental management systems are also TÜV-certified. TÜV, a German technical inspection agency, subjects our corporate headquarters, our plants, our distribution and our clinic organization to precise testing on a yearly basis.

We have introduced the IMS at most of our European production sites. In 2008, it was implemented for the first time in the Republic of Serbia (ISO 9001 and ISO 14001) and South Africa (ISO 9001) as well as in France and England (ISO 14001). The share of our dialysis clinics that are certified according to ISO 14001 is constantly growing. In 2008, the figure rose to 37 % from 29 % the previous year. Add to these 39 facilities that meet the quality management standard ISO 9001:2000 as well as

*Chart 02.3.3* **PRODUCED DIALYZERS 1996 UNTIL 2008**



48 clinics certified according to the standard ISO 14001. The total number of clinics in Europe that fulfil ISO 9001:2000 requirements increased to 282. The number of our European dialysis clinics whose work is geared to the environmental management standard 14001:2004 grew to 145. Our U.S. production sites in Ogden, Utah, and in Walnut Creek, California, as well as our plant in Reynosa, Mexico, are certified according to ISO 13485.

In the U.S., we introduced a formalized "certified" environmental health and safety audit program several years ago that inspects all of our manufacturing operations on an annual basis.

In the Asia-Pacific region, we are currently boosting our efforts to establish western quality and environmental standards at all of our plants. Furthermore, in the year under review, we undertook improvements based on the "Six Sigma" concept (see the glossary starting *on page 132*), which is used in quality management to further reduce the error rate.

We use audits to verify whether the IMS is implemented effectively. To enable us to do this at as many sites and as regularly as possible, we stepped up our auditor training activities in 2008. A focus in the year under review was the Eastern Europe region.

As the above statements show, we see quality management as being much more than just the final inspection in the production process – although of course at Fresenius Medical Care this is a standard procedure and indispensable. Rather, quality in production means ensuring that outstanding work is done from the manufacture phase onwards. This requires targeted training and high employee commitment, and – an essential aspect – that the production team has a particular idea of the value it creates.

We currently carry out quality training regularly in our medical product and drug areas as well as in our dialysis services. To anchor quality management more firmly in the entire workforce, we are working on a comprehensive training management system. The aim of this is not to focus on certain products or services. Instead, an integrated system should emerge, similar to an IMS (*see page 19* for details on the training management system).

Another central aspect of our quality management activities is preparing drugs for approval and submitting applications. This is subject to national and international regulations. The aim is to keep the time between development, clinical testing and market launch to a minimum. To meet this goal, the so-called mutual recognition procedure plays a key role in Europe. This directive allows for accelerated approval of medical products in all European countries if they have already been approved by another EU member state. The speed depends on the choice of reference country. Another path that is usually even faster is the so-called decentralized procedure, whereby an application for the approval of a product is submitted in several member states at the same time.

In 2008, we focused our activities in this area on dialysis drugs, particularly phosphate binders like Phoslo and iron supplements. More than 38 approvals were granted for these products alone. At the same time, we expanded our product range of peritoneal dialysis (PD) and hemofiltration solutions and obtained a total of 36 approvals for these medical products.

To evaluate the quality of our dialysis treatments, we use quality parameters that are generally recognized by the dialysis industry (see the table on the next page containing a selection of quality data), such as hemoglobin values. In cooperation with responsible nephrologists, we aim to achieve a defined hemoglobin level for our patients. The so-called kt/v value gives an indication of the filtering performance of a treatment by establishing the ratio of the length of treatment and the filtration rate of certain toxic molecules. Albumin, a protein, is one quality parameter used to monitor a patient's general nutritional condition. Hospitalization days are another important indicator of the treatment quality, because they are particularly cost-intensive and can significantly reduce the quality of life of dialysis patients. In 2008, we were able to further improve the quality of our dialysis treatment based on these parameters.

Fresenius Medical Care makes efforts to promote greater environmental awareness and environmental protection on several levels at its sites. By improving our operational efficiency, for example through measures to save energy or by reducing the amount of raw materials needed in manufacture, we contribute to the sustainable development of the Company even in times of rising energy and raw materials prices. Increasing efficiency also means limiting the influence of our Company's activities on the environment. Therefore conservation of drinking water and energy, as well as emissions and waste, has been a central element of our environmental management for years.

In the U.S., for example, we already recycle an average of 1,752 tons of paper and cardboard a year. As a result, we avoid about 1,226 tons of $CO_2$ emissions and save around 160,000 liters of fuel, approximately 46.6 million liters of water, and 7.2 million kilowatts of electricity; and stop 29,700 trees from being chopped down. In our clinics in the U.S., we collect plastics, such as cannulae, in special boxes and pass them on to be recycled; in 2008, this totaled 18.64 tons of recyclable plastic waste. We also take environmental considerations into account when it comes to our buildings: we use energy-saving lamps and eco spec premium paint and exceed the insulation standards for the industry. We place great importance on avoiding waste and making sure that our production processes are energy-saving. In our Ogden plant, many of the components of the dialyzers produced there are recycled, as are different parts of dialysis machines made in Walnut Creek, where we prevent over 450 tons of machine waste from reaching our landfills.

Back in 2007, we adopted our environmental program for the entire EMEA (Europe, Middle East, Africa) region. In conjunction with this program, environmental goals were defined that are to be achieved by 2010:

- specifying environmentally relevant performance indicators for all participating production sites,
- further improving energy efficiency and avoiding emissions,
- carrying out a feasibility study on the use of alternative energy generation methods at a sample production site,
- improving the recycling rate from 70 % at present to 85 % in 2010,
- further training our employees and raising their awareness of environmental protection and environmental management, and
- optimizing eco-controlling in the rapidly growing number of dialysis clinics in Europe.

Last year, we made significant advances concerning all of these points.

In addition, our production buildings are becoming more environmentally friendly. In 2008, we began operating the extension of the production plant at our Schweinfurt site, in which dialysis machines are manufactured. The building is equipped with a heat recovery system and automatic fresh air supply. Consequently, air-conditioning is not needed, which saves a great deal of energy.

At our plants in St. Wendel (Germany), SMAD (France) and SisTer (Italy), our environmental measures centered on improving production processes by increasing the scope of plastic raw materials used.

*Table 02.3.5* **QUALITY DATA**

*Data refer to the last quarter*

| | *U.S.* | | *Europe* | |
|---|---|---|---|---|
| | *2008* | *2007* | *2008* | *2007* |
| Kt/V > 1.2 | 95 % | 95 % | 95 % | 95 % |
| Hemoglobin 10 – 13 g/dl | 85 % | 80 % | 75 % | 74 % |
| Albumin ≥ 3.5 g/dl[1] | 80 % | 80 % | 85 % | 87 % |
| Phosphat 3.5 – 5.5 mg/dl | 53 % | 52 % | 61 % | 60 % |

[1] *Internationaler Standard BCR CRM470*

Another environmental protection project launched in 2008 was the implementation of the new EU REACH chemical regulation at our European plants. Our project focuses on complying with legal requirements, assessing risks and developing appropriate preventive measures, for instance, exchanging information with suppliers or pre-ordering strategically important materials. Fresenius Medical Care is an active member of the REACH working group of the Federal Association of the Medical Device Industry in Germany.

At the largest industry trade show in Stockholm, we presented a resource-saving package solution. The Smart-Bag for liquid dialysis concentrates is PVC-free. It contains 80 % less plastic and has 90 % less waste volume than conventional Duroplastic containers. Moreover, it can be recycled very easily as it consists of polyolefins. Fresenius Medical Care did not first start promoting environmental protection with its environmental program, which we adopted in 2007. We introduced our first environmentally friendly products back in 1996. stay·safe CAPD was the first system for PD made of Biofine. Many more PVC-free products have followed since. Biofine consists exclusively of hydrogen and carbon. It is 60 % thinner than PVC, making it less costly to dispose of due to its smaller volume, and is easy to recycle. We use Biofine today to manufacture most of our PD products due to its many advantages. In the year under review, we received Nordic Ecolabel certification (also known as "SWAN") – a triumph for Biofine and for us. The Nordic Ecolabel organization certified our stay·safe Balance, stay·safe Bicavera, sleep·safe Balance and sleep·safe Bicavera products and the corresponding accessories, which are all completely PVC-free. Nordic Ecolabel is an officially recognized organization in Sweden, Norway, Finland, Iceland and Denmark that labels environmentally friendly products. But Nordic Ecolabel is also acknowledged in other countries for its quality standards, as a recent study by the British government shows. Its standards not only apply to environmentally friendly product qualities, but also to the corresponding production processes. Thus, Nordic Ecolabel expressly recognizes the two plants in which the certified PD products are manufactured: St. Wendel in Germany and SisTer in Italy. The Nordic Ecolabel certification is also interesting for economic reasons. As we are the only manufacturer of PD products to have received this eco label, we should be able to win market share in this product segment, particularly in countries that have a comprehensive environmental agenda.

## CORPORATE GOVERNANCE

### COMPLIANCE

For us, compliance means adhering to defined ethical and legal guidelines as part of our business activities. An integral part of our corporate culture is to follow the compliance guidelines. We have implemented Fresenius Medical Care's compliance program, which is one of the most demanding in our industry, in all of our business regions. The guidelines therefore apply to all our subsidiaries.

We continued our compliance training activities in 2008. As part of this training, local compliance officers were given the opportunity to exchange experiences in their business region. These officers are key to the success of the compliance program, as the chart below shows. They ensure that the Company adheres to the same high ethical and legal standards around the world and that each employee is fully informed about our code of conduct and its goals. At the same time, they are responsible for training measures and ensuring compliance with the guidelines. Compliance officers act as contacts for our employees and can be reached via special telephone numbers, by e-mail, or in person.

In the year under review, we implemented measures to monitor and audit the effectiveness of the compliance program. We increased the resources in the Corporate Compliance organisation to introduce further compliance initiatives.

Our compliance activities have been recognized outside the Company by the Ethisphere Institute. In 2008 we

were named one of the "World's Most Ethical Companies". Ethisphere, a think tank committed to identifying and fostering best practice in the areas of international politics, business ethics, compliance, and corporate responsibility, presented the award at the Ethisphere and Forbes Magazine joint conference "Driving Profit through Ethical Leadership", held in June 2008.

## GROUP MANAGEMENT AND MONITORING STRUCTURE

Fresenius Medical Care shares are listed on the stock market in the U.S. (as American Depositary Receipts) and in Germany. We are therefore subject to a number of regulations and recommendations regarding the management, administration and monitoring of the Company. In addition to mandatory requirements according to stock corporation and commercial law, we comply with the regulations of Deutsche Börse and adhere voluntarily to most of the recommendations of the German Corporate Governance Code. At the same time, we are subject to the regulations connected to our listing in the U.S., in particular the Sarbanes-Oxley Act (SOX) and portions of the Corporate Governance Rules of the New York Stock Exchange. The Sarbanes-Oxley Act includes provisions regulating companies and their auditors and is aimed at improving financial reporting and auditor independence, among other matters. The extension of regulations for financial reporting and related internal control systems is designed to increase the trust of investors and other interested parties. We fully meet all of the current requirements set forth in this law.

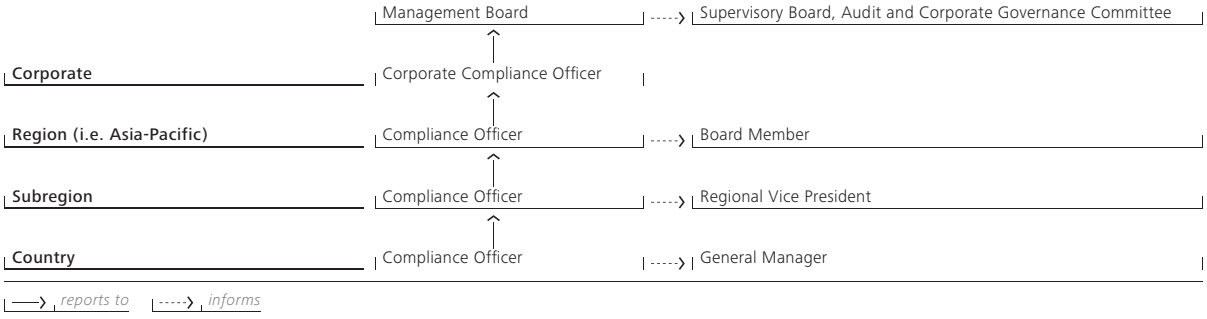
Although we are a non-U.S. company (a so-called foreign private issuer), we are nevertheless obliged to comply with the provisions of the Sarbanes-Oxley Act with regard to implementing control over financial reporting in accordance with SOX section 404. We already voluntarily implemented these provisions ahead of time by December 31, 2005 and fulfilled them again in 2008.

Fresenius Medical Care's declaration concerning significant differences between the systems of corporate governance in Germany and the U.S. – based on the listing standards of the New York Stock Exchange – can be accessed on the Internet at www.fmc-ag.com.

The Articles of Association of Fresenius Medical Care, also specifying the responsibilities of the various bodies of the Company, can also be found online.

The legal form of Fresenius Medical Care is that of a partnership limited by shares (Kommanditgesellschaft auf Aktien – KGaA). In this legal form, the most important bodies of the Company are the General Meeting, the Supervisory Board and the general partner Fresenius Medical Care Management AG. In 2008, there were no significant changes to the Group management and monitoring structure.

*Chart 02.3.4* **ORGANIZATIONAL STRUCTURE OF THE COMPLIANCE PROGRAM**



Fresenius Medical Care continues to strive for a corporate governance that provides the highest transparency possible. The Management Board of the general partner manages the business of the Company. In addition to the Company's Supervisory Board, Fresenius Medical Care Management AG also has its own Supervisory Board that includes at least two independent members who are not connected to the Company in any other way. Furthermore, Fresenius Medical Care Management AG continues to guarantee the independence requirements of its Supervisory Board via a so-called pooling agreement, which Fresenius SE has also joined.

## SHAREHOLDERS

Company shareholders exercise their rights by voting at the General Meeting. Each ordinary share of Fresenius Medical Care AG & Co. KGaA entitles the holder to one vote at the General Meeting. Our preference shares do not bear any voting rights. To compensate for this, preference shareholders receive a preference in earnings distribution and a higher dividend. Shares with multiple or preference voting rights do not exist. As a matter of principle, at the General Meeting, the general partner (as far as it is a shareholder in the Company, which was not the case in the year under review) or its sole shareholder Fresenius SE can exercise the voting rights connected with the shares it holds. However, the general partner and its sole shareholder Fresenius SE are subject to various legal bans on voting on certain resolutions. These include the election of the Supervisory Board, ratification of the actions of the general partner and members of the Supervisory Board, and the selection of the auditor of the annual financial statements. The purpose of this is to guarantee that the shareholders in the partnership limited by shares (KGaA) can solely decide on these matters, particularly those concerning control of the Management.

## GENERAL MEETING

According to the basic principles of the German Corporate Governance Code, shareholders can exercise their voting rights at the Annual General Meeting themselves, by proxy via a representative of their choice, or by a company-nominated proxy acting on their instructions. Proxy voting instructions to a company nominee can be issued before and during the Annual General Meeting until the end of the open discussion period.

All documents and information about the meeting are easily accessible on our Web site.

In the year under review, the ordinary General Meeting of Fresenius Medical Care AG & Co. KGaA took place on May 20, 2008 in Frankfurt / Main (Germany). More than 74 % of the ordinary share capital and 4 % of the preference share capital were represented. In 2007, about 74 % of the ordinary share capital and 5 % of the preference share capital were represented at the ordinary General Meeting. We broadcast the speech of the Chairman of the Management Board live over the Internet for those shareholders unable to attend. The speech is available on our Web site at www.fmc-ag.com.

## GENERAL PARTNER

The general partner – Fresenius Medical Care Management AG – represented by its Management Board is responsible for managing the Company and conducting the Company's business. Its actions and decisions are geared toward the interests of the Company. The seven members of the Management Board of the general partner are introduced *from page 26 onwards* of this annual report.

As a stock corporation (Aktiengesellschaft) the general partner has its own Supervisory Board consisting of six members. It appoints the members of the Management Board and advises and supervises them in managing the Company. In accordance with clause 5.1.3 of the German Corporate Governance Code, the Supervisory Board has established rules of procedure.

## SUPERVISORY BOARD

The Supervisory Board of Fresenius Medical Care AG & Co. KGaA consists of six members. All six members are elected by the General Meeting according to the provisions of the German Stock Corporation Act (Aktiengesetz, AktG). Such resolution of the General Meeting requires a majority of at least 75 % of the votes cast. As described above, Fresenius SE is barred from voting on this issue. In accordance with clause 5.1.3 of the German

Corporate Governance Code, the Supervisory Board has established rules of procedure.

The Chairman of the Supervisory Board is responsible for coordinating and directing the Supervisory Board. Further information on the tasks assumed by the Supervisory Board in 2008, on the activities of Supervisory Board committees as well as on efficiency evaluations undertaken in that year is included in the Report of the Supervisory Board starting *on page 28*.

## COOPERATION OF GENERAL PARTNER AND SUPERVISORY BOARD

The general partner and the Supervisory Board of the Company work closely together in the Company's interest with the joint goal of growing the Company's value in the long term in compliance with corporate governance principles and compliance regulations. The general partner regularly informs the Supervisory Board of the Company about all relevant issues regarding business policy, corporate planning and corporate strategy, about the profitability of the Company as well as the course of business and the Company's position including an assessment of the current risks.

## AVOIDANCE OF CONFLICTS OF INTEREST

In their decisions and in conjunction with their tasks and activities, the members of the Management Board of the general partner and of the Supervisory Board of Fresenius Medical Care AG & Co. KGaA as well the Supervisory Board of Fresenius Medical Care Management AG do not pursue personal interests or give unjustified advantages to other people. Any sideline activities or business dealings with the Company are to be reported to the Supervisory Board immediately and must receive its approval. The Supervisory Board reports to the General Meeting about possible conflicts of interest and how to deal with them. There were no conflicts of interest among members of the Management Board or the Supervisory Board in the year under review.

## COMPENSATION OF MANAGEMENT BOARD AND SUPERVISORY BOARD

Compensation for Management Board members comprises fixed and performance-related components. Since 2006, Fresenius Medical Care has disclosed the compensation of its Management Board members on an individual basis. Compensation for the Supervisory Board is governed by article 13 of the Articles of Association. Our Supervisory Board members receive a fixed compensation.

Further details on the compensation of the Management and Supervisory Boards as well as detailed information on the stock option programs can be found in the financial report of this annual report *from page 85 onwards*.

## TRANSPARENCY OF OUR REPORTING

We attach special importance to informing our shareholders simultaneously and uniformly about our Company in our regular financial reporting events. Ad hoc releases and our Web site play an essential role in these efforts. They provide institutional investors and private shareholders with equal and timely access to the information we release. All ad hoc releases as well as other news for investors and the media are also published on our Web site.

We keep our shareholders informed of key dates by means of a financial calendar that is published in the annual report, in quarterly reports and on the Web site of Fresenius Medical Care.

## INFORMATION ON DIRECTORS' DEALINGS AND SHAREHOLDING

According to article 15a of the German Securities Trading Act (Wertpapierhandelsgesetz, WpHG), members of the Management and Supervisory Boards or other employees in management positions are required to inform the Company when buying or selling shares in Fresenius Medical Care and related financial instruments if the volume exceeds €5,000 within a single year. During 2008, we received a total of ten disclosures according to article 15a of the German Securities Trading Act, which we published on our Web site in keeping with the regulations as well as in the Annual Document.

## RISK AND OPPORTUNITIES MANAGEMENT

In our opinion, good corporate governance means managing the risks of our business responsibly and recognizing opportunities for future development in sufficient time. We have a comprehensive management system in place that takes care of identifying risks and opportunities early, optimizing the risk profile and minimizing the costs related to these risks through timely intervention. Our risk management is an integral component of our day-to-day business and is reviewed on

a regular basis by independent external auditors. Our compliance program also plays a significant role in ensuring that our employees adhere to national and international regulations. Further information on Fresenius Medical Care's compliance activities as well as risk and opportunities management can be found *from pages 103* and *91 onwards*.

### FINANCIAL ACCOUNTING AND REPORTING

Fresenius Medical Care prepares its consolidated financial statements in accordance with the United States Generally Accepted Accounting Principles (U.S. GAAP) and publishes them within 90 days after the end of the fiscal year.

### GERMAN CORPORATE GOVERNANCE CODE AND DECLARATION OF COMPLIANCE FOR 2008

The German Corporate Governance Code includes key recommendations for the management and monitoring of companies listed on a German stock exchange with the aim of making the rules for managing and monitoring companies in Germany more transparent for investors. The code is also intended to boost the trust of the public as well as that of employees and customers in the management and monitoring of listed stock corporations.

The majority of the guidelines, recommendations and suggestions in the code have been an integral and active part of Fresenius Medical Care's day-to-day operations since the founding of the Company.

Fresenius Medical Care submitted the Declaration of Compliance required annually by article 161 of the German Stock Corporation Act in accordance with the recommendations of the German Corporate Governance Code as of June 6, 2008, and made it accessible to its shareholders. Fresenius Medical Care AG & Co. KGaA complies with the recommendations specified by the German Corporate Governance Code for 2008. The following recommendations are the only ones which have not been or are not being applied:

#### CODE CLAUSE 5.1.2 AND 5.4.1 "AGE LIMIT MANAGEMENT AND SUPERVISORY BOARD"

According to clause 5.4.1, an age limit shall be specified for the members of the Supervisory Board. According to clause 5.1.2 of the code the same shall apply for members of the Management Board. As in the past, Fresenius Medical Care will refrain from determination of an age limit for members of the Supervisory Board and the Board of Management since this would limit the selection of qualified candidates.

#### CODE CLAUSE 5.4.6 "COMPENSATION SUPERVISORY BOARD"

Based on clause 5.4.6. of the Code, members of the Supervisory Board shall receive fixed as well as performance-related compensation. The performance-related compensation should also contain components based on the long-term performance of the enterprise. Currently, Fresenius Medical Care pays a fixed compensation to the members of the Supervisory Board only. In addition, the introduction of a performance-related compensation, linked to the success of the Company, to the members of the Supervisory Board is regularly considered.

In accordance with clause 3.10 of the Code, this and all former declarations of compliance are available on our corporate Web site at www.fmc-ag.com in the Investor Relations / Corporate Governance section.

## EMPLOYEES

At the end of 2008, 64,666 people (full-time equivalents) were employed by Fresenius Medical Care: 3,260 or 5.3 % more than in the previous year.

The increase in employee numbers is primarily the result of continued organic growth in our dialysis services business in all regions, as well as numerous acquisitions in Europe and Asia. No employees were laid off due to factory closures or similar measures such as deconsolidations. This continues the trend of previous years. The number of employees has grown by an average of 8 % per year since the Company was founded in 1996.

The highest percentage increase in employee numbers – 15 % compared to 2007 – was again recorded in the Asia-Pacific region. Organic growth was supported by clinic and production acquisitions in Australia, Malaysia, Singapore, Taiwan, China, and Korea. In all other regions, the number of clinics and, as a result, the number of employees, also rose.

At the end of the year, approximately 3,600 people were employed by Fresenius Medical Care in Germany, accounting for nearly 6 % of the total workforce, another example of our high degree of internationalization.

In Germany, the average age of Fresenius Medical Care employees was 40.3 years in 2008, almost unchanged from the previous year. The average period of employment increased from 10 years in 2007 to 10.1 years in 2008. In Germany our rate of staff turnover was again very low at 2.8 %; in the previous year it was 2.3 %.

Fresenius Medical Care's personnel costs totalled $ 3.45 billion in 2008, about 10 % more than in 2007 ($ 3.13 billion). Personnel costs comprised about 32 % of revenue, unchanged compared to 2007. Average cost per employee was about $ 53,000 in 2008 (2007: $ 50,800).

## HUMAN RESOURCES DEVELOPMENT AND MARKETING

Fresenius Medical Care is continually expanding its extensive range of activities in the dialysis industry. This means that the employees of the Group have access to high-quality continuing professional development (CPD) and develop professional skills in a broad range of medical, business, and technical fields. As an employer, Fresenius Medical Care makes a concerted effort to gear the numbers and expertise of its qualified employees and senior managers towards the current and future needs of the Company. Targeted human resources development measures and the attraction of new staff both play an important role in this.

In all areas of Fresenius Medical Care expertise, our employees must possess a high degree of specialized knowledge and have a passion for quality. Only then can we achieve our goal: using our medical services and products to help dialysis patients to lead better lives. Fresenius Medical Care surveys worldwide have repeatedly shown that our employees view this goal as integral to their work.

An important focus of our human resources development is ensuring that our employees utilize and optimize their professional strengths and talents to the best of their ability. Human resources development encourages employees to take advantage of and improve their skills and advance their careers as specialists, managers and project managers. This is achieved through life-long learning, continuous feedback on performance and work quality, and providing professional challenges that are in line with employee ability. Senior management – supported by human resource experts – is committed to ensuring that these instruments are implemented throughout the entire company. At the beginning of 2008, the Group created the position of Global Human Resources Director. The Human Resources Director is also responsible for managing selected human resources development projects worldwide, thus enabling synergies and local experiences to be used and improved in a targeted way.

In 2008, Fresenius Medical Care in North America began to focus on new learning modules for medical staff in clinics, and, once again, employee commitment was extremely high. A staff survey demonstrated the high motivation of employees to help redesign or improve processes, thus providing important input for the further improvement of CPD.

The great wealth of employee innovation became apparent during the crisis in the southeast of the United States when Hurricane Gustav and Hurricane Ike were approaching the Gulf Coast in the fall. Fresenius Medical Care teams mobilized emergency care for our patients and employees in the disaster areas exceptionally quickly. The Company provided accommodation, generators, food, fuel, and additional staff. Thanks to the dedication of everyone involved, we were able to continue providing life-saving dialysis treatment for both current and new patients.

Our innovative human resources development program for specialized dialysis personnel in the Asia-Pacific region (presented in detail in the 2007 annual report)

got off to a successful start. In January 2008, 25 young men and women began studying at the Fresenius Medical Care Institute of Dialysis Nursing (F.I.D.N.); more than 300 students are expected in 2009. The F.I.D.N., the leading education center of its kind in the world, ensures high dialysis care standards and thus plays a pioneering role in providing quality in the healthcare industry.

In 2008, we continued our longstanding cooperation with the International Business Academy INSEAD (in Fontainebleau and Singapore). Here, senior managers from our subgroups come together on an international level. Further CPD modules for managers are being organized in each region. Preparations are currently underway so that special modules for the Company's senior management can start next year. These modules will support managers in meeting the leadership requirements of a growing and highly integrated global company.

Fresenius Medical Care is one of the world's largest employers of medical personnel. Finding the right staff for our expanding company is one of the most impor-

*Chart 02.3.5* **EMPLOYEES**

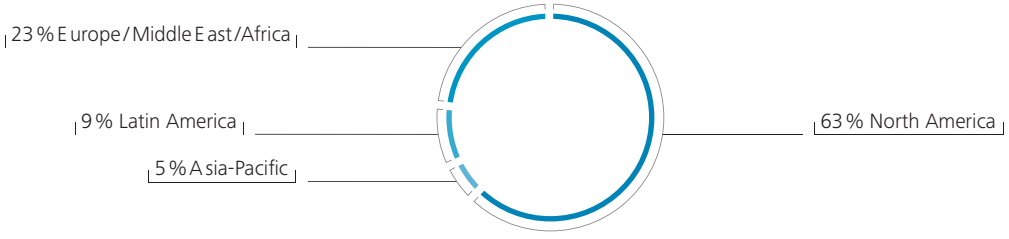
*Full-time equivalents*

| | |
|---|---|
| **2008** | **64,666** |
| 2007 | 61,406 |
| 2006 | 56,803 |
| 2005 | 47,521 |
| 2004 | 44,526 |

*Table 02.3.6* **EMPLOYEES BY REGION**

| *Full-time equivalents* | *2008* | *2007* | *Change* |
|---|---|---|---|
| North America | 40,509 | 39,161 | 3.4 % |
| Europe/Middle East/Africa | 14,664 | 13,401 | 9.4 % |
| Latin America | 5,935 | 5,749 | 3.2 % |
| Asia-Pacific | 3,558 | 3,095 | 15.0 % |
| **TOTAL** | **64,666** | **61,406** | **5.3 %** |

*Chart 02.3.6* **EMPLOYEES BY REGION**



tant tasks of human resources. Therefore, the main objective of our presence at recruitment fairs, in print media, and at selected universities is to demonstrate that we are an attractive employer.

Thanks to a uniform technological platform, our management in North America can now carry out human resource planning more quickly and with more precision.

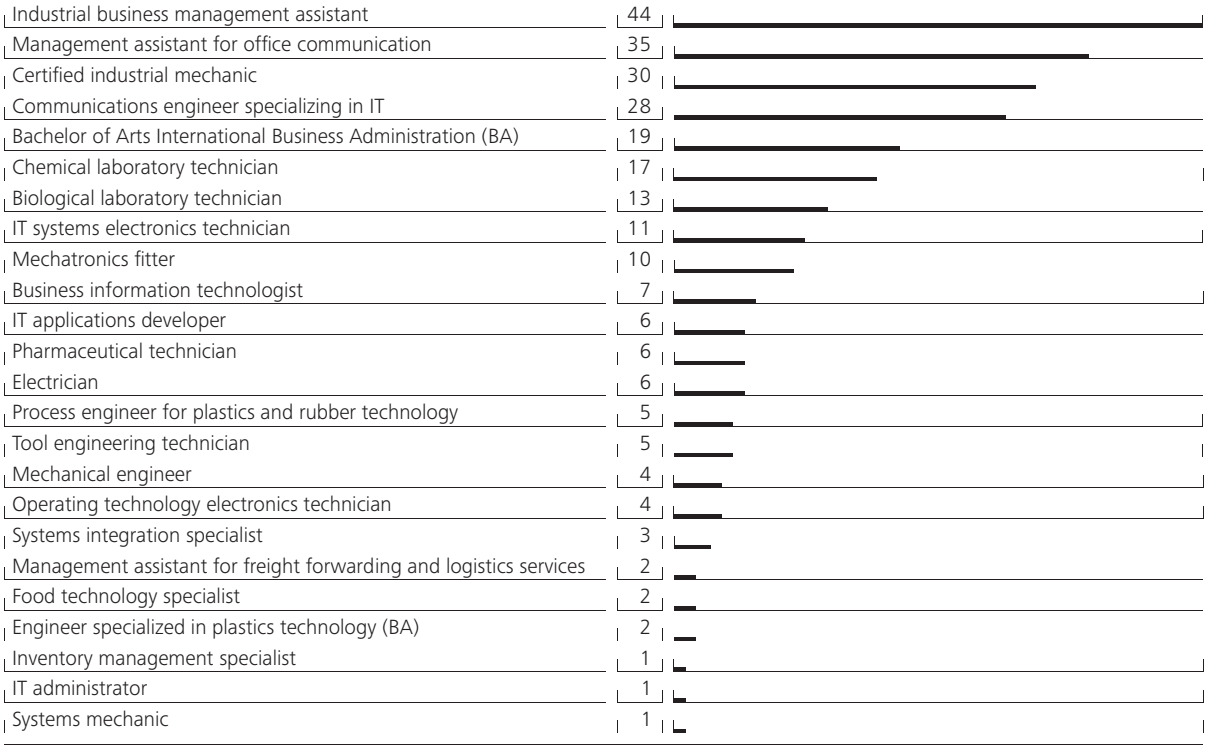
## VOCATIONAL TRAINING

An important factor in ensuring that a company is fit for the future is the professional training of young people in the company. This is why we take vocational training very seriously. We increased the number of trainee positions at all our German sites by an additional 10 %, on top of a 30 % increase in the previous year.

We are focusing our marketing activities to an increasing extent towards schools, working with them to inform even more young people about the advantages of vocational training within our company. We talk to students – and teachers. We invite students to our production sites to find out about corporate life and provide them with advice on applying for jobs; in our "SchuleWirtschaft" (SchoolBusiness) workshop, we deliver a range of CPD courses for teachers. In the middle of September, we held our second open day at Group headquarters in Bad Homburg with the theme "interactive education".

*Chart 02.3.7* **QUALIFIED OCCUPATIONS (EXCERPT)**

*Amount*



The many visitors to the event learned about the trainee and vocational degree programs offered by our company, demonstrating that Fresenius Medical Care is an attractive provider of vocational training for young people. Last year we saw the first signs of the success of these marketing activities: bucking the trend of the vocational training market, we received considerably more high-quality applications than in previous years. This is further proof that we are an attractive employer for both high-school graduates and trainees.

At the beginning of December, for the first time, Fresenius Medical Care trainees participated in the innovation contest "Jugend denkt Zukunft" (Young Foresight). This took place at companies all over Germany, supported by politicians and professional and trade associations. The goal of the innovation contest is to encourage trainees to engage with a company and develop innovative ideas for its future that will result in new products and services by 2020. In a one-week workshop including discussions with company representatives, participants generated ideas for our Company's future. They also worked on product development and marketing processes in order to develop "innovative concepts for the customer service of the future". Their ideas and proposals were put forward in a concluding presentation.

At the end of October, a ceremony was held in Bad Homburg in honor of the trainees who completed their training and vocational college students who graduated in 2008. Awards were presented to several chamber and state winners, and two students from the accadis College in Bad Homburg received special mention for their excellent academic achievements.

## PROFIT SHARING

Our employees identify themselves to a high degree with the Company, which is a major contributing factor to our long-term success. This identification is supported by the fact that employees have a stake in the success of Fresenius Medical Care. The level of profit-sharing is linked to the Company's operating result (EBIT), thus offering a value-oriented incentive. In 2008, each eligible employee received € 1,527 through the profit-sharing program. Two-thirds of the bonus was paid to the employees in the form of shares; the final third was available either as cash or shares.

## STOCK OPTION PLAN

Senior managers participate in the Company's economic success and the development of the Fresenius Medical Care shares through stock option plans. The stock option program implemented in 2006 is directly linked to the success of the Company. Over a period of five years, our senior managers receive up to fifteen million options for ordinary bearer shares. These are exercisable after a waiting period of three years, if the adjusted earnings per share (EPS) hurdle of 8 % is achieved in every year of the waiting period. If this hurdle is achieved in only one or two years, the options are reduced accordingly. If the hurdle is not achieved at all, the options are cancelled. The 2006 stock option program enables managers to participate in both the financial opportunities and risks of the Company, making an internationally competitive remuneration system available to them.

In 2008, some 600 senior managers participated in the future success of Fresenius Medical Care's through this program. Further information on the stock option plan can be found in the financial report beginning *on page 85*.

*Table 02.3.7* **PROFIT SHARING**

| *Year*[1] | *2008* | *2007* | *2006* | *2005* | *2004* |
|---|---|---|---|---|---|
| Bonus *in €* | 1,527 | 1,444 | 1,000 | 1,000 | 1,000 |
| Number of eligible employees | 2,581 | 2,483 | 2,101 | 2,101 | 1,624 |

[1] *Profit sharing is paid retroactively and reflects the Fresenius Group EBIT for the previous year.*

## PORTFOLIO EXPANSION AND GENERAL FACTORS

### DIALYSIS DRUGS

Dialysis drugs significantly contribute to the horizontal expansion of our product portfolio, beyond our dialysis services and products. Thus, they are perfectly in line with our strategic orientation. Typical drugs used to treat kidney patients counteract anemia and regulate the patients' mineral levels. The spectrum includes erythropoesis-stimulating agents (ESA), iron compounds, phosphate binders, vitamin D, and so-called calcimimetics.

The hormone erythropoietin (EPO), which is normally produced by healthy kidneys, stimulates the production of red blood cells. Since the kidneys of dialysis patients can no longer produce this endogenous hormone themselves, EPO is administered during dialysis treatment. A further component of anemia treatment are iron compounds that stimulate the blood formation of patients with reduced kidney function. Phosphate binders improve bone mineralization. Excess phosphate consumed with food is normally discharged by healthy kidneys. This filtering process can only partially be replaced through dialysis for patients with chronic kidney disease. Too much phosphate in the blood can have a number of adverse effects, such as bone disease, thyroid problems and vascular calcification. Calcimimetics are administered when the thyroid gland is hyperactive, as is often the case with dialysis patients. Calcimimetics also have a positive effect on the calcium level in the bones. Vitamin D is also very important for dialysis patients. The human body needs vitamin D to absorb sufficient calcium from food. In healthy bodies, this vitamin is then processed in the kidneys. A kidney with a limited function cannot adequately produce vitamin D. Hence, the stored calcium levels are too low.

In July 2008, Fresenius Medical Care concluded two separate and independent licensing and sales agreements, one for the U.S. market and one for selected countries in Europe and the Middle East. The agreements cover the marketing and sales of the iron compounds Venofer and Ferinject from Galenica Ltd. and its license partners. Both drugs are used to treat anemia as a result of iron deficiency in dialysis patients. Venofer is the world's leading intravenous iron product. More information can be found in the "Events Significant for the Business Development" section starting *on page 60.*

Fresenius Medical Care's total market volume of iron compounds in the world's most important markets was about $800 million last year. With our cooperative agreements, we believe we are on the right track to reach our revenue goal of $400 million (excluding erythropoietin) for 2010. As part of our growth strategy, we will continue to pursue the horizontal expansion of our product portfolio. We will also strongly enhance our traditional offer (ranging from dialysis machines to laboratory services) with the integration and use of dialysis drugs .

### HOME DIALYSIS

There are two kinds of home dialysis: peritoneal dialysis and home hemodialysis In 2008, around 11 % of all dialysis patients received peritoneal dialysis treatment. In recent years home hemodialysis was a niche market – at the end of 2008 only about 0.5 % of all patients worldwide received this treatment.

By the end of 2008, we treated about more than 35,000 peritoneal dialysis patients and approximated 3,500 home hemodialysis patients. This made us the world's largest provider of home hemodialysis. Approximately 40 % of all home hemodialysis patients use our dialysis machines and dialyzers.

We expect the need for home dialysis to increase substantially – driven by growing patient numbers and increasing cost pressure. Its significance and its market share – hand-in-hand with a growing availability of adequate therapy options – could increase to around 4 % in North America in the next ten years.

Fresenius Medical Care is ideally prepared to participate in this development. With the acquisition of the U.S. company Renal Solutions, Inc. (RSI), we acquired a key technology for the expansion of home hemodialysis: the SORB technology. This technology purifies tap water for dialysis and the dialysis solution can be re-used (see the section "Research and Development" *from page 82* onwards).

With the Continuum program, which we launched in 2004, we intend to further enhance the attractiveness of our range of products and services for home dialysis. We provide our patients with excellent products and comprehensive training programs to make home dialysis easier and safer. Continuum is a holistic program. In the future, patients will not only be able to choose between hemodialysis and peritoneal dialysis, but they will be able to decide whether they would like to be dialyzed in a clinic or at home.

Home dialysis gives patients more say in how to allocate their time, but it also requires more responsibility on their part. Therefore, this kind of therapy is not suitable for all patients. We want to educate doctors, nursing staff and healthcare decision makers, but primarily patients, and assure them that home dialysis is a safe, flexible and cost-effective option for the treatment of patients with end-stage renal disease when no other severe illnesses exist. Fresenius Medical Care's many years of experience and safe, high-quality products are convincing arguments.

## LABORATORY SERVICES

Laboratory services complement Fresenius Medical Care's service portfolio, as nephrologists require comprehensive lab tests to be able to tailor the therapy to the individual patient. The quality of the test results has a significant impact on the quality of the treatment and the quality of our patients' lives. In 2008, our subsidiary Spectra Laboratories in the United States provided nearly 52 million laboratory services to approximately 154,000 dialysis patients, an increase of 3 % (2007: about 150,000 patients).

Last year, Spectra Laboratories invested in information technology to be able to work even more flexibly and efficiently. Furthermore, environmental tests for dialysis clinics were added to its service portfolio. As a result, our clinics can now check the quality of their water at any time. Another novelty of Spectra Laboratories' spectrum of services is the examination of product samples from our production lines.

As part of our commitment to deliver best performance and services, Spectra Laboratories voluntarily adheres to a series of rigorous regulatory standards. This includes the requirements of organizations such as the Joint Commission on Accreditation of Healthcare Organizations and the College of American Pathologists.

## NEW REIMBURSEMENT MODELS

Dialysis reimbursement structures differ from country to country, and often even within one country. As a result, reimbursement rates and systems specified by government impact on Fresenius Medical Care's business. In the U.S., dialysis service reimbursement structures will change as from 2011. In Portugal this change was already implemented in 2008: a lump-sum reimbursement was introduced.

U.S. Terminal kidney failure is one of the few chronic illnesses whose treatment is covered by public health insurance in the U.S. The treatment of more than 80 % of all U.S. dialysis patients is financed by Medicare and Medicaid, the American healthcare programs that manage the medical care of the elderly and people with low income who do not have private health insurance. Changes to the reimbursement levels or methods of Medicare and Medicaid can therefore have a significant effect on our business in North America.

In the U.S., our most important sales market, a new and complex reimbursement system for dialysis treatment will be introduced for public healthcare patients (Medicare) as of January 1, 2011. The corresponding draft law was passed in July 2008. All products and services reimbursed according to the composite rate will be reimbursed in one lump sum in the future. The same applies to services such as the administration of certain drugs

and diagnostic laboratory tests which are now reimbursed separately. The bundled reimbursement rate will be adapted to patients' characteristics such as age and weight. Adjustments are also planned for patients whose extraordinary medical care results in extremely high costs. In addition to the implementation of inflationary adjustments, other special features of this new reimbursement system include the adherence to certain quality parameters. For example, the reimbursement rate will be decreased for dialysis clinics that do not meet certain quality standards. These standards comprise, among other things, patients' satisfaction with the services, regulation of the hemoglobin content of the blood (anemia management), and the mineral metabolism in the bones. Before the new reimbursement system takes effect, the composite rate will be increased by 1 % in 2009 and another 1 % in 2010.

PORTUGAL. In Portugal, where Fresenius Medical Care treats about 4,200 patients in 34 dialysis centers, the Portuguese Ministry of Health and the national association of privately run dialysis centers agreed at the beginning of 2008 on a new reimbursement model for ambulatory care of hemodialysis patients. The new lump-sum reimbursement plan is a quality-oriented approach where the costs of individual dialysis services and products are no longer reimbursed, but rather a number of dialysis products and services are bundled. The aim is to achieve a more comprehensive patient care, an improved quality of care, and to boost the efficiency of the healthcare system in the dialysis area. With this new model, the fixed reimbursement per patient per week covers all necessary services and the use of dialysis products. The precondition is that certain treatment results are achieved and quality parameters maintained. Due to its high standards of quality and its proven methods of monitoring therapy results, Fresenius Medical Care is best placed to meet these requirements. For us, this reform not only means that the reimbursement rate (including the new additional services) increased by around 50 %, it also gives us additional leeway for our quality-oriented research and development work that focuses on integrated products and services for this market. However, the additional sales potential is coupled with added research expenditure.

# 02.4 RISK REPORT

## RISK AND OPPORTUNITIES MANAGEMENT

As a result of its worldwide activities, Fresenius Medical Care is naturally exposed to a variety of risks which are directly related to the Company's business. Only by assuming risks we can seize the opportunities they offer. As a provider of life-saving products and therapies, we are only marginally subject to economic cycles, a key difference between us and, for example, a manufacturer of consumer goods. At the same time, our technical experience and our broad market knowledge provide a sound basis for detecting risks as early and as reliably as possible.

Fresenius Medical Care sees risk management as the ongoing task of determining, analyzing and evaluating the spectrum of potential and actual developments, and, if possible, taking corrective measures. Our extensive risk management system, the principles of which are set by internal guidelines, is therefore an important component of corporate control. It enables management to identify and reduce risks that could threaten the Company's existence or growth at an early stage, and thus minimize their impact as far as possible.

Risk management is part of our integrated management information system and is based on group-wide controlling as well as an internal monitoring system. Regional monitoring systems form the backbone of our risk management system and watch over all inherent industry and market-specific risks. The responsible risk managers present status reports to the Management Board twice a year. These provide qualitative and quantitative appraisals of the likelihood of risks arising that have been identified as potentially harmful to the Company, as well as the potential extent of damage. In addition, the Board is immediately and directly informed of any newly identified risks. Efficient reporting is essential for controlling and monitoring risks as well as for taking precautionary measures. Therefore, the management of Fresenius Medical Care receives information on a monthly and quarterly basis about the state of the healthcare industry, our operative and non-operative business, as well as analyses of our asset, financial and earnings position.

In 2007, our internal audit department was reorganized and strengthened as a part of the global company risk management system. The department works independently from the regions, and the head of department reports directly to the CFO. The annual audit assignments are selected based on a risk assessment model. The audit plan is reviewed by the Management Board and finally approved by the Audit Committee. The plan consists of financial audits and full-scope audits performed throughout the company. Audit reports are distributed to the Management Board and to our external auditors. The audit committee is informed about the audit results. In 2008, a total of 27 audits were conducted.

*Chart 02.4.1* **RISK MANAGEMENT SYSTEM**

| | Product Business | | | Provider Business | | |
|---|---|---|---|---|---|---|
| **Realization processes** | Design and development | Manufacturing | Sales | Development | Dialysis treatment | Extended services |
| **Support processes (Examples)** | Purchasing | | Valdation | | Storage and logistic | |
| **Planning processes (Examples)** | Responsibilities and authorities | | Resource management | | Communication | |
| **Evaluation processes (Examples)** | Product and service data | | System data (Audits) | | Customer satisfaction | |
| **Improvement processes (Examples)** | Prevention action | | Connective action | | Management review | |

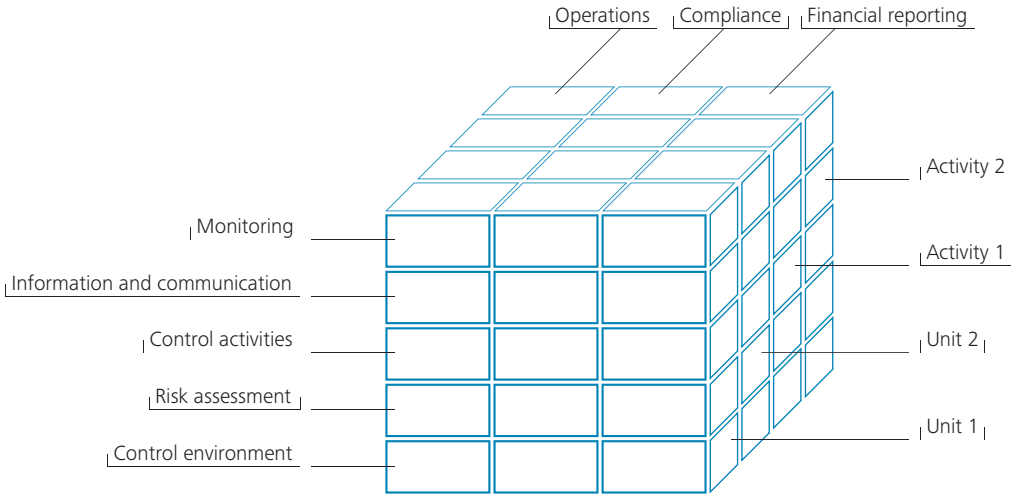
*Source: Internal data*

Fresenius Medical Care's opportunities management is a result of our efforts to closely observe individual markets and recognize trends early on. We identify opportunities based on comprehensive quantitative and qualitative analyses of market data, research plans and general health trends. The close cooperation between our strategy and planning departments and those responsible for M&A activities allows us to recognize opportunities worldwide as early as possible. Our ability to anticipate general economic, market-specific, regional and local trends at an early stage enables us to adjust our business model accordingly. As discussed in the "Dialysis Market" section starting *on page 52*, health systems and reimbursement criteria differ from country to country. Fresenius Medical Care's position as a technologically leading provider in the dialysis market with innovative products and therapies creates opportunities for future growth. We aim to take advantage of these with our long-term growth strategy GOAL 10 released in 2005 (*see page 47*). Our Company objectives are discussed in detail in the "Outlook" section beginning *on page 112*.

We are listed on the New York Stock Exchange and are therefore required to adhere to the specifications of the Sarbanes-Oxley Act. Section 404 expects the Management Board of companies listed in the U.S. to take responsibility for implementing and adhering to an appropriate internal control system to guarantee reliable financial reporting. As a non-U.S. company or "foreign private issuer", we were obliged to comply with the Sarbanes-Oxley Act by December 31, 2006. Fresenius Medical Care met the requirements one year earlier, on December 31, 2005.

Our internal control system ensures that our financial reporting complies with applicable accounting standards. This is guaranteed by mechanisms such as automated and manual controls on the one hand, and by the separation of functions and adherence to guidelines and operational mandates on the other. Furthermore, the assessments carried out by management ensure that risks with a direct impact on financial reporting are identified and that controls are in place to minimize these risks. In addition, we stay abreast of changes in accounting standards and continuously instruct those responsible for preparing financial information with comprehensive training courses.

*Chart 02.4.2* **COSO FRAMEWORK**




*Source: www.coso.org*

The criteria laid down in the "Internal Control – Integrated Framework (COSO framework)" set up by the Committee of Sponsoring Organizations of the Treadway Commission form the basis for evaluating the effectiveness of our internal control system for financial reporting. Following the COSO framework, our internal financial reporting control system is divided into five levels and evaluated accordingly. Not only the control environment, but also risk evaluation, control activities, information and communication paths, as well as the monitoring of the internal control system are documented, tested and assessed.

In 2008 we implemented a Sarbanes-Oxley Act 404 compliance software. The documentation, testing and assessment of the internal control system are carried out with this software. However, it supports a risk-based approach, enhances the efficiency of the management of internal controls, improves the quality of the data, and supports management in monitoring and assessing the internal control system.

Our review of the internal control system for financial reporting complies with the guidelines published on May 23, 2007 by the Securities and Exchange Commission (SEC) for the evaluation of the internal control system for financial reporting by management. The definitions as well as the requirements set out in the guidelines have been incorporated in the Sarbanes-Oxley Act 404 compliance software.

Regional project teams coordinate the evaluation of the internal control system. The Management assesses the effectiveness of the internal control system for each fiscal year and publishes its findings in the Annual Report. External advisers are consulted as needed. A steering committee led by our Chief Financial Officer meets regularly to find out about changes and new requirements of the Sarbanes-Oxley Act as well as to discuss potential weak points in our system, and to derive further measures. In addition, the Audit Committee of the Supervisory Board reviews the results of the Management's assessment on a regular basis.

The Management assessed the effectiveness of the Company's internal control system for financial reporting as of December 31, 2008. Based on this assessment, management determined that the Company's internal control system for financial reporting was effective as of December 31, 2008. The effectiveness of the internal control system for financial reporting was audited by KPMG Deutsche Treuhand-Gesellschaft Aktiengesellschaft Wirtschaftsprüfungsgesellschaft, an independent registered public accounting firm, and confirmed in all material aspects as part of its review of our financial statements as of December 31, 2008. For further details, *see page 112* of the financial report.

## RISK AREAS

The main risk areas with an impact on the business activities of the Fresenius Medical Care Group are as follows:

### RISKS DUE TO ECONOMIC CONDITIONS

In addition to observing and evaluating the development of the global economy, we pay special attention to monitoring and assessing the political, legal and financial conditions. The predominately international markets of the Fresenius Medical Care Group also make it essential for us to conduct continuous, intensive analyses of country-specific risks.

### RISKS RELATED TO THE GENERAL ECONOMIC ENVIRONMENT

Fresenius Medical Care is affected by general economic fluctuations to a lesser degree than companies in other industries. The demand for dialysis products and services is largely independent of economic cycles and is also relatively stable. At present, the development of the global economy presents no substantial danger to Fresenius Medical Care. For 2009, however, all the leading economic institutes forecast a sharp downturn in the global economy, which could have a slightly adverse effect on the growth of Fresenius Medical Care. Further information can be found in the "Outlook" section *from page 112 onwards*.

## RISKS IN THE HEALTHCARE INDUSTRY

Risks related to changes in the healthcare market are of major importance to Fresenius Medical Care. The main risks include the development of new products and therapies by competitors, the financing of healthcare systems, and reimbursement in the healthcare sector.

We actively minimize risks by closely monitoring the market, especially the products of our competitors and the introduction of new dialysis-related products. As part of our active risk management, Fresenius Medical Care has internal strategic departments that help us to anticipate and quickly react to new market conditions. Their main tasks are to identify and analyze all activities that could affect the dialysis market and the Group's business, and communicate these within the Company on a regular basis. In addition, close ties with the medical and scientific communities allow us to quickly identify and capitalize on technological innovation. These alliances also keep us up-to-date on alternative treatment methods and enable us to evaluate and, if necessary, adjust our corporate strategy. As a result, we continuously analyze and evaluate trends and review the progress of research and development projects. The development of new and innovative products will remain a decisive factor for success in the dialysis market in the foreseeable future.

As we operate in a highly regulated environment, changes in the law, such as those relating to reimbursement, can have a major economic and strategic impact on Fresenius Medical Care's business success. This is especially true in the United States, where we generate about 89 % of our sales with dialysis services, the majority of which are financed by public health insurance programs. Regulatory changes outside our most important market could also have a significant impact on the Company. For this reason, we not only carefully monitor regulatory planning and changes, but also intensively work with government healthcare agencies. Details on the changes in the reimbursement system in the U.S. can be found in the "New Reimbursement Models" section beginning *on page 101*.

## RISKS ASSOCIATED WITH OPERATING ACTIVITIES

We counter potential risks in production, products and services using preventive and quality assurance measures.

RESEARCH AND DEVELOPMENT. The risk that goals may not be achieved or be achieved later than anticipated is inherent in the development of new products and therapies. A new product has to undergo comprehensive, cost-intensive preclinical and clinical studies before it can receive regulatory approval and is launched on the market. Fresenius Medical Care counteracts risks in research and development projects by regularly analyzing and assessing development trends and reviewing the progress of the projects. Furthermore, we ensure that the legal regulations governing clinical and chemical-pharmaceutical research and development are strictly adhered to. Our dialysis products research team develops new products and technologies in close cooperation with representatives from the medical and scientific community. Trade relations are established early on in the development phase. Further information can be found in the "Research and Development" section starting *on page 76*.

PROCUREMENT. We impose substantial quality standards on suppliers to control the risk of low-quality sourced raw materials, semi-finished goods and other components. This includes demanding external certification, performing our own inspections of suppliers and sample products, as well as regular quality control checks. Fresenius Medical Care only accepts high-quality and safe products that are proven to be appropriate from certified suppliers that meet the Group's specifications and requirements and have a proven track record. These suppliers are constantly evaluated using our exacting supplier assessment system.

Fresenius Medical Care accepts market-related dependencies of suppliers of strategically relevant materials in exceptional cases only and subject to defined conditions. In this regard, our purchasing strategy is aimed at supporting and developing our partners and strategic suppliers through long-term contracts while at the same time ensuring that we have at least two sources for all products and raw materials (dual sourcing, multiple sourcing) to ensure a steady supply at favorable prices.

Fresenius Medical Care is also exposed to market-driven price fluctuations for raw materials. By conducting continuous market analyses, shaping supplier relations and contracts in accordance with our needs and reviewing the use of financial instruments on a case-by-case basis, we are able to counteract these fluctuations to a certain extent. Further information on procurement processes can be found *on page 84*.

PRODUCTION. Compliance with internal and legal product and manufacturing regulations is ensured by our Integrated Management System in accordance with ISO 9001, ISO 13485 and Good Manufacturing Practice (GMP) requirements, and implemented according to written process and work instructions. Regular audits are carried out by authorized quality management staff at each of our production sites to ensure that these adhere to the guidelines. The audits cover all areas and aspects affecting quality, from management and administration to development, production and customer satisfaction. In 2006, our production site for dialyzers in St. Wendel successfully passed an FDA (Food and Drug Administration) GMP Audit conducted by TÜV Süd Product Service Munich under the mutual recognition agreement between the European Union and the U.S. We have also introduced Lean Six Sigma in some of our plants. This is a management system used to analyze and better coordinate all production processes to permanently reduce the error rate. We intend to achieve even better production results and to further improve the quality of our products and related production processes. Further information can be found in the "Production" section *on page 86*.

PERSONNEL RISKS. Fresenius Medical Care has developed guidelines and codes of conduct for its employees worldwide to establish authoritative standards for our internal and external communication. With these guidelines and our compliance program, we aim to fulfil our own expectations and those of our partners, while aligning our business activities with recognized standards as well as local laws and regulations. Further details on our compliance program can be found *on page 91*.

Employees who are entrusted with confidential or insider information are under obligation to comply with relevant guidelines, such as the German Investor Protection Improvement Act, and handle the information responsibly.

Our success depends to a large extent on the dedication, motivation and abilities of our employees. We counteract the risk of a shortage of qualified personnel through pre-emptive measures, such as employee development programs and comprehensive recruiting. Furthermore, we offer our employees performance-related bonus payments and attractive social benefits. Further details on our employee bonus scheme can be found *on page 99*.

In addition, we have launched several initiatives to further increase job satisfaction among clinical staff, to improve motivation and retain qualified staff in our clinics. These initiatives involve implementing improvement measures where they are needed, based on a thorough satisfaction analysis. To deal with the general shortage of trained clinical personnel, we use targeted marketing programs to locate qualified and motivated personnel for our clinics and thus ensure a high standard of treatment quality. Comprehensive training programs such as the F.I.D.N., which is discussed *from page 97 onwards*, also

counteract a possible shortage of clinic personnel. Risks in the area of personnel marketing are considered insignificant as a result of our risk management strategies.

SERVICES. The very nature of the medical services we provide to patients at our dialysis clinics presents inherent risks. In this context, operational risks can arise, for example in the area of hygiene. We counteract these with strict organizational and operational procedures, ongoing personnel training and patient-oriented working methods. Our ISO 9001 certified clinic quality management system is part of our Integrated Management System (IMS) as detailed *on page 88*. The ISO 9001 certificate also attests to "Good Dialysis Practice". In the U.S., we have successfully implemented the standards outlined in the Kidney Disease Outcome Quality Initiative (KDOQI) and the Center for Medicare and Medicaid Services (CMS) clinical performance measures using our internal quality enhancement program. In addition to internal assessments of treatment data, annual internal audits of our processes provide a solid foundation for continuous improvement. Our clinic quality management system is also audited each year by external certification institutes such as the German TÜV or Medicare and CMS Networks in the U.S. As a consequence, we are able to quickly identify quality flaws and risks and to remedy them in a timely manner.

The IMS also covers environmental management, as manufacturing dialysis products requires the use of environmental resources and running dialysis centers produces clinical waste. An environmental management system, certified according to the ISO 14001 environmental standard, has therefore been implemented in some of our production sites and dialysis clinics to further protect the environment and resources while identifying potential savings for raw materials. Please refer to the "Quality and Environmental Management" section starting *on page 88* for further details.

MAJOR CUSTOMERS.In addition to a number of state-owned and public health insurance carriers, private health insurers and companies are among Fresenius Medical Care's customers. The largest private company is DaVita, which is also the world's second-largest provider in the dialysis services sector.

Fresenius Medical Care achieved about 1 % of its total revenue with DaVita in 2008. Therefore we assess the risks arising from relationships with major customers to be relatively small.

ACQUISITIONS AND INVESTMENTS. Fresenius Medical Care identifies potential financial risks arising from acquisitions and capital expenditures early on by performing careful, in-depth reviews with the help of internal and, if necessary, external professionals. Potential acquisitions and investments are analyzed at regular intervals by an internal committee (Acquisition Investment Committee, AIC) using internal guidelines and minimum requirements for a number of parameters. The efficiency of acquisitions and investments is also monitored subsequently on the basis of these key figures. Further information on corporate performance measures can be found *on page 44*.

FINANCIAL RISKS. The main financial risks that affect our Company are currency and interest rate risks. All other risks in this category are of secondary importance for Fresenius Medical Care.

We actively manage foreign currency and interest rate exposures that result from our business activities. Risk management is based on strategies defined in close cooperation with the Management Board. These include, for example, guidelines covering all steps and levels of the risk management process. They define responsibilities for determining risks, the careful use of financial instruments for hedging purposes, and for accurate financial reporting. We also use derivative financial instruments to manage the risks from foreign exchange rate and interest rate fluctuations. These, however, are restricted to hedging exposures in relation to underlying transactions. Transactions for the purpose of trading or speculation are not allowed. All transactions are conducted with highly rated financial institutions that are approved by the Management Board.

We use interest rate hedging instruments to reduce the impact of interest rate increases from our floating-rate financial liabilities. The aggregate nominal value of the respective hedge contracts, which all expire between 2009 and 2010, was $285 billion as of December 31, 2008.

As of December 31, 2008, 75 % of the Group's financial debt was protected against increases in interest rates either by fixed-rate borrowings or by interest rate hedges. Thus, only 25 % was exposed to the risk of increasing interest rates. We are therefore hedged to a large extend. Based on the current headging, a sensitivity analysis results that the effect on the net income of Fresenius Medical Care would be less than 1 % if the relevant reference interest rates for Fresenius Medical Care would change by 50 basis points.

Our foreign exchange exposures primarily result from transactions such as sales and purchases in foreign currencies between group companies located in different regions and currency areas. Most of our transaction exposures arise from sales of products from group companies in the euro zone to other international business units. The foreign exchange risks are therefore related to changes in the euro against various other currencies. To hedge against these risks, we generally use foreign exchange contracts. The aggregate nominal value of foreign exchange derivatives as of December 31, 2008 was $830 million. Based on a sensitivity analysis, Fresenius Medical Care estimates the effect on operating earnings to about $11 million. Although, it is assumed that the exchange rates of all non-hedged transactions in foreign currency change by 10 % to the disadvantage of Fresenius Medical Care. Please *see page 20* of the financial report ("Liquidity and Capital Resources") for further details.

DEBTORS. To reduce the risk of delayed or non-payment by customers, we evaluate the credit standing of new customers and review the credit limits of our existing ones. We monitor outstanding payments while assessing the possibility of default. Please *see page 7* of the financial report for further details on outstanding debts.

LEGAL RISKS. Risks associated with litigation are continuously identified, assessed and communicated within our organization. Fresenius Medical Care is involved in various legal proceedings resulting from our business operations. For details on ongoing proceedings and further information on the legal risks that Fresenius Medical Care is exposed to, please refer *to Note 18 from page 95 onwards* of the financial report.

IT RISKS. Fresenius Medical Care uses the latest hardware and software to reduce potential risks from information technology (IT). Our IT infrastructure is highly reliable and stable. Potential IT risks are covered by a detailed disaster recovery plan, which is tested and improved on a regular basis. Fresenius Medical Care operates three data centers at different locations, each with an associated disaster recovery plan, thus further reducing the potential impact of a disaster at any one site. We use a mirrored infrastructure that creates a copy of critical systems, including clinical systems and the communication infrastructure and server. To minimize organizational risks such as manipulation or unauthorized access to sensitive data and programs, we use access protection by means of passwords. In addition, internal procedures must be observed that govern authorization assignment. These are monitored to ensure that they comply with Section 404 of the Sarbanes-Oxley Act (see glossary *on page 118* in the financial report). Operational and security audits take place annually.

OTHER OPERATIVE RISKS. Potential risks, such as those arising from the construction of new production sites or the introduction of new technologies, are considered early on in the planning stage and reviewed on an ongoing basis. When building new production sites, we use internal milestones which we monitor constantly. Further risk management measures limit the effect of environmental factors on dialysis services. Many of our own dialysis clinics have emergency generators that ensure that life-saving dialysis treatments can be continued even in the case of a complete power failure. Furthermore, in the U.S., for example, a Fresenius Medical Care emergency team steps in during natural disasters such as hurricanes to professionally coordinate relief efforts and provide dialysis treatment for patients in the affected regions.

## OVERALL RISK

The Management Board's evaluation of general risk is based on Fresenius Medical Care's risk management system, which is subject to regular external reviews and scrutiny from management. The effectiveness of the risk management system is monitored and improved if necessary as part of the group-wide review of the Integrated Management System. The Management Board will continue to develop the risk management system as well as its review of the related management system to be able to identify, examine and evaluate potential risks even more quickly and ensure a timely and appropriate response.

Based on the general principles for estimating risk factors described *from page 103 onwards*, we currently assume that none of the mentioned risks will significantly impair the asset, financial and earnings position of Fresenius Medical Care in the long term. Furthermore, no material changes in risks were identified compared to 2007. We have established a structure that will allow us to quickly identify emerging risk situations.

# 02.5 SUBSEQUENT EVENTS

## ECONOMIC AND BUSINESS ENVIRONMENT

No significant events took place between the closing date of December 31, 2008 and the annual report's printing date of March 12, 2009. There were therefore no fundamental changes in the economic and business environment in our field of activity. Dialysis continues to be a medically indispensable and life-saving treatment for acute or chronic kidney failure for which there is no comparable alternative treatment with the exception of kidney transplantation. Therefore, Fresenius Medical Care is active in a relatively stable business area that is only exposed to economic cycles to a small extent.

We are currently not planning any major changes in Fresenius Medical Care's organizational structure, administration, legal form or with regard to personnel which could lead to a significant impairment of the asset, financial and earnings situation of our company.

## OVERALL ASSESSMENT OF OUR BUSINESS SITUATION

Fresenius Medical Care's business development met our expectations in the first weeks of 2009.

As discussed in the Outlook section that follows, there is continued high demand for our dialysis products and services worldwide. Overall, the Management Board again assessed the Company's business development as positive when this annual report was compiled. From today's perspective, we expect to increase our revenue and earnings as forecast, and achieve the other performance ratios as planned. As this report goes to press, the current development of our business is basically in line with our expectations.

# 02.6 OUTLOOK

After achieving and partially exceeding our goals last year, we expect our sustainable growth to continue in the 2009 business year, resulting in new records in terms of revenue and earnings. Despite the unfavorable economic conditions worldwide, we consider ourselves to be prepared for achieving our goals for the year 2010.

## BUSINESS POLICY

Fresenius Medical Care is the world's leading dialysis company. We intend to strengthen this position in the years to come by expanding our activities in business areas such as dialysis drugs. We will maintain our vertically integrated business model; at present, the Company does not plan any major changes to its business policy.

## GENERAL ECONOMIC DEVELOPMENT

The economic climate deteriorated considerably in the course of 2008 due to the international financial crisis. Over the last few months, all the world's major economic research institutes have adjusted their forecasts for economic development in 2009 downwards significantly. The outlook for worldwide economic growth continues to be characterized by great uncertainty and so the risk of further downward adjustment remains very high. For the current year, worldwide gross domestic product growth is forecast to be under 1 %, in comparison to a growth rate of approx. 3.6 % last year. Unlike earlier phases of economic downturn, this steep economic decline is occurring simultaneously in all regions. As a result, individual negative effects are reinforced overall. If the programs introduced to stabilize the financial sector and mobilize the demand for credit are successful, then the global economy could return to a growth path in 2010.

U.S. After the decline in investment activity and industrial production in the U.S. this year, a steeper and longer-lasting decline in private consumption is expected because of the flagging labor market. As a result, the gross domestic product is expected to decrease significantly in 2009 by 1.5 % (2008: +1.3 %).

EUROPE. A similar development can be identified in the euro zone. As in the U.S., declining investment and weak private consumption are having an adverse effect on the gross domestic product, which is forecast to drop by 2.7 % in 2009. The inflation rate is anticipated to fall to below 1 %, assuming that oil prices and the current exchange rate between the U.S. dollar and the euro stabilize.

The German economy has been in a recession since the end of 2008. Almost all economic indicators have deteriorated significantly in the last few months. The weak-

*Table 02.6.1* **REAL GROSS DOMESTIC PRODUCT**

| *Expected change from the previous year in %* | *2008* | *2009* | *2010* |
|---|---|---|---|
| U.S. | 1.3 | (1.5) | 1.0 |
| Germany | 1.3 | (2.7) | 0.3 |
| Euro region | 0.9 | (2.7) | 0.1 |
| Great Britain | 0.8 | (2.3) | (0.4) |
| New EU member states | 4.5 | 0.5 | 1.7 |
| EU 27 | 1.2 | (2.3) | 0.2 |
| Russia | 6.8 | 1.5 | (1.0) |
| Japan | 0.1 | (1.5) | 0.6 |
| China and Hong Kong | 9.6 | 5.8 | 6.5 |
| East Asia | 4.4 | 1.9 | 3.3 |
| Latin America | 4.4 | 0.3 | 1.6 |
| **WORLDWIDE** | **3.6** | **0.4** | **1.9** |

*Sources: Institute for the World Economy at Kiel University: "Weltkonjunktur im Winter 2008; 19. Dezember 2008", monthly reports of the Deutsche Bundesbank and the European Central Bank, German Federal Statistics Office*

ening of the world economy has had a particularly negative effect on exports, and corporate investments are expected to decrease considerably. This cannot be offset by comparably stable domestic demand or by Germany's expansive financial policy. The gross domestic product is expected to shrink by 2.7 %.

Economic growth in Great Britain has been negative since the third quarter of 2008. With private consumption further declining and investment activity remaining weak, the gross domestic product is also expected to decrease significantly, by about 2.3 %.

ASIA. The export economy of China in particular, but also that of Japan, have slowed down quite substantially due to decreasing demand worldwide and especially exchange rate developments. Nevertheless, China's gross domestic product is forecast to increase by 5.8 % in 2009 (+9.6 % in 2008); the country is thus expected to remain the world's most important growth driver. Japan's gross domestic product, however, is expected to decrease by 1.5 %.

LATIN AMERICA. Economic growth in Latin America is expected to decline significantly in 2009. Countries that export raw materials are being adversely affected by the low prices for those materials. Overall, the gross domestic product is expected to stagnate in 2009.

## MARKETS

We already offer our range of dialysis products and services in over 115 countries. Differences between the regions and between their regulatory frameworks mean that in some countries we only offer dialysis products and are not allowed to operate our own dialysis clinics. If the regulations in these countries, which include Japan, were to change, this would open up new dialysis service markets for us. More information can be found in the "Risk and Opportunities Management" section starting *on page 103*.

From today's perspective, significant changes in the dialysis industry are not expected in 2009 and 2010. Market consolidation and the trend towards privatization of several years in the healthcare sector, particularly in highly industrialized countries, should continue in the future. In some markets, such as the U.S. dialysis services sector, where the two major providers Fresenius Medical Care and DaVita hold about 63 % of the market, this process is more advanced. Market consolidation outside North America, however, is at an early stage. Therefore, in these regions, we expect acquisitions to play a more important role for Fresenius Medical Care in the development of new markets.

## SECTOR-SPECIFIC CONDITIONS – DIALYSIS MARKET

Fresenius Medical Care expects the number of dialysis patients worldwide to grow by about 6 % in 2009. Significant regional differences will remain unchanged; we expect a slightly lower than average increase in patient numbers in the U.S., Japan, and Western and Central Europe. In these regions, the prevalence of terminal kidney failure is already relatively high and patients generally have secured access to treatment, normally dialysis. In economically weaker regions, the growth rates are much higher, with values of up to 10 %, and in some countries even higher than that.

We are convinced that patient numbers will continue to increase in the coming years and expect annual growth rates of approximately 6 %. It is anticipated that the growing number of people suffering from high blood pressure and diabetes worldwide will contribute to sustained growth in the number of dialysis patients.

The annual growth rates and the differences between economically strong regions and developing nations indicate that the regional distribution of patients will change. In the future, a higher proportion of patients will undergo dialysis treatment in Asia, Latin America, Eastern Europe, the Middle East and Africa. This opens up huge potential for the entire spectrum of dialysis services and products, as more than 80 % of the world's population lives in these regions.

We do not expect significant changes in the distribution of dialysis treatment modalities in 2009 and 2010. Hemodialysis will remain the treatment of choice, accounting for about 90 % of all dialysis therapies. Peritoneal dialysis is expected to be the preferred treatment for about 10 % of all dialysis patients.

We expect that the volume of the worldwide dialysis market, which according to estimates amounted to about $65 billion last year, will increase by about 5 %

annually. As a result, the total market could amount to more than $70 billion by 2010, almost doubling its volume over a period of just ten years.

We intend to maintain our market leadership in the major product groups such as dialyzers and dialysis machines, which is already at a very high level in some segments, and to improve it where possible.

## BUSINESS PERFORMANCE OF FRESENIUS MEDICAL CARE IN 2009 AND 2010

### EXCHANGE RATE RELATIONS

Fresenius Medical Care's outlook for 2009 is based on an anticipated exchange rate of $1.36 to the euro. This exchange rate, in turn, is based on the year end rate of 2008 of $1.39 to the euro. As mentioned in section "Economic Environment" *on page 48*, the relation between the U.S. dollar and the euro is more important to Fresenius Medical Care than any other currency relation. In its forecasts, the Company also takes other exchange rates that are relevant for the performance of its subsidiaries into account, such as yen to U.S. dollar and yen to euro.

The current very volatile exchange rates have a major impact not only on our outlook for the local results of our subsidiaries, but also on the conversion of these results to U.S. dollars. This is giving rise to greater uncertainty and higher fluctuation margins.

### REVENUE

We intend to further increase our revenue in 2009 to more than $11.1 billion (+8 % at constant currency). As a result, we will be able to almost reach our "GOAL 10" target of more than $11.5 billion already in 2009. We intend to continue this positive development in 2010, achieving currency-adjusted growth of between 6 % and 9 %.

### NET INCOME

In 2009, we aim to generate a net income between $850 million and $890 million. The targets of our GOAL 10 growth strategy (*see also page 45*) are based on an annual net income growth of more than 10 % for 2009 and 2010, based on stable exchange rates. At the time when this annual report went to press, no one-time effects were expected to have a significant impact on net income in 2009.

*Table 02.6.2* **EXPECTED GROWTH IN NUMBER OF PATIENTS IN 2009[1]**

| | *Change* |
|---|---|
| **North America** | **4–5 %** |
| U.S. | 3 – 4 % |
| **Europe / Middle East / Africa** | **5–6 %** |
| EU | 3 – 4 % |
| **Asia-Pacific** | **10–11 %** |
| Japan | 3 – 4 % |
| **Latin America** | **7–8 %** |
| **WORLDWIDE** | **6–7 %** |

[1] *Internal estimates*

## EARNINGS PER SHARE

For 2009, we expect the earnings per share to grow in parallel with net income. We also expect the earnings per share in 2010 to develop in line with the expected improvement in net income.

## DIVIDENDS

We will continue to pursue our long-term profit-oriented dividend policy. Information on the proposed dividend increase can be found in the chapter "To Our Shareholders" *on page 37*. We intend to continue this dividend development in 2009 and 2010. Over these two years, the dividend payout ratio should remain at the 2008 level of nearly one-third of net income.

## CAPITAL EXPENDITURES AND ACQUISITIONS

In 2009, we intend to spend about 7 % to 9 % – or $750 million to $950 million – of our revenue on capital expenditures and acquisitions. While our planning foresees investments of about $550 million to $650 million, the budget for acquisitions is $200 million to $300 million. We aim to maintain this level of capital expenditures and acquisitions in 2010.

As in previous years, the Group plans to invest the majority of this amount in North America and Europe, our largest business regions. In addition to the ongoing modernization of our dialysis clinics and production facilities, capital expenditures will be allocated for new dialysis clinics, the expansion of worldwide production capacities, and for dialysis machines within the framework of long-term supply contracts. Additionally, investments will be used to further rationalize production processes and to improve patient data management and billing.

## TAXES

For 2009, we expect the effective tax rate to be between 36 % and 37 %; a higher rate in 2010 is not anticipated.

*Table 02.6.3* **GOALS 2009/2010**

| | *Results 2008* | *Goals 2009* | *Goals 2010* |
|---|---|---|---|
| Revenue | $10.61 bil. | > $11.1 bil. | Increase + 6 % – 9 % |
| Net income | $818 mil. | $850 – 890 mil. | Increase > +10 % |
| Earnings per share | $2.75 | $2.89 – $3.03 | Increase > +10 % |
| Dividend | +7 % per ordinary share €0.58[1] | Continuous increase | Continuous increase |
| Capitale xpenditures( net) | $673 mil. | $550 – 650 mil. | – |
| Acquisitions( net) | $215 mil. | $200 – 300 mil. | – |
| Tax rate | 36.6 % | 36 % – 37 % | 36 % – 37 % |
| Debt/EBITDAr atio | 2.69 | Below 2.7 | Below 2,7 |
| Employees[2] | 64,666 | More than 67,000 | More than 70,000 |
| Research and development expenditures | $80 mil. | ~ $95 mil. | ~ 105 mil. $ |
| Product innovations | e.g. 5008S dialysis machine | Further expansion of product and service range | Further expansion of product and service range |

[1] *Proposal for approval at the Annual General Meeting on May 7, 2009*
[2] *Full-time equivalents*

### CASH FLOW

In 2009 and 2010, the operating cash flow is expected to account for more than 10 % of revenue. This takes into account potentially higher DSO (days sales outstanding) in some countries due to the difficult economic situation. Reaching the cash flow targets will be guaranteed by a focused management of current assets. A revenue of more than $11.1 billion is forecast for 2009; operating cash flow for that year would thus be more than $1.1 billion.

### DEBT / EBITDA RATIO

Fresenius Medical Care takes the debt / EBITDA ratio as its guideline for long-term financial planning. This ratio was 2.69 at the end of 2008 and we aim to keep it below 2.7 in 2009 and 2010.

### FINANCING

Although Fresenius Medical Care is not fully immune to the sustained worldwide financial crisis, we intend to continue to expand our business and meet our financial obligations by the maturity date. The syndicated credit facilities of the Company are spread over 60 lenders; none of these provide more than 4 % of the credit agreement of 2006.

We have a sufficient financial cushion – consisting of only partly utilized bilateral and syndicated credit facilities and the accounts receivable facility – which we intend to preserve in the coming years. We aim to keep committed and unutilized credit facilities to a minimum of 10 % to 15 % of our debt portfolio.

We will focus our financing activities in the coming years on reducing subordinated debt. Therefore, the subordinated trust-preferred securities Fresenius Medical Care Capital Trust II and III, which matured in February 2008, were not refinanced by issuing new subordinated debt, but instead by our existing senior credit facilities.

Our mid-term target is to create a financing portfolio containing only senior and unsecured debt instruments.

Refinancing needs for the years 2009 and 2010 will be limited to Euro Notes credit, amounting to $200 million in July 2009, as well as the annual extension of the accounts receivable facility amounting to $550 million (approx. €395 million). We aim to cover this refinancing requirement, the dividend distribution of approximately €173 million in May 2009 and the expected dividend payment in 2010 through our cash flow and by using existing credit facilities. The contractual obligations from debt instruments offer sufficient flexibility to cover our financing requirements. All in all, we expect to have sufficient financing to achieve our future goals and to continue promoting company growth.

Further information can be found in the "Financial Situation" chapter beginning *on page 70* as well as in the "Risk and Opportunities Management" section beginning *on page 103*.

## THERAPIES, PRODUCTS AND SERVICES

The research and development of new treatment methods and products is a long-term process. The activities discussed in detail in the "Research and Development" section, beginning *on page 76*, will remain the focus of our work. Our ongoing goal is continuous improvement of treatment quality and thus the quality of our patients' lives. The use of platform technology – as in the work on the 5008S dialysis machine – will play a major role in improving products or extending their functions. At the same time, projects resulting from corporate decisions and current R&D activities are also of great interest as is following important trends on the market and in medicine in general so that we can adapt our products and projects to the dynamic changes occurring in this environment.

We are ideally equipped to meet future challenges, as we possess core competences in an increasing number of technologies that will be indispensable in the treatment of chronic kidney patients in the years to come. We are constantly growing these competences, in keeping with current market trends and requirements. Our competitive position is extremely solid, due to the acquisition of Renal Solutions, Inc. in November 2007. Finally, we benefit from the synergies resulting from the interaction between the various technological, medical, and academic institutes of our group. In order to ensure that we remain aware of our business environment and also our own accomplishments, we regularly evaluate our performance, benchmarking it against that of direct competitors and leading companies in other industries.

We plan to spend around $95 million on research and development in 2009. Following the integration of RSI, the number of employees in R&D (415 full-time equivalents) is expected to remain fairly stable. In 2010, we expect research and development expenditure to amount to about $105 million.

## EMPLOYEES

As a result of further expanding its business, Fresenius Medical Care expects the number of employees to further grow, especially in its dialysis clinics and production sites. We anticipate that, by the end of 2009, we will have more than 67,000 employees (full-time equivalents). This reflects an increase of 4 % year-on-year. We also expect our workforce to continue to grow in 2010, to over 70,000.

In keeping with our growth strategy, we see particularly promising opportunities in Asia-Pacific. Employee numbers in this region will therefore increase significantly. Nevertheless, we do not anticipate any major changes in the worldwide distribution of our employees – most of them will continue to work in North America.

We will remain highly committed to training young people in Germany. In the years to come, we will continue to train beyond our own needs and thus fulfil our responsibility to society.

## LEGAL STRUCTURE AND ORGANIZATION

Fresenius Medical Care has been a partnership limited by shares (Kommanditgesellschaft auf Aktien, KGaA) since 2006. Changes to the legal form are not planned in the foreseeable future. As described in the "Group Structure and Business" section beginning *on page 43*, Fresenius Medical Care's activities are organized into three operating segments: "North America", "International", and "Asia-Pacific": the last two are aggregated into the "International" segment for reporting purposes. We intend to retain this organizational structure in 2009 and 2010. Our decentralized organizational structure enables us to react to market requirements with the greatest possible flexibility. This principle of "company within the company" with clearly defined responsibilities has a proven track record of many years now and will therefore be maintained.

## PRODUCTION

Expanding our production capacities is again a top priority this year. At the beginning of 2010, we will put a sixth production line into operation in our plant in Ogden, Utah. This will boost our production capacity there to over 45 million dialyzers a year. Two further production lines for fiber bundles will start operating in Ogden in 2010 and 2011. In addition to the expansion of our capacities, we will also better coordinate processes between the production sites and the supply chain.

One of our goals for 2009 is to achieve Six Sigma quality standards and correspondingly high efficiency in all of our Asian plants. We will double our capacities to 7.5 million dialyzers a year; in five years we plan to manufacture almost 20 million dialyzers annually in Asia.

The Chinese and other Asian-Pacific markets will continue to grow strongly in the next few years. Consequently, we intend to introduce more products there and manufacture products locally. At our plant in Jiangsu, we will manufacture concentrates for hemodialysis and peritoneal dialysis solutions for the Chinese market. We will also expand our capacities in Japan. The Indian market is becoming increasingly interesting for us. According to estimates, in 15 years India will have a population on a par with that of China. As a result, our motto for the Asia-Pacific region in the years to come will continue to be: "prepare for growth". We want to be ready to meet the growing demand in the region at all times.

Furthermore, we will continue to implement our technical management system TAM (*see page 88*) in 2009. In addition to the nine countries where we apply TAM today, we also intend to extend its use to other European countries as well as large areas of South America over the next year. This will lead to a new level of quality and efficiency in customer service in these regions.

## PROCUREMENT AND LOGISTICS

In 2009, in our International segment, we intend to implement measures that were developed in our projects, for example, in supplier management, and in the "Purchasing Excellence" initiative (*see page 84*). This will result in further cost savings in procurement and logistics. Another item on our agenda is the introduction of a uniform SAP-based information system for purchasing. It will comprise a bid management tool and an advanced purchasing controlling module for harmonized supplier and contract management.

Overall, supply chain management (*see also page 85*) will gain increasing strategic importance in the Fresenius Medical Care Group, as it is the optimal lever for improving quality, costs, and service. This is one reason why we plan to centralize supply chain management for the Europe/Middle East/Africa region in the future.

In 2009, material costs will remain a challenge for us. As a consequence, we will step up our worldwide search for new, qualified suppliers. It remains to be seen whether overall demand for raw materials and other materials will decrease and prices will drop in the face of the generally unfavorable economic climate. The growing markets in the Asia-Pacific region will continue to put pressure on supplier capacities in individual material groups. As a result, apart from cutting costs, safeguarding the required production capacities is on our agenda in 2009. The potential in North America and Asia-Pacific will play an increasingly prominent role; initiatives to this end have already been launched.

In 2009, our logistics activities will focus on integrating our Darmstadt warehouse into the new distribution center in Biebesheim (both near Frankfurt/Main, Germany). More information on our distribution center can be found in the "Procurement and Logistics" section beginning *on page 84*. Furthermore, we plan to harmonize our warehousing in Central Europe and the Asia-Pacific region.

In North America, we will bring together our third-party transport services under one brand name and thus generate additional revenue. We also intend to step up cross-border cooperation of the logistics departments in the U.S., Canada, and Mexico. Building extensions and moving to new sites will gear our distribution network to better suit customer needs. A major challenge will be the integration of new products into the supply chain and the development of logistics solutions for increasing warehouse and transport volumes.

## QUALITY AND ENVIRONMENTAL MANAGEMENT

We intend to further enhance the effectiveness and efficiency of our quality management system in 2009. To this end, we will offer more audits, training sessions, and coaching to our subsidiaries, focusing on the topics of legal regulations, improvements to the management system, and risk management. Moreover, through effective measures and systems, we intend to bring about improvements in all of our business processes.

An important aspect of quality management is quality risk, which will be viewed in closer relation to financial risk in future. The background for this change is the fact that all company activities have a financial impact. As a consequence, financial and quality management are to be consolidated into the Company's risk management.

This year, we will expand our environmental management system on the basis of ISO 14001 and certify further dialysis centers (*see page 88*); Spain and Romania will be the focus in 2009. We aim to certify our first dialysis clinic in Sweden according to ISO 9001. Our goal is for more than 75 % of our clinics to be certified with ISO 9001 by the end of the year and for half of our clinics to have ISO 14001 certification. This means a total of 45 new certifications according to ISO 9001, and 65 according to ISO 14001. Another focus in 2009 will be ensuring

that employees are qualified to carry out audits, particularly in Eastern Europe. In addition, we are aiming for certification of our production sites for dialysis concentrate in Ober-Erlenbach, Germany, and our Serbian plant, where dialyzers, tubes and concentrate are made.

In 2009, we will also implement our efficiency initiative "Energy squeeze" at our most important European plants. The goal is to save 5 % of energy consumed at these factories so far, which would cut costs by nearly €1 million this year alone. This will further contribute to achieving the goals of our environmental program (*see page 90*).

Last year, using our clinical database EuCliD5, we developed the "e-con 5" integrated software solution for eco-controlling in our clinics. It records environmentally relevant data – for example, on energy consumption or waste disposal – more efficiently, stores these data in high quality, and provides convenient methods for analyzing the data. The pilot application in Slovenia, where the clinics have been working with the software since January 2008, was successful. The software will be rolled out to other countries this year. As a result, our vision of a comprehensive data management system in Europe is gradually becoming reality.

## OPPORTUNITIES

As mentioned *on page 43* in the "Group Business and Structure" section, certain demographic factors have a decisive impact on Fresenius Medical Care's growth opportunities. These include the aging population and the increasing incidence of diabetes and hypertension, two illnesses that frequently precede the onset of end-stage renal disease (ESRD). Due to these developments, there is a growing need for dialysis products and services. We intend to make a significant contribution to covering this need by supplying renal patients with high-quality products and services. At the same time, we will persevere to achieve our goal of operating at profit.

Fresenius Medical Care can benefit as further markets open up, particularly in Eastern Europe and Asia. Although we already sell dialysis products in most of these markets via distributors or our own sales organizations, we only provide dialysis services in our own clinics in some of them. This is partly due to legal restrictions and to the fact that the prerequisite economic conditions often do not exist – for instance, appropriate reimbursement structures or functioning health systems.

In Japan, new opportunities for Fresenius Medical Care could arise from changes in the legal framework. If the regulations for operating dialysis clinics in this country are changed, enabling private companies such as Fresenius Medical Care to run their own clinics, this would open up significant new growth potential. Japan is the biggest market in Asia with about 290,000 dialysis patients, representing more than half of all dialysis patients in Asia. In addition, populous countries such as China and India will provide further growth opportunities over the long term. Therefore, we intend to strengthen our presence in India's eight largest cities by offering dialysis services there.

Germany is the fourth-largest market worldwide in terms of the number of dialysis patients treated. We have an excellent market position there, thanks to the quality of our products. Whereas previously only doctors in private practice, hospitals, and nonprofit organizations were allowed to operate dialysis clinics, Fresenius Medical Care can now run dialysis clinics in medical care centers. Medical care centers are facilities managed by doctors with different areas of expertise: these are either salaried physicians or physicians under contract to the statutory healthcare insurance provider. We see ourselves as the partners of our customers with

regard to establishing new structures in the German healthcare system, and we will take advantage of any opportunities available to strengthen our business long-term through this commitment. At the end of 2008, we had a share in two medical care centers.

Further opportunities arise from the research and development of new treatments for renal patients. A wearable artificial kidney could be developed in the future. However, research is still in its infancy, and it is unlikely that significant numbers of patients will be treated in the short and medium term. Fresenius Medical Care made the first step with the acquisition of Renal Solutions, Inc. in 2007. Should such systems be developed, their use would open up considerable potential for Fresenius Medical Care in terms of dialysis products and services connected with home dialysis.

Renal drugs are another business area offering excellent long-term growth opportunities. The integration of the phosphate binder PhosLo into the product portfolio in fall 2006 as well as its expansion through intravenous iron compounds in the previous business year are key steps forward in this area. Other renal drugs are vitamin D, iron compounds and calcimimetics. The Company estimates the size of the market for renal drugs of these four product groups to total more than $2.5 billion with respect to 2008.

Furthermore, Fresenius Medical Care could benefit from a number of opportunities arising from its operating business. These include a continually optimized procurement process and cost-efficient production.

## GENERAL STATEMENT ON EXPECTED DEVELOPMENTS

We view Fresenius Medical Care's prospects for the years to come as very positive. At present, all regions are expected to contribute to revenue and earnings growth on a constant currency basis.

In 2008, we aspire to strengthen our market position in all segments and to pursue our growth plans resolutely. This includes building new clinics and the targeted acquisition of dialysis clinics in all regions, as well as the expansion of our production capacities.

This outlook takes into account all factors known at the time of preparing the financial statements that could affect our business in 2009 and beyond. Major risks are discussed in the risk report beginning *on page 105*. Fresenius Medical care will do everything in its power to attain or – if possible – exceed its goals.

# *Chap.* 03.1–3 FURTHER INFORMATION

*Employee* HORST GEORG RADTKE
*Job Title* EXECUTIVE VICE PRESIDENT LATIN AMERICA
*Age* 58 YEARS
*Nationality* GERMAN, CHILEAN
*Joined* IN 1986 TO 1995 AND FROM 1997 TO THE PRESENT DAY

## HOW CAN QUALITY EXTEND PATIENTS' LIFE EXPECTANCY?

"Dialysis prolongs patients' lives today by years or even decades; in the early days of kidney treatment, it was a matter of days and weeks. The difference is in the quality of the machines, drugs and nursing care offered. In Latin America, too, we enjoy our customers' trust: They know that we have the best products and services in the market." *living* CONFIDENCE

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Fresenius Medical Care Management AG
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Allianz Private Krankenversicherungs-AG
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Attorney, Frankfurt am Main, Germany

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Dr. Gerd Krick
Dr. William P. Johnston
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### DR. WILLIAM P. JOHNSTON
Nashville, Tennessee, U.S.

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Fresenius Medical Care Groupe France S.A.S.

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### MATS WAHLSTROM
Co-Chief Executive Officer Fresenius Medical Care North America and Chief Executive Officer of "Fresenius Medical Services", Boston, Massachusetts, U.S.

# 03.2 GLOSSARY

## PRODUCTS AND SERVICES OF FRESENIUS MEDICAL CARE



### – 5008 THERAPY SYSTEM

This therapy system offers advantages for both patients and caregivers. The innovative, user-friendly interface makes the preparation of the hemodialysis treatment more efficient and the treatment itself safer; guarantees simple data processing.

### A A.N.D.Y.·DISC

A peritoneal dialysis double-bag system with lactate-buffered peritoneal dialysis fluid with PIN- and DISC technology for an easy and safe handling by the patient.

### B BALANCE

Lactate-buffered peritoneal dialysis solution with stay safe technology in a double- bag system. After mixing the contents of the two compartments, the ready-to-use solution has a physiological pH and a considerably reduced amount of glucose degradation products aiming at preserving of the peritoneal membrane function as well as the residual renal function.

### B BCM – BODY COMPOSITION MONITOR

Based on bio-impedance spectroscopy, this device can be used to assess the body composition and quantify the level of overhydration in dialysis patients.

### B BIBAG

Dry bicarbonate concentrate for online production of liquid bicarbonate concentrate used in bicarbonate hemodialysis with our hemodialysis machines of the 4008 and 5008 series.

### B BICAVERA

Physiological peritoneal dialysis solution with stay·safe technology in a double-bag system. After mixing the contents of the two compartments, the ready-to-use solution has a physiological pH and a considerably reduced amount of glucose degradation products aiming at the preservation of the peritoneal membrane function and the residual function as well as better acidosis correction.

### B BIOFINE

PVC-free, biocompatible material for producing foils, tubing and other components for peritoneal and acute dialysis.

### B BLOOD PRESSURE MONITOR (BPM)

Module for hemodialysis machines for fully automated blood pressure monitoring.

### B BLOOD TEMPERATURE MONITOR (BTM)

Module for hemodialysis machines to measure blood temperature. It can be used to control the body temperature of a dialysis patient, for example.

### B BLOOD VOLUME MONITOR (BVM)

Module for hemodialysis machines to measure relative blood volume and control fluid removal from the patient to avoid complications during dialysis treatment.

### C CALCIMIMETICS

An expansion of the therapy options to more effectively influence the bone and mineral change in patients with chronic kidney disease.

### C CARDIOPROTECTIVE HEMODIALYSIS

An integrated hemodialysis therapy developed by Fresenius Medical Care that deals with cardiovascular disease in dialysis patients.

### C CI-CA SYSTEM

Multifiltrate with integrated regional citrate anticoagulation for a renal replacement therapy without the need for systemic anticoagulants, thereby reducing the risk of bleeding.

### C CONTINUUM – DIALYSIS WITHOUT BOUNDARIES

Comprehensive program of Fresenius Medical Care to emphasize home dialysis – including home hemodialysis and peritoneal dialysis – for patients and healthcare professionals.

### D DALI – DIRECT ADSORPTION OF LIPOPROTEINS

First method for the direct adsorption of lipoproteins from whole blood. Apheresis treatment for patients whose LDL cholesterol levels cannot be lowered sufficiently through medication alone.

### D DIASAFEPLUS

Filter which produces ultrapure dialysis fluid during hemodialysis.

### D DISC TECHNOLOGY

Unique technology where a DISC integrated in the bag system guides the patient through the essential steps during Continuous Ambulatory Peritoneal Dialysis (CAPD), virtually eliminating operating errors.

### E EUCLID

European Clinical Database. Clinical database for ensuring the quality of dialysis treatment. The database records the treatment data of dialysis patients and allows an efficient comparison of treatment quality among individual dialysis clinics.

### F FRESENIUS POLYSULFON DIALYZER

Dialyzer with capillaries made from Fresenius Polysulfone.

### F FX-CLASS DIALYZER

A new class of dialyzer with increased performance and outstanding biocompatibility. The improved performance of FX-class dialyzers was realized with an innovative dialyzer concept, comprising improvements of individual components, including the Helixone membrane.

### G GENIUS

Innovative hemodialysis therapy system based on a single-pass batch system. All the dialysate needed is prepared in one batch before treatment and adjusted to the requirements of the individual patient.

### G GRANUDIAL

Dry acid and bicarbonate concentrates for the offline production of liquid concentrates for bicarbonate hemodialysis.

### H HELIXONE

An advanced high-flux membrane for FX-class dialyzers based on the Fresenius Polysulfone membrane. The size and distribution of pores in Helixone have been optimized to enable the removal of larger uremic toxins such as β2-microglobulin.

### I ICARE MONITORING SYSTEM

Web-based system for monitoring nocturnal dialysis treatment from a central location and comparing actual with predefined data as the patient sleeps. The system reacts to any deviations from the defined data by contacting the patient immediately, using the emergency information provided.

### I IN-LINE STEAM STERILISATION

Specific steam sterilisation method employed by Fresenius Medical Care in the production of polysulfone dialyzers. One particular advantage is the automatic rinsing out of all sterilisation by-products and bacterial debris during actual dialyzer production.

### I IQCARD

Used with the Fresenius Freedom Cycler PD+ to monitor every minute of automated peritoneal dialysis therapy. The data stored by the IQcard can be used to optimize the patient's therapy as well as for research purposes.

### L LIBERTY CYCLER

Innovative device with PIN technology for automated peritoneal dialysis marketed exclusively in the U.S. The Liberty Cycler automatically regulates the exchange of used and fresh dialysis fluid. It is equipped with a state-of-the-art pumping mechanism, is easy to set-up and also has an integrated patient data management software.

### M MULTIBIC

A bicarbonate-buffered solution for hemofiltration.

### M MULTIFILTRATE

Multifunctional acute dialysis machine used for therapy in intensive care.

### ON-LINE CLEARANCE (OLC) / O ON-LINE CLEARANCE MONITOR (OCM)

Optional quality assurance component for hemodialysis machines to measure online the effective in-vivo dialyzer clearance.

### O ONLINEPLUS SYSTEM

A system for our 4008 and 5008 series hemodialysis machines to perform ONLINE hemodiafiltration and ONLINE hemofiltration. The infusion fluid is prepared conveniently and cost-efficiently by filtering dialysate.

### O OPTIFLUX

A dialyzer generation for the U.S. market, featuring improved clearance rates and outstanding biocompatibility.

### P PATIENTONLINE

PatientOnLine is a PC software tool recognized as medical device to administer patient data, to evaluate treatment results and to optimize prescription in order to ensure best treatment outcomes for peritoneal dialysis patients.

### P PHOSLO

A calcium acetate phosphate binder for oral application in end-stage renal disease patients.

### P PIN TECHNOLOGY

Unique automatic inline-closing system that eliminates the risk of contamination during disconnection from peritoneal dialysis (PD) systems.

### P PLASMAFLUX

Capillary membrane filter used to separate plasma from other blood components.

### P PROMETHEUS

Novel extracorporeal blood purification system for patients with hepatic failure.

### S SLEEP·SAFE

Automated peritoneal dialysis system for a safe and convenient treatment during the night. One of sleep·safe's main features is the automatic bag connection and the inline warming of the peritoneal dialysis fluid.

### S SORB TECHNOLOGY

Purifies tap water to dialysate quality and allows dialysate to be regenerated; a water- and space-saving technology very suitable for home-hemodialysis and thus an important step towards a wearable kidney.

### S STAY·SAFE

Manual peritoneal dialysis system with PIN and DISC technology made of PVC-free Biofine material.

### U ULTRA CARE

Innovative and integrated treatment concept in Fresenius Medical Care's North American dialysis clinics combining, for example, the On-line Clearance Monitor, ultrapure dialysis fluid and the use of disposable high flux Polysulfone dialyzers.

### U ULTRAFLUX

Filters for acute dialysis treatment.

### V VENOFER

Iron product used to treat anemia in dialysis patients resulting from iron deficiency.

The financial glossary is included in the financial report *on page 117*.

## HEALTHCARE AND DIALYSIS-RELATED TERMS

### A ACUTE KIDNEY FAILURE

Acute loss of renal function. There is a good chance of recovery of the renal function if the cause of the acute kidney failure can be eliminated. Depending on the severity of renal function loss, intermittent dialysis treatment may be necessary.

### A ADEQUACY

The term refers to the quality of dialysis treatment. To measure adequacy, tests are performed to see if enough fluid and substances have been removed from the patient's blood.

### A ALBUMIN

A protein that can be used to monitor a patient's nutritional condition.

### A ANEMIA

Reduced oxygen transport capacity of the blood, measured as reduced hemoglobin content in the blood.

### A ANTICOAGULANT

An agent (e. g. heparin) that prevents the clotting of blood (see blood coagulation).

### A APHERESIS

Process of obtaining blood from a donor or a patient to separate or remove certain components (thrombocytes, plasma) before reinfusing the remainder.

### A ARTERIO-VENOUS (AV) FISTULA

A direct surgically created connection between an artery and a vein in a patient. This connection forms a large blood vessel with an increased blood flow, providing access for hemodialysis.

### A ARTERY

A blood vessel that carries blood from the heart to the body.

### A AUTOMATED PERITONEAL DIALYSIS (APD)

Machine (cycler) supported version of peritoneal dialysis treatment usually performed at night.

### B BIOCOMPATIBILITY

Ability of a material, system or solution to perform without an undesired, clinically significant response from the host.

### B BIOIMPEDANCE

Procedure for measuring the water content of the body. Alternating voltage electrodes measure the relationship between the alternating current and the alternating voltage flowing through the body.

### B BLOOD

Fluid circulating in the body composed of plasma and cells (red blood cells, white blood cells, platelets, etc.). The main function of blood is to transport oxygen, nutrients and hormones to the cells and to remove waste products (such as carbon dioxide and urea). Blood also regulates the water and electrolyte balance and helps fight off contaminants as part of the immune system.

### B BLOOD CELLS, RED (ERYTHROCYTES)

Cells responsible for transporting oxygen. They are created with the help of erythropoietin, a hormone produced in the kidneys.

### B BLOOD CELLS, WHITE (LEUKOCYTES)

Cells that defend the human body against infection. They are involved in allergic reactions and destroy damaged, old and dead cells in the body.

### B BLOOD COAGULATION

A complex process during which blood forms solid clots. It is an important part of hemostasis whereby a damaged blood vessel wall is covered by a fibrin clot that stops hemorrhaging and helps repair the damaged vessel. Disorders in coagulation can lead to increased hemorrhaging and / or thrombosis and embolism. During dialysis treatment, blood coagulation is inhibited with anticoagulants such as heparin.

### B BLOODLINES

System of tubes connecting a patient's blood circulation with a dialyzer during extracorporeal dialysis treatment.

### B BLOOD PLATELETS (THROMBOCYTES)

The part of blood responsible for healing wounds. Blood platelets form clots and release substances into the blood to generate the body's healing response.

### B BLOOD PRESSURE

Pressure exerted by the blood on the walls of the blood vessels. Unless indicated otherwise, blood pressure is understood to mean arterial blood pressure, i.e. the pressure in the large arteries, such as the brachial artery (in the arm). The arterial pressure is higher than the pressure of the blood in other vessels.

### B BUFFER

Substance that reduces pH changes that occur in a system during the introduction of an acid or a base.

### C CATHETER

A flexible tube inserted through the skin into a blood vessel or cavity to draw out body fluid or infuse fluid. In peritoneal dialysis a catheter is used to infuse dialysis solution into the abdominal cavity and drain it out again.

### C CE CERTIFICATION

Proof of compliance with European Union directives for medical devices.

### C CHRONIC KIDNEY DISEASE

Slow and progressive loss of kidney function over several years, often resulting in permanent kidney failure. Since the renal function cannot be recovered, the patient has to be treated with renal replacement therapy, i.e. kidney transplantation or dialysis.

### C CLEARANCE

A quantitative parameter to describe dialysis performance in terms of uremic toxin removal.

### C COMPOSITE RATE

Medicare reimbursement rate for dialysis treatment.

### C CONTINUOUS AMBULATORY PERITONEAL DIALYSIS (CAPD)

A type of peritoneal dialysis treatment where the dialysis solution is exchanged manually, generally four times a day.

### D DIABETES

A condition characterized by high blood glucose (sugar) resulting from the body's inability to use glucose efficiently. Insulin helps the body's cells use glucose.

### D DIALYSATE

Fluid used in the process of dialysis.

### D DIALYSIS

Form of renal replacement therapy where a semipermeable membrane – in peritoneal dialysis the peritoneum of the patient, in hemodialysis the membrane of the dialyzer – is used to selectively filter solute from the patient's blood into the dialysate.

### D DIALYZER

Special filter used in hemodialysis for removing toxic substances and excess water from the blood. The dialyzer is sometimes referred to as the "artificial kidney".

### D DIALYZER MEMBRANE

Semipermeable barrier in the dialyzer to separate the blood from the dialysate.

### D DIFFUSION

An exchange in the chemical concentration of two fluids that are divided by a semipermeable membrane. The molecules move from one fluid to the other, with metabolic toxins being transferred through the membrane into the dialysate.

### D DISEASE MANAGEMENT

Integrated concept of patient care that takes into account all medical aspects of an illness.

### D DRY WEIGHT

Targeted optimal body weight of the patient, achieved by removing excess water during dialysis.

### D DWELL TIME

In peritoneal dialysis, this is the amount of time the dialysis solution remains in the patient's abdominal cavity during an exchange.

### E END-STAGE RENAL DISEASE (ESRD)

Terminal kidney failure accompanied by long-term complications such as renal anemia, hypertension and other cardiovascular problems, as well as bone disease, loss of appetite and malnutrition (see also "Chronic Kidney Failure").

### E ERYTHROPOIETIN (EPO)

Hormone that stimulates red blood cell production.

### E ERYTHROPOIESIS-STIMULATING AGENTS (ESA)

Recombinant human EPO that is commonly prescribed to patients on dialysis who suffer from anemia.

### E EXTRACORPOREAL TREATMENTS

Treatments situated or occurring outside (extra) the body (corporeal), e.g. haemodialysis.

### F FDA

The U.S. Food and Drug Administration.

### G GLOMERULAR FILTRATION RATE (GFR)

The U.S. National Kidney Foundation categorizes kidney disease into five stages based on the glomerular filtration rate (GFR). The GFR indicates the volume of liquid that the kidneys filter from the blood per minute (primary urine). This ranges from more than 90 ml/min in healthy kidneys (stage 1) to less than 15 ml/min (stage 5) when dialysis or a kidney transplant is needed. Persons with stage 4 chronic kidney disease (CKD) have advanced kidney damage (GFR of 15 to 29 ml/min); it is highly likely that these patients will need dialysis or a kidney transplant in the near future.

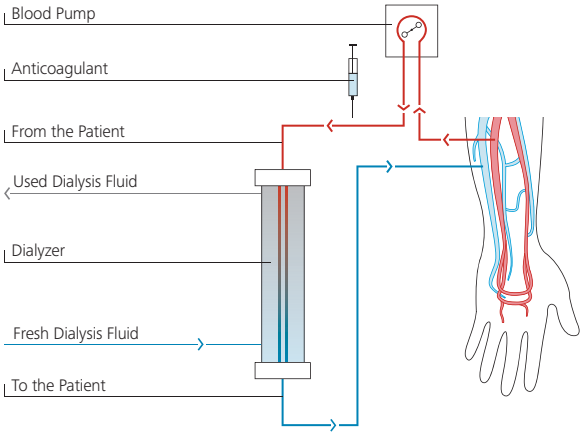
### H HEALTH MAINTENANCE ORGANIZATION (HMO)

Special form of private health insurance in the U.S. where the insured are members and treatment is provided by contract physicians (or member physicians) of the organization.

### H HEMODIAFILTRATION (HDF)

Special type of ESRD treatment combining the advantages of hemodialysis and hemofiltration. High elimination rates are achieved for substances with small and large weight molecules via diffusive and convective mechanisms respectively.

### H HEMODIALYSIS (HD)




ESRD treatment method where the patient's blood flows outside the body through disposable bloodlines into a special filter, the dialyzer. The dialysis solution carries away waste products and excess water, and the cleaned blood is returned to the patient. The process is controlled by a hemodialysis machine that pumps blood, adds anticoagulants, regulates the purification process, and controls the mixing of the dialysis solution and its flow rate through the system. A patient typically receives three treatments per week, lasting from three to six hours each.

### H HEMOFILTRATION (HF)

A type of ESRD treatment that does not use dialysate. The solutes are removed using convective forces to filter plasma water through a semipermeable membrane. Substitution fluid is used to replace the volume removed by filtration.

### H HEMOGLOBIN

Substance in red blood cells that carries oxygen around the body.

### H HEPARIN

Universal anticoagulant substance that is administered during hemodialysis to inhibit blood coagulation during the dialysis treatment.

### H HIGH-FLUX DIALYZERS

Dialyzers containing highly permeable membranes that allow for the effective removal of water and large uremic toxins in the size of e.g. β2-microglobulin.

### H HYPERVOLAEMIA

Increased blood volume.

### I INCIDENCE

Number of patients who are newly diagnosed with a specific disease during a certain period of time.

### I ISO

International Standards Organization.

### K KIDNEY

Two kidneys are located at the rear of the abdominal cavity, one each on the right and left side of the spinal column. These vital organs are approximately 11 cm long and weigh only 160 grams each. The kidneys ensure a regulated acid-base balance by filtering excreta and producing urine. Approximately 1,700 liters of blood normally pass through the kidneys every 24 hours.

### K KIDNEY TRANSPLANTATION

A surgical procedure to implant a kidney from a donor.

### L KT / V

Indicator to evaluate treatment quality. It is calculated by dividing the product of urea clearance (K) and the length of treatment (dialysis time, t) by the filtration rate of certain toxic molecules (the urea distribution volume in the patient, V).

### L LEAN SIX SIGMA

System of quality management to describe, measure, analyze, improve and monitor processes with the goal of quality improvement.

### L LOW-FLUX DIALYZERS

Dialyzers with low permeability, e. g. for water.

### M MEDICARE / MEDICAID

A program developed by the federal U.S. Social Security Administration that reimburses health insurances and providers of medical services for medical care to individuals over 65, with ESRD or the disabled.

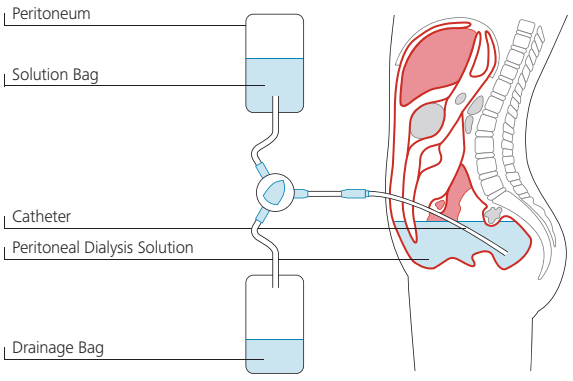
### M MEMBRANE PERMEABILITY

An indication of the "openness" of a dialyzer membrane for blood or dialysis fluid constituents.

### O OSMOSIS

Passage of water from the blood through a semipermeable membrane. In osmosis, as opposed to diffusion, molecules move only in one direction.

### P PERITONEAL DIALYSIS




Dialysis treatment method using the patient's peritoneum, i.e. the tissue that covers the inner surface of the abdominal cavity and the abdominal organs, as the dialyzing membrane for blood purification. A sterile dialysis solution is introduced and removed through a catheter that has been surgically implanted into the patient's abdominal cavity. The solution absorbs toxins and excess water. Most treatments are supported by a machine, the cycler, and are administered by the patients in their home or workplace several times a day or during the night.

### P PLASMA

Liquid part of the blood containing water, proteins and other substances such as electrolytes and hormones. Blood cells are not part of the plasma.

### P POLYSULFONE

A polymer used to produce dialyzer membranes. It is characterized by extreme thermal stability, chemical resistance and blood compatibility.

### P PREVALENCE

Number of all patients who suffer from a specific disease.

### S SUPPLY CHAIN MANAGEMENT

Management of all tasks along the supply chain, ranging from supplier selection, procurement and warehousing to the transport of goods to customers with the goal of improving efficiency in the value chain.

### T TERMINAL KIDNEY FAILURE

Terminal renal failure occurs when kidneys no longer detoxify the body, have lost this function finally and thus kidney substitute therapies become necessary.

### T TRANSPLANTATION

Taking an organ or tissue from the body and grafting it into another area of the same body or into another individual.

### U ULTRAFILTRATION

The convective transport of solutes through a dialyzer or hemofilter membrane due to a decrease in hydrostatic pressure.

### U ULTRAFILTRATION RATE

Rate of fluid removal from the patient's blood circulation measured in ml/min. This rate has to be chosen carefully. If the rate is too high, the cardiovascular stability of the patient is put at risk; if it is too low, the patient's excess water cannot be removed.

### V VASCULAR ACCESS (SHUNT)

Method to connect a patient's blood circulation to the dialyzer. The vascular access must enable sufficient blood flow and connection to the dialyzer as often as necessary, normally three times a week. Adequate vascular access is a prerequisite for hemodialysis. The early recognition of problems at the vascular access is essential for the blood to flow.

### V VEIN

A blood vessel that carries blood to the heart.

### X XENOTRANSPLANTATION

Transplantation of tissues or organs from one species to another.

# 03.3 CONTACTS AND IMPRINT

## CONTACTS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## IMPRINT

Subject to change.

This annual report is also available in German and may be obtained from the Company upon request.

Dieser Geschäftsbericht liegt auch in deutscher Sprache vor.

Annual reports, interim reports, and further information on the Company are also available on our Web site: http://www.fmc-ag.com. Printed reports can be ordered online, by phone or in writing from Investor Relations.


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This report contains forward-looking statements that are based on plans, projections and estimates
and subject to various risks and uncertainties. Actual results could differ materially from those described in these forward-looking statements due to certain factors. The risks and uncertainties are detailed in Fresenius Medical Care AG & Co. KGaA's reports filed with the U.S. Securities and Exchange Commission. We do not undertake any obligation to update any forward-looking statements in this report.




Fresenius Medical Care AG & Co. KGaA
Registered seat and commercial register: Hof an der Saale (Germany), HRB 4019
Chairman of the Supervisory Board: Dr. Gerd Krick
General partner: Fresenius Medical Care Management AG
Registered seat and commercial register: Hof an der Saale (Germany), HRB 3894
Management Board: Dr. Ben Lipps (Chairman), Roberto Fusté, Dr. Emanuele Gatti, Rice Powell, Lawrence A. Rosen, Dr. Rainer Runte, Mats Wahlstrom
Chairman of the Supervisory Board: Dr. Ulf M. Schneider

## *2009* FINANCIAL CALENDAR

| | |
|---|---|
| *April 30, 2009* | REPORT ON THE FIRST QUARTER 2009 |
| *May 7, 2009* | ANNUAL GENERAL MEETING, FRANKFURT/MAIN |
| *May 8, 2009* | PAYMENT OF DIVIDEND[1] |
| *August 4, 2009* | REPORT ON THE SECOND QUARTER 2009 |
| *November 3, 2009* | REPORT ON THE THIRD QUARTER 2009 |

[1] *Subject to the approval of the Annual General Meeting*

## *2009* IMPORTANT FAIRS

| | |
|---|---|
| *May 22 – 26, 2009* | WORLD CONGRESS OF NEPHROLOGY<br>Milan, Italy |
| *October 9 – 12, 2009* | 9TH EUROPEAN PERITONEAL DIALYSIS MEETING<br>Strasbourg, France |
| *October 27 – November 1, 2009* | 42ND ANNUAL MEETING OF THE ASN (AMERICAN SOCIETY OF NEPHROLOGY)<br>San Diego, California, U.S. |

# *living* CONFIDENCE

Fresenius Medical Care

*Table 01* **OPERATING DATA**

| *$ in millions* | *2008* | *2007* | *Change in %* |
|---|---|---|---|
| **Selected key figures** | | | |
| Net revenue | 10,612 | 9,720 | 9 % |
| Earnings before interest and taxes, depreciation and amortization (EBITDA) | 2,088 | 1,943 | 7 % |
| Earnings before interest and taxes (EBIT) | 1,672 | 1,580 | 6 % |
| Net incom | 818 | 717 | 14 % |
| Net cash flow from operating activities | 1,016 | 1,200 | (15 %) |
| Free Cash Flow[1] | 343 | 657 | (48 %) |
| Capitale xpenditure( net) | 673 | 543 | 24 % |
| Acquisitions, investments and purchases of intangible assets (net) | 218 | 234 | (7 %) |
| Earnings per ordinary share *in $* | 2.75 | 2.43 | 13 % |
| Dividend per ordinary share[2] *in €* | 0.58 | 0.54 | 7 % |
| EBIT margin *in %* | 15.8 | 16.3 | – |
| Return on invested capital (ROIC) *in %* | 8.6 | 8.4 | – |
| Equity to assets *in %* | 40.0 | 39.3 | – |
| **Other data** | | | |
| Employees (full-time equivalents) | 64,666 | 61,406 | 5 % |
| Patients | 184,086 | 173,863 | 6 % |
| Clinics | 2,388 | 2,238 | 7 % |
| Treatments *in millions* | 27.9 | 26.4 | 5 % |

*[1] Before acquisitions and dividends*
*[2] 2008: Proposal for approval at the Annual General Meeting on May 7, 2009.*

*Chart 01* **NET REVENUE**

*$ in millions*


*Chart 02* **NET INCOME**

*$ in millions*


*Chart 03* **EARNINGS PER SHARE**

*in $*


*All figures in this report are stated in U.S.-$ and in conformity with U.S. GAAP, if not indicated otherwise.*
*Unless specified, all charts refer to fiscal year 2008. For more details please look to the 5-year-summary at the end of the financial report.*

Fresenius Medical Care filed an annual report under Form 20-F with the Securities and Exchange Commission (SEC) with additional information on the Company. Fresenius Medical Care's annual report on Form 20-F may be obtained from the Company.

The audited financial statements of the Group's holding company, Fresenius Medical Care AG & Co. KGaA, will be submitted electronically to the electronic German Federal Gazette (Bundesanzeiger) who files these financial statements with the Company Register. These financial statements can be obtained from the Company.

The audited consolidated financial statements in accordance with § 315 a Commercial Code (HGB) in conjunction with Article 58(5) of the Introductory Act to the German Commercial Code (EGHGB) will be submitted electronically to the electronic German Federal Gazette (Bundesanzeiger) who files these consolidated financial statements with the Company Register. These financial statements can be obtained from the Company.

The publications can be also accessed on www.fmc-ag.com.

# *Chap.* 04.1–7 OPERATING AND FINANCIAL REVIEW AND PROSPECTS



*Employee* **LAWRENCE PARK**

*Job Title* **VICE PRESIDENT CORPORATE HEALTH, ENVIRONMENTAL AFFAIRS, ENGINEERING, SECURITY AND RISK MANAGEMENT**

*Age* **47 YEARS**

*Nationality* **KOREAN**

*Joined* **IN MAY 1986**

## HOW DOES LOW ABSENTEEISM AND A FOCUS TO A SAFE WORKPLACE RELATE TO QUALITY?

"Our casualty insurer has presented us with the "Safety In Excellence" award for ten consecutive years now. We are the only client to have received this distinction. Employees whose workplace meets high health and safety and security standards are less likely to be hurt or take unscheduled leave. At the same time, teams that are constant and work together well vouch for high-quality products and services." *living* **CONFIDENCE**

# OPERATING AND FINANCIAL REVIEW AND PROSPECTS

You should read the following discussion and analysis of the results of operations of Fresenius Medical Care AG & Co. KGaA and its subsidiaries ("FMC-AG & Co. KGaA" or the "Company") in conjunction with our historical consolidated financial statements and related notes contained elsewhere in this report. Some of the statements contained below, including those concerning future revenue, costs and capital expenditures and possible changes in our industry and competitive and financial conditions include forward-looking statements. We made these forward-looking statements based on the expectations and beliefs of the management of the Company's General Partner concerning future events which may affect us, but we cannot assure that such events will occur or that the results will be as anticipated. Because such statements involve risks and uncertainties, actual results may differ materially from the results which the forward-looking statements express or imply. Such statements include the matters and are subject to the un-certainties that we described in "Outlook" and "Risk Report" in the corporate report as well as in *Note 18* "Legal Proceedings".

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

## 04.1 CRITICAL ACCOUNTING POLICIES

The Company's reported financial condition and results of operations are sensitive to accounting methods, assumptions and estimates that are the basis for our financial statements. The critical accounting policies, the judgments made in the creation and application of these policies, and the sensitivities of reported results to changes in accounting policies, assumptions and estimates are factors to be considered along with the Company's financial statements, and the discussion in "Results of Operations".

### RECOVERABILITY OF GOODWILL AND INTANGIBLE ASSETS

The growth of our business through acquisitions has created a significant amount of intangible assets, including goodwill, trade names and management contracts. At December 31, 2008, the carrying amount of goodwill amounted to $7,310 million and non-amortizable intangible assets amounted to $430 million representing in total approximately 52 % of our total assets.

In accordance with Statement of Financial Accounting Standards ("SFAS") No. 142 Goodwill and Other Intangible Assets, we perform an impairment test of goodwill and non-amortizable intangible assets at least once a year for each reporting unit, or if we become aware of events that occur or if circumstances change that would indicate the carrying value might be impaired (*see also Note 1f* ).

To comply with the provisions of SFAS No. 142, the fair value of the reporting unit is compared to the reporting unit's carrying amount. We estimate the fair value of each reporting unit using estimated future cash flows for the unit discounted by a weighted average cost of capital ("WACC") specific to that unit. Estimating the discounted future cash flows involves significant assumptions, especially regarding future reimbursement rates and sales prices, treatments

and sales volumes and costs. In determining discounted cash flows, the Company utilizes its three-year budget, projections for years 4 to 10 and a range of growth rates of 0 % to 4 % for all remaining years. The Company's weighted average cost of capital consists of a basic rate of 6.47 % for 2008. This basic rate is then adjusted by a percentage ranging from 0 % to 7 % for specific country risks within each reporting unit for determining the reporting unit's fair value.

If the fair value of the reporting unit is less than its carrying value, a second step is performed which compares the fair value of the reporting unit's goodwill to the carrying value of its goodwill. If the fair value of the goodwill is less than its carrying value, the difference is recorded as an impairment.

A prolonged downturn in the healthcare industry with lower than expected increases in reimbursement rates and/or higher than expected costs for providing healthcare services and for procuring and selling products could adversely affect our estimated future cash-flows. Future adverse changes in a reporting unit's economic environment could affect the discount rate. A decrease in our estimated future cash flows and/or a decline in the reporting unit's economic environment could result in impairment charges to goodwill and other intangible assets which could materially and adversely affect our future financial position and operating results.

## LEGAL CONTINGENCIES

We are party to litigation and subject to investigations relating to a number of matters as described in *Note 18* "Legal Proceedings". The outcome of these matters may have a material effect on our financial position, results of operations or cash flows.

We regularly analyze current information including, as applicable, our defenses and we provide accruals for probable contingent losses including the estimated legal expenses to resolve the matters. We use the resources of our internal legal department as well as external lawyers for the assessment. In making the decision regarding the need for loss accrual, we consider the degree of probability of an unfavorable outcome and our ability to make a reasonable estimate of the amount of loss.

The filing of a suit or formal assertion of a claim or assessment, or the disclosure of any such suit or assertion, does not automatically indicate that accrual of a loss may be appropriate.

## ACCOUNTS RECEIVABLE AND ALLOWANCE FOR DOUBTFUL ACCOUNTS

Trade accounts receivable are a significant asset of ours and the allowance for doubtful accounts is a significant estimate made by management. Trade accounts receivable were $2,176 million and $2,027 million at December 31, 2008 and 2007, respectively, net of allowances for doubtful accounts of $263 million and $248 million at December 31, 2008 and 2007, respectively. The majority of our receivables relates to our dialysis service business in North America.

Dialysis care revenues are recognized and billed at amounts estimated to be receivable under reimbursement arrangements with third party payors. Medicare and Medicaid programs are billed at pre-determined net realizable rates per treatment that are established by statute or regulation. Revenues for non-governmental payors where we have contracts or letters of agreement in place are recognized at the prevailing contract rates. The remaining non-governmental payors are billed at our standard rates for services and, in our North America segment, a contractual adjustment is recorded to recognize revenues based on historic reimbursement experience with those payors for which contracted rates are not predetermined. The contractual adjustment and the allowance for doubtful accounts are reviewed quarterly for their adequacy. No material changes in estimates were recorded for the contractual allowance in the periods presented.

The allowance for doubtful accounts is based on local payment and collection experience. We sell dialysis products directly or through distributors in over 115 countries and dialysis services in more than 30 countries through owned or managed clinics. Most payors are government institutions or government-sponsored programs with significant variations between the countries and even between payors within one country in local payment and collection practices. Specifically, public health institutions in a number of countries outside the U.S. require a significant amount of time until payment is made. Payment differences are mainly due to the timing of the funding by the local, state or federal government to the agency that is sponsoring the program that purchases our services or products. The collection of accounts receivable from product sales to third party distributors or dialysis clinics is affected by the same underlying causes, since these buyers of our products are reimbursed as well by government institutions or government sponsored programs.

In our U.S. operations, the collection process is usually initiated 30 days after service is provided or upon the expiration of the time provided by contract. For Medicare and Medicaid, once the services are approved for payment, the collection process begins upon the expiration of a period of time based upon experience with Medicare and Medicaid. In all cases where co-payment is required the collection process usually begins within 30 days after service has been provided. In those cases where claims are approved for amounts less than anticipated or if claims are denied, the collection process usually begins upon notice of approval of the lesser amounts or upon denial of the claim. The collection process can be confined to internal efforts, including the accounting and sales staffs and, where appropriate, local management staff. If appropriate, external collection agencies may be engaged.

For our international operations, a significant number of payors are government entities whose payments are often determined by local laws and regulations. Depending on local facts and circumstances, the period of time to collect can be quite lengthy. In those instances where there are commercial payors, the same type of collection process is initiated as in the US.

Due to the number of our subsidiaries and different countries that we operate in, our policy of determining when a valuation allowance is required considers the appropriate local facts and circumstances that apply to an account. While payment and collection practices vary significantly between countries and even agencies within one country, government payors usually represent low credit risks. Accordingly, the length of time to collect does not, in and of itself, indicate an increased credit risk and it is our policy to determine when receivables should be classified as bad debt on a local basis taking into account local practices. In all instances, local review of accounts receivable is performed on a regular basis, generally monthly. When all efforts to collect a receivable, including the use of outside sources where required and allowed, have been exhausted, and after appropriate management review, a receivable deemed to be uncollectible is considered a bad debt and written off.

Estimates for the allowances for doubtful accounts receivable from the dialysis service business are mainly based on local payment and past collection history. Specifically, the allowances for the North American operations are based on an analysis of collection experience, recognizing the differences between payors and aging of accounts receivable. From time to time, accounts receivable are reviewed for changes from the historic collection experience to ensure the appropriateness of the allowances. The allowances in the International segment and the products business are also based on estimates and consider various factors, including aging, creditor and past collection history. Write offs are taken on a claim by claim basis when the collection efforts are exhausted. A significant change in our collection experience, a deterioration in the aging of receivables and collection difficulties could require that we increase our estimate of the allowance for doubtful accounts. Any such additional bad debt charges could materially and adversely affect our future operating results.

If, in addition to our existing allowances, 1 % of the gross amount of our trade accounts receivable as of December 31, 2008 were uncollectible through either a change in our estimated contractual adjustment or as bad debt, our operating income for 2008 would have been reduced by approximately 1 %.

The following table shows the portion and the aging of trade accounts receivable of major debtors or debtor groups at December 31, 2008 and December 31, 2007. No single debtor other than U.S. Medicaid and Medicare accounted for more than 5 % of total trade accounts receivable in either year. Trade accounts receivable in the International segment are for a large part due from government or government-sponsored organizations that are established in the various countries within which we operate. Amounts pending approval from third party payors represent less than 1 % at December 31, 2008.

Aging of net trade accounts receivable by major payor groups:

*Table 04.1.1* **AGING OF NET TRADE ACCOUNTS RECEIVABLE BY MAJOR PAYOR GROUPS**

| *in million $, as of December 31, 2008* | *Current* | *overdue by up to 3 months* | *overdue more than 3 months up to 6 months* | *overdue by more than 6 months up to 1 year* | *overdue by more than 1 year* | *Total* | *% of net trade A/R* |
|---|---|---|---|---|---|---|---|
| U.S. Medicare and Medicaid Programs | 311 | 56 | 47 | 34 | 34 | 482 | 22 |
| U.S. Commercial Payors | 215 | 176 | 62 | 47 | 41 | 541 | 25 |
| U.S. Hospitals | 83 | 25 | 3 | 1 | 1 | 113 | 5 |
| Self-Pay of U.S. Patients | 1 | 5 | 3 | 2 | 0 | 11 | 1 |
| Other North America, including product customers | 7 | 1 | 0 | 0 | 0 | 8 | 0 |
| International product customers and dialysis payors | 620 | 185 | 84 | 66 | 66 | 1,021 | 47 |
| **TOTAL** | **1,237** | **448** | **199** | **150** | **142** | **2,176** | **100** |

*Table 04.1.2* **AGING OF NET TRADE ACCOUNTS RECEIVABLE BY MAJOR PAYOR GROUPS**

| *$ in million, as of December 31, 2007* | *Current* | *overdue by up to 3 months* | *overdue more than 3 months up to 6 months* | *overdue by more than 6 months up to 1 year* | *overdue by more than 1 year* | *Total* | *% of net trade A/R* |
|---|---|---|---|---|---|---|---|
| U.S. Medicare and Medicaid Programs | 261 | 63 | 30 | 28 | 19 | 401 | 20 |
| U.S. Commercial Payors | 209 | 139 | 57 | 56 | 62 | 523 | 26 |
| U.S.Hospitals | 69 | 39 | 2 | 1 | 1 | 112 | 6 |
| Self-Pay of U.S. patients | 1 | 2 | 4 | 3 | 1 | 11 | 1 |
| Other North America, including product customers | 5 | 1 | 0 | 0 | 0 | 6 | 0 |
| International product customers and dialysis payors | 614 | 178 | 75 | 56 | 51 | 974 | 47 |
| **TOTAL** | **1,159** | **422** | **168** | **144** | **134** | **2,027** | **100** |

## SELF-INSURANCE PROGRAMS

Under the insurance programs for professional, product and general liability, auto liability and worker's compensation claims, FMCH, our largest subsidiary, is partially self-insured for professional liability claims. For all other coverages we assume responsibility for incurred claims up to predetermined amounts above which third party insurance applies. Reported liabilities for the year represent estimated future payments of the anticipated expense for claims incurred (both reported and incurred but not reported) based on historical experience and existing claim activity. This experience includes both the rate of claims incidence (number) and claim severity (cost) and is combined with individual claim expectations to estimate the reported amounts.

# 04.2 FINANCIAL CONDITION AND RESULTS OF OPERATIONS

## OVERVIEW

We are engaged primarily in providing dialysis services and manufacturing and distributing products and equipment for the treatment of end stage renal disease. In the U.S., we also perform clinical laboratory testing. We estimate that providing dialysis services and distributing dialysis products and equipment represents an over $65 billion worldwide market with expected annual world-wide patient growth of around 6%. Patient growth results from factors such as the aging population; increasing incidence of diabetes and hypertension, which frequently precede the onset of ESRD; improvements in treatment quality, which prolong patient life; and improving standards of living in developing countries, which make life-saving dialysis treatment available. Key to continued growth in revenue is our ability to attract new patients in order to increase the number of treatments performed each year. For that reason, we believe the number of treatments performed each year is a strong indicator of continued revenue growth and success. In addition, the reimbursement and ancillary services utilization environment significantly influences our business. In the past we experienced and also expect in the future generally stable reimbursements for dialysis services. This includes the balancing of unfavorable reimbursement changes in certain countries with favorable changes in other countries. The majority of treatments are paid for by governmental institutions such as Medicare in the United States. As a consequence of the pressure to decrease health care costs, reimbursement rate increases have been limited. Our ability to influence the pricing of our services is limited. Profitability depends on our ability to manage rising labor, drug and supply costs.

For calendar year 2009, CMS has maintained the drug add-on adjustment at the 2008 rate of $0.69 which resulted in a reduction in the drug add-on adjustment from 15.5 percent to 15.2 percent of the total per-treatment prospective payment. The composite rate, unlike many other payment rates in Medicare is not automatically updated each year. As a result, this portion of the payment rate has not received an annual update in the absence of a statutory change. In the Medicare Improvements for Patients and Providers Act of 2008 ("MIPPA"), Congress provided for a 1.0 percent increase in the composite rate in each of 2009 and 2010. Further, Congress eliminated a provision that previously paid hospital-based facilities slightly more than independent (or "free-standing") facilities. Thus, in 2009, all facilities are paid at the 2008 independent facility rate increased by 1.0 percent. CMS updated the wage index adjustment applicable to ESRD facilities from the 25/75 blend between adjustments based on old metropolitan statistical areas ("MSAs") and those based on new core-based statistical areas ("CBSAs") used in 2008. For 2009, CMS completed the transition from the MSA definition to the CBSA definition, and facilities will henceforth be paid according to the CBSA rate.

Certain other items and services that we furnish at our dialysis centers are not now included in the composite rate and are eligible for separate Medicare reimbursement. The most significant of these items are drugs or biologicals, such as erythropoietin-stimulating agents ("ESAs"), vitamin D analogs, and iron, which are reimbursed at 106 % of the average sales price as reported to CMS by the manufacturer. Products and support services furnished to ESRD patients receiving dialysis treatment at home are also reimbursed separately under a reimbursement structure comparable to the in-center composite rate. Although these reimbursement methodologies limit the allowable charge per treatment, they provide us with predictable per treatment revenues.

In 2008, Congress mandated the development of an expanded ESRD bundled payment system for services furnished on or after January 1, 2011. The new law requires CMS to implement by January 1, 2011 a bundled ESRD payment system under which CMS will reimburse dialysis facilities with a single payment for (i) all items and services included in the composite rate, (ii) all ESAs and other pharmaceuticals (other drugs and biologicals, other than vaccines) furnished to the patients that were previously reimbursed separately, (iii) diagnostic laboratory tests and (iv) other services furnished to individuals for the treatment of ESRD. The initial bundled reimbursement rate will be set based on 98 percent of estimated 2011 Medicare program costs of dialysis care as calculated under the current reimbursement system using the lowest per patient utilization data from 2007, 2008 or 2009. The bundled payment will be subject to case mix adjustments that may take into account individual patient characteristics (e.g., age, weight, body mass) and co-morbidities. Payments will also be adjusted for (i) certain high cost patient outliers due to unusual variations in medically necessary care, (ii) disparately high costs incurred by low volume facilities relative to other facilities and (iii) such other adjustments as the Secretary of HHS deems appropriate. Beginning in 2012, the bundled payment amount will be subject to annual increases based on increases in the costs of a mix of dialysis items and services to be determined by HHS minus 1 %. The Act will establish pay-for-performance quality standards that will take effect in 2012. Dialysis facilities that fail to achieve the established quality standards will have payments reduced by 2 %. Facility quality standards are expected to be developed in the areas of anemia management, patient satisfaction, iron management, bone mineral metabolism and vascular access. Facility performance scores will be made available to the public. The bundled system will be phased in over four years with full implementation for all dialysis facilities on January 1, 2014. However, providers may elect at any time prior to 2011 to become fully subject to the new system. The Act extends the authority of specialized Medicare Advantage ("MA") plans to target enrollment to certain populations through December 31, 2010 and revises definitions, care management requirements and quality reporting standards for all specialized plans. CMS is developing and drafting the regulations necessary to implement this new system; details of the system will not be known until CMS issues final regulations sometime in 2010. The Act maintains a moratorium on the new specialized MA plans through December 31, 2010. This change will materially affect how the Company is paid for Epogen and other items and services. The Company cannot estimate the overall effect of the new system on its business until adoption of the final CMS regulations.

We believe our policies on billing for ESAs comply with CMS policies. We have recommended to our treating physicians that they review and understand the package label insert and the K/DOQI guidelines as they make their anemia management decisions.

We have identified three operating segments, North America, International, and Asia-Pacific. For reporting purposes, we have aggregated the International and Asia-Pacific segments as "International". We aggregated these segments due to their similar economic characteristics. These characteristics include same services provided and same products sold, same type patient population, similar methods of distribution of products and services and similar economic environments. The general partner's Management Board member responsible for the profitability and cash flow of each segment's various businesses supervises the management of each operating segment. The accounting policies of the operating segments are the same as those we apply in preparing our consolidated financial statements under accounting principles generally accepted in the United States ("U.S. GAAP"). Our management evaluates each segment using a measure that reflects all of the segment's controllable revenues and expenses.

With respect to the performance of our business operations, our management believes the most appropriate measure in this regard is operating income which measures our source of earnings. Financing is a corporate function which segments do not control. Therefore, we do not include interest expense relating to financing as a segment measurement. We also regard income taxes to be outside the segments' control. Similarly, we do not allocate "corporate costs", which relate primarily to certain headquarters overhead charges, including accounting and finance, professional services, etc. because we believe that these costs are also not within the control of the individual segments. In addition, certain acquisitions and intangible assets are not allocated to a segment but are accounted for as "corporate". Accordingly, all of these items are excluded from our analysis of segment results and are discussed below in the discussion of our consolidated results of operations.

# 04.3 RESULTS OF OPERATIONS

The following tables summarize our financial performance and certain operating results by principal business segment for the periods indicated. Inter-segment sales primarily reflect sales of medical equipment and supplies from the International segment to the North America segment. We prepared the information using a management approach, consistent with the basis and manner in which our management internally disaggregates financial information to assist in making internal operating decisions and evaluating management performance.

*Table 04.3.1* **SEGMENT DATA**

| *$ in million* | *2008* | *2007* |
|---|---|---|
| **Total revenue** | | |
| North America | 7,007 | 6,664 |
| International | 3,688 | 3,134 |
| Corporate | 1 | – |
| **TOTAL** | **10,696** | **9,798** |
| **Inter-segment revenue** | | |
| North America | 2 | 1 |
| International | 82 | 77 |
| **TOTAL** | **84** | **78** |
| **Total net revenue** | | |
| North America | 7,005 | 6,663 |
| International | 3,606 | 3,057 |
| Corporate | 1 | – |
| **TOTAL** | **10,612** | **9,720** |
| **Amortization and depreciation** | | |
| North America | 238 | 220 |
| International | 171 | 141 |
| Corporate | 7 | 2 |
| **TOTAL** | **416** | **363** |
| **Operating income** | | |
| North America | 1,168 | 1,130 |
| International | 616 | 544 |
| Corporate | (112) | (94) |
| **TOTAL** | **1,672** | **1,580** |
| Interest income | 25 | 29 |
| Interest expense | (361) | (400) |
| Income tax expense | (489) | (466) |
| Minority interest | (29) | (26) |
| **NET INCOME** | **818** | **717** |

## HIGHLIGHTS

Revenues increased by 9 % to $ 10,612 million (8 % at constant exchange rates) mainly due to organic growth at 7 % and acquisitions at 1 %.

Operating income (EBIT) increased 6 %.

Net Income increased by 14 %.

Trust Preferred Securities in the amount of $ 678 million were redeemed at maturity.

In July 2008, we entered into two separate and independent license and distribution agreements to market and distribute intravenous iron products, such as Venofer and Ferinject.

## CONSOLIDATED FINANCIALS

*Table 04.3.2* **KEY INDICATORS FOR CONSOLIDATED FINANCIALS**

| | *2008* | *2007* | *Change as reported* | *Change at constant exchange rates* |
|---|---|---|---|---|
| Number of treatments | 27,866,573 | 26,442,421 | 5 % | – |
| Same market treatment growth | 4.5 % | 3.9 % | – | – |
| Revenue *in $ million* | 10,612 | 9,720 | 9 % | 8 % |
| Gross profit *in % of revenue* | 34.2 % | 34.5 % | – | – |
| Selling, general and administrative costs *in % of revenue* | 17.7 % | 17.6 % | – | – |
| Net income *in $ million* | 818 | 717 | 14 % | – |

We provided 27,866,573 treatments during the year ended December 31, 2008, an increase of 5 % over the same period in 2007. Same market treatment growth contributed 4 % and growth from acquisitions contributed 1 %.

At December 31, 2008, we owned, operated or managed (excluding those managed but not consolidated in the U.S.) 2,388 clinics compared to 2,238 clinics at December 31, 2007. During 2008, we acquired 48 clinics, opened 127 clinics and combined or closed 25 clinics. The number of patients treated in clinics that we own, operate or manage (excluding patients of clinics managed but not consolidated in the U.S.) increased by 6 % to 184,086 at December 31, 2008 from 173,863 at December 31, 2007. Including 32 clinics managed but not consolidated in the U.S., the total number of patients was 185,768.

Net revenue increased by 9 % (8 % at constant exchange rates) for the year ended December 31, 2008 over 2007 due to growth in revenue in both dialysis care and dialysis products.

Dialysis care revenue grew by 7 % to $7,737 million (6 % at constant exchange rates) in 2008 mainly due to growth in same market treatments (4 %), revenue per treatment (2 %), acquisitions (1 %), and exchange rate fluctuations (1 %), partially offset by sold or closed clinics (1 %).

Dialysis product revenue increased by 15 % to $2,875 million (11 % at constant exchange rates) mainly as a result of increased sales of hemodialysis machines, dialyzers, bloodlines, concentrates, and peritoneal dialysis products and higher revenues attributable to the phosphate binding drug, PhosLo and to the sales of the newly licensed intravenous iron products.

The decrease in gross margin reflects reductions in gross margin in the International segment. North America was impacted by higher personnel and other operating costs, decreased utilization of and reduced reimbursement rates for EPO, higher material costs, and increased costs for the anticoagulant drug heparin, fully offset by increased commercial payor revenue. International was affected by strong growth in dialysis care business which has lower than average margins and unfavorable foreign currency transaction effects related to purchases from Europe due to the appreciation of the Euro against local currencies. Both segments experienced higher depreciation expense in 2008 as compared to 2007 as a result of expansion of production capacities. The availability of these new capacities allowed a more normalized summer maintenance program in our International facilities, in contrast to the prior year's shortened program.

Selling, general and administrative ("SG&A") costs increased to $1,876 million in 2008 from $1,709 million in 2007. SG&A costs as a percentage of sales increased to 17.7 % in 2008 from 17.6 % in 2007. The percentage increased in the North America segment and decreased in the International segment. North America was impacted by higher personnel costs and higher bad debt expense, partially offset by economies of scale and gains on the sale of minority interests in subsidiaries. International benefited from lower foreign currency losses in Europe, lower bad debt expense and with respect to SG&A as a percentage of sales, from revenue growth in excess of the increase of SG&A. These were partially offset by higher corporate expenses relating to the operating expenses of Renal Solutions Inc., reported under corporate, and compensation expense for stock options. Bad debt expense for the year ended December 31, 2008 was $214 million as compared to $202 million in 2007, representing 2.0 % of sales for the year ended December 31, 2008 and 2.1 % for 2007.

Research and development ("R&D") expenses increased to $80 million in 2008 from $67 million for the same period in 2007 mainly as a result of the additional R&D programs related to continued development of hemodialysis machines, field testing of new products and extracorporeal and home therapy programs.

Operating income increased to $1,672 million in 2008 from $1,580 million for 2007. Operating income margin decreased to 15.8 % for the year ended December 31, 2008 from 16.3 % for 2007 due to the decreased gross margins, increased SG&A as a percentage of sales, and increased R&D costs as discussed above.

Interest expense decreased 10 % to $361 million in 2008 from $400 million for 2007 mainly as a result of decreased interest rates and the more favorable financing structure following the repayment of a portion of our trust preferred securities. This was partially offset by the slightly increased debt level resulting from the acquisition of Renal Solutions, Inc. in the fourth quarter of 2007 as well as higher capital expenditures in 2008.

Income tax expense increased to $489 million for the year ended December 31, 2008 from $466 million in 2007 due to increased earnings. The effective tax rate for 2008 decreased to 36.6 % from 38.5 % for 2007 mainly due to a German corporate tax rate reduction which became effective January 1, 2008.

Net income for 2008 increased to $818 million from $717 million for 2007 mainly as a result of the combined effects of the items discussed above.

We employed 64,666 people (full-time equivalents) as of December 31, 2008 compared to 61,406 as of December 31, 2007, an increase of 5 % primarily due to our overall growth in business.

The following discussions pertain to our business segments and the measures we use to manage these segments.

## NORTH AMERICA SEGMENT

*Table 04.3.3* **KEY INDICATORS FOR NORTH AMERICA SEGMENT**

| | *2008* | *2007* | *Change* |
|---|---|---|---|
| Number of treatments | 19,146,084 | 18,451,381 | 4 % |
| Same market treatment growth | 2.9 % | 2.9 % | – |
| Revenue *in $ million* | 7,005 | 6,663 | 5 % |
| Depreciation and amortization *in $ million* | 238 | 220 | 8 % |
| Operating income *in $ million* | 1,168 | 1,130 | 3 % |
| Operating income margin | 16.7 % | 17.0 % | – |

### REVENUE

Treatments increased by 4 % for the year ended December 31, 2008 as compared to 2007 due to same market growth (3 %) and acquisitions (1 %). At December 31, 2008, 125,857 patients (a 4 % increase over the same period in the prior year) were being treated in the 1,686 clinics that we own or operate in the North America segment, compared to 121,431 patients treated in 1,602 clinics at December 31, 2007. Average North America revenue per treatment was $326 for the year ended December 31, 2008 and $323 for 2007. In the U.S., the average revenue per treatment was $330 for the year ended December 31, 2008 and $327 in 2007, mainly due to increased commercial payor revenue.

Net revenue for the North America segment for 2008 increased as a result of increases in dialysis care revenue by 4 % to $6,247 million from $6,002 million in 2007 and in dialysis product revenue by 15 % to $758 million from $661 million in 2007.

The dialysis care revenue increase was driven by same market treatment growth of 3 %, increased revenue per treatment (1 %), and 1 % resulting from acquisitions partially offset by the effects of sold or closed clinics (1 %). The administration of EPO represented approximately 20 % and 21 % of total North America dialysis care revenue for 2008 and 2007, respectively.

The product revenue increase was driven mostly by a higher sales volume of dialysis machines, concentrate, bloodlines, dialyzers, and peritoneal products, as well as increased pricing and sales of the newly licensed intravenous iron products and higher sales attributable to the phosphate binding drug, PhosLo, which we acquired in late 2006. However, we experienced substantial reductions in our PhosLo sales following a competitor's launch of a generic version of PhosLo in the U.S. in October 2008.

### OPERATING INCOME

Operating income increased by 3 % to $1,168 million for 2008 from $1,130 million for 2007. Operating income margin decreased to 16.7 % for 2008 as compared to 17.0 % for 2007 primarily due to increased personnel and other operating costs, higher raw material costs, decreased utilization of and reduced reimbursement rates for EPO, heparin cost increases, and higher depreciation expense due to expansion of production capacities, partially offset by increased commercial payor revenue. Cost per treatment increased to $273 in 2008 from $267 in 2007.

## INTERNATIONAL SEGMENT

*Table 04.3.4* **KEY INDICATORS FOR INTERNATIONAL SEGMENT**

| | *2008* | *2007* | *Change as reported* | *Change at constant exchange rates* |
|---|---|---|---|---|
| Number of treatments | 8,720,489 | 7,991,040 | 9 % | – |
| Same market treatment growth | 8.6 % | 6.2 % | – | – |
| Revenue *in $ million* | 3,606 | 3,057 | 18 % | 13 % |
| Depreciation and amortization *in $ million* | 171 | 141 | 21 % | – |
| Operating income *in $ million* | 616 | 544 | 13 % | – |
| Operating income margin | 17.1 % | 17.8 % | – | – |

## REVENUE

Treatments increased by 9 % in 2008 over 2007 mainly due to same market growth (9 %), and acquisitions (1 %), partially offset by sold or closed clinics (1 %). As of December 31, 2008, 58,229 patients (a 11 % increase over the prior year) were being treated at 702 clinics that we own, operate or manage in the International segment compared to 52,432 patients treated at 636 clinics at December 31, 2007. Average revenue per treatment increased to $171 from $152 due to increased reimbursement rates and changes in country mix ($11) and the strengthening of local currencies against the U.S. dollar ($8).

The increase in net revenues for the International segment for 2008 over 2007 resulted from increases in both dialysis care and dialysis product revenues. Organic growth during the period was 12 % and acquisitions contributed approximately 1 %. Exchange rate fluctuations contributed 5 %.

Including the effects of acquisitions, European region revenue increased 19 % (12 % at constant exchange rates), Latin America region revenue increased 23 % (19 % at constant exchange rates), and Asia-Pacific region revenue increased 12 % (11 % at constant exchange rates).

Total dialysis care revenue for the International segment increased during 2008 by 23 % (18 % at constant exchange rates) to $1,490 million from $1,211 million for 2007. This increase is a result of same market treatment growth of 9 % and a 1 % increase in contributions from acquisitions and one additional dialysis day (1 %), partially offset by sold or closed clinics (1 %). Increases in revenue per treatment contributed 8 % and exchange rate fluctuations contributed approximately 5 %.

Total dialysis product revenue for 2008 increased by 15 % (10 % at constant exchange rates) to $2,117 million mostly due to higher dialyzer and machine sales.

## OPERATING INCOME

Operating income increased by 13 % to $616 million primarily as a result of increases in the number of treatments, revenue per treatment and increases in units of products sold. Operating income margin decreased to 17.1 % for the year ended December 31, 2008 from 17.8 % in 2007. The margin decrease resulted from the effects of stronger growth in dialysis care business which has lower than average margins and higher depreciation expense due to expansion of production capacities. The availability of these new capacities allowed a more normalized summer maintenance program in our facilities in 2008, in contrast to the prior year's shortened program. In addition, the International margin was impacted by unfavorable foreign currency transaction effects in Asia-Pacific related to purchase of products from Europe due to the appreciation of the Euro against local currencies.

# 04.4 LIQUIDITY AND CAPITAL RESOURCES

Our primary sources of liquidity have historically been cash from operations, cash from borrowings from third parties and related parties, as well as cash from issuance of equity and debt securities. We require this capital primarily to finance working capital needs, to fund acquisitions and develop free-standing renal dialysis centers, to purchase equipment for existing or new renal dialysis centers and production sites, to repay debt and to pay dividends.

At December 31, 2008, we had cash and cash equivalents of $222 million and unused credit lines of $820 million available to us which are discussed in more detail below.

## OPERATIONS

In the past two years, 2008 and 2007, we have generated cash flows from operations of $1,016 million and $1,200 million, respectively. Cash from operations is impacted by the profitability of our business, the development of our working capital, principally receivables, and cash outflows that occur due to a number of singular specific items (especially payments in relation to disallowed tax deductions and legal proceedings).

The profitability of our business depends significantly on reimbursement rates. Approximately 73 % of our revenues are generated by providing dialysis treatment, a major portion of which is reimbursed by either public health care organizations or private insurers. For the year ended December 31, 2008, approximately 35 % of our consolidated revenues resulted from U.S. federal health care benefit programs, such as Medicare and Medicaid reimbursement. Legislative changes could affect Medicare reimbursement rates for all the services we provide, as well as the scope of Medicare coverage. A decrease in reimbursement rates or the scope of coverage could have a material adverse effect on our business, financial condition and results of operations and thus on our capacity to generate cash flow. In the past we experienced and also expect in the future generally stable reimbursements for our dialysis services. This includes the balancing of unfavorable reimbursement changes in certain countries with favorable changes in other countries. See “Overview” above for a discussion of recent Medicare reimbursement rate changes including provisions for implementation of a “bundled rate” by January 1, 2011.

Furthermore, cash from operations depends on the collection of accounts receivable. Our working capital was $1,068 million at December 31, 2008 which increased from $833 million at December 31, 2007, mainly as a result of increases in our accounts receivables; our ratio of current assets to current liabilities was 1.34. We could face difficulties in enforcing and collecting accounts receivable under some countries' legal systems. Some customers and governments may have longer payment cycles. A lengthening of this payment cycle could have a material adverse effect on our capacity to generate cash flow. During 2008, we have experienced some delay in payments from our customers worldwide. Accounts receivable balances at December 31, 2008 and December 31, 2007, net of valuation allowances, represented

approximately 77 and 73 days of net revenue, respectively, with increased balances in both of our segments. The increase in the North America segment is mainly driven by the launch of Venofer in late 2008 in the Products business, as well as reimbursement delays in the dialysis services business related to National Provider Identification issues and other delays associated with provider numbers for new clinics and acquisitions. The increase for the International segment mainly reflects payment delays by government entities most recently impacted by the worldwide financial crises. Due to the fact that a large portion of our reimbursement is provided by public health care organizations and private insurers, we expect that most of our accounts receivables will be collectable, albeit somewhat more slowly in the immediate future.

The development of days sales outstanding ("DSO") by operating segment is shown in the table below:

*Table 04.4.1* **DEVELOPMENT OF DAYS SALES OUTSTANDING**

| *in days, December 31,* | *2008* | *2007* |
|---|---|---|
| North America | 60 | 58 |
| International | 107 | 104 |
| **TOTAL** | **77** | **73** |

Interest and income tax payments also have a significant impact on our cash from operations.

There are a number of tax and other items we have identified that will or could impact our cash flows from operations in the immediate future as follows:

During the third quarter 2006, the German tax authorities substantially finalized their tax audit for tax years 1998 – 2001 and issued an audit report in the second quarter 2008. We recognized and recorded the results of the audit in 2006, and thereafter paid all amounts due to the tax authorities. We have filed claims for refunds contesting the IRS's disallowance of FMCH's civil settlement payment deductions in prior year tax returns. As a result of a settlement agreement with the IRS to resolve our appeal of the IRS's disallowance of deductions for the civil settlement payments made to qui tam relators in connection with the resolution of the 2000 investigation, we received a refund in September 2008 of $37 million, inclusive of interest. The settlement agreement preserves our right to continue to pursue claims in the U.S. Federal courts for refund of all other disallowed deductions.

For the tax year 1997, we recognized an impairment of one of our subsidiaries which the German tax authorities have disallowed in the audit for the years 1996 and 1997. We disagree with such conclusion, believe we have valid arguments and have filed a complaint with the appropriate German court to challenge the tax authority's decision. An adverse determination in this litigation could have a material adverse effect on our results of operations in the relevant reporting period. We have a liability payable to Fresenius SE related to this matter (*see Note 3* "Related Party Transactions – Other").

The IRS tax audit of FMCH for the years 2002 through 2004 has been completed. Except for the disallowance of all deductions taken during the audit period for remuneration related to intercompany mandatorily redeemable preferred shares, the proposed adjustments are routine in nature and have been recognized in the financial statements. The Company has protested the disallowed deductions and some routine adjustments and will avail itself of all remedies. An adverse determination in this litigation could have a material adverse effect on results of operations and liquidity.

We are subject to ongoing tax audits in the U.S., Germany and other jurisdictions. We have received notices of unfavorable adjustments and disallowances in connection with certain of the audits. We are contesting, including appealing, certain of these unfavorable determinations. If our objections and any final audit appeals are unsuccessful, we could be required to make additional tax payments, including payments to state tax authorities reflecting the adjustments made in our federal tax returns in the U.S. With respect to other potential adjustments and disallowances of tax matters currently under review or where tentative agreement has been reached, we do not anticipate that an unfavorable ruling would have a material impact on our results of operations. We are not currently able to determine the timing of these potential additional tax payments.

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. The settlement agreement with the asbestos creditors committees on behalf of the W.R. Grace & Co. bankruptcy estate (*see Note 18* "Legal Proceedings") provides for payment by the Company of $115 million upon approval of the settlement agreement by the U.S. District Court, which has occurred, and confirmation of a W.R. Grace & Co. bankruptcy reorganization plan that includes the settlement. The $115 million obligation was included in the special charge we recorded in 2001 to address 1996 merger-related legal matters. The payment obligation is not interest-bearing.

If all potential additional tax payments and the Grace Chapter 11 Proceedings settlement payment were to occur contemporaneously, there could be a material adverse impact on our operating cash flow in the relevant reporting period. Nonetheless, we anticipate that cash from operations and, if required, our available liquidity will be sufficient to satisfy all such obligations if and when they come due.

## INVESTING

We used net cash of $891 million and $777 million in investing activities in 2008 and 2007, respectively.

Capital expenditures for property, plant and equipment, net of disposals were $673 million in 2008 and $543 million in 2007. In 2008, capital expenditures were $384 million in the North America segment, and $289 million for the International segment. Capital expenditures in 2007 were $314 million in the North America segment, and $229 million for the International segment. The majority of our capital expenditures was used for equipping new clinics, maintaining existing clinics, maintenance and expansion of production facilities primarily in North America and Germany and; in 2008 – Japan and France, in 2007 – Japan. In addition, we incurred higher investment for machines that we provide to our customers mostly under operating leases, primarily in the International segment (2008 and 2007). Capital expenditures were approximately 6 % and 6 % of total revenue for 2008 and 2007, respectively.

Primarily for acquisitions of dialysis clinics and licenses, we invested approximately $227 million cash in 2008 ($113 million in the North America segment, $57 million in the International segment and $57 million in Corporate) and $143 million in 2007 ($63 million in the North America segment and $80 million in the International segment). In addition, in 2007 we paid approximately $120 million in conjunction with the Renal Solutions, Inc. acquisition. We also received $59 million and $29 million in conjunction with divestitures in 2008 and 2007, respectively.

In 2008, we granted a loan of $50 million to Fresenius SE, our parent (*see Note 3* "Related Party Transactions").

We anticipate capital expenditures of approximately $550 to $650 million and expect to make acquisitions of approximately $200 to $300 million in 2009.

## FINANCING

Net cash used in financing was $156 million in 2008 compared to $341 million in 2007.

In 2008, cash was mainly used for redemption of trust preferred securities ($678 million), the payment of dividends ($252 million) and the payment in November 2008 of the remaining financial liability relating to the 2007 RSI Acquisition ($56 million); we raised cash from our accounts receivable securitization facility ("A/R Facility") and other existing long-term credit facilities. In 2007, cash was mainly used to pay down our A/R Facility and other debt and for payment of dividends; we raised net proceeds of $484 million from the issuance of our Senior Notes due 2017 ("Senior Notes").

For a description of our short-term credit facilities, including our A/R Facility, *see Note 8* "Short-Term Borrowings, Other Financial Liabilities and Short-Term Borrowings from Related Parties". For a description of our long-term sources of liquidity, including our 2006 Senior Credit Agreement, our Senior Notes, our credit facilities with the European Investment Bank ("EIB"), and our trust preferred securities, *see Note 9* "Long-Term Debt and Capital Lease Obligations" and *see Note 11* "Mandatorily Redeemable Trust Preferred Securities".

The following table summarizes the Company's available sources of liquidity at December 31, 2008:

*Table 04.4.2* **AVAILABLE SOURCES OF LIQUIDITY**

| *$ in million* | *Total* | *Expiration per period of* | | |
|---|---|---|---|---|
| | | *1 Year* | *2 – 5 Years* | *over 5 Years* |
| Accounts receivable facility[1] | 11 | 11 | – | – |
| Unused Senior Credit lines | 583 | – | 583 | – |
| Other unused lines of credit | 226 | 226 | – | – |
| **TOTAL** | **820** | **237** | **583** | **–** |

[1] *Subject to availability of sufficient accounts receivable meeting funding criteria.*
*The amount of guarantees and other commercial commitments at December 31, 2008 is not significant.*

At December 31, 2008, we have short-term borrowings, excluding the current portion of long-term debt, of $660 million.

The following table summarizes, as of December 31, 2008, our obligations and commitments to make future payments under our long-term debt, trust preferred securities and other long-term obligations, and our commitments and obligations under lines of credit and letters of credit.

*Table 04.4.3* **CONTRACTUAL CASH OBLIGATIONS**

| *$ in million* | *Total* | *Payments due by period of* | | |
|---|---|---|---|---|
| | | *1 Year* | *2 – 5 Years* | *over 5 Years* |
| Trust Preferred Securities[1] | 765 | 50 | 715 | – |
| Long-term debt[2] | 4,990 | 588 | 3,649 | 753 |
| Capital lease obligations | 13 | 3 | 9 | 1 |
| Operating leases | 2,121 | 388 | 1,094 | 639 |
| Unconditional purchase obligations | 2,557 | 358 | 1,002 | 1,197 |
| Other long-term obligations | 63 | 57 | 6 | – |
| Letters of Credit | 112 | 112 | – | – |
| **TOTAL** | **10,621** | **1,556** | **6,475** | **2,590** |

[1] *Interest payments are determined on these debt instruments until their respective maturity dates and based on their applicable balances and fixed interest rates for each period presented. We redeemed $670 million of Trust Preferred Securities on February 1, 2008, primarily by utilizing funds available under our existing credit facilities.*
[2] *Interest payments are based upon the principal repayment schedules and fixed interest rates or estimated variable interest rates considering the applicable interest rates (e.g. Libor, Prime), the applicable margins, and the effects of related interest rate swaps.*

Our obligations under the 2006 Credit Agreement are secured by pledges of capital stock of certain material subsidiaries, including FMCH and D-GmbH, in favor of the lenders. Our 2006 Senior Credit Agreement, EIB agreements, Euro Notes, Senior Notes, 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 2006 Senior Credit Agreement, we are obligated to maintain a minimum consolidated fixed charge ratio (ratio of consolidated EBITDAR (sum of EBITDA plus Rent expense under operation leases) to Consolidated Fixed Charges as these terms are defined in the 2006 Senior Credit Agreement) and a maximum consolidated leverage ratio (ratio of consolidated funded debt to consolidated EBITDA as these terms are defined in the 2006 Senior Credit Agreement). Other covenants in one or more of each of these agreements restrict or have the effect of restricting our ability to dispose of assets, incur debt, pay dividends and make other restricted payments, create liens or engage in sale-lease backs.

The breach of any of the covenants in any of the instruments or agreements governing our long-term debt – the 2006 Senior Credit Agreement, the EIB agreements, the Euro Notes, the Senior Notes or the notes underlying our trust preferred securities – could, in turn, create additional defaults under one or more of the other instruments or agreements. In default, the outstanding balance under the Senior Credit Agreement becomes due at the option of the lenders under that agreement, and the "cross default" provisions in our other long-term debt permit the lenders to accelerate the maturity of the debt upon such a default as well. As of December 31, 2008, we are in compliance with all covenants under the 2006 Senior Credit Agreement and our other financing agreements.

Although we are not immune from the world-wide financial crises of 2008, we believe that we are in a solid financial position to continue to grow our business while meeting our financial obligations as they come due. Our business is generally not cyclical. A substantial portion of our accounts receivable are generated by governmental payers. While payment and collection practices vary significantly between countries and even between agencies within one country, government payors usually represent low risks (see "Critical Accounting Policies – Accounts Receivable and Allowance for Doubtful Accounts", above). Our syndicated credit facility is comprised of 60 lenders for our revolving credit facility none of which contribute more than 4 % of our revolving borrowings under the 2006 Credit Agreement. Even though one of the 60 participating banks in this syndicated facility defaulted on its obligation to provide funds under the terms of the revolving facility during the fourth quarter 2008, we do not anticipate any major issues in having funds available for us when we utilize this credit facility. As we deemed the amount in default immaterial, we took no action to amend our 2006 Credit Agreement to replace the defaulting bank (*see Note 9* "Long-Term Debt and Capital Lease Obligations – 2006 Senior Credit Agreement"). However, limited or expensive access to capital could make it more difficult for our customers to do business with us, or to do business generally, which could adversely affect our business. Current conditions in the credit and equity markets, if they continue, could also increase our financing costs and limit our financial flexibility.

Following our earnings-driven dividend policy, our General Partner's Management Board will propose to the shareholders at the Annual General meeting on May 7, 2009, a dividend with respect to 2008 and payable in 2009, of €0.58 per ordinary share (for 2007 paid in 2008: €0.54) and €0.60 per preference share (for 2007 paid in 2008: €0.56). The total expected dividend payment is approximately €173 million (approximately $240 million based upon the December 31, 2008 spot rate) compared to €160 million ($252 million) in 2008 with respect to 2007. Our 2006 Senior Credit Agreement limits disbursements for dividends and other payments for the acquisition of our equity securities (and rights to acquire them, such as options or warrants) during 2009 to $280 million in total.

Our treasury management services, which Fresenius SE provides under contractual arrangements with us, assists in the management of our liquidity by means of effective cash management as well as an anticipatory evaluation of financing alternatives. We have sufficient financial resources – consisting of only partly drawn credit facilities and our accounts receivable facility – which we intend to preserve in the next years. We aim to keep committed and unutilized credit facilities to a minimum of $500 million.

We will focus our financing activities in the coming years on reducing subordinated debt. In this respect we did not refinance the subordinated trust-preferred securities issued by Fresenius Medical Care Capital Trust II and III which matured in February 2008 by issuing new subordinated debt, but used our existing senior credit facilities instead. Our target for maturing long-term debt is to refinance with senior and unsecured debt instruments only.

Our refinancing needs for the years 2009 and 2010 are limited to refinancing of our Euro Notes totaling $278 million (€200 million) in July 2009 and the annual renewal of our $550 million accounts receivable facility. These refinancing requirements, as well as our dividend payment of approximately $240 million in May 2009 and the anticipated dividend payment in 2010, are expected to be covered by our cash flows and by using existing credit facilities. Our debt covenants provide sufficient flexibility to cover our financing needs. Generally, we believe that we will have sufficient financing to achieve our goals in the future and to continue to promote our growth.

Our financing strategy and our financial performance are reflected in the credit ratings assigned to us by the rating agencies, Standard & Poor's and Moody's. The table below shows the ratings as of December 31, 2008.

*Tabelle 04.4.4* **RATING**

| | *Rating* | *Outlook* |
|---|---|---|
| Standard & Poor's | BB | negative |
| Moody's | Ba1 | stable |

## DEBT COVENANT DISCLOSURE – EBITDA

EBITDA (earnings before interest, taxes, depreciation and amortization) was approximately $2,088 million, 19.7 % of revenues for 2008 and $1,944 million, 20.0 % of revenues for 2007. EBITDA is the basis for determining compliance with certain covenants contained in our 2006 Credit Agreement, Senior Notes, Euro Notes, EIB, and the indentures relating to our outstanding trust preferred securities. You should not consider EBITDA to be an alternative to net earnings determined in accordance with U.S. GAAP or to cash flow from operations, investing activities or financing activities. In addition, not all funds depicted by EBITDA are available for management's discretionary use. For example, a substantial portion of such funds are subject to contractual restrictions and functional requirements for debt service, as needed for capital expenditures and to meet other commitments as described in more detail elsewhere in this report. EBITDA, as calculated, may not be comparable to similarly titled measures reported by other companies. A reconciliation of cash flow provided by operating activities to EBITDA is calculated as follows:

*Table 004.4.5* **RECONCILIATION OF MEASURES FOR CONSOLIDATED TOTALS**

| *$ in thousands* | *2008* | *2007* |
|---|---|---|
| Total EBITDA | 2,088,103 | 1,943,451 |
| Interest expense (net of interest income) | (336,742) | (371,047) |
| Income tax expense, net | (489,142) | (465,652) |
| Change in deferred taxes, net | 133,047 | 1,177 |
| Change in operating assets and liabilities | (420,297) | 46,876 |
| Compensation expense | 31,879 | 24,208 |
| Other items, net | 9,550 | 20,561 |
| **NET CASH PROVIDED BY OPERATING ACTIVITIES** | **1,016,398** | **1,199,574** |

# 04.5 RECENTLY ISSUED ACCOUNTING STANDARDS

For a discussion of recently issued accounting standards, *see Note 1* "The Company, Basis of Presentation and Summary of Significant Accounting Policies – Summary of Significant Accounting Policies – u) Recent Pronouncements".

# 04.6 QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

## MARKET RISK

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

- changes in reimbursement rates;
- intense competition;
- foreign exchange rate fluctuations;
- varying degrees of acceptance of new product introductions;
- technological developments in our industry;
- uncertainties in litigation or investigative proceedings and regulatory developments in the health care sector; and
- the availability of financing.

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.

### REIMBURSEMENT RATES

We obtained approximately 35 % of our worldwide revenue for 2008 from sources subject to regulations under U.S. government health care programs. In the past, U.S. budget deficit reduction and health care reform measures have changed the reimbursement rates under these programs, including the Medicare composite rate, the reimbursement rate for EPO, and the reimbursement rates for other dialysis and non-dialysis related services and products, as well as other material aspects of these programs, and they may change in the future.

We also obtain a significant portion of our net revenues from reimbursement by non-government payors. Historically, these payors' reimbursement rates generally have been higher than government program rates in their respective countries. However, non-governmental payors are imposing cost containment measures that are creating significant downward pressure on reimbursement levels that we receive for our services and products.

### INFLATION

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

## MANAGEMENT OF FOREIGN EXCHANGE AND INTEREST RATE RISKS

We are primarily exposed to market risk from changes in foreign exchange rates and changes in interest rates. In order to manage the risks from these foreign exchange rate and interest rate fluctuations, we enter into various hedging transactions, as authorized by the Management Board of the General Partner, with banks which generally have ratings in the "A" Category or better. We do not use financial instruments for trading or other speculative purposes.

Fresenius SE, as provided for under a service agreement, conducts financial instrument activity for us and its other subsidiaries under the control of a single centralized department. Fresenius SE has established guidelines, that we have agreed to, for risk assessment procedures and controls for the use of financial instruments. They include a clear segregation of duties with regard to execution on one side and administration, accounting and controlling on the other.

FOREIGN EXCHANGE RISK. We conduct our business on a global basis in various currencies, although our operations are located principally in the United States and Germany. For financial reporting purposes, we have chosen the U.S. dollar as our reporting currency. Therefore, changes in the rate of exchange between the U.S. dollar and the local currencies in which the financial statements of our international operations are maintained, affect our results of operations and financial position as reported in our consolidated financial statements. We have consolidated the balance sheets of our non-U.S. dollar denominated operations into U.S. dollars at the exchange rates prevailing at the balance sheet date. Revenues and expenses are translated at the average exchange rates for the period.

Our exposure to market risk for changes in foreign exchange rates relates to transactions such as sales and purchases. We have significant amounts of sales of products invoiced in euro from our European manufacturing facilities to our other international operations. This exposes our subsidiaries to fluctuations in the rate of exchange between the euro and the currency in which their local operations are conducted. For the purpose of hedging existing and foreseeable foreign exchange transaction exposures we enter into foreign exchange forward contracts and, on a small scale, foreign exchange options. Our policy, which has been consistently followed, is that financial derivatives be used only for purposes of hedging foreign currency exposures. We have not used such instruments for purposes other than hedging.

In connection with intercompany loans in foreign currency, we normally use foreign exchange swaps thus assuring that no foreign exchange risks arise from those loans.

The Company is exposed to potential losses in the event of non-performance by counterparties to financial instruments. We do not expect any counterparty to fail to meet its obligations as the counterparties are banks which generally have ratings in the "A" Category or better. The current credit exposure of foreign exchange derivatives is represented by the fair value of those contracts with a positive fair value at the reporting date. The table below provides information about our foreign exchange forward contracts at December 31, 2008. The information is provided in U.S. dollar equivalent amounts. The table presents the notional amounts by year of maturity, the fair values of the contracts, which show the unrealized net gain (loss) on existing contracts as of December 31, 2008, and the credit risk inherent to those contracts with positive market values as of December 31, 2008. All contracts expire within 25 months after the reporting date.

*Table 04.6.1* **FOREIGN CURRENCY RISK MANAGEMENT**

| *$ in million, December 31* | *Nominal amount* | | | | *Fair value* | *Credit risk* |
|---|---|---|---|---|---|---|
| | *2009* | *2010* | *2011* | *Total* | | |
| Purchase of € against $ | 113 | 41 | – | 154 | – | 7 |
| Sale of € against $ | 14 | – | – | 14 | – | – |
| Purchase of € against others | 501 | 32 | – | 533 | 12 | 38 |
| Sale of € against others | 30 | – | – | 30 | – | – |
| Others | 83 | 15 | 1 | 99 | 2 | 9 |
| **TOTAL** | **741** | **88** | **1** | **830** | **14** | **54** |

A summary of the high and low exchange rates for the Euro to U.S. dollars and the average exchange rates for the last five years is set forth below.

*Table 04.6.2*

| *$ per €* | *Year's high* | *Year's low* | *Year's average* | *Year's close* |
|---|---|---|---|---|
| **2008** | **1.5990** | **1.2460** | **1.4713** | **1.3917** |
| 2007 | 1.4874 | 1.2893 | 1.3705 | 1.4721 |
| 2006 | 1.3331 | 1.1826 | 1.2558 | 1.3170 |
| 2005 | 1.3507 | 1.1667 | 1.2442 | 1.1797 |
| 2004 | 1.3633 | 1.1802 | 1.2439 | 1.3621 |

FOREIGN EXCHANGE SENSITIVITY ANALYSIS. In order to estimate and quantify the transaction risks from foreign currencies, the Company considers the cash flows reasonably expected for the three months following the reporting date as the relevant assessment basis for a sensitivity analysis. For this analysis, the Company assumes that all foreign exchange rates in which the Company had unhedged positions as of the reporting date would be negatively impacted by 10 %. By multiplying the calculated unhedged risk positions with this factor, the maximum possible negative impact of the foreign exchange transaction risks on the Company's results of operations would be $11 million.

INTEREST RATE RISK. We are exposed to changes in interest rates that affect our variable-rate borrowings. We enter into debt obligations and into accounts receivable securitizations to support our general corporate purposes including capital expenditures and working capital needs. Consequently, we enter into derivatives, particularly interest rate swaps to protect interest rate exposures arising from borrowings at floating rates by effectively swapping them into fixed rates.

We enter into interest rate swap agreements that are designated as cash flow hedges effectively converting the major part of variable interest rate payments due on our 2006 Senior Credit Agreement denominated in U.S. dollars into fixed interest rate payments. Those swap agreements, all of which expire at various dates between 2009 and 2012, in the notional amount of $2.85 billion, effectively fix the Company's variable interest rate exposure on the majority of its U.S. dollar-denominated revolving loans at an average interest rate of 4.37 % plus an applicable margin. Interest payable and interest receivable under the swap agreements are accrued and recorded as an adjustment to interest expense at each reporting date. At December 31, 2008, the negative fair value of these agreements is $149 million.

The table below presents principal amounts and related weighted average interest rates by year of maturity for interest rate swaps and for our significant debt obligations.

*Table 04.6.3* **INTEREST RATE EXPOSURE**

| *$ in million* | *2009* | *2010* | *2011* | *2012* | *2013* | *Thereafter* | *Total* | *Fair value Dec. 31, 2008* |
|---|---|---|---|---|---|---|---|---|
| **Floating Rate $ Debt** | | | | | | | | |
| Principal payments on Senior Credit Agreement<br>Variable interest rate = 3.92 % | 134 | 134 | 1,410 | 1,142 | 379 | | 3,199 | 3,199 |
| Accounts receivable securitization programs<br>Variable interest rate = 2.29 % | 539 | | | | | | 539 | 539 |
| EIB loans<br>Variable interest rate = 2.03 % | | | | | 49 | | 49 | 49 |
| **Floating Rate € Debt** | | | | | | | | |
| Principal payments on Senior Credit Agreement<br>Variable interest rate = 3.49 % | | | 167 | | | | 167 | 167 |
| Euro Notes 2005/2009<br>Variable interest rate = 6.871 % | 103 | | | | | | 103 | 103 |
| EIB loan<br>Variable interest rate = 4.77 % | | | | | | 125 | 125 | 125 |
| **Fixed Rate $ Debt** | | | | | | | | |
| Company obligated mandatorily redeemable preferred securities of subsidiaries Fresenius Medical Care Capital Trust<br>Fixed interest rate = 7.875 %/issued in 2001 | | | 224 | | | | 224 | 213 |
| Senior Notes 2007/2017<br>Fixed interest rate = 6.875 % | | | | | | 492 | 492 | 466 |
| **Fixed Rate € Debt** | | | | | | | | |
| Company obligated mandatorily redeemable preferred securities of subsidiaries Fresenius Medical Care Capital Trust<br>Fixed interest rate = 7.375 %/issued in 2001 (denominatedin EUR) | | | 417 | | | | 417 | 413 |
| Euro Notes 2005/2009;<br>Fixed interest rate = 4.57 % | 175 | | | | | | 175 | 173 |
| **Interest Rate derivatives** | | | | | | | | |
| $ Payer Swaps Notional amount | 450 | 250 | 1,000 | 1,150 | | | 2,850 | (149) |
| Average fixed pay rate = 4.37 % | 4.84 % | 4.28 % | 4.10 % | 4.45 % | | | 4.37 % | |
| Receive rate = 3-month $LIBOR | | | | | | | | |

*All variable interest rates depicted above are as of December 31, 2008*

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

# 04.7 COMPENSATION OF MANAGEMENT BOARD AND SUPERVISORY BOARD

## REPORT OF THE MANAGEMENT BOARD OF FRESENIUS MEDICAL CARE MANAGEMENT AG, OUR GENERAL PARTNER

The compensation report of Fresenius Medical Care AG & Co. KGaA summarizes the principles applied for the determination of the compensation of the management board members of Fresenius Medical Care Management AG as general partner of Fresenius Medical Care AG & Co. KGaA and explains the amounts and structure of the management board compensation.

The compensation report is based on the recommendations of the German Corporate Governance Code and also includes the disclosures in accordance with the Commercial Code extended by the Act on the Disclosure of Management Board Compensation.

### I. COMPENSATION OF THE MANAGEMENT BOARD

Determination of the compensation of the management board is made by the full supervisory board of Fresenius Medical Care Management AG. In the fiscal year 2008, the supervisory board was, for the first time, supported in this manner by a personnel committee, the "Human Resources Committee". In the year under report, the Human Resources Committee consisted of Dr. Ulf M. Schneider, Dr. Gerd Krick, Dr. William P. Johnston and Dr. Walter Weisman. The objective of the compensation system is to enable the members of the management board to participate in the development of the business relative to their duties and performance and the successes in managing the economic and financial position of the Company taking into account its comparable environment.

The compensation of the management board is, as a whole, performance oriented and consists of three elements in fiscal year 2008:

- non-performance related compensation (basic salary)
- performance related compensation (variable bonus)
- components with long-term incentive effect (share options, share-based compensation with cash settlement)

Furthermore, three members of the management board had pension commitments in the reporting period. The design of the individual components is based on the following criteria:

The non-performance-related compensation was paid in twelve monthly installments as basic salary in fiscal year 2008. In addition, the members of the management board received additional benefits consisting mainly of insurance premiums, the private use of company cars, special payments such as foreign supplements, rent supplements and reimbursement of certain other charges and additional contributions to pension and health insurance.

The performance-related compensation will also be granted for fiscal year 2008 as a variable bonus. The amount of the bonus in each case depends on the achievement of individual and common targets. For the total performance-related compensation, the maximum achievable bonus is fixed. The targets are measured on revenue growth, consolidated net income and operating income (EBIT) as well as the development of cash flow, are in part subject to a comparison with the previous year's figures and can for another part be derived from the comparison of budgeted and actually achieved figures. Furthermore, targets are divided into group level targets and those to be achieved in individual regions. The regional targets also include in some cases special components which are for a three-year period, and therefore only for the fiscal years 2006, 2007 and 2008, linked to a special bonus component to the achievement of extraordinary financial targets connected to special integration measures, e. g. in connection with the acquisition of Renal Care Group in the U.S. The special components require an extraordinary increase in earnings. These special bonus components thereby consist in equal parts of cash payments and a share-based compensation based on the development of the stock exchange price of the Company's ordinary shares. Once the annual targets are achieved, the cash was or will be paid after the end of the respective fiscal year. The share-based compensation also to be granted yearly in these cases is subject to a three-year vesting period. The amount of cash payment of this share-based compensation corresponds to the share price of Fresenius Medical Care AG & Co. KGaA ordinary shares on exercise, and is, for that reason, attributed to the long-term incentive compensation components.

For fiscal years 2008 and 2007 the amount of the cash payment of the management board of Fresenius Medical Care Management AG consisted of the following:

*Table 04.7.1*

| $ in thousands | Non-performance related compensation | | | | Performance related compensation | | Cash compensation (without long-term incentive components) | |
|---|---|---|---|---|---|---|---|---|
| | Salary | | Other[1] | | Bonus | | | |
| | 2008 | 2007 | 2008 | 2007 | 2008 | 2007 | 2008 | 2007 |
| Dr. Ben J. Lipps | 1,200 | 1,050 | 297 | 315 | 1,417 | 2,257 | 2,914 | 3,622 |
| Roberto Fusté | 515 | 480 | 270 | 251 | 290 | 624 | 1,075 | 1,355 |
| Dr. Emanuele Gatti | 809 | 637 | 95 | 63 | 968 | 1,530 | 1,872 | 2,230 |
| Rice Powell | 750 | 700 | 44 | 46 | 1,053 | 1,541 | 1,847 | 2,287 |
| Lawrence A. Rosen | 589 | 548 | 126 | 115 | 750 | 1,197 | 1,465 | 1,860 |
| Dr. Rainer Runte | 486 | 452 | 42 | 41 | 644 | 979 | 1,172 | 1,472 |
| Mats Wahlstrom | 850 | 800 | 46 | 47 | 1,244 | 1,761 | 2,140 | 2,608 |
| **TOTAL** | **5,199** | **4,667** | **920** | **878** | **6,366** | **9,889** | **12,485** | **15,434** |

[1] *Includes insurance premiums, private use of company cars, contributions to pension and health insurance and other benefits.*

In fiscal year 2008 stock options based on the Stock Option Plan 2006 were granted as components with long-term incentive effect. The principles of the Stock Option Plan 2006 are described in more detail in *Note 15* "Stock Options". As of January 1, 2008, the Company had three additional Employee Participation Programs secured by conditional capital which entitled their participants to convertible bonds or stock options and under which however, no further options could be issued.

In connection with these successful employee participation programs of the past fiscal years, Fresenius Medical Care AG & Co. KGaA implemented Stock Option Plan 2006 approved by resolution of the general meeting on May 9, 2006 and amended by resolution of the general meeting of May 15, 2007 (share split 1:3). A total of 2,499,021 stock options were granted under the Stock Option Plan 2006 on July 28, 2008, of which 398,400 options were granted to the members of the management board.

For fiscal years 2008 and 2007 the number and value of stock options issued and also the value of the share-based compensation is shown in the following table.

*Table 04.7.2* **COMPONENTS WITH LONG-TERM INCENTIVE EFFECTS**

| | *Stock options* | | | | *Share-based compensation with cash settlement* | | *Total* | |
|---|---|---|---|---|---|---|---|---|
| | *Number* | | *Value $ in thousands* | | *Value $ in thousands* | | *Value $ in thousands* | |
| | *2008* | *2007* | *2008* | *2007* | *2008* | *2007* | *2008* | *2007* |
| Dr. Ben J. Lipps | 99,600 | 99,600 | 1,537 | 1,318 | 626 | 1,243 | 2,163 | 2,561 |
| Roberto Fusté | 49,800 | 49,800 | 768 | 659 | – | – | 768 | 659 |
| Dr. Emanuele Gatti | 49,800 | 49,800 | 768 | 659 | 260 | 366 | 1,028 | 1,025 |
| Rice Powell | 49,800 | 49,800 | 768 | 659 | 348 | 841 | 1,116 | 1,500 |
| Lawrence A. Rosen | 49,800 | 49,800 | 768 | 659 | 307 | 649 | 1,075 | 1,308 |
| Dr. Rainer Runte | 49,800 | 49,800 | 768 | 659 | 253 | 535 | 1,021 | 1,194 |
| Mats Wahlstrom | 49,800 | 49,800 | 768 | 659 | 395 | 961 | 1,163 | 1,620 |
| **TOTAL** | **398,400** | **398,400** | **6,145** | **5,272** | **2,189** | **4,595** | **8,334** | **9,867** |

The stated values of the stock options granted to members of the management board in fiscal year 2008 correspond to their fair value at the time of grant, namely a value of $15.43 (€9.80) (2007: $13.23/€9.71) per stock option. The exercise price for the stock options granted is $55.88 (€35.49) (2007: $46.22/€33.91).

At the end of fiscal year 2008, the members of the management board held a total of 2,159,720 stock options (December 31, 2007: 1,922,628 stock options).

The development and the status of the stock options of the members of the management board during 2008 are shown in more detail in the following table:

*Table 04.7.3*

| | *Options outstanding at January 1, 2008* | | *Options granted during the fiscal year* | | *Options exercised during the fiscal year* | | |
|---|---|---|---|---|---|---|---|
| | *Number* | *Weighted average exercise price in $* | *Number* | *Weighted average exercise price in $* | *Number* | *Weighted average exercise price in $* | *Weighted average share price in $* |
| Dr. Ben J. Lipps | 824,280 | 31.05 | 99,600 | 55.88 | 105,469 | 24.01 | 49.55 |
| Roberto Fusté | 241,476 | 31.15 | 49,800 | 55.88 | – | – | – |
| Dr. Emanuele Gatti | 226,476 | 31.76 | 49,800 | 55.88 | – | – | – |
| Rice Powell | 162,846 | 36.84 | 49,800 | 55.88 | 35,469 | 28.20 | 49.09 |
| Lawrence A. Rosen | 177,804 | 36.47 | 49,800 | 55.88 | – | – | – |
| Dr. Rainer Runte | 157,953 | 38.50 | 49,800 | 55.88 | – | – | – |
| Mats Wahlstrom | 131,793 | 40.23 | 49,800 | 55.88 | 20,370 | 24.81 | 49.20 |
| **TOTAL** | **1,922,628** | **33.38** | **398,400** | **55.88** | **161,308** | **25.03** | **49.40** |

| | *Options outstanding at December 31, 2008* | | | | *Options exercisable at December 31, 2008* | |
|---|---|---|---|---|---|---|
| | *Number* | *Weighted average exercise price in $* | *Weighted average remaining contractual life in years* | *Range of exercise price in $* | *Number* | *Weighted average exercise price in $* |
| Dr. Ben J. Lipps | 818,411 | 34.19 | 3.7 | 20.14–55.88 | 519,611 | 27.21 |
| Roberto Fusté | 291,276 | 34.27 | 5.0 | 15.89–55.88 | 141,876 | 21.56 |
| Dr. Emanuele Gatti | 276,276 | 34.93 | 5.1 | 15.89–55.88 | 126,876 | 21.50 |
| Rice Powell | 177,177 | 42.10 | 5.4 | 15.89–55.88 | 27,777 | 19.29 |
| Lawrence A. Rosen | 227,604 | 39.90 | 5.5 | 23.91–55.88 | 78,204 | 25.85 |
| Dr. Rainer Runte | 207,753 | 41.11 | 5.3 | 19.98–55.88 | 58,353 | 27.73 |
| Mats Wahlstrom | 161,223 | 45.01 | 5.6 | 28.20–55.88 | 11,823 | 28.20 |
| **TOTAL** | **2,159,720** | **36.96** | **4.7** | **15.89–55.88** | **964,520** | **25.33** |

On the basis of the financial targets achieved in fiscal year 2008, additional rights for share-based compensation with cash settlement amounting to $2,189,419 (2007: $4,595,000) were earned. Since the actual distribution will only take place in March 2009, the number of shares will, on the basis of the then current share price, be determined only then by the supervisory board and serve as the basis for the calculation of the payment after the three year waiting period.

The amount of the total compensation of the management board of Fresenius Medical Care Management AG for fiscal years 2008 and 2007 consisted of:

*Table 04.7.4*

*$ in thousands*

| | *Cash compensation (without long-term incentive components)* | | *Components with long-term incentive effect* | | *Total compensation (including long-term incentive components)* | |
|---|---|---|---|---|---|---|
| | *2008* | *2007* | *2008* | *2007* | *2008* | *2007* |
| Dr. Ben J. Lipps | 2,914 | 3,622 | 2,163 | 2,561 | 5,077 | 6,183 |
| Roberto Fusté | 1,075 | 1,355 | 768 | 659 | 1,843 | 2,014 |
| Dr. Emanuele Gatti | 1,872 | 2,230 | 1,028 | 1,025 | 2,900 | 3,255 |
| Rice Powell | 1,847 | 2,287 | 1,116 | 1,500 | 2,963 | 3,787 |
| Lawrence A. Rosen | 1,465 | 1,860 | 1,075 | 1,308 | 2,540 | 3,168 |
| Dr. Rainer Runte | 1,172 | 1,472 | 1,021 | 1,194 | 2,193 | 2,666 |
| Mats Wahlstrom | 2,140 | 2,608 | 1,163 | 1,620 | 3,303 | 4,228 |
| **TOTAL** | **12,485** | **15,434** | **8,334** | **9,867** | **20,819** | **25,301** |

The components with long-term incentive effect can be exercised only after the expiry of the specified vesting period. Their value is recognized over the vesting period as expense in the respective fiscal year. The expenses attributable to fiscal years 2008 and 2007 are stated in the following table.

*Table 04.7.5*

*$ in thousands*

| | *Expense for long-term incentive components with equity instruments* | | *Expense for long-term incentive components by share-based compensation with cash settlement* | | *Total expense for share-based compensation* | |
|---|---|---|---|---|---|---|
| | *2008* | *2007* | *2008* | *2007* | *2008* | *2007* |
| Dr. Ben J. Lipps | 1,188 | 769 | 796 | 379 | 1,984 | 1,148 |
| Roberto Fusté | 594 | 384 | – | – | 594 | 384 |
| Dr. Emanuele Gatti | 594 | 384 | 265 | 133 | 859 | 517 |
| Rice Powell | 594 | 378 | 488 | 224 | 1,082 | 602 |
| Lawrence A. Rosen | 594 | 398 | 385 | 147 | 979 | 545 |
| Dr. Rainer Runte | 594 | 384 | 340 | 144 | 934 | 528 |
| Mats Wahlstrom | 594 | 378 | 558 | 256 | 1,152 | 634 |
| **TOTAL** | **4,752** | **3,075** | **2,832** | **1,283** | **7,584** | **4,358** |

The non-performance related compensation components and the basic structures of the performance-related compensation components are agreed in the service agreements with the individual management board members. The stock options are granted on an annual basis by the supervisory board to members of the management board.

## II. COMMITMENTS TO MEMBERS OF THE MANAGEMENT BOARD FOR THE EVENT OF THE TERMINATION OF THEIR APPOINTMENT

There are individual contractual pension commitments for the management board members Roberto Fusté, Dr. Emanuele Gatti and Lawrence A. Rosen. With regard to these pension commitments, the Company as of December 31, 2008 has pension obligations of $3,354,178 (at December 31, 2007: $3,192,997). The additions to pension obligations in fiscal year 2008 amounted to $422,394 (2007: $1,530,166). Each of the pension commitments provides a pension and survivor benefit, depending on the amount of the most recent basic salary, from the 65th year of life, or, in the case of termination because of professional or occupational incapacity, from the time of ending active work. The starting percentage of 30 % increases with every year of service by 1.5 percentage points, 45 % being the attainable maximum. 30 % of the gross amount of any later income from an occupation of the management board member is set-off against the pension.

With the chairman of the management board, Dr. Ben Lipps, there is an individual agreement, instead of a pension provision, to the effect that, taking account of a competitive restriction after the ending of the employment contract / service agreement between him and Fresenius Medical Care Management AG, he can, for a period of ten years, act in a consultative capacity for the company. The consideration to be granted annually by Fresenius Medical Care Management AG in return would amount to approximately 33 % of the non-performance related compensation components paid to him in the fiscal year 2008.

The management board members Dr. Emanuele Gatti, Rice Powell and Mats Wahlstrom have been granted benefits (severance, calculated on the basis of guaranteed simple annual income, based on the relevant basic salary) by individual agreements for the event that their employment with Fresenius Medical Care Management AG should end. One half of any additional compensation payments which the said management board members would be entitled to in connection with existing post-contractual prohibitions of competitive activity would be set-off against these severance payments. The employment contracts of management board members contain no express provisions for the case of a change of control.

## III. MISCELLANEOUS

In fiscal year 2008, no loans or advance payments of future compensation components were made to members of the management board of Fresenius Medical Care Management AG.

As far as legally permitted, Fresenius Medical Care Management AG undertook to indemnify the members of the management board against claims against them arising out of their work for the company and its affiliates, if such claims exceed their responsibilities under German law. To secure such obligations, the company concluded a Directors & Officers insurance with an appropriate excess. The indemnity applies for the time in which each member of the management board is in office and for claims in this connection after the ending of the membership of the management board in each case.

Former members of the management board did not receive any compensation in fiscal year 2008.

## COMPENSATION OF THE SUPERVISORY BOARD

The compensation of the Supervisory Board of FMC-AG & Co. KGaA is regulated in § 13 of its statute.

Corresponding to this regulation the Company reimburses the Supervisory Board members for expenses incurred from their duties as Supervisory Board members, including value added tax.

Each member of the supervisory board shall receive a fixed fee of $ 80,000 per annum for each full fiscal year, payable in four equal installments at the end of each calendar quarter. In the event that the general meeting, taking into consideration the annual results, resolves a higher remuneration by a three fourths majority of the votes cast, such higher remuneration shall be payable.

The chairman of the supervisory board shall receive additional remuneration in the amount of $ 80,000 and his deputy additional remuneration in the amount of $ 40,000. As a member of a committee, a supervisory board member shall receive, in addition, $ 30,000 per year. As chairman of a committee a supervisory board member shall receive additional remuneration of $ 20,000 per year, payable in each case in four equal installments at the end of each calendar quarter.

To the extent that a member of the supervisory board is at the same time member of the supervisory board of the General Partner Management AG and receives remuneration for his services as member of the supervisory board of the Management AG, the remuneration will be reduced to half of it. The same shall apply in relation to additional remuneration of the Chairman and his deputy if such person is, at the same time, the chairman or his deputy, respectively, of the supervisory board of the Management AG. If the deputy of the chairman of the supervisory board of the Company is at the same time chairman of the supervisory board of the Management AG he shall not receive additional remuneration for his services as deputy of the chairman of the Company.

As regulated in § 7 of the Company's statute the aggregate compensation fees to the members of the Supervisory Board of the General Partner Management AG and to its committees were charged to FMC-AG & Co. KGaA.

For the years 2008 and 2007 the compensation for the members of the supervisory boards were as follows:

*Table 04.7.6*

| *$ in thousands*[1] | *Fixed compensation* | | *Compensation for committee services at Management AG*[4] | | *Compensation for committee services at KGaA* | | *Total compensation* | |
|---|---|---|---|---|---|---|---|---|
| | *2008* | *2007* | *2008* | *2007* | *2008* | *2007* | *2008* | *2007* |
| Dr. Gerd Krick | 160 | 160 | 20 | – | 30 | 30 | 210 | 190 |
| Dr. Dieter Schenk | 120 | 120 | 15 | – | – | – | 135 | 120 |
| Dr. Ulf M. Schneider[2] | 160 | 160 | 25 | – | – | – | 185 | 160 |
| Dr. Walter L. Weisman | 80 | 80 | 15 | – | 50 | 50 | 145 | 130 |
| John Gerhard Kringel | 80 | 80 | 20 | – | 30 | 30 | 130 | 110 |
| Dr. William P. Johnston | 80 | 80 | 40 | – | 30 | 30 | 150 | 110 |
| Prof. Dr. Bernd Fahrholz[3] | 80 | 80 | – | – | 30 | 30 | 110 | 110 |
| **TOTAL** | **760** | **760** | **135** | **–** | **170** | **170** | **1,065** | **930** |

[1] *Shown without VAT and withholding tax.*
[2] *Chairman of the supervisory board of Management AG, but not member of the supervisory board of KGaA; fixed compensation paid by Management AG.*
[3] *Member of the supervisory board of KGaA, but not member of the supervisory board of Management AG; fixed compensation paid by KGaA.*
[4] *At Management AG level committees have been established in Q3 2008 only; hence, the respective compensation was paid on a pro rata basis.*

# *Chap.* 05.1–8 CONSOLIDATED FINANCIAL STATEMENTS



*Employee* **TOBY JONES**
*Job Title* **DIRECTOR OF MARKETING ASIA-PACIFIC**
*Age* **50 YEARS**
*Nationality* **AUSTRALIAN**
*Joined* **IN JULY 2003**

## WHY DOES QUALITY MAKE BUSINESS SENSE?

"Quality ensures that we deliver the best products and services to our customers. They can rely on Fresenius Medical Care to fulfil this promise every day. And that is why we are the leading provider in the field of dialysis – with all the economic benefits that this market position entails." *living* **CONFIDENCE**

# 05.1 CONSOLIDATED STATEMENTS OF INCOME

*Table 05.1.1* **CONSOLIDATED STATEMENTS OF INCOME**

| *$ in thousands, except share data* | *Note* | *2008* | *2007* |
|---|---|---|---|
| **Net revenue** | | | |
| Dialysis care | *1I* | 7,737,498 | 7,213,000 |
| Dialysis products | | 2,874,825 | 2,507,314 |
| **TOTAL** | *22* | **10,612,323** | **9,720,314** |
| **Costs of revenue** | | | |
| Dialysis care | | 5,547,615 | 5,130,287 |
| Dialysis products | | 1,435,860 | 1,234,232 |
| **TOTAL** | | **6,983,475** | **6,364,519** |
| Gross profit | | 3,628,848 | 3,355,795 |
| **Operating expenses** | | | |
| Selling, general and administrative | | 1,876,177 | 1,709,150 |
| Research and development | *1J* | 80,239 | 66,523 |
| **OPERATING INCOME** | | **1,672,432** | **1,580,122** |
| **Other (income) expense** | | | |
| Interest income | | (24,811) | (28,588) |
| Interest expense | | 361,553 | 399,635 |
| Income before income taxes and minority interest | | 1,335,690 | 1,209,075 |
| Income tax expense | *1K, 16* | 489,142 | 465,652 |
| Minority interest | | 28,941 | 26,293 |
| **NET INCOME** | | **817,607** | **717,130** |
| **BASIC INCOME PER ORDINARY SHARE** | | **2.75** | **2.43** |
| **FULLY DILUTED INCOME PER ORDINARY SHARE** | | **2.75** | **2.42** |

*See accompanying notes to consolidated financial statements.*

# 05.2 CONSOLIDATED BALANCE SHEETS

*Table 05.2.1* **CONSOLIDATED BALANCE SHEETS**

| *$ in thousands, except share data, at December 31* | *Note* | *2008* | *2007* |
|---|---|---|---|
| **Assets** | | | |
| **Current assets** | | | |
| Cash and cash equivalents | *1B* | 221,584 | 244,690 |
| Trade accounts receivable, less allowance for doubtful accounts of $ 262,836 in 2008 and $ 247,800 in 2007 | | 2,176,316 | 2,026,865 |
| Accounts receivable from related parties | | 175,525 | 99,626 |
| Inventories | *4* | 707,050 | 636,234 |
| Prepaid expenses and other current assets | | 607,399 | 495,630 |
| Deferred taxes | *1K, 16* | 324,123 | 356,427 |
| **TOTAL CURRENT ASSETS** | | **4,211,997** | **3,859,472** |
| Property, plant and equipment, net | *1E, 5* | 2,236,078 | 2,053,793 |
| Intangible assets | *1F, 6* | 846,496 | 689,956 |
| Goodwill | *1F, 6* | 7,309,910 | 7,245,589 |
| Deferred taxes | *1K, 16* | 92,805 | 83,615 |
| Other assets | | 222,390 | 237,840 |
| **TOTAL ASSETS** | | **14,919,676** | **14,170,265** |

*See accompanying notes to consolidated financial statements.*

Table 05.2.2 CONSOLIDATED BALANCE SHEETS

| $ in thousands, except share data, at December 31 | Note | 2008 | 2007 |
|---|---|---|---|
| **Liabilities and shareholders' equity** | | | |
| **Current liabilities** | | | |
| Accounts payable | | 366,017 | 329,919 |
| Accounts payable to related parties | | 239,243 | 201,049 |
| Accrued expenses and other current liabilities | 7 | 1,288,433 | 1,352,013 |
| Short-term borrowings and other financial liabilities | 8 | 683,155 | 217,497 |
| Short-term borrowings from related parties | 8 | 1,330 | 2,287 |
| Current portion of long-term debt and capital lease obligations | 9 | 455,114 | 84,816 |
| Company-obligated mandatorily redeemable preferred securities of subsidiary Fresenius Medical Care Capital Trusts holding solely Company-guaranteed debentures of subsidiaries – current portion | 11 | – | 669,787 |
| Income tax payable | 1K, 16 | 82,468 | 146,536 |
| Deferred taxes | 1K, 16 | 28,652 | 22,589 |
| **TOTAL CURRENT LIABILITIES** | | **3,144,412** | **3,026,493** |
| Long-term debt and capital lease obligations, less current portion | 9 | 3,957,379 | 4,004,013 |
| Other liabilities | | 319,602 | 193,604 |
| Pension liabilities | 10 | 136,755 | 111,352 |
| Income tax payable | 1K, 16 | 171,747 | 111,280 |
| Deferred taxes | 1K, 16 | 426,299 | 378,497 |
| Company-obligated mandatorily redeemable preferred securities of subsidiary Fresenius Medical Care Capital Trusts holding solely Company-guaranteed debentures of subsidiaries | 11 | 640,696 | 663,995 |
| Minority interest | | 160,504 | 105,814 |
| **TOTAL LIABILITIES** | | **8,957,394** | **8,595,048** |
| **Shareholders' equity** | | | |
| Preference shares, no par value, € 1.00 nominal value, 12,356,880 shares authorized, 3,810,540 issued and outstanding | | 4,240 | 4,191 |
| Ordinary shares, no par value, € 1.00 nominal value 373,436,220 shares authorized, 293,932,036 issued and outstanding | | 363,076 | 361,384 |
| Additional paid-in capital | | 3,293,918 | 3,221,644 |
| Retained earnings | | 2,452,332 | 1,887,120 |
| Accumulated other comprehensive (loss) income | 21 | (151,284) | 100,878 |
| **TOTAL SHAREHOLDERS' EQUITY** | 13 | **5,962,282** | **5,575,217** |
| **TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY** | | **14,919,676** | **14,170,265** |

*See accompanying notes to consolidated financial statements.*

# 05.3 CONSOLIDATED STATEMENTS OF CASH FLOWS

*Table 05.3.1* **CONSOLIDATED STATEMENTS OF CASH FLOWS**

| *$ in thousands* | *Note* | *2008* | *2007* |
|---|---|---|---|
| **Operating activities** | | | |
| Net income | | 817,607 | 717,130 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | | |
| Depreciation and amortization | 22 | 415,671 | 363,330 |
| Change in minority interest | | 59,555 | 43,237 |
| Change in deferred taxes, net | | 133,047 | 1,177 |
| (Gain) Loss on sale of fixed assets and investments | | (21,064) | 3,616 |
| Compensation expense related to stock options | 1T, 15 | 31,879 | 24,208 |
| Changes in assets and liabilities, net of amounts from businesses acquired: | | | |
| Trade accounts receivable, net | | (241,967) | (62,735) |
| Inventories | 4 | (94,112) | (72,825) |
| Prepaid expenses, other current and non-current assets | | (101,263) | (11,680) |
| Accounts receivable from/payable to related parties | | 32,252 | (22,265) |
| Accounts payable, accrued expenses and other current and non-current liabilities | | (17,040) | 113,960 |
| Income tax payable | 1K, 16 | 1,833 | 102,421 |
| **NET CASH PROVIDED BY OPERATING ACTIVITIES** | | **1,016,398** | **1,199,574** |

*See accompanying notes to consolidated financial statements.*

*Table 05.3.2* **CONSOLIDATED STATEMENTS OF CASH FLOWS**

| *$ in thousands* | *Note* | *2008* | *2007* |
|---|---|---|---|
| **Investing activities** | | | |
| Purchases of property, plant and equipment | *1E, 5, 22* | (687,356) | (572,721) |
| Proceeds from sale of property, plant and equipment | *1E, 5, 22* | 13,846 | 29,668 |
| Acquisitions and investments, net of cash acquired, and net purchases of intangible assets | *22, 23* | (276,473) | (263,395) |
| Proceeds from divestitures | | 58,582 | 29,495 |
| **NET CASH USED IN INVESTING ACTIVITIES** | | **(891,401)** | **(776,953)** |
| **Financing activities** | | | |
| Proceeds from short-term borrowings and other financial liabilities | *8* | 176,104 | 96,995 |
| Repayments of short-term borrowings and other financial liabilities | *8* | (183,210) | (107,793) |
| Proceeds from short-term borrowings from related parties | *8* | 168,641 | 43,554 |
| Repayments of short-term borrowings from related parties | *8* | (169,573) | (46,071) |
| Proceeds from long-term debt and capital lease obligations (net of debt issuance costs of $ 16,703 in 2007) | *9* | 458,951 | 516,762 |
| Repayments of long-term debt and capital lease obligations | | (135,492) | (486,513) |
| Redemption of trust preferred securities | | (678,379) | – |
| Increase of accounts receivable securitization program | | 454,000 | (181,000) |
| Proceeds from exercise of stock options | *15* | 43,887 | 46,934 |
| Repurchase of preferred stock | | – | (7,660) |
| Dividends paid | *13* | (252,395) | (188,407) |
| Distributions to minority interest | | (38,592) | (27,469) |
| **NET CASH USED IN FINANCING ACTIVITIES** | | **(156,058)** | **(340,668)** |
| **EFFECT OF EXCHANGE RATE CHANGES ON CASH AND CASH EQUIVALENTS** | | **7,955** | **3,727** |
| **Cash and cash equivalents** | | | |
| Net (decrease) increase in cash and cash equivalents | | (23,106) | 85,680 |
| Cash and cash equivalents at beginning of period | | 244,690 | 159,010 |
| **CASH AND CASH EQUIVALENTS AT END OF PERIOD** | | **221,584** | **244,690** |

*See accompanying notes to consolidated financial statements.*

# 05.4 CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY

*Table 05.4.1* **CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY**

| *$ in thousands* | *Note* | *Preference shares* | | *Ordinary shares* | |
|---|---|---|---|---|---|
| | | *Number of shares* | *No par value* | *Number of shares* | *No par value* |
| **BALANCE AT DECEMBER 31, 2006** | | **3,711,435** | **4,098** | **291,449,673** | **359,527** |
| Proceeds from exercise of options and related tax effects | *15* | 66,652 | 93 | 1,336,910 | 1,857 |
| Compensation expense related to stock options | *15* | – | – | – | – |
| Dividends paid | *13* | – | – | – | – |
| Comprehensive income (loss) | | | | | |
| Net income | | – | – | – | – |
| Other comprehensive income (loss) related to: | | | | | |
| Cash flow hedges, net of related tax effects | *21* | – | – | – | – |
| Foreign currency translation | *21* | – | – | – | – |
| Adjustments relating to pension obligations, net of related tax effects | *10, 21* | – | – | – | – |
| Comprehensive Income | | – | – | – | – |
| **BALANCE AT DECEMBER 31, 2007** | | **3,778,087** | **4,191** | **292,786,583** | **361,384** |
| Proceeds from exercise of options and related tax effects | *15* | 32,453 | 49 | 1,145,453 | 1,692 |
| Compensation expense related to stock options | *15* | – | – | – | – |
| Dividends paid | *13* | – | – | – | – |
| Comprehensive income (loss) | | | | | |
| Net income | | – | – | – | – |
| Other comprehensive income (loss) related to: | | | | | |
| Cash flow hedges, net of related tax effects | *21* | – | – | – | – |
| Foreign currency translation | *21* | – | – | – | – |
| Adjustments relating to pension obligations, net of related tax effects | *10, 21* | – | – | – | – |
| Comprehensive Income | | – | – | – | – |
| **BALANCE AT DECEMBER 31, 2008** | | **3,810,540** | **4,240** | **293,932,036** | **363,076** |

*See accompanying notes to consolidated financial statements.*

Table 05.4.2 **CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY**

| $ in thousands | Note | Additional paid in capital | Retained earnings | Accumulated other comprehensive income (loss) | | | Total |
|---|---|---|---|---|---|---|---|
| | | | | Foreign currency translation | Cash flow hedges | Pensions | |
| **BALANCE AT DECEMBER 31, 2006** | | **3,153,556** | **1,358,397** | **8,309** | **37,187** | **(50,912)** | **4,870,162** |
| Proceeds from exercise of options and related tax effects | 15 | 43,880 | – | – | – | – | 45,830 |
| Compensation expense related to stock options | 15 | 24,208 | – | – | – | – | 24,208 |
| Dividends paid | 13 | – | (188,407) | – | – | – | (188,407) |
| Comprehensive income (loss) | | | | | | | |
| Net income | | – | 717,130 | – | – | – | 717,130 |
| Other comprehensive income (loss) related to: | | | | | | | |
| Cash flow hedges, net of related tax effects | 21 | – | – | – | (54,053) | – | (54,053) |
| Foreign currency translation | 21 | – | – | 137,048 | – | – | 137,048 |
| Adjustments relating to pension obligations, net of related tax effects | 10, 21 | – | – | – | – | 23,299 | 23,299 |
| Comprehensive Income | | – | – | – | – | – | 823,424 |
| **BALANCE AT DECEMBER 31, 2007** | | **3,221,644** | **1,887,120** | **145,357** | **(16,866)** | **(27,613)** | **5,575,217** |
| Proceeds from exercise of options and related tax effects | 15 | 40,395 | – | – | – | – | 42,136 |
| Compensation expense related to stock options | 15 | 31,879 | – | – | – | – | 31,879 |
| Dividends paid | 13 | – | (252,395) | – | – | – | (252,395) |
| Comprehensive income (loss) | | | | | | | |
| Net income | | – | 817,607 | – | – | – | 817,607 |
| Other comprehensive income (loss) related to: | | | | | | | |
| Cash flow hedges, net of related tax effects | 21 | – | – | – | (65,180) | – | (65,180) |
| Foreign currency translation | 21 | – | – | (171,063) | – | – | (171,063) |
| Adjustments relating to pension obligations, net of related tax effects | 10, 21 | – | – | – | – | (15,919) | (15,919) |
| Comprehensive Income | | – | – | – | – | – | 565,445 |
| **BALANCE AT DECEMBER 31, 2008** | | **3,293,918** | **2,452,332** | **(25,706)** | **(82,046)** | **(43,532)** | **5,962,282** |

*See accompanying notes to consolidated financial statements.*

# 05.5 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

*In thousands, except share data*

## 1. THE COMPANY, BASIS OF PRESENTATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

### THE COMPANY

Fresenius Medical Care AG & Co. KGaA ("FMC-AG & Co. KGaA" or the "Company", "we", "us" or "our" and together with its subsidiaries on a consolidated basis, as the context requires), a German partnership limited by shares (Kommanditgesellschaft auf Aktien), is the world's largest kidney dialysis company, operating in both the field of dialysis services and the field of dialysis products for the treatment of end-stage renal disease ("ESRD"). The Company's dialysis business is vertically integrated, providing dialysis treatment at dialysis clinics it owns or operates and supplying these clinics with a broad range of products. In addition, the Company sells dialysis products to other dialysis service providers. In the United States, the Company also performs clinical laboratory testing and provides inpatient dialysis services and other services under contract to hospitals.

### BASIS OF PRESENTATION

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP").

### SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A) PRINCIPLES OF CONSOLIDATION. The consolidated financial statements include all companies in which the Company has legal or effective control. In addition, the Company consolidates variable interest entities ("VIEs") for which it is deemed the primary beneficiary. The equity method of accounting is used for investments in associated companies (20 % to 50 % owned). Minority interest represents the proportionate equity interests of owners in the Company's consolidated entities that are not wholly owned. All significant intercompany transactions and balances have been eliminated.

The Company entered into various arrangements with certain dialysis clinics to provide management services, financing and product supply. A group of these clinics has negative equity and are unable to provide their own funding, therefore the Company has agreed to fund their operations for at least a six year period. The funding carries no interest but the Company is entitled to a pro rata share of profits, if any, and has a right of first refusal in the event the owners sell the business or assets. These clinics are VIEs in which the Company has been determined to be the primary beneficiary and which therefore have been fully consolidated. They generated approximately $88,508 and $79,164 in revenue in 2008 and 2007, respectively. The following table shows the carrying amounts of the assets and liabilities of these VIEs:

*Table 05.5.1* **CARRYING AMOUNTS VIE**

*$ in thousands*

| | |
|---|---|
| Trade accounts receivable, net | 22,207 |
| Other current assets | 7,308 |
| Property, plant and equipment, intangible assets & other non-current assets | 6,466 |
| Goodwill | 13,992 |
| Accounts payable, accrued expenses and other liabilities | (19,306) |
| Non-current loans to related parties | (10,086) |
| Equity | (20,581) |

B) CASH AND CASH EQUIVALENTS. Cash and cash equivalents comprise cash funds and all short-term, liquid investments with original maturities of up to three months.

C) ALLOWANCE FOR DOUBTFUL ACCOUNTS. Estimates for the allowances for accounts receivable from the dialysis care business are based mainly on past collection history. Specifically, the allowances for the North American services division are based on an analysis of collection experience, recognizing the differences between payors and aging of accounts receivable. From time to time, accounts receivable are reviewed for changes from the historic collection experience to ensure the appropriateness of the allowances. The allowances in the International Segment and the products business are based on estimates and consider various factors, including aging, debtor and past collection history.

D) INVENTORIES. Inventories are stated at the lower of cost (determined by using the average or first-in, first-out method) or market value (*see Note 4*). Costs included in inventories are based on invoiced costs and/or production costs as applicable. Included in production costs are material, direct labor and production overhead, including depreciation charges.

E) PROPERTY, PLANT AND EQUIPMENT. Property, plant, and equipment are stated at cost less accumulated depreciation (*see Note 5*). Significant improvements are capitalized; repairs and maintenance costs that do not extend the useful lives of the assets are charged to expense as incurred. Property and equipment under capital leases are stated at the present value of future minimum lease payments at the inception of the lease, less accumulated depreciation. Depreciation on property, plant and equipment is calculated using the straight-line method over the estimated useful lives of the assets ranging from 5 to 50 years for buildings and improvements with a weighted average life of 12 years and 3 to 15 years for machinery and equipment with a weighted average life of 10 years. Equipment held under capital leases and leasehold improvements are amortized using the straight-line method over the shorter of the lease term or the estimated useful life of the asset. Internal use platform software that is integral to the computer equipment it supports is included in property, plant and equipment. The Company capitalizes interest on borrowed funds during construction periods. Interest capitalized during 2008 and 2007 was $8,723 and $5,323, respectively.

F) INTANGIBLE ASSETS AND GOODWILL. Intangible assets such as non-compete agreements, technology, distribution rights, patents, licenses to treat, licenses to manufacture, distribute and sell pharmaceutical drugs, trade names, management contracts, application software, acute care agreements, lease agreements, and licenses acquired in a purchase method business combination are recognized and reported apart from goodwill (*see Note 6*).

Goodwill and identifiable intangibles with indefinite useful lives are not amortized but tested for impairment annually or when an event becomes known that could trigger an impairment. The Company identified trade names and certain qualified management contracts as intangible assets with indefinite useful lives. Intangible assets with finite useful lives are amortized over their respective useful lives to their residual values. The Company amortizes non-compete agreements over their average useful life of 8 years. Technology is amortized over its useful life of 15 years. Licenses to manufacture, distribute and sell pharmaceutical drugs are amortized over their average useful life of 10 years. The U.S. intravenous iron products distribution and manufacturing agreement is amortized over its 10 year contractual license period based upon the annual estimated units of sale of the licensed product. All other intangible assets are amortized over their weighted average useful lives of 6 years. The average useful life of all amortizable intangible assets is 8 years. Intangible assets with finite useful lives are evaluated for impairment when events have occurred that may give rise to an impairment.

To perform the annual impairment test of goodwill, the Company identified its reporting units and determined their carrying value by assigning the assets and liabilities, including the existing goodwill and intangible assets, to those reporting units. In a first step, the Company compares the fair value of each reporting unit to the reporting unit's carrying amount. Fair value is determined using a discounted cash flow approach based upon the cash flow expected to be generated by the reporting unit.

In the case that the fair value of the reporting unit is less than its book value, a second step is performed which compares the fair value of the reporting unit's goodwill to the carrying value of its goodwill. If the fair value of the goodwill is less than the book value, the difference is recorded as an impairment.

To evaluate the recoverability of intangible assets with indefinite useful lives, the Company compares the fair values of intangible assets with their carrying values. An intangible asset's fair value is determined using a discounted cash flow approach or other methods, if appropriate.

G) DERIVATIVE FINANCIAL INSTRUMENTS. Derivative financial instruments which primarily include foreign currency forward contracts and interest rate swaps are recognized as assets or liabilities at fair value in the balance sheet (*see Note 19*). Changes in the fair value of derivative financial instruments classified as fair value hedges and in the corresponding underlyings are recognized periodically in earnings. The effective portion of changes in fair value of cash flow hedges is recognized in accumulated other comprehensive income (loss) in shareholders' equity. The ineffective portion of cash flow hedges is recognized in earnings immediately.

H) FOREIGN CURRENCY TRANSLATION. For purposes of these consolidated financial statements, the U.S. dollar is the reporting currency. Substantially all assets and liabilities of the parent company and all non-U.S. subsidiaries are translated at year-end exchange rates, while revenues and expenses are translated at average exchange rates. Adjustments for foreign currency translation fluctuations are excluded from net earnings and are reported in accumulated other comprehensive income (loss). In addition, the translation adjustments of certain intercompany borrowings, which are considered foreign equity investments, are reported in accumulated other comprehensive income (loss).

I) REVENUE RECOGNITION POLICY. Dialysis care revenues are recognized on the date services and related products are provided and the payor is obligated to pay at amounts estimated to be received under reimbursement arrangements with third party payors. Medicare and Medicaid in North America and programs involving other government payors in the International Segment are billed at pre-determined rates per treatment that are established by statute or regulation. Most non-governmental payors are billed at our standard rates for services net of contractual allowances to reflect the estimated amounts to be received under reimbursement arrangements with these payors.

Dialysis product revenues are recognized when title to the product passes to the customers either at the time of shipment, upon receipt by the customer or upon any other terms that clearly define passage of title. As product returns are not typical, no return allowances are established. In the event a return is required, the appropriate reductions to sales, accounts receivables and cost of sales are made. Sales are stated net of discounts and rebates.

A minor portion of International Segment product revenues is generated from arrangements which give the customer, typically a health care provider, the right to use dialysis machines. In the same contract the customer agrees to purchase the related treatment disposables at a price marked up from the standard price list. FMC-AG & Co. KGaA does not recognize revenue upon delivery of the dialysis machine but recognizes revenue, including the mark-up, on the sale of disposables.

Any tax assessed by a governmental authority that is incurred as a result of a revenue transaction (e.g. sales tax) is excluded from revenues and reported on a net basis.

J) RESEARCH AND DEVELOPMENT EXPENSES. Research and development expenses are expensed as incurred.

K) INCOME TAXES. The Company adopted FASB Interpretation No. 48 ("FIN 48"), Accounting for Uncertainty in Income Taxes – an interpretation of FASB Statement No. 109 Accounting for Income Taxes ("FAS 109") as of January 1, 2007. Deferred tax assets and liabilities are recognized for the future consequences attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis as well as on consolidation procedures affecting net income and tax loss carryforwards which are more likely than not to be utilized. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. A valuation allowance is recorded to reduce the carrying amount of the deferred tax assets unless it is more likely than not that such assets will be realized (*see Note 16*).

It is the Company's policy to recognize interest and penalties related to its tax positions as income tax expense.

L) IMPAIRMENT. The Company reviews the carrying value of its long-lived assets or asset groups with definite useful lives to be held and used for impairment whenever events or changes in circumstances indicate that the carrying value of these assets may not be recoverable. Recoverability of these assets is measured by a comparison of the carrying value of an asset to the future net cash flows directly associated with the asset. If assets are considered to be impaired, the impairment recognized is the amount by which the carrying value exceeds the fair value of the asset. The Company uses a discounted cash flow approach or other methods, if appropriate, to assess fair value.

Long-lived assets to be disposed of by sale are reported at the lower of carrying value or fair value less cost to sell and depreciation is ceased. Long-lived assets to be disposed of other than by sale are considered to be held and used until disposal.

M) DEBT ISSUANCE COSTS. Costs related to the issuance of debt are amortized over the term of the related obligation (*see Note 9*).

N) SELF-INSURANCE PROGRAMS. Under the insurance programs for professional, product and general liability, auto liability and worker's compensation claims, the Company's largest subsidiary is partially self-insured for professional liability claims. For all other coverages, the Company assumes responsibility for incurred claims up to predetermined amounts above which third party insurance applies. Reported liabilities for the year represent estimated future payments of the anticipated expense for claims incurred (both reported and incurred but not reported) based on historical experience and existing claim activity. This experience includes both the rate of claims incidence (number) and claim severity (cost) and is combined with individual claim expectations to estimate the reported amounts.

O) USE OF ESTIMATES. The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

P) CONCENTRATION OF RISK. The Company is engaged in the manufacture and sale of products for all forms of kidney dialysis, principally to health care providers throughout the world, and in providing kidney dialysis treatment, clinical laboratory testing, and other medical ancillary services. The Company performs ongoing evaluations of its customers' financial condition and, generally, requires no collateral.

Approximately 35 % and 36 % of the Company's worldwide revenues were earned and subject to regulations under governmental health care programs, Medicare and Medicaid, administered by the United States government in 2008 and 2007, respectively. (*See Note 4* for concentration of supplier risks.)

Q) LEGAL CONTINGENCIES. From time to time, during the ordinary course of the Company's operations, the Company is party to litigation and arbitration and is subject to investigations relating to various aspects of its business (*see Note 17*). The Company regularly analyzes current information about such claims for probable losses and provides accruals for such matters, including the estimated legal expenses and consulting services in connection with these matters, as appropriate. The Company utilizes its internal legal department as well as external resources for these assessments. In making the decision regarding the need for loss accrual, the Company considers the degree of probability of an unfavorable outcome and its ability to make a reasonable estimate of the amount of loss.

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

R) EARNINGS PER ORDINARY SHARE AND PREFERENCE SHARE. Basic earnings per ordinary share and basic earnings per preference share for all years presented have been calculated using the two-class method required under U.S. GAAP based upon the weighted average number of ordinary and preference shares outstanding. Basic earnings per share is computed by dividing net income less preference amounts by the weighted average number of ordinary shares and preference shares outstanding during the year. Basic earnings per preference share is derived by adding the preference per preference share to the basic earnings per share. Diluted earnings per share include the effect of all potentially dilutive instruments on ordinary shares and preference shares that would have been outstanding during the year.

The awards granted under the Company's stock incentive plans (*see Note 15*), are potentially dilutive equity instruments.

S) EMPLOYEE BENEFIT PLANS. As of December 31, 2006, the Company adopted the recognition provisions of FASB Statement No. 158, Employer's Accounting for Defined Benefit Pension and Other Postretirement Plans – an amendment of FASB Statements No. 87, 88, 106, and 132(R) ("FAS 158"). The Company recognized the underfunded status of its defined benefit plans, measured as the difference between plan assets at fair value and the benefit obligation, as a liability. Changes in the funded status of a plan, net of tax, resulting from actuarial gains or losses and prior service costs or credits that are not recognized as components of the net periodic benefit cost will be recognized through accumulated other comprehensive income in the year in which they occur. Actuarial gains or losses and prior service costs are subsequently recognized as components of net periodic benefit cost pursuant to the recognition and amortization provisions of those standards. The Company uses December 31 as the measurement date when measuring the funded status of all plans.

T) STOCK OPTION PLANS. Effective January 1, 2006, the Company adopted the provisions of FASB Statement No. 123R (revised 2004), Share-Based Payment ("FAS 123(R)") using the modified prospective transition method (*see Note 14*). Under this transition method, compensation cost recognized in 2006 and subsequent years includes applicable amounts of: (a) compensation cost of all stock-based payments granted prior to, but not yet vested as of, January 1, 2006, and (b) compensation cost for all stock-based payments subsequent to January 1, 2006 (based on the grant-date fair value estimated in accordance with the new provisions of FAS 123(R)).

U) RECENT PRONOUNCEMENTS. On December 30, 2008, the Financial Accounting Standards Board ("FASB") issued final staff position FSP FAS 132R-1: Employers' Disclosures about Postretirement Benefit Plan Assets. The FSP requires more disclosure about pension plan assets mainly regarding the following areas:

- How investment allocation decisions are made, including the factors that are pertinent to an understanding of investment policies and strategies,
- The major categories of plan assets,
- The inputs and valuation techniques used to measure the fair value of plan assets,
- The effect of fair value measurements using significant unobservable inputs (Level 3) on changes in plan assets for the period, and
- Significant concentrations of risk within plan assets.

The disclosures about plan assets required by this FSP shall be provided for fiscal years ending after December 15, 2009. Upon initial application, the provisions of this FSP are not required for earlier periods that are presented for comparative purposes. Earlier application of the provisions of this FSP is permitted. The Company will comply with the disclosure requirements of this standard in its report on its consolidated financial statements beginning for the fiscal year ended December 31, 2009.

In March 2008, the FASB issued Statement of Financial Accounting Standards No. 161 Disclosures about Derivative Instruments and Hedging Activities an amendment of FASB Statement No. 133 ("FAS 161"). This Statement changes the disclosure requirements for derivative instruments and hedging activities. Entities are required to provide enhanced disclosures about (a) how and why an entity uses derivative instruments, (b) how derivative instruments and related hedged items are accounted for under Statement 133 and its related interpretations, and (c) how derivative instruments and related hedged items affect an entity's financial position, financial performance, and cash flows. The requirements of this Statement are effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008, with early application encouraged. This Statement encourages, but does not require, comparative disclosures for earlier periods at initial adoption. The Company will adopt this standard as of January 1, 2009 and will implement its disclosure requirements in 2009.

In December 2007, the FASB issued FASB Statement No. 160, Noncontrolling Interests in Consolidated Financial Statements – an amendment of ARB No. 51 ("FAS 160"), which establishes a framework for reporting of noncontrolling or minority interests, the portion of equity in a subsidiary not attributable, directly or indirectly, to a parent. FAS 160 is effective for financial statements issued for fiscal years beginning on or after December 15, 2008. Earlier adoption is prohibited. The Company will adopt this standard as of January 1, 2009, and does not anticipate any material impact of this standard on its Consolidated Financial Statements.

In December 2007, FASB issued FASB Statement No. 141 (revised), Business Combinations. This Statement replaces FASB Statement No. 141, Business Combinations and retains the fundamental requirements in Statement 141 that the acquisition method of accounting (which Statement 141 called the purchase method) be used for all business combinations and for an acquirer to be identified for each business combination. This Statement defines the acquirer as the entity that obtains control of one or more businesses in the business combination and establishes the acquisition date as the date that the acquirer achieves control.

In general, the main points of this Statement are that the assets acquired, liabilities assumed and non-controlling interests in the acquired company are stated at fair value as of the date of acquisition, that assets acquired and liabilities assumed arising from contractual contingencies are recognized as of the acquisition date, measured at their acquisition-date fair values and that contingent consideration is recognized at the acquisition date, measured at its fair value at that date.

This Statement applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. An entity may not apply it before that date. The effective date of this Statement is the same as that of the related FASB Statement No. 160, Non-controlling Interests in Consolidated Financial Statements. The Company will adopt this standard as of January 1, 2009.

In September 2006, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards No. 157, Fair Value Measurements ("FAS 157"), which establishes a framework for reporting fair value and expands disclosures about fair value measurements. FAS 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years. FASB Staff Position No. 157-2 ("FSP 157-2") issued February 12, 2008 delayed application of this Statement for nonfinancial assets and nonfinancial liabilities, except for items that are recognized or disclosed at fair value in the consolidated financial statements on a recurring basis (at least annually), until fiscal years beginning after November 15, 2008, and interim periods within those fiscal years.

The Company adopted this standard, except for those sections affected by FSP 157-2, as of January 1, 2008.

## 2. ACQUISITIONS

### RSI ACQUISITION

On November 26, 2007, the Company completed the acquisition of all the common stock of Renal Solutions, Inc. ("RSI"), an Indiana corporation with principal offices in Warrendale, PA. The RSI acquisition agreement provided for total consideration of up to $203,666, consisting of $20,000 previously advanced to RSI in the form of a loan, $99,854 paid at closing, $60,000 paid in November, 2008, $3,572 receivable related to a working capital adjustment which was received in 2008, and up to $30,000 in milestone payments over a three year period contingent upon the achievement of certain performance criteria, none of which were due or paid in 2008. In 2007, the Company recorded a liability of $27,384 representing the net present value of the $30,000 milestone payments as it was deemed beyond reasonable doubt that the future performance criteria would be achieved. The purchase price was allocated to goodwill ($159,385), intangible assets ($34,480) and other net assets ($9,800). RSI holds key patents and other intellectual property worldwide related to sorbent-based technology ("SORB").

SORB technology purifies potable water to dialysate quality and allows dialysis for up to 8 hours with only 6 liters of potable water through a process of dialysate regeneration and toxin adsorption. This regeneration capability significantly reduces the water volume requirement for a typical hemodialysis treatment and is an important step in advancing home hemodialysis and helping to create a potential platform for eventual development of a wearable kidney.

The assets and liabilities of all acquisitions were recorded at their estimated fair values at the dates of the acquisitions and are included in the Company's Consolidated Financial Statements and operating results from the effective date of acquisition.

## 3. RELATED PARTY TRANSACTIONS

### A) SERVICE AGREEMENTS AND LEASES

The Company is party to service agreements with Fresenius SE, the sole stockholder of its General Partner and its largest shareholder with approximately 36.3 % ownership of the Company's voting shares, and certain affiliates of Fresenius SE that are not also subsidiaries of the Company to receive services, including, but not limited to: administrative services, management information services, employee benefit administration, insurance, IT services, tax services and treasury management services. For the years 2008, and 2007, amounts charged by Fresenius SE to the Company under the terms of these agreements are $59,038 and $44,143, respectively. The Company also provides certain services to Fresenius SE and certain affiliates of Fresenius SE, including research and development, central purchasing, patent administration and warehousing. The Company charged $9,798 and $9,784 for services rendered to Fresenius SE in 2008 and 2007, respectively.

Under operating lease agreements for real estate entered into with Fresenius SE, the Company paid Fresenius SE $23,485 and $19,211 during 2008 and 2007, respectively. The majority of the leases expire in 2016 and contain renewal options.

The Company's Articles of Association provide that the General Partner shall be reimbursed for any and all expenses in connection with management of the Company's business, including remuneration of the members of the General Partner's supervisory board and the General Partner's management board. The aggregate amount reimbursed to Management AG for 2008 and 2007 was $9,230 and $10,348 for its management services during those years and included and $88 and $82 as compensation for their exposure to risk as General Partner for 2008 and 2007, respectively. The Company's Articles of Association set the annual compensation for assuming unlimited liability at 4 % of the amount of the General Partner's invested capital (€1,500).

### B) PRODUCTS

During the years ended December 31, 2008 and 2007, the Company sold products to Fresenius SE for $36,704 and $34,133, respectively. During 2008 and 2007, the Company made purchases from Fresenius SE in the amount of $45,084 and $52,280, respectively.

As a result of product recalls and production suspension by other suppliers in 2008, APP Pharmaceuticals, Inc. ("APP Inc."), is the only remaining U.S. supplier of FDA-approved heparin used in dialysis. APP Inc. has substantially increased prices for this product. On September 10, 2008, Fresenius Kabi AG, a wholly-owned subsidiary of Fresenius SE, acquired APP Inc. The acquisition has had no impact on the Company's purchase price of heparin. The Company currently purchases heparin supplied by APP Inc. through a group purchasing organization ("GPO").

The Company has no direct supply agreement with APP Inc. and does not submit purchase orders directly to APP Inc. During 2008, FMCH acquired approximately $19,500 of heparin from APP Inc. through the GPO contract, which was negotiated at arm's length.

### C) FINANCING PROVIDED BY AND TO FRESENIUS SE

The Company receives short-term financing from and provides short-term financing to Fresenius SE. There was $1,330 and $2,287 owed to Fresenius SE at December 31, 2008 and 2007, respectively (*see Note 8*).

On November 7, 2008, the Company entered into a loan agreement with Fresenius SE whereby it advanced Fresenius SE $50,000 at 6.45 % interest which is due on April 30, 2009.

### D) OTHER

The Company was party to a German consolidated trade tax return with Fresenius SE and certain of its German subsidiaries for the fiscal years 1998 – 2001. For this period Fresenius SE made advance tax payments of which $118,100 (€77,700) including interest is recorded as a liability due to Fresenius SE at December 31, 2008. During 2008 the final tax assessment for those years was received and on this basis the tax and interest allocation will be finally determined.

In 2007, the company acquired a production line at our Schweinfurt facility from Fresenius SE for $5,646.

The Chairman of the Company's Supervisory Board is also the Chairman of the Supervisory Board of Fresenius SE. He is also a member of the Supervisory Board of the Company's General Partner.

The Vice Chairman of the Company's Supervisory Board is a member of the Supervisory Board of Fresenius SE and Vice Chairman of the Supervisory Board of the Company's General Partner. He is also a partner in a law firm which provided services to the Company. The Company paid the law firm approximately $1,098 and $969 in 2008 and 2007, respectively. Five of the six members of the Company's Supervisory Board are also members of the Supervisory Board of the Company's General Partner.

## 4. INVENTORIES

As of December 31, 2008 and 2007, inventories consisted of the following:

*Table 05.5.2* **INVENTORIES**

| *$ in thousands* | *2008* | *2007* |
|---|---|---|
| Raw materials and purchased components | 145,756 | 136,013 |
| Work in process | 60,960 | 51,829 |
| Finished goods | 385,607 | 350,478 |
| Health care supplies | 114,727 | 97,914 |
| **TOTAL** | **707,050** | **636,234** |

Under the terms of certain unconditional purchase agreements, the Company is obligated to purchase approximately $2,556,603 of materials, of which $358,283 is committed at December 31, 2008 for 2009. The terms of these agreements run 1 to 10 years.

Inventories as of December 31, 2008 and 2007 include $35,143 and $30,999 respectively, of Erythropoietin ("EPO"), which is supplied by a single source supplier in the United States. In October 2006, the Company entered into a five-year exclusive sourcing and supply agreement with its EPO supplier. Revenues from EPO accounted for approximately 20 % and 21 % of total dialysis care revenue in the North America segment for 2008 and 2007, respectively. Delays, stoppages, or interruptions in the supply of EPO could adversely affect the operating results of the Company.

## 5. PROPERTY, PLANT AND EQUIPMENT

As of December 31, 2008 and 2007, property, plant and equipment consisted of the following:

*Table 05.5.3* **ACQUISITION AND MANUFACTURING COSTS**

| *$ in thousands* | *Balance at Jan. 1, 2008* | *Currency change* | *Changes in consolidation group* | *Additions* | *Reclassifications* | *Disposals* | *Balance at Dec. 31, 2008* |
|---|---|---|---|---|---|---|---|
| Land and improvements | 39,791 | (110) | – | 1,182 | (608) | (99) | 40,156 |
| Buildings and improvements | 1,348,727 | (33,881) | 1,370 | 205,125 | 25,939 | (12,263) | 1,535,017 |
| Machinery and equipment | 2,191,418 | (95,028) | 8,504 | 316,526 | 44,019 | (113,095) | 2,352,344 |
| Machinery, equipment and rental equipment under capitalized leases | 21,533 | 353 | 85 | 2,160 | (570) | (843) | 22,718 |
| Construction in progress | 235,144 | (7,163) | – | 191,012 | (129,126) | (51,284) | 238,583 |
| **TOTAL** | **3,836,613** | **(135,829)** | **9,959** | **716,005** | **(60,346)** | **(177,584)** | **4,188,818** |

*Table 05.5.4* **DEPRECIATION/AMORTIZATION**

| *$ in thousands* | *Balance at Jan. 1, 2008* | *Currency change* | *Changes in consolidation group* | *Additions* | *Reclassifications* | *Disposals* | *Balance at Dec. 31, 2008* |
|---|---|---|---|---|---|---|---|
| Land and improvements | – | – | – | – | – | – | – |
| Buildings and improvements | 566,455 | (13,689) | 242 | 120,956 | 727 | (23,918) | 650,773 |
| Machinery and equipment | 1,208,321 | (53,853) | 1,142 | 243,969 | (4,711) | (103,885) | 1,290,983 |
| Machinery, equipment and rental equipment under capitalized leases | 8,044 | (480) | – | 3,375 | 539 | (494) | 10,984 |
| Construction in progress | – | – | – | – | – | – | – |
| **TOTAL** | **1,782,820** | **(68,022)** | **1,384** | **368,300** | **(3,445)** | **(128,297)** | **1,952,740** |

*Table 05.5.5* **NET BOOK VALUE**

| *$ in thousands* | *Dec. 31, 2008* | *Dec. 31, 2007* |
|---|---|---|
| Land and improvements | 40,156 | 39,791 |
| Buildings and improvements | 884,244 | 782,272 |
| Machinery and equipment | 1,061,361 | 983,097 |
| Machinery, equipment and rental equipment under capitalized leases | 11,734 | 13,489 |
| Construction in progress | 238,583 | 235,144 |
| **TOTAL** | **2,236,078** | **2,053,793** |

Depreciation expense for property, plant and equipment amounted to $368,300 and $328,595 for the years ended December 31, 2008 and 2007, respectively.

Included in property, plant and equipment as of December 31, 2008 and 2007 were $299,778 and $275,537, respectively, of peritoneal dialysis cycler machines which the Company leases to customers with end-stage renal disease on a month-to-month basis and hemodialysis machines which the Company leases to physicians under operating leases. Accumulated depreciation related to machinery, equipment and rental equipment under capital leases was $10,984 and $8,044 at December 31, 2008 and 2007, respectively.

## 6. INTANGIBLE ASSETS AND GOODWILL

As of December 31, 2008 and 2007, the carrying value and accumulated amortization of intangible assets consisted of the following:

*Table 05.5.6* **ACQUISITION COSTS**

| *$ in thousands* | *Balance at Jan. 1, 2008* | *Currency change* | *Changes in consolidation group* | *Additions* | *Reclassifications* | *Disposals* | *Balance at Dec. 31, 2008* |
|---|---|---|---|---|---|---|---|
| **Amortizable intangible assets** | | | | | | | |
| Non-compete agreements | 212,105 | (1,451) | 7,782 | 142 | – | (333) | 218,245 |
| Technology | 100,016 | – | – | – | – | – | 100,016 |
| License and distribution agreements | 52,422 | (6,963) | – | 128,962 | – | (1,177) | 173,244 |
| Construction in progress | – | (26) | – | 173 | 49,739 | – | 49,886 |
| Other | 257,886 | (9,272) | 7,377 | 24,295 | 10,301 | (20,115) | 270,472 |
| **TOTAL** | **622,429** | **(17,712)** | **15,159** | **153,572** | **60,040** | **(21,625)** | **811,863** |
| **Non-amortizable intangible assets** | | | | | | | |
| Tradename | 256,850 | (372) | – | 874 | (15,878) | – | 241,474 |
| Management contracts | 241,391 | (17) | – | – | – | – | 241,374 |
| **TOTAL** | **498,241** | **(389)** | **–** | **874** | **(15,878)** | **–** | **482,848** |
| **TOTAL INTANGIBLE ASSETS** | **1,120,670** | **(18,101)** | **15,159** | **154,446** | **44,162** | **(21,625)** | **1,294,711** |
| **GOODWILL** | **7,691,763** | **(44,693)** | **95,818** | **341** | **14,997** | **(1,572)** | **7,756,654** |

*Table 05.5.7* **DEPRECIATION / AMORTIZATION**

| *$ in thousands* | *Balance at Jan. 1, 2008* | *Currency change* | *Changes in consolidation group* | *Additions* | *Reclassifications* | *Disposals* | *Balance at Dec. 31, 2008* |
|---|---|---|---|---|---|---|---|
| **Amortizable intangible assets** | | | | | | | |
| Non-compete agreements | 129,559 | (1,163) | – | 14,594 | – | (16) | 142,974 |
| Technology | 4,872 | – | – | 6,618 | – | – | 11,490 |
| License and distribution agreements | 35,809 | (2,298) | – | 7,825 | – | – | 41,336 |
| Construction in progress | – | – | – | – | – | – | – |
| Other | 205,066 | (5,158) | 9 | 18,347 | 2,067 | (21,142) | 199,189 |
| **TOTAL** | **375,306** | **(8,619)** | **9** | **47,384** | **2,067** | **(21,158)** | **394,989** |
| **Non-amortizable intangible assets** | | | | | | | |
| Tradename | 33,500 | (42) | – | – | (2,140) | – | 31,318 |
| Management contracts | 21,908 | – | – | – | – | – | 21,908 |
| **TOTAL** | **55,408** | **(42)** | **–** | **–** | **(2,140)** | **–** | **53,226** |
| **TOTAL INTANGIBLE ASSETS** | **430,714** | **(8,661)** | **9** | **47,384** | **(73)** | **(21,158)** | **448,215** |
| **GOODWILL** | **446,174** | **(1,654)** | **–** | **–** | **2,224** | **–** | **446,744** |

*Table 05.5.8* **NET BOOK VALUE**

| *$ in thousands* | *Dec. 31, 2008* | *Dec. 31, 2007* |
|---|---|---|
| **Amortizable intangible assets** | | |
| Non-compete agreements | 75,271 | 82,546 |
| Technology | 88,526 | 95,144 |
| License and distribution agreements | 131,908 | 16,613 |
| Construction in progress | 49,886 | – |
| Other | 71,283 | 52,820 |
| **TOTAL** | **416,874** | **247,123** |
| **Non-amortizable intangible assets** | | |
| Tradename | 210,156 | 223,350 |
| Management contracts | 219,466 | 219,483 |
| **TOTAL** | **429,622** | **442,833** |
| **TOTAL INTANGIBLE ASSETS** | **846,496** | **689,956** |
| **GOODWILL** | **7,309,910** | **7,245,589** |

Amortization on intangible assets amounted to $47,384 and $34,003 for the years 2008 and 2007, respectively.

*Table 05.5.9* **ESTIMATED AMORTIZATION EXPENSES**

| *$ in thousands* | *2009* | *2010* | *2011* | *2012* | *2013* |
|---|---|---|---|---|---|
| Estimated Amortization Expenses | 46,420 | 44,479 | 40,219 | 37,923 | 36,747 |

## INTANGIBLE ASSETS: LICENSE AND DISTRIBUTION AGREEMENTS

In July 2008, Fresenius Medical Care entered into two separate distribution agreements, one for the U.S. (with Galenica Ltd. and Luitpold Pharmaceuticals Inc.), the "U.S. Agreement", and one for certain countries in Europe and the Middle East (with Galenica AG and Vifor (International) AG), the "International Agreement", to market and distribute Galenica Ltd's and Luitpold Pharmaceuticals Inc.'s intravenous iron products, such as Venofer and Ferinject for dialysis treatment. In North America, the license agreement among our subsidiary, FUSA Manufacturing Inc. ("FMI"), Luitpold Pharmaceuticals Inc, American Regent, Inc. and Vifor (International), Inc. provides FMI with exclusive rights to manufacture and distribute Venofer to freestanding (non-hospital based) U.S. dialysis facilities. In addition, it grants FMI similar rights for Injectafer (ferric carboxymaltose), a proposed new intravenous iron medication currently under clinical study in the U.S. The U.S. license agreement has a term of ten years, includes FMI extension options, and requires payment by FMI over the ten year term of approximately $2,000,000, which the Company will expense as incurred (based upon the annual estimated units of sale of the licensed product), subject to certain early termination provisions. In addition to these payments, the Company will pay a total of approximately $47,000 over a four year period for the U.S Agreement of which $22,000 was paid in 2008. The Company recorded a liability for the balance. The cost of the U.S. Agreement and related transaction costs of $5,843 will be amortized over their 10-year expected useful life (based upon the annual estimated units of sale of the licensed product). The Company paid $14,566 upon signing of the International Agreement in 2008 and could pay up to €40,000 more upon certain milestones being met. The International Agreement costs will be amortized over their expected 20-year useful life. Milestone payments will be capitalized and amortized over their useful lives at the time the milestone payments are made.

## GOODWILL

Changes in the carrying amount of goodwill are mainly a result of acquisitions and the impact of foreign currency translations. During 2008, the Company's acquisitions consisted primarily of clinics in the normal course of operations. During 2007, the Company's acquisitions consisted primarily of RSI and clinics in the normal course of operations (*see Note 2*). The segment detail is as follows:

*Table 05.5.10* **GOODWILL**

| *$ in thousands* | *North America* | *International* | *Corporate* | *Total* |
|---|---|---|---|---|
| **BALANCE AS OF JANUARY 1, 2007** | **6,437,995** | **454,166** | **–** | **6,892,161** |
| Goodwill acquired | 52,674 | 59,491 | 159,385 | 271,550 |
| Reclassifications | 17,952 | 8,195 | – | 26,147 |
| Foreign currency translation adjustment | (146) | 55,877 | – | 55,731 |
| **BALANCE AS OF DECEMBER 31, 2007** | **6,508,475** | **577,729** | **159,385** | **7,245,589** |
| Goodwill acquired | 64,809 | 30,577 | 432 | 95,818 |
| Reclassifications | (1,231) | 12,773 | – | 11,542 |
| Foreign currency translation adjustment | (642) | (42,397) | – | (43,039) |
| **BALANCE AS OF DECEMBER 31, 2008** | **6,571,411** | **578,682** | **159,817** | **7,309,910** |

## 7. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

As at December 31, 2008 and 2007 accrued expenses and other current liabilities consisted of the following:

*Table 05.5.11* **ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES**

| *$ in thousands* | *2008* | *2007* |
|---|---|---|
| Accrued salaries and wages | 301,923 | 331,931 |
| Unapplied cash and receivable credits | 205,187 | 173,424 |
| Accrued insurance | 125,713 | 146,377 |
| Special charge for legal matters | 115,000 | 115,000 |
| Other | 540,610 | 585,281 |
| **TOTAL** | **1,288,433** | **1,352,013** |

In 2001, the Company recorded a $258,159 special charge to address legal matters relating to transactions pursuant to the Agreement and Plan of Reorganization dated as of February 4, 1996 by and between W.R. Grace & Co. and Fresenius SE (the "Merger"), estimated liabilities and legal expenses arising in connection with the W.R. Grace & Co. Chapter 11 proceedings (the "Grace Chapter 11 Proceedings") and the cost of resolving pending litigation and other disputes with certain commercial insurers. During the second quarter of 2003, the court supervising the Grace Chapter 11 Proceedings approved a definitive settlement agreement entered into among the Company, the committees representing the asbestos creditors and W.R. Grace & Co. Under the settlement agreement, the Company will pay $115,000, without interest, upon plan confirmation (*see Note 18*). With the exception of the proposed $115,000 payment under the Settlement Agreement, all other matters included in the special charge have been resolved.

The other item in the table above includes accruals for interest, withholding tax, value added tax, legal and compliance costs, physician compensation, commissions, short-term portion of pension liabilities, bonuses and rebates, and accrued rents.

## 8. SHORT-TERM BORROWINGS, OTHER FINANCIAL LIABILITIES AND SHORT-TERM BORROWINGS FROM RELATED PARTIES

As of December 31, 2008 and 2007, short-term borrowings, other financial liabilities and short-term borrowings from related parties consisted of the following:

*Table 05.5.12* **SHORT-TERM BORROWINGS**

| *$ in thousands* | *2008* | *2007* |
|---|---|---|
| Borrowings under lines of credit | 121,476 | 71,908 |
| Accounts receivable facility | 539,000 | 85,000 |
| Other financial liabilities | 22,679 | 60,589 |
| **SHORT-TERM BORROWINGS AND OTHER FINANCIAL LIABILITIES** | **683,155** | **217,497** |
| Short-term borrowings from related parties | 1,330 | 2,287 |
| **SHORT-TERM BORROWINGS, OTHER FINANCIAL LIABILITIES AND SHORT-TERM BORROWINGS FROM RELATED PARTIES** | **684,485** | **219,784** |

### SHORT-TERM BORROWINGS AND OTHER FINANCIAL LIABILITIES

LINES OF CREDIT. Short-term borrowings of $121,476 and $71,908 at December 31, 2008 and 2007, respectively, represent amounts borrowed by the Company and certain of its subsidiaries under lines of credit with commercial banks. The average interest rates on these borrowings at December 31, 2008 and 2007 were 5.30 % and 4.50 %, respectively.

Excluding amounts available under the 2006 Senior Credit Agreement (*see Note 9*), at December 31, 2008, the Company had $226,221 available under such commercial bank agreements. In some instances, lines of credit are secured by assets of the Company's subsidiary that is party to the agreement or may require the Company's guarantee. In certain circumstances, the subsidiary may be required to meet certain covenants.

ACCOUNTS RECEIVABLE FACILITY. The Company has an asset securitization facility (the "A/R Facility") which is typically renewed in October of each year and was most recently renewed in October 2008. Under the A/R Facility, certain receivables are sold to NMC Funding Corporation ("NMC Funding"), a wholly-owned subsidiary. NMC Funding then assigns percentage ownership interests in the accounts receivable to certain bank investors. Under the terms of the A/R Facility, NMC Funding retains the right to recall all transferred interests in the accounts receivable assigned to the banks under the facility. As the Company has the right at any time to recall the then outstanding interests, the receivables remain on the Consolidated Balance Sheet and the proceeds from the transfer of percentage ownership interests are recorded as short-term borrowings.

At December 31, 2008 there are outstanding short-term borrowings under the A/R Facility of $539,000. NMC Funding pays interest to the bank investors, calculated based on the commercial paper rates for the particular tranches selected. The average interest rate at December 31, 2008 was 3.89 %. Annual refinancing fees, which include legal costs and bank fees (if any), are amortized over the term of the facility.

OTHER FINANCIAL LIABILITIES. At December 31, 2008, the Company also had $22,679 of other financial liabilities which was related to the Venofer transaction in the year 2008 (*see Note 6*). At December 31, 2007, the Company also had $60,589 of other financial liabilities of which $56,427 was related to the 2007 RSI acquisition and was paid in November 2008.

### SHORT-TERM BORROWINGS FROM RELATED PARTIES

From time to time during each of the years presented, the Company received advances under the existing loan agreements with Fresenius SE for those years. During the year ended December 31, 2008, the Company received advances ranging from €13,200 to €153,400 with interest rates ranging from 4.02 % to 5.11 %. At December 31, 2008 and 2007, there were no advances outstanding with Fresenius SE. On December 31, 2008, the Company had advances outstanding with a Fresenius SE subsidiary in the amount of $1,330 with an interest rate of 7.25 %. On December 31, 2007, the Company had advances outstanding with a Fresenius SE subsidiary in the amount of $2,287 (€1,554) with an interest rate of 4.1 % which was repaid in 2008. Annual interest expense on the borrowings during the years presented was $81 and $506 for the years 2008 and 2007, respectively.

## 9. LONG-TERM DEBT AND CAPITAL LEASE OBLIGATIONS

At December 31, 2008 and 2007, long-term debt and capital lease obligations consisted of the following:

*Table 05.5.13* **LONG-TERM DEBT AND CAPITAL LEASE OBLIGATIONS**

| *$ in thousands* | *2008* | *2007* |
|---|---|---|
| 2006 Senior Credit Agreement | 3,366,079 | 3,166,114 |
| Senior Notes | 492,456 | 491,569 |
| Euro Notes | 278,340 | 294,420 |
| EIB agreements | 174,059 | 48,806 |
| Capital lease obligations | 13,394 | 14,027 |
| Other | 88,165 | 73,893 |
| | **4,412,493** | **4,088,829** |
| Less current maturities | (455,114) | (84,816) |
| **TOTAL** | **3,957,379** | **4,004,013** |

## SENIOR DEBT

The Company's senior debt consists mainly of borrowings related to its 2006 Senior Credit Agreement, its Senior Notes, its Euro Notes and borrowings under its European Investment Bank Agreements as follows:

## 2006 SENIOR CREDIT AGREEMENT

The Company entered into a $4,600,000 syndicated credit agreement (the "2006 Senior Credit Agreement") with Bank of America, N.A. ("BofA"); Deutsche Bank AG New York Branch; The Bank of Nova Scotia; Credit Suisse, Cayman Islands Branch; JPMorgan Chase Bank, National Association; and certain other lenders (collectively, the "Lenders") on March 31, 2006 which replaced its prior credit agreement.

The 2006 Senior Credit Agreement consists of:

- a 5-year $1,000,000 revolving credit facility (of which up to $250,000 is available for letters of credit, up to $300,000 is available for borrowings in certain non-U.S. currencies, up to $150,000 is available as "swing line" loans in U.S. dollars, up to $250,000 is available as a competitive loan facility and up to $50,000 is available as "swing line" loans in certain non-U.S. currencies, the total of which cannot exceed $1,000,000) which will be due and payable on March 31, 2011.
- a 5-year term loan facility ("Term Loan A") of $1,850,000, also scheduled to mature on March 31, 2011. The 2006 Senior Credit Agreement requires 19 quarterly payments on Term Loan A of $30,000 each that permanently reduce the term loan facility which began June 30, 2006 and continue through December 31, 2010. The remaining amount outstanding is due on March 31, 2011. As a result of the voluntary repayment made in July 2007 from the proceeds of the issuance of senior notes (*see "Senior Notes"*) which reduced the principal balance outstanding, the quarterly payments were reduced to $29,430 beginning with the payment for September 30, 2008.
- a 7-year term loan facility ("Term Loan B") of $1,750,000 scheduled to mature on March 31, 2013. The terms of the 2006 Senior Credit Agreement require 28 quarterly payments on Term Loan B that permanently reduce the term loan facility. The repayment began June 30, 2006. The first 24 quarterly payments are $4,375 and payments 25 through 28 are $411,250 with the final payment of the remaining balance due on March 31, 2013, subject to an early repayment requirement on March 1, 2011 if the Trust Preferred Securities due June 15, 2011 are not repaid or refinanced or their maturity is not extended prior to that date. As a result of the voluntary repayment made in July 2007 from the proceeds of the issuance of senior notes (*see "Senior Notes"*) the balance of the remaining payments of $4,375 were reduced to $4,036 beginning with the September 30, 2008 payment, and payments 25 through 28 were reduced to $379,396.

Interest on these facilities will be, at the Company's option, depending on the interest periods chosen, at a rate equal to either (i) LIBOR plus an applicable margin or (ii) the higher of (a) BofA's prime rate or (b) the Federal Funds rate plus 0.5 %, plus an applicable margin.

The applicable margin is variable and depends on the Company's Consolidated Leverage Ratio which is a ratio of its Consolidated Funded Debt less up to $30,000 cash and cash equivalents to Consolidated EBITDA (as these terms are defined in the 2006 Senior Credit Agreement).

In addition to scheduled principal payments, indebtedness outstanding under the 2006 Senior Credit Agreement will be reduced by mandatory prepayments utilizing portions of the net cash proceeds from certain sales of assets, securitization transactions other than the Company's existing A/R Facility, the issuance of subordinated debt other than certain intercompany transactions, certain issuances of equity and excess cash flow.

Obligations under the 2006 Senior Credit Agreement are secured by pledges of capital stock of certain material subsidiaries in favor of the lenders. The 2006 Senior Credit Agreement contains affirmative and negative covenants with respect to the Company and its subsidiaries and other payment restrictions. Certain of the covenants limit indebtedness of the Company and investments by the Company, and require the Company to maintain certain financial ratios defined in the agreement. Additionally, the 2006 Senior Credit Agreement provides for a limitation on dividends and other restricted payments which is $280,000 for dividends in 2009, and increases in subsequent years. The Company paid dividends of $252,395 in May of 2008 which was in compliance with the restrictions set forth in the 2006 Senior Credit Agreement. In default, the outstanding balance under the 2006 Senior Credit Agreement becomes immediately due and payable at the option of the Lenders. As of December 31, 2008, the Company is in compliance with all covenants under the 2006 Senior Credit Agreement.

The following table shows the available and outstanding amounts under the 2006 Senior Credit Agreement at December 31, 2008 and 2007, respectively:

*Table 05.5.14* **AVAILABLE AND OUTSTANDING CREDITS**

| *$ in thousands, December 31* | *2008* | *2007* |
|---|---|---|
| **Maximum amount available** | | |
| Revolving credit | 1,000,000 | 1,000,000 |
| Term Loan A | 1,491,139 | 1,550,000 |
| Term Loan B | 1,570,053 | 1,578,125 |
| **TOTAL** | **4,061,192** | **4,128,125** |
| **Balance outstanding** | | |
| Revolving credit | 304,887 | 37,989 |
| Term Loan A | 1,491,139 | 1,550,000 |
| Term Loan B | 1,570,053 | 1,578,125 |
| **TOTAL** | **3,366,079** | **3,166,114** |

In addition, at December 31, 2008, $111,994 and at December 31, 2007, $87,140 were utilized as letters of credit which are not included as part of the balances outstanding at those dates.

In June 2007, the 2006 Senior Credit Agreement was amended in order to enable the Company to issue $500,000 in Senior Notes (*see "Senior Notes" below*). Furthermore, on January 31, 2008, it was amended to increase certain types of permitted borrowings and to remove all limitations on capital expenditures.

In July 2007, the Company voluntarily repaid portions of the term loans outstanding utilizing a portion of the proceeds from the issuance of senior notes (*see "Senior Notes" below*). Under the terms of the 2006 Senior Credit Agreement, advance payments on the term loans are applied first against the next four quarterly payments due with any amounts in excess of the four quarterly payments applied on a pro-rata basis against any remaining payments. As a result of the advance payments on the Term Loans, no payments were made or were due for either Term Loan A or B until the third quarter of 2008 at which time quarterly payments were resumed.

## SENIOR NOTES

In July 2007, FMC Finance III S.A. ("Finance III"), a wholly-owned subsidiary of the Company, issued $500,000 aggregate principal amount of 6 7/8 % senior notes due 2017 (the "Senior Notes") at a discount resulting in an effective interest rate of 7 1/8 %. The Senior Notes are guaranteed on a senior basis jointly and severally by the Company and by its subsidiaries Fresenius Medical Care Holdings, Inc. ("FMCH") and Fresenius Medical Care Deutschland GmbH ("D-GmbH"). Finance III may redeem the Senior Notes at any time at 100 % of principal plus accrued interest and a premium calculated pursuant to the terms of the indenture. The holders have a right to request that Finance III repurchase the Senior Notes at 101 % of principal plus accrued interest upon the occurrence of a change of control followed by a decline in the rating of the Senior Notes. The proceeds, net of discounts, investment bank fees and other offering related expenses, were $484,024, of which $150,000 was used to reduce Term Loan A and $150,000 to reduce Term Loan B under the Company's 2006 Senior Credit Agreement (see 2006 Senior Credit Agreement above). The remaining $184,024 was applied to the then outstanding balance under its short-term A/R Facility. The discount is being amortized over the life of the Senior Notes.

## EURO NOTES

In July 2005, FMC Finance IV Luxembourg issued euro denominated notes ("Euro Notes") (Schuldscheindarlehen) totaling $278,340 (€200,000) with a €126,000 tranche at a fixed interest rate of 4.57 % and a €74,000 tranche with a floating rate at EURIBOR plus applicable margin resulting in an interest rate of 6.87 % at December 31, 2008. The Euro Notes, guaranteed by the Company, mature on July 27, 2009 and are included in the short term portion of long-term debt in our balance sheet at December 31, 2008.

## EUROPEAN INVESTMENT BANK AGREEMENTS

The Company entered into various credit agreements with the European Investment Bank ("EIB") in 2005 and 2006 totaling €221,000. The EIB is a not-for-profit long-term lending institution of the European Union and lends funds at favorable rates for the purpose of capital investment and R&D projects, normally for up to half of the funds required for such projects.

The Company uses the funds to refinance certain R&D projects, to make investments in expansion and optimization of existing production facilities in Germany, and for financing and refinancing of certain clinic refurbishing and improvement projects. Currently all agreements with the EIB have variable interest rates that change quarterly, with FMC-AG & Co. KGaA having options to convert the variable rates into fixed rates. All advances under all agreements can be denominated in certain foreign currencies including U.S. dollars.

The Company has three credit facilities available at December 31, 2008 under these agreements as follows:

*Table 05.5.15* AVAILABLE AND OUTSTANDING CREDITS

| *December 31* | *2008* | *2007* |
|---|---|---|
| **Maximum amount available** *€ in thousands* | | |
| Revolving credit | 90,000 | 90,000 |
| Loan 2005 | 41,000 | 41,000 |
| Loan 2006 | 90,000 | 90,000 |
| **TOTAL** | **221,000** | **221,000** |
| **Balance outstanding** *$ in thousands* | | |
| Revolving credit | – | – |
| Loan 2005 | 48,806 | 48,806 |
| Loan 2006 | 125,253 | – |
| **TOTAL** | **174,059** | **48,806** |

At December 31, 2008, the Company had no borrowings outstanding under the revolving credit facility, $48,806 under the Loan 2005 facility and $125,253 under the Loan 2006 facility which was drawn down during 2008. The Company's U.S. dollar borrowings under the Loan 2005 agreement had an interest rate of 2.03 % and the Euro borrowings under the Loan 2006 agreement had an interest rate of 4.77 % at December 31, 2008.

Borrowings under these agreements are secured by bank guarantees, which are in place for Loan 2005 and Loan 2006 and have customary covenants. Borrowings under the Revolving Credit facility are subject to obtaining a bank guarantee at the time of the borrowings.

### ANNUAL PAYMENTS

Aggregate annual payments applicable to the 2006 Senior Credit Agreement, Senior Notes, Euro Notes, EIB agreements, capital leases and other borrowings (excluding the Company's trust preferred securities, *see Note 11*) for the five years subsequent to December 31, 2008 are:

*Table 05.5.16* **ANNUAL PAYMENTS**

| *$ in thousands* | *2009* | *2010* | *2011* | *2012* | *2013* | *Thereafter* | ***Total*** |
|---|---|---|---|---|---|---|---|
| Annual Payments | 455,114 | 157,037 | 1,504,105 | 1,152,256 | 519,380 | 632,145 | **4,420,037** |

## 10. EMPLOYEE BENEFIT PLANS

### GENERAL

FMC-AG & Co. KGaA recognizes pension costs and related pension liabilities for current and future benefits to qualified current and former employees of the Company. The Company's pension plans are structured differently according to the legal, economic and fiscal circumstances in each country. The Company currently has two types of plans, defined benefit and defined contribution plans. In general plan benefits in defined benefit plans are based on all or a portion of the employees' years of services and final salary. Plan benefits in defined contribution plans are determined by the amount of contribution by the employee and the employer, both of which may be limited by legislation, and the returns earned on the investment of those contributions.

Upon retirement under defined benefit plans, the Company is required to pay defined benefits to former employees when the defined benefits become due. Defined benefit plans may be funded or unfunded. The Company has two major defined benefit plans, one funded plan in North America and an unfunded plan in Germany.

Actuarial assumptions generally determine benefit obligations under defined benefit plans. The actuarial calculations require the use of estimates. The main factors used in the actuarial calculations affecting the level of the benefit obligations are: assumptions on life expectancy, the discount rate, salary and pension level trends. Under the Company's funded plans, assets are set aside to meet future payment obligations. An estimated return on the plan assets is recognized as income in the respective period. Actuarial gains and losses are generated when there are variations in the actuarial assumptions and differences between the actual and the estimated return on plan assets for that year. The Company's pension liability is impacted by these actuarial gains or losses.

In the case of the Company's funded plan, the defined benefit obligation is offset against the fair value of plan assets. A pension liability is recognized in the balance sheet if the defined benefit obligation exceeds the fair value of plan assets. A pension asset is recognized (and reported under other assets in the balance sheet) if the fair value of plan assets exceeds the defined benefit obligation and if the Company has a right of reimbursement against the fund or a right to reduce future payments to the fund.

Under defined contribution plans, the Company pays defined contributions during the employee's service life which satisfies all obligations of the Company to the employee. The Company has a defined contribution plan in North America.

## DEFINED BENEFIT PENSION PLANS

During the first quarter of 2002, FMCH, the Company's North America subsidiary, curtailed its defined benefit and supplemental executive retirement plans. Under the curtailment amendment for substantially all employees eligible to participate in the plan, benefits have been frozen as of the curtailment date and no additional defined benefits for future services will be earned. The Company has retained all employee benefit obligations as of the curtailment date. Each year FMCH contributes at least the minimum amount required by the Employee Retirement Income Security Act of 1974, as amended. There was no minimum funding requirement for FMCH for the defined benefit plan in 2008. FMCH voluntarily contributed $684 during 2008. Expected funding for 2009 is $827.

The benefit obligation for all defined benefit plans at December 31, 2008, is $353,961 (2007: $331,649) which consists of the benefit obligation of $245,070 (2007: $218,009) for the North America funded plan and the benefit obligation of $108,891 (2007: $113,640) for the German unfunded plan. The benefit obligation includes $245,070 (2007: $218,009) which is funded by plan assets and $108,891 (2007: $113,640) which is unfunded.

The following table shows the changes in benefit obligations, the changes in plan assets, and the funded status of the pension plans. Benefits paid as shown in the changes in benefit obligations represent payments made from both the funded and unfunded plans while the benefits paid as shown in the changes in plan assets include only benefit payments from the Company's funded benefit plan.

*Table 05.5.17* **FUNDED STATUS OF EMPLOYEE BENEFIT PLANS**

| *$ in thousands* | *2008* | *2007* |
|---|---|---|
| **Change in benefit obligation** | | |
| Benefit obligation at beginning of year | 331,649 | 334,375 |
| Foreign currency translation | (6,288) | 12,193 |
| Service cost | 8,357 | 8,835 |
| Interest cost | 20,393 | 18,506 |
| Transfer of plan participants | 2,228 | 670 |
| Actuarial (gain) loss | 4,472 | (36,637) |
| Benefits paid | (6,850) | (6,293) |
| **BENEFIT OBLIGATION AT END OF YEAR** | **353,961** | **331,649** |
| **Change of plan assets** | | |
| Fair value of plan assets at beginning of year | 228,581 | 220,367 |
| Actual return on plan assets | (9,092) | 12,276 |
| Employer contributions | 684 | 1,173 |
| Benefits paid | (5,557) | (5,235) |
| **FAIR VALUE OF PLAN ASSETS AT END OF YEAR** | **214,616** | **228,581** |
| **FUNDED STATUS AT YEAR END** | **139,345** | **103,068** |

The Company had a pension liability of $139,345 at December 31, 2008. The pension liability consists of a current portion of $2,590 (2007: $2,288) which is recognized as a current liability in the line item "accrued expenses and other current liabilities" in the balance sheet. The non-current portion of $136,755 (2007: $111,352) is recorded as non-current pension liability in the balance sheet. The net amount recognized at December 31, 2007, consisted of Balance Sheet items of a pension liability of $113,640 and prepaid pension costs of $10,572. The prepaid pension costs related to the North America plan and were recorded within Other Assets in the balance sheet. Approximately 85 % of the beneficiaries are located in North America with the majority of the remaining 15 % located in Germany.

The accumulated benefit obligation for all defined benefit pension plans was $334,951 and $312,459 at December 31, 2008 and 2007, respectively. The accumulated benefit obligation for all defined benefit pension plans with an obligation in excess of plan assets was $334,951 and $96,659 at December 31, 2008 and 2007, respectively; the related plan assets had a fair value of $214,616 at December 31, 2008.

The pre-tax changes in the following table reflect actuarial losses (gains) in other comprehensive income relating to pension liabilities. As of December 31, 2008, there are no cumulative effects of prior service costs included in other comprehensive income.

*Table 05.5.18* **OTHER COMPREHENSIVE INCOME (LOSS) RELATED TO PENSION LIABILITIES**

| *$ in thousands* | *Actuarial losses (gains)* |
|---|---|
| **ADJUSTMENTS RELATED TO PENSIONS AT JANUARY 1, 2007** | **84,104** |
| Additions | (32,551) |
| Releases | (5,163) |
| Foreign currency translation adjustment | 1,985 |
| **ADJUSTMENTS RELATED TO PENSIONS AT DECEMBER 31, 2007** | **48,375** |
| Additions | 30,494 |
| Releases | (1,944) |
| Foreign currency translation adjustment | 1 |
| **ADJUSTMENTS RELATED TO PENSIONS AT DECEMBER 31, 2008** | **76,926** |

The actuarial loss expected to be amortized from other comprehensive income into net periodic pension cost over the next year is $6,412.

The discount rates for all plans are based upon yields of portfolios of equity and highly rated debt instruments with maturities that mirror the plan's benefit obligation. The Company's discount rate is the weighted average of these plans based upon their benefit obligations at December 31, 2008. The following weighted-average assumptions were utilized in determining benefit obligations as of December 31:

*Table 05.5.19* **WEIGHTED AVERAGE ASSUMPTIONS FOR BENEFIT OBLIGATIONS**

| | *2008* | *2007* |
|---|---|---|
| Discount rate | 6.15 % | 6.16 % |
| Rate of compensation increase | 4.19 % | 4.16 % |

The defined benefit pension plans' net periodic benefit costs are comprised of the following components for each of the years ended December 31:

*Table 05.5.20* **COMPONENTS OF NET PERIODIC BENEFIT COSTS**

| *$ in thousands* | *2008* | *2007* |
|---|---|---|
| Service cost | 8,357 | 8,835 |
| Interest cost | 20,393 | 18,506 |
| Expected return on plan assets | (16,931) | (16,362) |
| Amortization of unrealized losses | 1,944 | 5,163 |
| **NET PERIODIC BENEFIT COSTS** | **13,763** | **16,142** |

The following weighted-average assumptions were used in determining net periodic benefit cost for the year ended December 31:

*Table 05.5.21* **WEIGHTED AVERAGE ASSUMPTIONS FOR NET PERIODIC BENEFIT COSTS**

| | *2008* | *2007* |
|---|---|---|
| Discount rate | 6.16 % | 5.52 % |
| Expected return of plan assets | 7.50 % | 7.50 % |
| Rate of compensation increase | 4.16 % | 4.18 % |

Expected benefit payments for the next five years and in the aggregate for the five years thereafter are as follows:

*Table 05.5.22* **EXPECTED BENEFIT PAYMENTS**

| *$ in thousands* | *2009* | *2010* | *2011* | *2012* | *2013* | *2014 through 2018* |
|---|---|---|---|---|---|---|
| Expected benefit payments | 9,138 | 9,994 | 10,763 | 12,366 | 13,172 | 89,250 |

## PLAN INVESTMENT POLICY AND STRATEGY

For the North America funded plan, the Company periodically reviews the assumption for long-term expected return on pension plan assets. As part of the assumptions review, a range of reasonable expected investment returns for the pension plan as a whole was determined based on an analysis of expected future returns for each asset class weighted by the allocation of the assets. The range of returns developed relies both on forecasts, which include the actuarial firm's expected long-term rates of return for each significant asset class or economic indicator, and on broad-market historical benchmarks for expected return, correlation, and volatility for each asset class. As a result, the Company's expected rate of return on pension plan assets was 7.5 % for 2008.

The investment policy, utilizing a revised target investment allocation of 31 % equity and 69 % long-term U.S. bonds, considers that there will be a time horizon for invested funds of more than 5 years. The total portfolio will be measured against a policy index that reflects the asset class benchmarks and the target asset allocation. The Plan policy does not allow investments in securities of the Company or other related party securities. The performance benchmarks for the separate asset classes include: S & P 500 Index, Russell 2000 Growth Index, MSCI EAFE Index, Barclays Capital Long Term Government Credit Index and Barclays Capital US Strips 20+ Year Index.

The following schedule describes FMCH's allocation for its plans:

*Table 05.5.23* **CATEGORIES OF PLAN ASSETS**

| | *Allocation 2008* | *Allocation 2007* | *Target allocation* |
|---|---|---|---|
| Equity securities | 33 % | 32 % | 31 % |
| Debt securities | 67 % | 68 % | 69 % |
| **TOTAL** | **100 %** | **100 %** | **100 %** |

### DEFINED CONTRIBUTION PLANS

Most FMCH employees are eligible to join a 401(k) savings plan. Employees can deposit up to 75 % of their pay up to a maximum of $15.5 if under 50 years old ($20.5 if 50 or over) under this savings plan. The Company will match 50 % of the employee deposit up to a maximum Company contribution of 3 % of the employee's pay. The Company's total expense under this defined contribution plan for the years ended December 31, 2008 and 2007 was $26,096 and $23,534, respectively.

## 11. MANDATORILY REDEEMABLE TRUST PREFERRED SECURITIES

The Company issued Trust Preferred Securities through Fresenius Medical Care Capital Trusts, statutory trusts organized under the laws of the State of Delaware. FMC-AG & Co. KGaA owns all of the common securities of these trusts. The sole asset of each trust is a senior subordinated note of FMC-AG & Co. KGaA or a wholly-owned subsidiary of FMC-AG & Co. KGaA. FMC-AG & Co. KGaA, D-GmbH and FMCH have guaranteed payment and performance of the senior subordinated notes to the respective Fresenius Medical Care Capital Trusts. The Trust Preferred Securities are guaranteed by FMC-AG & Co. KGaA through a series of undertakings by the Company, FMCH and D-GmbH.

The Trust Preferred Securities entitle the holders to distributions at a fixed annual rate of the stated amount and are mandatorily redeemable after 10 years. Earlier redemption at the option of the holders may also occur upon a change of control followed by a rating decline or defined events of default including a failure to pay interest. Upon liquidation of the trusts, the holders of Trust Preferred Securities are entitled to a distribution equal to the stated amount. The Trust Preferred Securities do not hold voting rights in the trust except under limited circumstances.

The indentures governing the notes held by the Fresenius Medical Care Capital Trusts contain affirmative and negative covenants with respect to the Company and its subsidiaries and other payment restrictions. Some of the covenants limit the Company's indebtedness and its investments, and require the Company to maintain certain ratios defined in the indentures. As of December 31, 2008, the Company is in compliance with all financial covenants under all Trust Preferred Securities agreements.

The Trust Preferred Securities outstanding as of December 31, 2008 and 2007 are as follows:

*Table 05.5.24* **TRUST PREFERRED SECURITIES**

| *in thousands, stated amounts in $* | *Year issued* | *Stated amount* | *Interest rate* | *Mandatory redemption date* | *2008* | *2007* |
|---|---|---|---|---|---|---|
| Fresenius Medical Care Capital Trust II | 1998 | $ 450,000 | 7 7/8 % | Feb. 1, 2008 | – | 443,985 |
| Fresenius Medical Care Capital Trust III | 1998 | DM 300.000 | 7 3/8 % | Feb. 1, 2008 | – | 225,802 |
| Fresenius Medical Care Capital Trust IV | 2001 | $ 225,000 | 7 7/8 % | Jun. 15, 2011 | 224,068 | 223,684 |
| Fresenius Medical Care Capital Trust V | 2001 | € 300.000 | 7 3/8 % | Jun. 15, 2011 | 416,628 | 440,311 |
| **TOTAL** | | | | | **640,696** | **1,333,782** |

The Company redeemed the securities issued by Trust II and Trust III which were due and paid on February 1, 2008, primarily with funds obtained under its existing credit facilities.

## 12. MINORITY INTERESTS

The Company has obligations to purchase options held by minority shareholders in certain of its subsidiaries. These obligations result from put options and are exercisable by the minority owners. If these put options were exercised, the Company would be required to purchase the minority owners' interest for cash equal to the then fair value. As of December 31, 2008 the Company's potential obligations under these put options are $112,000 of which $53,000 were exercisable and another $15,000 is exercisable within one year. In the last two fiscal years ending December 31, 2008, one put has been exercised for a total consideration of $7,000.

## 13. SHAREHOLDERS' EQUITY

### CAPITAL STOCK

The General Partner has no equity interest in the Company and, therefore, does not participate in either the assets or the profits and losses of the Company. However, the General Partner is compensated for all outlays in connection with conducting the Company's business, including the remuneration of members of the management board and the supervisory board (*see Note 3*).

The general meeting of a partnership limited by shares may approve Authorized Capital (genehmigtes Kapital). The resolution creating Authorized Capital requires the affirmative vote of a majority of three quarters of the capital represented at the vote and may authorize the management board to issue shares up to a stated amount for a period of up to five years. The nominal value of the Authorized Capital may not exceed half of the capital stock at the time of the authorization.

In addition, the general meeting of a partnership limited by shares may create Conditional Capital (bedingtes Kapital) for the purpose of issuing (i) shares to holders of convertible bonds or other securities which grant a right to shares, (ii) shares as the consideration in a merger with another company, or (iii) shares offered to management or employees. In each case, the authorizing resolution requires the affirmative vote of a majority of three quarters of the capital represented at the vote. The nominal value of the Conditional Capital may not exceed half or, in the case of Conditional Capital created for the purpose of issuing shares to management and employees, 10 % of the company's capital at the time of the resolution.

All resolutions increasing the capital of a partnership limited by shares also require the consent of the General Partner for their effectiveness.

### AUTHORIZED CAPITAL

By resolution of the Extraordinary General Meeting ("EGM") of shareholders on August 30, 2005, Management AG was authorized, with the approval of the supervisory board, to increase, on one or more occasions, the Company's share capital until August 29, 2010 by a maximum amount of €35,000 through issue of new ordinary shares against cash contributions, Authorized Capital I. The General Partner is entitled, subject to the approval of the supervisory board, to decide on the exclusion of statutory pre-emption rights of the shareholders. However, such an exclusion of pre-emption rights will be permissible for fractional amounts. Additionally, the newly issued shares may be taken up by certain credit institutions determined by the General Partner if such credit institutions are obliged to offer the shares to the shareholders (indirect pre-emption rights).

In addition, by resolution of the EGM of shareholders on August 30, 2005, the General Partner was authorized, with the approval of the supervisory board, to increase, on one or more occasions, the share capital of the Company until August 29, 2010 by a maximum amount of €25,000 through the issue of new ordinary shares against cash contributions or contributions in kind, Authorized Capital II. The General Partner is entitled, subject to the approval of the supervisory board, to decide on an exclusion of statutory pre-emption rights of the shareholders. However, such exclusion of pre-emption rights will be permissible only if (i) in case of a capital increase against cash contributions, the nominal value of the issued shares does not exceed 10 % of the nominal share value of the Company's share capital and the issue price for the new shares is at the time of the determination by the General Partner not significantly lower than the stock price in Germany of the existing listed shares of the same type and with the same rights or, (ii) in case of a capital increase against contributions in kind, the purpose of such increase is to acquire an enterprise, parts of an enterprise or an interest in an enterprise.

The Company's Authorized Capital I and Authorized Capital II became effective upon registration with the commercial register of the local court in Hof an der Saale on February 10, 2006.

## CONDITIONAL CAPITAL

By resolution of the Company's Annual General Meeting of shareholders ("AGM") on May 9, 2006, as amended by the AGM on May 15, 2007, resolving a three-for-one share split, the Company's share capital was conditionally increased by up to €15,000 corresponding to 15 million ordinary shares with no par value and a nominal value of €1.00. This Conditional Capital increase can only be effected by the exercise of stock options under the Company's Stock Option Plan 2006 with each stock option awarded exercisable for one ordinary share (*see Note 15*). The Company has the right to deliver ordinary shares that it owns or purchases in the market in place of increasing capital by issuing new shares.

Through the Company's other employee participation programs, the Company has issued convertible bonds and stock option/subscription rights (Bezugsrechte) to employees and the members of the Management Board of the General Partner and employees and members of management of affiliated companies that entitle these persons to receive preference shares or, following the conversion offer in 2005, ordinary shares. At December 31, 2008, 241,776 convertible bonds or options for preference shares remained outstanding with a remaining average term of 3.57 years and 11,279,843 convertible bonds or options for ordinary shares remained outstanding with a remaining average term of 5.33 years under these programs. For the year ending December 31, 2008, 32,453 options for preference shares and 1,145,453 options for ordinary shares had been exercised under these employee participation plans and $36,755 (€24,886) remitted to the Company.

As the result of the Company's three-for-one stock split for both preference and ordinary shares on June 15, 2007, and with the approval of the shareholders as the AGM on May 15, 2007, the Company's Conditional Capital was increased by €4,454 ($6,557). Conditional Capital available for all programs at December 31, 2008 is €28,051 ($39,038) which includes €15,000 ($20,876) for the 2006 Plan and €13,051 ($18,162) for all other plans.

## DIVIDENDS

Under German law, the amount of dividends available for distribution to shareholders is based upon the unconsolidated retained earnings of Fresenius Medical Care AG & Co. KGaA as reported in its balance sheet determined in accordance with the German Commercial Code (Handelsgesetzbuch).

If no dividends on the Company's preference shares are declared for two consecutive years after the year for which the preference shares are entitled to dividends, then the holders of such preference shares would be entitled to the same voting rights as holders of ordinary shares until all arrearages are paid. In addition, the payment of dividends by FMC-AG & Co. KGaA is subject to limitations under the 2006 Senior Credit Agreement (*see Note 9*).

Cash dividends of $252,395 for 2007 in the amount of €0.56 per preference share and €0.54 per ordinary share were paid on May 21, 2008.

Cash dividends of $188,407 for 2006 in the amount of €0.49 per preference share and €0.47 per ordinary share were paid on May 16, 2007.

## 14. EARNINGS PER SHARE

The following table is a reconciliation of the numerators and denominators of the basic and diluted earnings per share computations and shows the basic and fully diluted income per ordinary and preference share for the years ending December 31:

*Table 05.5.25* **RECONCILIATION OF BASIC AND DILUTED EARNINGS PER SHARE**

| *$ in thousands, except per share data* | *2008* | *2007* |
|---|---|---|
| **Numerators** | | |
| Net income | 817,607 | 717,130 |
| Less dividend preference on preference shares | 112 | 103 |
| **INCOME AVAILABLE TO ALL CLASS OF SHARES** | **817,495** | **717,027** |
| **Denominators** | | |
| Weighted average number of | | |
| Ordinary shares outstanding | 293,233,477 | 291,929,141 |
| Preference shares outstanding | 3,795,248 | 3,739,470 |
| Total weighted average shares outstanding | 297,028,725 | 295,668,611 |
| Potentially dilutive Ordinary shares | 497,714 | 1,079,683 |
| Potentially dilutive Preference shares | 97,929 | 127,324 |
| Total weighted average ordinary shares outstanding assuming dilution | 293,731,191 | 293,008,824 |
| Total weighted average preference shares outstanding assuming dilution | 3,893,177 | 3,866,794 |
| Basic income per ordinary share | 2.75 | 2.43 |
| Plus preference per preference share | 0.03 | 0.02 |
| Basic income per preference share | 2.78 | 2.45 |
| Fully diluted income per ordinary share | 2.75 | 2.42 |
| Plus preference per preference share | 0.03 | 0.02 |
| Fully diluted income per preference share | 2.78 | 2.44 |

## 15. STOCK OPTIONS

In connection with its stock option program, the Company incurred compensation expense of $31,879 and $24,208 for the years ending December 31, 2008 and 2007, respectively. There were no capitalized compensation costs in any of the two years presented. The Company also recorded a related deferred income tax of $9,158 and $6,880 for the years ending December 31, 2008 and 2007, respectively.

### STOCK OPTIONS AND OTHER SHARE-BASED PLANS

At December 31, 2008, the Company has awards outstanding under various stock-based compensation plans.

## INCENTIVE PLAN

In 2006, Fresenius Medical Care Management AG adopted a three-year performance related compensation plan for fiscal years 2008, 2007 and 2006, for the members of its management board in the form of a variable bonus. A special bonus component (award) for some of the management board members consists in equal parts of cash payments and a share-based compensation based on development of the share price of Fresenius Medical Care AG & Co. KGaA's ordinary shares. The amount of the award in each case depends on the achievement of certain performance targets. The targets are measured by reference to revenue growth, operating income, consolidated net income, and cash flow development. Once the annual targets are achieved, the cash portion of the award is paid after the end of the respective fiscal year. The share-based compensation portion of the award is granted but subject to a three-year vesting period beginning after the respective fiscal year in which the target has been met and is amortized over the same three-year vesting period. The payment of the share-based compensation portion corresponds to the share price of Fresenius Medical Care AG & Co. KGaA's ordinary shares on exercise, i.e. at the end of the vesting period, and is also made in cash. The share-based compensation is revalued each reporting period during the vesting period to reflect the market value of the stock as of the reporting date with any changes in value recorded in the reporting period. The share-based compensation incurred under this plan for target years 2008 and 2007 was $2,189 and $4,595, respectively.

## FRESENIUS MEDICAL CARE AG & CO. KGAA STOCK OPTION PLAN 2006

On May 9, 2006, as amended on May 15, 2007, the Fresenius Medical Care AG & Co. KGaA Stock Option Plan 2006 (the "Amended 2006 Plan") was established by resolution of the Company's AGM with a conditional capital increase up to €15,000 subject to the issue of up to fifteen million no par value bearer ordinary shares with a nominal value of €1.00 each. Under the 2006 Plan, up to fifteen million options can be issued, each of which can be exercised to obtain one ordinary share, with up to three million options designated for members of the Management Board of the General Partner, up to three million options designated for members of management boards of direct or indirect subsidiaries of the Company and up to nine million options designated for managerial staff members of the Company and such subsidiaries. With respect to participants who are members of the General Partner's Management Board, its Supervisory Board has sole authority to grant stock options and exercise other decision making powers under the Amended 2006 Plan (including decisions regarding certain adjustments and forfeitures). The General Partner has such authority with respect to all other participants in the Amended 2006 Plan.

Options under the Amended 2006 Plan can be granted the last Monday in July and/or the first Monday in December. The exercise price of options granted under the Amended 2006 Plan shall be the average closing price on the Frankfurt Stock Exchange of the Company's ordinary shares during the 30 calendar days immediately prior to each grant date. Options granted under the Amended 2006 Plan have a seven-year term but can be exercised only after a three-year vesting period. The vesting of options granted is subject to achievement of performance targets measured over a three-year period from the grant date. For each such year, the performance target is achieved if the Company's adjusted basic income per ordinary share ("EPS"), as calculated in accordance with the Amended 2006 Plan, increases by at

least 8 % year over year during the vesting period, beginning with EPS for the year of grant as compared to EPS for the year preceding such grant. Calculation of EPS under the Amended 2006 Plan excluded, among other items, the costs of the transformation of the Company's legal form and the conversion of preference shares into ordinary shares. For each grant, one-third of the options granted are forfeited for each year in which EPS does not meet or exceed the 8 % target. The performance targets for 2008 and 2007 were met. Vesting of the portion or portions of a grant for a year or years in which the performance target is met does not occur until completion of the entire three-year vesting period. Upon exercise of vested options, the Company has the right to reissue treasury shares or issue new shares.

During 2008, the Company awarded 2,523,729 options, including 398,400 options granted to members of the Management Board of the General Partner, at a weighted average exercise price of $49.38 (€35.48), a weighted average fair value of $15.37 each and a total fair value of $38,788, which will be amortized on a straight line basis over the three-year vesting period.

During 2007, the Company awarded 2,395,962 options, including 398,400 options granted to members of the Management Board of the General Partner, at a weighted average exercise price of $46.22 (€33.91), a weighted average fair value of $13.23 (€9.71) each and a total fair value of $31,709, which will be amortized on a straight line basis over the three-year vesting period.

Options granted under the 2006 Plan to US participants are non-qualified stock options under the United States Internal Revenue Code of 1986, as amended. Options under the 2006 Plan are not transferable by a participant or a participant's heirs, and may not be pledged, assigned, or otherwise disposed of.

### FRESENIUS MEDICAL CARE 2001 INTERNATIONAL STOCK OPTION PLAN

Under the Fresenius Medical Care 2001 International Stock Incentive Plan (the "2001 Plan"), options in the form of convertible bonds with a principal of up to €10,240 were issued to the members of the Management Board and other employees of the Company representing grants for up to 4 million non-voting preference shares. The convertible bonds originally had a par value of €2.56 and bear interest at a rate of 5.5 %. In connection with the share split effected in 2007, the principal amount was adjusted in the same proportion as the share capital out of the capital increase and the par value of the convertible bonds was adjusted to €0.85 without affecting the interest rate. Except for the members of the Management Board, eligible employees may purchase the bonds by issuing a non-recourse note with terms corresponding to the terms of and secured by the bond. The Company has the right to offset its obligation on a bond against the employee's obligation on the related note; therefore, the convertible bond obligations and employee note receivables represent stock options issued by the Company and are not reflected in the Consolidated Financial Statements. The options expire ten years from issuance and can be exercised beginning two, three or four years after issuance. Compensation costs related to awards granted under this plan are amortized on a straight-line basis over the vesting period for each separately vesting portion of the awards. Bonds issued to Management Board members who did not issue a note to the Company are recognized as a liability on the Company's balance sheet.

Upon issuance of the option, the employees had the right to choose options with or without a stock price target. The conversion price of options subject to a stock price target corresponds to the stock exchange quoted price of the preference shares upon the first time the stock exchange quoted price exceeds the initial value by at least 25 %. The initial value ("Initial Value") is the average price of the preference shares during the last 30 trading days prior to the date of grant. In the case of options not subject to a stock price target, the number of convertible bonds awarded to the eligible employee would be 15 % less than if the employee elected options subject to the stock price target. The conversion price of the options without a stock price target is the Initial Value. Each option entitles the holder thereof, upon payment of the respective conversion price, to acquire one preference share. Effective May 2006, no further grants can be issued under the 2001 Plan and no options were granted under the 2001 Plan after 2005.

At December 31, 2008, the Management Board members of the General Partner, held 2,159,720 stock options for ordinary shares and employees of the Company held 9,120,123 stock options for ordinary shares and 241,776 stock options for preference shares, under the various stock-based compensation plans of the Company. The Table below provides reconciliations for options outstanding at December 31, 2008, as compared to December 31, 2007.

*Table 05.5.26* **RECONCILIATION OF OPTIONS OUTSTANDING**

| | *Options in thousands* | *Weighted average exercise price* | |
|---|---|---|---|
| | | *in €* | *in $* |
| **Ordinary shares** | | | |
| **BALANCE AT DECEMBER 31, 2007** | **9,973** | **26.64** | **37.07** |
| Granted | 2,524 | 35.48 | 49.38 |
| Excercised | 1,145 | 21.27 | 29.60 |
| Forfeited | 72 | 29.82 | 41.51 |
| **BALANCE AT DECEMBER 31, 2008** | **11,280** | **29.15** | **40.56** |
| | | | |
| **Preference shares** | | | |
| **BALANCE AT DECEMBER 31, 2007** | **275** | **16.16** | **22.50** |
| Exercised | 32 | 16.01 | 22.29 |
| Forfeited | 1 | 16.42 | 22.85 |
| **BALANCE AT DECEMBER 31, 2008** | **242** | **16.18** | **22.52** |

The following table provides a summary of fully vested options outstanding and exercisable for both preference and ordinary shares at December 31, 2008:

*Table 05.5.27* **FULLY VESTED OUTSTANDING AND EXERCISABLE OPTIONS**

| | *Options in thousands* | *Weighted average remaining contractual life in years* | *Weighted average exercise price* | | *Aggregate intrinsic value* | |
|---|---|---|---|---|---|---|
| | | | *in €* | *in $* | *in €* | *in $* |
| **Options** | | | | | | |
| Options for preference shares | 217 | 3.21 | 15.49 | 21.55 | 3,918 | 5,452 |
| Options for ordinary shares | 3,470 | 4.50 | 21.24 | 29.56 | 41,876 | 58,278 |

At December 31, 2008, there were $53,628 of total unrecognized compensation costs related to non-vested options granted under all plans. These costs are expected to be recognized over a weighted-average period of 1.6 years.

During the years ended December 31, 2008 and 2007 the company received cash of $36,755 and $38,757, respectively, from the exercise of stock options. The intrinsic value of options exercised for the twelve-month periods ending December 31, 2008 and 2007 were $27,135 and $27,591, respectively. The Company recorded a related tax benefit of $7,132 and $8,177 for the years ending December 31, 2008 and 2007, respectively.

### FAIR VALUE INFORMATION

The Company used a binomial option-pricing model in determining the fair value of the awards under the 2006 Plan. Option valuation models require the input of highly subjective assumptions including expected stock price volatility. The Company's assumptions are based upon its past experiences, market trends and the experiences of other entities of the same size and in similar industries. Expected volatility is based on historical volatility of the Company's shares. To incorporate the effects of expected early exercise in the model, an early exercise of vested options was assumed as soon as the share price exceeds 155 % of the exercise price. The Company's stock options have characteristics that vary significantly from traded options and changes in subjective assumptions can materially affect the fair value of the option. The assumptions used to determine the fair value of the 2008 and 2007 grants are as follows:

*Table 05.5.28* **ASSUMPTIONS**

| | *2008* | *2007* |
|---|---|---|
| Expected dividend yield | 1.85 % | 1.93 % |
| Risk-free interest rate | 4.38 % | 4.19 % |
| Expected volatility | 25.58 % | 27.13 % |
| Expected life of options | 7 years | 7 years |
| Exercise price *in €* | 35.48 | 33.91 |
| Exercise price *in $* | 49.38 | 46.22 |

## 16. INCOME TAXES

Income before income taxes and minority interest is attributable to the following geographic locations:

*Table 05.5.29* **INCOME BEFORE INCOME TAXES**

| *$ in thousands* | *2008* | *2007* |
|---|---|---|
| Germany | 372,174 | 281,633 |
| United States | 773,089 | 724,839 |
| Other | 190,427 | 202,603 |
| **TOTAL** | **1,335,690** | **1,209,075** |

Income tax expense (benefit) for the years ended December 31, 2008 and 2007 consisted of the following:

*Table 05.5.30* **EXPENSE (BENEFIT) FOR INCOME TAXES**

| *$ in thousands* | *2008* | *2007* |
|---|---|---|
| **Current** | | |
| Germany | 62,609 | 124,598 |
| United States | 211,889 | 283,350 |
| Other | 77,134 | 75,534 |
| **TOTAL CURRENT** | **351,632** | **483,482** |
| **Deferred** | | |
| Germany | 43,593 | (11,377) |
| United States | 105,466 | 4,052 |
| Other | (11,549) | (10,505) |
| **TOTAL DEFERRED** | **137,510** | **(17,830)** |
| **TOTAL** | **489,142** | **465,652** |

As a result of the German Business Tax Reform Act 2008 (Unternehmensteuerreformgesetz 2008), the corporate income tax rate was reduced from 25 % to 15 % for German companies. This reduction, together with technical changes to trade tax rules, generally reduces the Company's German entities' combined corporate income tax rate effective as of January 1, 2008. Deferred tax assets and liabilities for German entities expected to be realized in 2008 and beyond, were revalued in 2007 to reflect the changes in the enacted tax rate.

In 2007 the Company was subject to German federal corporation income tax at a base rate of 25 % plus a solidarity surcharge of 5.5 % on federal corporation taxes payable.

A reconciliation between the expected and actual income tax expense is shown below. The expected corporate income tax expense is computed by applying the German corporation tax rate (including the solidarity surcharge) and the effective trade tax rate on income before income taxes and minority interest. The respective combined tax rates are 29.58 % and 38.47 % for the fiscal years ended December 31, 2008 and 2007.

*Table 05.5.31* **RECONCILIATION OF INCOME TAXES**

| *$ in thousands* | *2008* | *2007* |
|---|---|---|
| Expected corporate income tax expense | 395,097 | 465,131 |
| Tax free income | (49,309) | (50,131) |
| Foreign tax rate differential | 93,877 | (5,434) |
| Non-deductible expenses | 5,494 | 5,081 |
| Taxes for prior years | 21,371 | 41,868 |
| Change in valuation allowance | 4,168 | 3,627 |
| Change of German tax rate | – | (4,257) |
| Other | 18,444 | 9,767 |
| **ACTUAL INCOME TAX EXPENSE** | **489,142** | **465,652** |
| **EFFECTIVE TAX RATE** | **36.6 %** | **38.5 %** |

The tax effects of the temporary differences that give rise to deferred tax assets and liabilities at December 31, 2008 and 2007, are presented below:

*Table 05.5.32* **DEFERRED INCOME TAX ASSETS AND LIABILITIES**

| *$ in thousands* | *2008* | *2007* |
|---|---|---|
| **Deferred tax assets** | | |
| Accounts receivable, primarily due to allowance for doubtful accounts | 37,431 | 37,572 |
| Inventory, primarily due to additional costs capitalized for tax purposes, and inventory reserve accounts | 35,029 | 42,301 |
| Plant, equipment, intangible assets and other non current assets, principally due to differences in depreciation and amortization | 41,103 | 50,829 |
| Accrued expenses and other liabilities for financial accounting purposes, not currently tax deductible | 305,898 | 320,518 |
| Net operating loss carryforwards, tax credit carryforwards and interest carryforwards | 79,389 | 64,792 |
| Derivatives | 67,800 | 22,260 |
| Stock-based compensation expense | 17,405 | 11,213 |
| Other | 10,679 | 11,497 |
| **TOTAL DEFERRED TAX ASSETS** | **594,734** | **560,983** |
| Less valuation allowance | (56,169) | (51,326) |
| **NET DEFERRED TAX ASSETS** | **538,565** | **509,657** |
| **Deferred tax liabilities** | | |
| Accounts receivable | 11,015 | 13,630 |
| Inventory, primarily due to inventory reserve accounts for tax purposes | 4,615 | 6,306 |
| Accrued expenses and other liabilities deductible for tax prior to financial accounting recognition | 50,229 | 15,134 |
| Plant, equipment and intangible assets, principally due to differences in depreciation and amortization | 432,367 | 400,408 |
| Derivatives | 11,830 | 14,636 |
| Other | 66,532 | 20,587 |
| **TOTAL DEFERRED TAX LIABILITIES** | **576,588** | **470,701** |
| **NET DEFERRED TAX ASSETS (LIABILITIES)** | **(38,023)** | **38,956** |

The valuation allowance increased by $4,843 in 2008 and by $10,095 in 2007.

The expiration of net operating losses is as follows:

*Table 05.5.33* **NET OPERATING LOSS CARRYFORWARDS** *$ in thousands*

| *2009* | *2010* | *2011* | *2012* | *2013* | *2014* | *2015* | *2016* | *2017* | *2018 and thereafter* | *Without expiration date* | ***Total*** |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 27,304 | 4,604 | 9,155 | 19,503 | 17,879 | 9,640 | 13,485 | 13,632 | 12,158 | 30,477 | 95,984 | **253,821** |

In assessing the realizability of deferred tax assets, management considers whether it is more-likely-than-not that some portion or all of the deferred tax assets will be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management considers the scheduled reversal of deferred tax liabilities and projected future taxable income in making this assessment. Based upon the level of historical taxable income and projections for future taxable income over the periods in which the deferred tax assets are deductible, management believes it is more-likely-than-not the Company will realize the benefits of these deductible differences, net of the existing valuation allowances at December 31, 2008.

The Company provides for income taxes on the cumulative earnings of foreign subsidiaries that will not be reinvested. During the year 2008, the Company provided for $8,600 of deferred tax liabilities associated with earnings that are likely to be distributed in 2009 and the following years. Provision has not been made for additional taxes on $1,643,429 undistributed earnings of foreign subsidiaries as these earnings are considered permanently reinvested. The earnings could become subject to additional tax if remitted or deemed remitted as dividends; however calculation of such additional tax is not practical. These taxes would predominantly comprise foreign withholding tax on dividends of foreign subsidiaries, and German income tax of approx 1.5 percent on all dividends and capital gains.

FMC-AG & Co. KGaA companies are subject to tax audits in Germany and the U.S. on a regular basis and on-going tax audits in other jurisdictions. In Germany, the tax audit for the years 1998 until 2001 has been finalized. The Company recognized and recorded the results of the audit in 2006 and thereafter paid all amounts due to the tax authorities. Fiscal years 2002 through 2005 are currently under audit and fiscal years 2006, 2007 and 2008 are open to audit.

For the tax year 1997, the Company recognized an impairment of one of its subsidiaries which the German tax authorities have disallowed in the audit for the years 1996 and 1997. The Company disagrees with such conclusion and filed a complaint with the appropriate German court to challenge the tax authority's decision. An adverse determination in this litigation could have a material adverse effect on the results of operations in the relevant reporting period. The Company has included the related unrecognized tax benefit in the total unrecognized tax benefit noted below.

In the U.S., the Company filed claims for refunds contesting the IRS's disallowance of FMCH's deductions of civil settlement payments in prior year tax returns. As a result of a settlement agreement with the IRS to resolve the appeal of the IRS's disallowance of deductions for the civil settlement payments made to qui tam relators in connection with the resolution of the 2000 investigation, the Company received a refund in September 2008 of $37,000, inclusive of interest. The settlement agreement preserves the right to continue to pursue claims in the U.S. Federal courts for refund of all other disallowed deductions. The unrecognized tax benefit relating to these deductions is included in the total unrecognized tax benefit noted below.

The Federal tax audit for the years 2002 through 2004 has been completed and the IRS has issued its report. The audit report includes disallowance of a material amount of deductions taken during the audit period for interest expense related to intercompany mandatorily redeemable preferred securities. The Company has filed a protest over the disallowed deductions and will avail itself of all remedies. An adverse determination with respect to any of the disputed disallowances could have a material adverse effect on our cash flows, tax expenses, net income and earnings per share.

Fiscal years 2005 and 2006 are currently under audit, 2007 and 2008 are open to audit. There are a number of state audits in progress and various years are open to audit in various states. All expected results have been recognized in the financial statements.

Subsidiaries of FMC-AG & Co. KGaA in a number of countries outside of Germany and the U.S. are also subject to tax audits. The Company estimates that the effects of such tax audits are not material to these consolidated financial statements.

The following table shows the reconciliation of the beginning and ending amounts of unrecognized tax benefits:

*Table 5.5.34* **UNRECOGNIZED TAX BENEFITS (NET OF INTEREST)**

| *$ in thousands* | *2008* | *2007* |
|---|---|---|
| **BALANCE AT JANUARY 1** | **354,050** | **302,552** |
| Increases in unrecognized tax benefits prior periods | 24,074 | 29,236 |
| Decreases in unrecognized tax benefits prior periods | (36,334) | (9,965) |
| Increases in unrecognized tax benefits current period | 20,180 | 14,893 |
| Changes related to settlements with tax authorities | (2,042) | (2,960) |
| Foreign currency translation | 19,399 | 20,294 |
| **BALANCE AT DECEMBER 31** | **379,327** | **354,050** |

Included in the balance at December 31, 2008 are $363,188 of unrecognized tax benefits which would affect the effective tax rate if recognized. The Company is currently not in a position to forecast the timing and magnitude of changes in the unrecognized tax benefits.

During the year ended December 31, 2008 the Company recognized $17,982 in interest and penalties. The Company had a total accrual of $101,178 of tax related interest and penalties at December 31, 2008.

## 17. OPERATING LEASES

The Company leases buildings and machinery and equipment under various lease agreements expiring on dates through 2045. Rental expense recorded for operating leases for the years ended December 31, 2008 and 2007 was $497,875 and $461,490, respectively.

Future minimum rental payments under noncancelable operating leases for the five years succeeding December 31, 2008 and thereafter are:

*Table 05.5.35* **FUTURE MINIMUM RENTAL PAYMENTS**

| *$ in thousands* | *2009* | *2010* | *2011* | *2012* | *2013* | *Thereafter* | ***Total*** |
|---|---|---|---|---|---|---|---|
| Future minimum rental payments | 387,996 | 348,208 | 300,387 | 246,607 | 198,460 | 638,944 | **2,120,602** |

## 18. LEGAL PROCEEDINGS

The Company is routinely involved in numerous claims, lawsuits, regulatory and tax audits, investigations and other legal matters arising, for the most part, in the ordinary course of its business of providing healthcare services and products. The outcome of litigation and other legal matters is always difficult to accurately predict and outcomes that are not consistent with the Company's view of the merits can occur. The Company believes that it has valid defenses to the legal matters pending against it and is defending itself vigorously. Nevertheless, it is possible that the resolution of one or more of the legal matters currently pending or threatened could have a material adverse effect on its business, results of operations and financial condition.

### COMMERCIAL LITIGATION

The Company was originally formed as a result of a series of transactions it completed pursuant to the Agreement and Plan of Reorganization dated as of February 4, 1996, by and between W.R. Grace & Co. and Fresenius SE (the "Merger"). At the time of the Merger, a W.R. Grace & Co. subsidiary known as W.R. Grace & Co.-Conn. had, and continues to have, significant liabilities arising out of product-liability related litigation (including asbestos-related actions), pre-Merger tax claims and other claims unrelated to National Medical Care, Inc. ("NMC"), which was W.R. Grace & Co.'s dialysis business prior to the Merger. In connection with the Merger, W.R. Grace & Co.-Conn. agreed to indemnify the Company, FMCH, and NMC against all liabilities of W.R. Grace & Co., whether relating to events occurring before or after the Merger, other than liabilities arising from or relating to NMC's operations. W.R. Grace & Co. and certain of its subsidiaries filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code (the "Grace Chapter 11 Proceedings") on April 2, 2001.

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

In 2003, the Company reached agreement with the asbestos creditors' committees on behalf of the W.R. Grace & Co. bankruptcy estate and W.R. Grace & Co. in the matters pending in the Grace Chapter 11 Proceedings for the settlement of all fraudulent conveyance and tax claims against it and other claims related to the Company that arise out of the bankruptcy of W.R. Grace & Co. Under the terms of the settlement agreement as amended (the "Settlement Agreement"), fraudulent conveyance and other claims raised on behalf of asbestos claimants will be dismissed with prejudice and the Company will receive protection against existing and potential future W.R. Grace & Co. related claims, including fraudulent conveyance and asbestos claims, and indemnification against income tax claims related to the non-NMC members of the W.R. Grace & Co. consolidated tax group upon confirmation of a W.R. Grace & Co. bankruptcy reorganization plan that contains such provisions. Under the Settlement Agreement, the Company will pay a total of $115,000 without interest to the W.R. Grace & Co. bankruptcy estate, or as otherwise directed by the Court, upon plan confirmation. No admission of liability has been or will be made. The Settlement Agreement has been approved by the U.S. District Court. Subsequent to the Merger, W.R. Grace & Co. was involved in a multi-step transaction involving Sealed Air Corporation ("Sealed Air", formerly known as Grace Holding, Inc.). The Company is engaged in litigation with Sealed Air to confirm its entitlement to indemnification from Sealed Air for all losses and expenses incurred by the Company relating to pre-Merger tax liabilities and Merger-related claims. Under the Settlement Agreement, upon confirmation of a plan that satisfies the conditions of the Company's payment obligation, this litigation will be dismissed with prejudice.

On April 4, 2003, FMCH filed a suit in the U.S. District Court for the Northern District of California, styled Fresenius USA, Inc., et al., v. Baxter International Inc., et al., Case No. C 03-1431, seeking a declaratory judgment that FMCH does not infringe patents held by Baxter International Inc. and its subsidiaries and affiliates ("Baxter"), that the patents are invalid, and that Baxter is without right or authority to threaten or maintain suit against FMCH for alleged infringement of Baxter's patents. In general, the alleged patents concern the use of touch screen interfaces for hemodialysis machines. Baxter filed counterclaims against FMCH seeking more than $140,000 in monetary damages and injunctive relief, and alleging that FMCH willfully infringed on Baxter's patents. On July 17, 2006, the court entered judgment on a jury verdict in favor of FMCH finding that all the asserted claims of the Baxter patents are invalid as obvious and/or anticipated in light of prior art. On February 13, 2007, the court granted Baxter's motion to set aside the jury's verdict in favor of FMCH and reinstated the patents and entered judgment of infringement. Following a trial on damages, the court entered judgment on November 6, 2007 in favor of Baxter on a jury award of $14,300. On April 4, 2008, the court denied Baxter's motion for a new trial, established a royalty payable to Baxter of 10 % of the sales price for continuing sales of FMCH's 2008K hemodialysis machines and 7 % of the sales price of related disposables, parts and service beginning November 7, 2007, and enjoined sales of the 2008K machine effective January 1, 2009. We appealed the court's rulings to the Court of Appeals for the Federal Circuit. We are confident that we will prevail on appeal or as a result of the pending U.S. Patent and Trademark Office re-examinations of the underlying Baxter

patents and have made no provision in our financial statements for any potential liability in this matter. If we are unsuccessful on all appeals, including any appeal of the royalty, the royalties payable to Baxter on the machines and disposable supplies that are subject to the court's order will be approximately $56,000 for sales through December 31, 2008 and are estimated to be in the range of $2,000 to $3,000 per month thereafter. In the interim period until our appeal is decided, we are funding a court-approved escrow account at the royalty rates noted above. If we win the appeal, the escrowed funds will be returned to us with interest. In October 2008, we completed design modifications to the 2008K machine that we expect will eliminate any incremental hemodialysis machine royalty payment exposure under the court order and permit the continued sale of the modified machine in compliance with the injunction, irrespective of the outcome of our appeal.

On April 28, 2008, Baxter filed suit in the U.S. District Court for the Northern District of Illinois, Eastern Division (Chicago), styled Baxter International, Inc. and Baxter Healthcare Corporation v. Fresenius Medical Care Holdings, Inc. and Fresenius USA, Inc., Case No. CV 2389, asserting that FMCH's hemodialysis machines infringe four recently issued patents (late 2007-2008), all of which are based on one of the patents at issue in the April 2003 Baxter case described above. The new patents expire in April 2011 and relate to trend charts shown on touch screen interfaces and the entry of ultrafiltration profiles (ultrafiltration is the removing of liquid from a patient's body using pressure). The court has stayed the case pending the outcome of the appeal in the April 2003 Baxter case. The Company believes that its hemodialysis machines do not infringe any valid claims of the Baxter patents at issue.

On October 17, 2006, Baxter and Deka Products Ltd. (DEKA) filed suit in the U.S. District Court for the Eastern District of Texas which was subsequently transferred to the Northern District of California, styled Baxter Healthcare Corporation and DEKA Products Limited Partnership v. Fresenius Medical Care Holdings, Inc. d/b/a Fresenius Medical Care North America and Fresenius USA, Inc., Case No. CV 438 TJW. The complaint alleges that FMCH's Liberty peritoneal cyclers infringe certain patents owned by or licensed to Baxter. Sales of the Liberty cyclers commenced in July 2008. The Company believes that the Liberty peritoneal cycler does not infringe any valid claims of the Baxter / DEKA patents.

Two patent infringement actions have been pending in Germany between Gambro Industries ("Gambro") on the one side and D-GmbH and FMC-AG & Co. KGaA on the other side (hereinafter collectively "Fresenius Medical Care"). Gambro herein alleged patent infringements by Fresenius Medical Care concerning a patent on a device for the preparation of medical solutions. The first case was dismissed as being unfounded. Such decision has already become final. In the second case, the District Court of Mannheim rendered a judgment on June 27, 2008 deciding in favor of Gambro and declaring that Fresenius Medical Care has in-fringed a patent. Accordingly, the court ordered Fresenius Medical Care to pay compensation (to be determined in a separate court proceeding) for alleged infringement and to stop offering the alleged patent infringing technology in its original form in Germany. D-GmbH brought an invalidity action in the Federal German Patent Court ("BPatG") against Gambro's patent. This case is currently pending with the Federal Court of Justice as the court of appeal. Fresenius Medical Care has also filed an appeal against the District Court's verdict. On January 5, 2009, Gambro enforced such verdict provisionally by way of security to be deposited by Gambro. However, preceding such enforcement Fresenius Medical Care had already developed design modifications, being an alternative technical solution, and replaced the alleged patent infringing technology in nearly all of the affected devices. In view of the pending appeal against BPatG's verdict and Fresenius Medical Care's appeal against the District Court's verdict, Fresenius Medical Care continues to believe that the alleged patent infringing technology does not infringe any valid patent claims of Gambro. Therefore, the Company has made no provision in the financial statements for any potential liability in this matter.

## OTHER LITIGATION AND POTENTIAL EXPOSURES

Renal Care Group, Inc. ("RCG") was named as a nominal defendant in a second amended complaint filed September 13, 2006 in the Chancery Court for the State of Tennessee Twentieth Judicial District at Nashville against former officers and directors of RCG which purports to constitute a class action and derivative action relating to alleged unlawful actions and breaches of fiduciary duty in connection with the Company's acquisition of RCG (the "RCG Acquisition") and in connection with alleged improper backdating and/or timing of stock option grants. The amended complaint was styled Indiana State District Council of Laborers and Hod Carriers Pension Fund, on behalf of itself and all others similarly situated and derivatively on behalf of RCG, Plaintiff, vs. RCG, Gary Brukardt, William P. Johnston, Harry R. Jacobson, Joseph C. Hutts, William V. Lapham, Thomas A. Lowery, Stephen D. McMurray, Peter J. Grua, C. Thomas Smith, Ronald Hinds, Raymond Hakim and R. Dirk Allison, Defendants. The complaint sought damages against former officers and directors and did not state a claim for money damages directly against RCG. On August 30, 2007, this suit was dismissed by the trial court without leave to amend. Plaintiff subsequently appealed and the matter remains pending in the appellate court of Tennessee.

FMCH and its subsidiaries, including RCG (prior to the RCG Acquisition), received subpoenas from the U.S. Department of Justice, Eastern District of Missouri, in connection with a joint civil and criminal investigation. FMCH received its subpoena in April 2005. RCG received its subpoena in August 2005. The subpoenas require production of a broad range of documents relating to FMCH's and RCG's operations, with specific attention to documents related to clinical quality programs, business development activities, medical director compensation and physician relationships, joint ventures, and anemia management programs, RCG's supply company, pharmaceutical and other services that RCG provides to patients, RCG's relationships to pharmaceutical companies, and RCG's purchase of dialysis equipment from FMCH. The Office of the Inspector General of the U.S. Department of Health and Human Services and the U.S. Attorney's office for the Eastern District of Texas have also confirmed that they are participating in the review of the anemia management program issues raised by the U.S. Attorney's office for the Eastern District of Missouri. On July 17, 2007, the U.S. Attorney's office filed a civil complaint against RCG and FMCH in its capacity as RCG's current corporate parent in United States District Court, Eastern District of Missouri. The complaint seeks monetary damages and penalties with respect to issues arising out of the operation of RCG's Method II supply company through 2005, prior to the date of FMCH's acquisition of RCG. The complaint is styled United States of America ex rel. Julie Williams et al. vs. Renal Care Group, Renal Care Group Supply Company and FMCH. The Company believes that RCG's operation of its Method II supply company was in compliance with applicable law and will defend this litigation vigorously. We will continue to cooperate in the ongoing investigation.

On November 27, 2007, the United States District Court for the Western District of Texas (El Paso) unsealed and permitted service of two complaints previously filed under seal by a qui tam relator, a former FMCH local clinic employee (Qui tam is a legal provision under the United States False Claims Act, which allows for private individuals to bring suit on behalf of the U.S. federal government, as far as such individuals believe to have knowledge of presumable fraud committed by third parties). The first complaint alleges that a nephrologist unlawfully employed in his practice an assistant to perform patient care tasks that the assistant was not licensed to perform and that Medicare billings by the nephrologist and FMCH therefore violated the False Claims Act. The second complaint alleges that FMCH unlawfully retaliated against the relator by discharging her from employment constructively. The United States Attorney for the Western District of Texas declined to intervene and to prosecute on behalf of the United States. Counsel for the nephrologist asserted that a criminal investigation of the relator's allegations was in process and therefore moved the Court to stay all activity in the qui tam until the alleged criminal investigation concluded. The Court denied the nephrologist's motion to stay and the litigation is progressing.

From time to time, the Company is a party to or may be threatened with other litigation or arbitration, claims or assessments arising in the ordinary course of its business. Management regularly analyzes current information including, as applicable, the Company's defenses and insurance coverage and, as necessary, provides accruals for probable liabilities for the eventual disposition of these matters.

The Company, like other health care providers, conducts its operations under intense government regulation and scrutiny. It must comply with regulations which relate to or govern the safety and efficacy of medical products and supplies, the operation of manufacturing facilities, laboratories and dialysis clinics, and environmental and occupational health and safety. The Company must also comply with the Anti-Kickback Statute, the False Claims Act, the Stark Statute, and other federal and state fraud and abuse laws. Applicable laws or regulations may be amended, or enforcement agencies or courts may make interpretations that differ from the Company's interpretations or the manner in which it conducts its business. Enforcement has become a high priority for the federal government and some states.

In addition, the provisions of the False Claims Act authorizing payment of a portion of any recovery to the party bringing the suit encourage private plaintiffs to commence "whistle blower" actions. By virtue of this regulatory environment, as well as the Company's corporate integrity agreement with the U.S. federal government, the Company's business activities and practices are subject to extensive review by regulatory authorities and private parties, and continuing audits, investigative demands, subpoenas, other inquiries, claims and litigation relating to the Company's compliance with applicable laws and regulations. The Company may not always be aware that an inquiry or action has begun, particularly in the case of "whistle blower" actions, which are initially filed under court seal.

The Company operates many facilities throughout the United States. In such a decentralized system, it is often difficult to maintain the desired level of oversight and control over the thousands of individuals employed by many affiliated companies. The Company relies upon its management structure, regulatory and legal resources, and the effective operation of its compliance program to direct, manage and monitor the activities of these employees. On occasion, the Company may identify instances where employees, deliberately or inadvertently, have submitted inadequate or false billings. The actions of such persons may subject the Company and its subsidiaries to liability under the Anti-Kickback Statute, the Stark Statute and the False Claims Act, among other laws.

Physicians, hospitals and other participants in the health care industry are also subject to a large number of lawsuits alleging professional negligence, malpractice, product liability, worker's compensation or related claims, many of which involve large claims and significant defense costs. The Company has been and is currently subject to these suits due to the nature of its business and expects that those types of lawsuits may continue. Although the Company maintains insurance at a level which it believes to be prudent, it cannot assure that the coverage limits will be adequate or that insurance will cover all asserted claims. A successful claim against the Company or any of its subsidiaries in excess of insurance coverage could have a material adverse effect upon it and the results of its operations. Any claims, regardless of their merit or eventual outcome, could have a material adverse effect on the Company's reputation and business.

The Company has also had claims asserted against it and has had lawsuits filed against it relating to alleged patent infringements or businesses that it has acquired or divested. These claims and suits relate both to operation of the businesses and to the acquisition and divestiture transactions. The Company has, when appropriate, asserted its own claims, and claims for indemnification. A successful claim against the Company or any of its subsidiaries could have a material adverse effect upon its business, financial condition, and the results of its operations. Any claims, regardless of their merit or eventual outcome, could have a material adverse effect on the Company's reputation and business.

## ACCRUED SPECIAL CHARGE FOR LEGAL MATTERS

At December 31, 2001, the Company recorded a pre-tax special charge of $258,159 to reflect anticipated expenses associated with the defense and resolution of pre-Merger tax claims, Merger-related claims, and commercial insurer claims. The costs associated with the Settlement Agreement and settlements with insurers have been charged against this accrual. With the exception of the proposed $115,000 payment under the Settlement Agreement, all other matters included in the special charge have been resolved. While the Company believes that its remaining accrual reasonably estimates its currently anticipated costs related to the continued defense and resolution of this matter, no assurances can be given that its actual costs incurred will not exceed the amount of this accrual.

## 19. FAIR VALUE MEASURES

In September 2006, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards No. 157, Fair Value Measurements ("FAS 157"), which establishes a framework for reporting fair value and expands disclosures about fair value measurements. FAS 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years. FASB Staff Position No. 157-2 ("FSP 157-2") issued February 12, 2008 delayed application of this Statement for nonfinancial assets and nonfinancial liabilities, except for items that are recognized or disclosed at fair value in the consolidated financial statements on a recurring basis (at least annually), until fiscal years beginning after November 15, 2008, and interim periods within those fiscal years.

FAS 157 establishes a three-tier value hierarchy, which prioritizes the inputs used in estimating fair value: (i) Level 1 is defined as observable inputs, such as quoted prices in active markets, (ii) Level 2 is defined as inputs other than quoted prices in active markets, that are directly or indirectly observable, and (iii) Level 3 is defined as unobservable inputs for which little or no market data exists, therefore requiring the Company to develop its own assumptions.

The Company adopted this standard, except for those sections affected by FSP 157-2, as of January 1, 2008.

The following table presents the carrying amounts and fair values of the Company's financial instruments at December 31, 2008 and 2007.

*Table 05.5.36* **CARRYING AMOUNT AND FAIR VALUE OF FINANCIAL INSTRUMENTS**

| *$ in thousands* | *2008* | | *2007* | |
|---|---|---|---|---|
| | *Carrying amount* | *Fair value* | *Carrying amount* | *Fair value* |
| **Non-Derivatives** | | | | |
| **Assets** | | | | |
| Cash and cash-equivalents | 221,584 | 221,584 | 244,690 | 244,690 |
| Receivables | 2,176,316 | 2,176,316 | 2,026,865 | 2,026,865 |
| **Liabilities** | | | | |
| Accounts payable | 605,260 | 605,260 | 530,968 | 530,968 |
| Long-term debt, excluding Euro and Senior Notes | 3,641,697 | 3,641,697 | 3,302,840 | 3,302,840 |
| Trust Preferred Securities | 640,696 | 626,241 | 1,333,782 | 1,364,188 |
| Euro Notes | 278,340 | 276,154 | 294,420 | 292,466 |
| Senior Notes | 492,456 | 465,625 | 491,569 | 496,035 |
| **Derivatives**[1] | | | | |
| **Assets** | | | | |
| Foreign exchange contracts | 53,631 | 53,631 | 19,485 | 19,485 |
| Dollar interest rate hedges | – | – | 62 | 62 |
| **Liabilities** | | | | |
| Foreign exchange contracts | (39,595) | (39,595) | (5,849) | (5,849) |
| Dollar interest rate hedges | (148,946) | (148,946) | (40,797) | (40,797) |
| Yen interest rate hedges | (9) | (9) | (32) | (32) |

[1] *As of December 31, 2008, the valuation of the Company's derivates was determined using Significant. Other Observable Inputs (Level 2) in accordance with the fair value hierarchy levels established in FAS 157.*

The carrying amounts in the table are included in the consolidated balance sheet under the indicated captions, except for derivatives, which are included in other assets or other liabilities.

The significant methods and assumptions used in estimating the fair values of financial instruments are as follows:

Cash and cash equivalents are stated at nominal value which equals the fair value.

Short-term financial instruments like accounts receivable and payable and short-term borrowings are valued at their carrying amounts, which are reasonable estimates of the fair value due to the relatively short period to maturity of these instruments.

The fair value of Senior Notes and trust preferred securities are based on market prices and quotes as of the balance sheet date. The fair values of other fixed-rate financial liabilities, for which market quotes are not available, are calculated as present value of the respective future cash flows. To determine these present values, the prevailing interest rates and credit spreads for the Company as of the balance sheet date are used.

The fair values of financial liabilities with floating interest rates approximate their carrying amounts as the interest rates for these liabilities are predominantly updated every three months with interest rates reflecting actual market conditions at the time of update.

The Company enters into interest rate swaps and foreign exchange forward contracts which are carried at fair value initially and on a recurring basis. The fair value of interest rate swaps is calculated by discounting the future cash flows on the basis of the market interest rates applicable for the remaining term of the contract as of the balance sheet date. To determine the fair value of foreign exchange forward contracts, the contracted forward rate is compared to the current forward rate for the remaining term of the contract as of the balance sheet date. The result is then discounted on the basis of the market interest rates prevailing at the balance sheet date for the respective currency.

Under FAS 157, the Company is required to take into account credit risks when measuring the fair value of derivative financial instruments. In accordance with these requirements, the Company's own credit risk is incorporated in the fair value estimation of interest rate derivatives that are liabilities. However, for foreign exchange forward derivatives that are liabilities, due to the relatively short term of the contracts, the Company did not take into account its own credit risk in the fair value estimation. Counterparty credit-risk adjustments are not material at this time due to the ratings of the counterparty banks which generally have ratings in the "A" Category or better and are therefore not factored into the valuation of derivatives that are assets.

## 20. MARKET RISK

The Company is exposed to market risk from changes in interest rates and foreign exchange rates. In order to manage the risk of interest rate and currency exchange rate fluctuations, the Company enters into various hedging transactions with highly rated financial institutions as authorized by the Company's General Partner. The Company does not use financial instruments for trading purposes.

The Company established guidelines for risk assessment procedures and controls for the use of financial instruments. They include a clear segregation of duties with regard to execution on one side and administration, accounting and controlling on the other.

### FOREIGN EXCHANGE RISK MANAGEMENT

The Company conducts business on a global basis in various currencies, though its operations are mainly in Germany and the United States. For financial reporting purposes, the Company has chosen the U.S. dollar as its reporting currency. Therefore, changes in the rate of exchange between the U.S. dollar and the local currencies in which the financial statements of the Company's international operations are maintained affect its results of operations and financial position as reported in its consolidated financial statements.

The Company's exposure to market risk for changes in foreign exchange rates relates to transactions such as sales and purchases. The Company has significant amounts of sales of products invoiced in euro from its European manufacturing facilities to its other international operations and, to a lesser extent, sales of products invoiced in other non functional currencies. This exposes the subsidiaries to fluctuations in the rate of exchange between the euro and the currency in which their local operations are conducted. For the purpose of hedging existing and foreseeable foreign exchange transaction exposures the Company enters into foreign exchange forward contracts and, on a small scale, foreign exchange options. The Company's policy, which has been consistently followed, is that financial derivatives be used only for the purpose of hedging foreign currency exposure. As of December 31, 2008 the Company had no foreign exchange options.

In connection with intercompany loans in foreign currency the Company normally uses foreign exchange swaps thus assuring that no foreign exchange risks arise from those loans.

Changes in the fair value of foreign exchange forward contracts designated and qualifying as cash flow hedges of forecasted product purchases and sales are reported in accumulated other comprehensive income (loss). These amounts are subsequently reclassified into earnings as a component of cost of revenues, in the same period in which the hedged transaction affects earnings. After tax gains of $9,534 ($12,491 pretax) for the year ended December 31, 2008 are deferred in accumulated other comprehensive income and will mainly be reclassified into earnings during 2009. During 2008, the Company reclassified after tax gains of $2,452 ($3,296 pretax) from accumulated other comprehensive income (loss) into the statement of operations.

The notional amounts of foreign exchange forward contracts in place to hedge exposures from operations totaled $543,911 with a fair value of $21,227 as of December 31, 2008.

In connection with foreign currency denominated intercompany loans, the Company also entered into foreign exchange swaps with a notional amount of $285,932 having a fair value of $–7,191 as of December 31, 2008. No hedge accounting is applied to these foreign exchange contracts. Accordingly, the respective foreign exchange swaps are recognized as assets or liabilities and changes in their fair values are recognized against earnings thus offsetting the changes in fair values of the underlying intercompany loans denominated in foreign currency.

As of December 31, 2008, the Company had foreign exchange derivatives with maturities of up to 25 months.

The Company is exposed to potential losses in the event of nonperformance by counterparties to financial instruments but does not expect any counterparty to fail to meet its obligations as the counterparties are banks which generally have ratings in the "A" Category or better. The current credit exposure of foreign exchange derivatives is represented by the fair value of those contracts with a positive fair value at the reporting date amounting to $53,631.

## INTEREST RATE RISK MANAGEMENT

The Company enters into derivatives, particularly interest rate swaps and to a certain extent, interest options, to protect interest rate exposures arising from long-term debt at floating rates by effectively swapping them into fixed rates.

The Company may be exposed to potential losses in the event of nonperformance by counterparties to financial instruments but does not expect any counterparty to fail to meet its obligations as the counterparties are banks which generally have ratings in the "A" Category or better. The Company had no current credit exposure from interest rate derivatives as none of those contracts had a positive fair value at December 31, 2008.

## CASH FLOW HEDGES OF VARIABLE RATE DEBT

The Company enters into interest rate swap agreements that are designated as cash flow hedges effectively converting the major part of variable interest rate payments due on the Company's 2006 Senior Credit Agreement denominated in U.S. dollars into fixed interest rate payments. Those swap agreements, all of which expire at various dates between 2009 and 2012, in the notional amount of $2,850,000, effectively fix the Company's variable interest rate exposure on the majority of its U.S. dollar-denominated revolving loans at an average interest rate of 4.37 % plus an applicable margin. After tax losses of $91,573 ($148,913 pretax) for the year ended December 31, 2008, were deferred in accumulated other comprehensive income. Interest payable and interest receivable under the swap agreements are accrued and recorded as an adjustment to interest expense.

## FAIR VALUE HEDGES OF FIXED RATE DEBT

The Company entered into interest rate swap agreements that were designated as fair value hedges to hedge the risk of changes in the fair value of fixed interest rate borrowings effectively converting the fixed interest payments on Fresenius Medical Care Capital Trust II trust preferred securities (*see Note 11*) denominated in U.S. dollars into variable interest rate payments. Since the critical terms of the interest rate swap agreements were identical to the terms of Fresenius Medical Capital Trust II trust preferred securities, the hedging relationship was highly effective and no ineffectiveness was recognized in earnings. The interest rate swap agreements were reported at fair value in the balance sheet. The reported amount of the hedged portion of the fixed rate trust preferred securities included an adjustment representing the fair value attributable to the interest rate risk being hedged. Changes in the fair value of interest rate swap contracts and trust preferred securities offset each other in the income statement. On February 1, 2008, the Fresenius Medical Care Capital Trust II trust preferred securities were repaid and the interest rate swap agreements expired.

## 21. OTHER COMPREHENSIVE INCOME (LOSS)

The changes in the components of other comprehensive income (loss) for the years ended December 31, 2008 and 2007 are as follows:

*Table 05.5.37* **OTHER COMPREHENSIVE INCOME (LOSS)**

| *$ in thousands* | *2008* | | | *2007* | | |
|---|---|---|---|---|---|---|
| | *Pretax* | *Tax effect* | *Net* | *Pretax* | *Tax effect* | *Net* |
| **Other comprehensive (loss) income relating to cash flow hedges** | | | | | | |
| Changes in fair value of cash flow hedges during the period | (107,316) | 42,764 | (64,552) | (83,919) | 32,961 | (50,958) |
| Reclassification adjustments | (924) | 296 | (628) | (4,455) | 1,360 | (3,095) |
| **TOTAL OTHER COMPREHENSIVE (LOSS) INCOME RELATING TO CASH FLOW HEDGES** | **(108,240)** | **43,060** | **(65,180)** | **(88,374)** | **34,321** | **(54,053)** |
| Foreign-currency translation adjustment | (171,063) | – | (171,063) | 137,048 | – | 137,048 |
| Adjustments related to pension obligations | (28,551) | 12,632 | (15,919) | 35,729 | (12,430) | 23,299 |
| **OTHER COMPREHENSIVE INCOME (LOSS)** | **(307,854)** | **55,692** | **(252,162)** | **84,403** | **21,891** | **106,294** |

## 22. BUSINESS SEGMENT INFORMATION

The Company has identified three business segments, North America, International, and Asia Pacific, which were determined based upon how the Company manages its businesses. All segments are primarily engaged in providing dialysis services and manufacturing and distributing products and equipment for the treatment of end-stage renal disease. In the U.S., the Company also engages in performing clinical laboratory testing and providing inpatient dialysis services, and other services under contract to hospitals. The Company has aggregated the International and Asia Pacific operating segments as "International". The segments are aggregated due to their similar economic characteristics. These characteristics include the same services provided and the same products sold, the same type patient population, similar methods of distribution of products and services and similar economic environments.

Management evaluates each segment using a measure that reflects all of the segment's controllable revenues and expenses. Management believes that the most appropriate measure in this regard is operating income which measures the Company's source of earnings. Financing is a corporate function, which the Company's segments do not control. Therefore, the Company does not include interest expense relating to financing as a segment measure. Similarly, the Company does not allocate "corporate costs" which relate primarily to certain headquarters overhead charges, including accounting and finance, professional services, etc., because the Company believes that these costs are also not within the control of the individual segments. The Company also regards income taxes to be outside the segment's control. In addition, certain acquisitions and intangible assets are not allocated to a segment but are accounted for as "corporate".

*Table 05.5.38* **BUSINESS SEGMENT INFORMATION**

| *$ in thousands* | *North America* | *International* | *Segment total* | *Corporate* | *Total* |
|---|---|---|---|---|---|
| **2008** | | | | | |
| Net revenue | 7,005,401 | 3,606,270 | 10,611,671 | 652 | 10,612,323 |
| Inter-segment revenue | 2,100 | 82,283 | 84,383 | (84,383) | – |
| **TOTAL NET REVENUE** | **7,007,501** | **3,688,553** | **10,696,054** | **(83,731)** | **10,612,323** |
| Depreciation and amortization | (238,300) | (169,999) | (408,299) | (7,372) | (415,671) |
| **OPERATING INCOME** | **1,168,173** | **616,034** | **1,784,207** | **(111,775)** | **1,672,432** |
| Segment assets | 10,960,264 | 3,557,247 | 14,517,511 | 402,165 | 14,919,676 |
| Capital expenditures, acquisitions and investments[1] | 497,612 | 358,930 | 856,542 | 107,287 | 963,829 |
| **2007** | | | | | |
| Net revenue | 6,663,221 | 3,057,030 | 9,720,251 | 63 | 9,720,314 |
| Inter-segment revenue | 516 | 77,492 | 78,008 | (78,008) | – |
| **TOTAL NET REVENUE** | **6,663,737** | **3,134,522** | **9,798,259** | **(77,945)** | **9,720,314** |
| Depreciation and amortization | (220,210) | (140,968) | (361,178) | (2,151) | (363,329) |
| **OPERATING INCOME** | **1,129,801** | **544,214** | **1,674,015** | **(93,894)** | **1,580,121** |
| Segment assets | 10,586,316 | 3,330,955 | 13,917,271 | 252,994 | 14,170,265 |
| Capital expenditures, acquisitions and investments[2] | 396,705 | 319,105 | 715,810 | 120,306 | 836,116 |

[1] *North America and International acquisitions exclude $22,542 and $24,710, respectively, of non-cash acquisitions for 2008.*
[2] *International and Corporate acquisitions exclude $9,964 and $83,812, respectively, of non-cash acquisitions for 2007.*

For the geographic presentation, revenues are attributed to specific countries based on the end user's location for products and the country in which the service is provided. Information with respect to the Company's geographic operations is set forth in the table below:

*Table 05.5.39* **GEOGRAPHIC DIVISION**

| *$ in thousands* | *2008* | | *2007* | |
|---|---|---|---|---|
| | *Net revenue* | *Long-lived assets* | *Net revenue* | *Long-lived assets* |
| Germany | 350,995 | 306,963 | 308,603 | 195,846 |
| North America | 7,005,401 | 8,706,790 | 6,663,221 | 8,471,870 |
| Rest of the world | 3,255,927 | 1,597,576 | 2,748,490 | 1,558,364 |
| **TOTAL** | **10,612,323** | **10,611,329** | **9,720,314** | **10,226,080** |

## 23. SUPPLEMENTARY CASH FLOW INFORMATION

The following additional information is provided with respect to the consolidated statements of cashflows:

*Table 05.5.40* **SUPPLEMENTARY CASH FLOW INFORMATION**

| *$ in thousands* | *2008* | *2007* |
|---|---|---|
| **Supplementary cash flow information** | | |
| Cash paid for interest | 357,295 | 407,882 |
| Cash paid for income taxes[1] | 343,224 | 349,058 |
| Cash inflow for income taxes from stock option exercises | 7,132 | 8,177 |
| **Supplemental disclosures of cash flow information** | | |
| Details for acquisitions | | |
| Assets acquired | (129,711) | (431,289) |
| Liabilities assumed | 9,858 | 47,779 |
| Minorities | (3,706) | 13,040 |
| Notes assumed in connection with acquisition | 2,490 | 99,775 |
| Cash paid | (121,069) | (276,695) |
| Less cash acquired | 714 | 18,818 |
| **NET CASH PAID FOR ACQUISITIONS** | **(120,355)** | **(257,877)** |

[1] *Net of tax refund*

# 05.6 MANAGEMENT'S ANNUAL REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

Management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f). The Company's internal control over financial reporting is a process designed by or under the supervision of the Company's Chief Executive Officer and Chief Financial Officer to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the Company's financial statements for external reporting purposes in accordance with U.S. generally accepted accounting principles.

As of December 31, 2008, management conducted an assessment of the effectiveness of the Company's internal control over financial reporting based on the criteria established in Internal Control–Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Management's assessment follows the guidance for management of the evaluation of internal controls over financial reporting released by the Securities and Exchange Commission on May 23, 2007. Based on this assessment, management has determined that the Company's internal control over financial reporting is effective as of December 31, 2008.

The Company's internal control over financial reporting includes policies and procedures that (1) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect transactions and dispositions of assets; (2) provide reasonable assurance that the Company's transactions are recorded as necessary to permit preparation of financial statements in accordance with U.S. generally accepted accounting principles, and that the Company's receipts and expenditures are being made only in accordance with authorizations of the Company's management and directors; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the Company's financial statements.

Because of its inherent limitation, internal control over financial reporting, no matter how well designed, cannot provide absolute assurance of achieving financial reporting objectives and may not prevent or detect misstatements. Therefore, even if the internal control over financial reporting is determined to be effective it can provide only reasonable assurance with respect to financial statement preparation and presentation. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

The effectiveness of the Company's internal control over financial reporting as of December 31, 2008, has been audited by KPMG AG Wirtschaftsprüfungsgesellschaft, an independent registered public accounting firm, as stated in their report included *on page 114*.

February 18, 2009
Fresenius Medical Care AG & Co. KGaA
a partnership limited by shares, represented by:
Fresenius Medical Care Management AG, its general partner

Dr. Ben Lipps
Chief Excecutive Officer

Lawrence A. Rosen
Chief Financial Officer

# 05.7 REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

## TO THE SUPERVISORY BOARD OF FRESENIUS MEDICAL CARE AG & CO. KGAA

We have audited the internal control over financial reporting of Fresenius Medical Care AG & Co. KGaA and subsidiaries ("Fresenius Medical Care" or the "Company") as of December 31, 2008, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Fresenius Medical Care's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Annual Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the effectiveness of the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with U.S. generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with U.S. generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, Fresenius Medical Care maintained, in all material respects, effective internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Fresenius Medical Care as of December 31, 2008 and 2007, and the related consolidated statements of income, shareholders' equity, and cash flows for each of the years in the two-year period ended December 31, 2008, and our report dated February 18, 2009 expressed an unqualified opinion on those consolidated financial statements.

Frankfurt am Main, Germany
February 18, 2009

KPMG AG
Wirtschaftsprüfungsgesellschaft

# 05.8 AUDITORS' REPORT: REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

## TO THE SUPERVISORY BOARD OF FRESENIUS MEDICAL CARE AG & CO. KGAA

We have audited the accompanying consolidated balance sheets of Fresenius Medical Care AG & Co. KGaA and subsidiaries ("Fresenius Medical Care" or the "Company") as of December 31, 2008 and 2007, and the related consolidated statements of income, shareholders' equity, and cash flows for each of the years in the two-year period ended December 31, 2008. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Fresenius Medical Care as of December 31, 2008 and 2007, and the results of their operations and their cash flows for each of the years in the two-year period ended December 31, 2008, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of Fresenius Medical Care's internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated February 18, 2009 expressed an unqualified opinion on the effective operation of internal control over financial reporting.

Frankfurt am Main, Germany
February 18, 2009

KPMG AG
Wirtschaftsprüfungsgesellschaft

# *Chap.* 06.1–5 FURTHER INFORMATION

*Employee* RON KUERBITZ

*Job Title* EXECUTIVE VICE PRESIDENT GOVERNMENTAL AFFAIRS AND CHIEF ADMINISTRATIVE OFFICER

*Age* 49 YEARS

*Nationality* AMERICAN

*Joined* IN MARCH 1997

## WHAT DOES QUALITY IN ADMINISTRATION MEAN?

"Quality in administration implies that the company has understood what its responsibilities are. And that it has the workforce, know-how and procedures it needs to meet these responsibilities. It also involves assisting our employees in achieving their career aspirations and providing health care coverage for their families, as well as helping them plan for their retirement." *living* CONFIDENCE

# 06.1 FINANCIAL GLOSSARY

### A AMERICAN DEPOSITARY RECEIPT (ADR)

Physical certificate proving ownership in one or several American Depositary Shares (ADS). The terms ADS (see "American Depositary Share") and ADR are often used interchangeably. Fresenius Medical Care's ordinary and preference shares are listed on the New York Stock Exchange (NYSE) in the form of ADRs.

### A AMERICAN DEPOSITARY SHARE (ADS)

Share certificate traded at U.S. exchanges, representing (parts of) shares of a foreign company.

### C CURRENCY TRANSLATION EFFECTS

Financial figures translated at prior-period exchange rates.

### D DAYS SALES OUTSTANDING (DSO)

Indicates the average number of days it takes for a receivable to be paid. A shorter DSO results in less interest for the creditor and a lower risk of default.

### D DAX

Acronym for "German stock index – calculated on the basis of the weighted prices of the 30 largest (by market capitalization and market turnover) German stock corporations.

### D DEBT / EBITDA RATIO

Important indicator in corporate management. It compares a company's debt to earnings before interest, tax, depreciation and amortization and other noncash charges.

### D DIVIDEND

Portion of a company's profits. The profit to be distributed divided by the number of outstanding shares shows the dividend per share. The dividend is paid to shareholders usually once a year in the form of cash, stock or tangible assets.

### E EBIT (EARNINGS BEFORE INTEREST AND TAXES)

This is used to assess the company's earnings position. More precisely, it is the operating result before earnings from financial activities and investments.

### E EBITDA (EARNINGS BEFORE INTEREST, TAXES, DEPRECIATION AND AMORTIZATION)

Corresponds to operative cash flow before taxes.

### F FREE CASH FLOW

Net cash from operating activities less net capital expenditures (purchases of property, plant and equipment as well as intangible assets, less acquisitions and dividends).

### F FREE FLOAT

The proportion of a company's listed shares that are freely available for trading.

### G GROSS DOMESTIC PRODUCT (GDP)

Total value of goods and services produced in a national economy over a particular period of time, usually one year.

### K KOMMANDITGESELLSCHAFT AUF AKTIEN (KGAA)

A German legal form meaning 'partnership limited by shares'. An entity with its own legal identity in which at least one general partner has full liability (personally liable shareholder, or 'Komplementäraktionär'), while the other shareholders have an interest in the capital stock divided into shares without being personally liable for the debts of the company.

### M MARKET CAPITALIZATION

Total value of all outstanding shares of a company calculated by the number of shares multiplied by the share price.

### N NET OPERATING PROFIT ADJUSTED FOR TAXES (NOPAT)

Earnings before interest and taxes (EBIT) less taxes. It shows the profit a company would achieve in the event of pure equity financing. In contrast to EBIT, NOPAT does not take into account the tax savings which a company generates as a result of high debt.

### N NO-PAR SHARE

Stock issued without a nominal value.

### O OPERATING MARGIN

Earnings before interest and taxes (EBIT) divided by revenues.

### O ORDINARY AND PREFERENCE SHARES

The capital stock of the Company consists of ordinary and preference shares, both of which are bearer shares. Preference shares are non-voting, but are entitled to a dividend exceeding that of ordinary shares. The distribution of the minimum dividend on preference shares takes precedence over the distribution of a dividend on ordinary shares.

### R | RATING

The rating is a classification of the creditworthiness of a company accepted on the international capital market. It is published by independent rating agencies such as Standard & Poor's or Moody's based on a company analysis.

### R | RECESSION

A phase in which economic growth is slightly negative or stagnant for more than two quarters. A distinct form of recession is the depression.

### R | RETURN ON EQUITY (ROE)

The Return on Equity is an indicator of company profitability related to the shareholders' financing.

### R | RETURN ON INVESTED CAPITAL (ROIC)

The return on a Company's adjusted invested capital or the NOPAT divided by average invested capital. Invested capital consists of current and noncurrent assets plus accumulated goodwill amortization less cash and cash equivalents, deferred tax assets, accounts payable ( including those due to related parties), accrued expenses and other liabilities (including income tax accruals).

### R | RETURN ON OPERATING ASSETS (ROOA)

EBIT divided by average operating assets. Operating assets consist of cash and cash equivalents, accounts receivable (including those due from related parties), inventories, prepaid expenses and other current assets, noncurrent assets, less noncurrent deferred tax assets and accounts payable (including those due to related parties).

### R | REVENUE

The amount of money a company actually receives from its activities, mostly from sales of products and / or services to customers.

### S | SARBANES-OXLEY ACT (SOX)

A law aimed at corporations and their auditors designed to improve financial accounting. The intention of SOX is to strengthen the confidence of shareholders and other stakeholders by extending regulations which relate to financial reporting and internal monitoring systems. SOX requirements include strict obligations for a company's management regarding the provision of complete and correct information. The new and expanded rules apply for all U.S. exchange-listed companies.

### S | SECURITIES AND EXCHANGE COMMISSION (SEC)

A federal agency that regulates and monitors the U.S. financial markets.

### S | SHARE INDEX

Indicates the development of the stock market as a whole and / or of individual groups of shares (e. g. DAX, DOW JONES, STOXX). Share indices act as a guide for investors to help them identify trends in the stock market. The index calculation is based on a weighted value for the average development of the stock corporations that make up the index. Share indices can be calculated as price indices or performance indices.

### U | U.S. GAAP

United States Generally Accepted Accounting Principles.

### V | VOLATILITY

This means the price fluctuation of a security or currency. Often this is calculated from the form of standard deviation from the share price history or implicit from a price-setting formula.

### W | WORKING CAPITAL

Current assets less current liabilities. The higher the working capital, the more secure a company's liquidity position.

# 06.2 REGIONAL ORGANIZATION

## EUROPE / MIDDLE EAST / AFRICA

### GERMANY
100% FMC Deutschland GmbH
Bad Homburg v. d. H.

### FRANCE
100% FMC France S.A.S.
Fresnes

### SERBIA
100% FMC Srbjia d.o.o.
Vrsac

### GREAT BRITAIN
100% FMC (UK) Ltd.
Nottinghamshire

### ITALY
100% FMC Italia S.p.A.
Palazzo Pignano/Cremona

### SPAIN
100% NMC of Spain S.A.
Madrid

### SOUTH AFRICA
100% FMC South Africa (Pty.) Ltd.
Johannesburg

### TURKEY
100% Fresenius Medikal Hizmetler A.S., Istanbul

### BELGIUM
100% FMC Belgium N.V.
Antwerp

### MOROCCO
100% FMC Maroc S.A.
Casablanca

### IRELAND
100% FMC (Ireland) Ltd.
Dublin

### POLAND
100% FMC Polska S.A
Poznan

### PORTUGAL
100% NMC Centro Médico Nacional S.A., Lisbon

### ROMANIA
100% FMC Romania S.r.l.
Bucharest

### RUSSIA
100% ZAO Fresenius S.P.
Moscow

### SLOVAKIA
100% FMC Slovensko spol. s.r.o.
Pieštany

### SLOVENIA
100% FMC Slovenija d.o.o.
Zrece

### CZECH REPUBLIC
100% FMC Česká Republica spol s.r.o., Prague

### HUNGARY
100% FMC Dializis Center Kft., Budapest

### DENMARK
100% FMC Danmark A.S.
Albertslund

### FINLAND
100% FMC Suomi OY
Helsinki

### LEBANON
99% FMC Lebanon S.a.r.l.
Beirut

### THE NETHERLANDS
100% FMC Nederland B.V.
Nieuwkuijk

### AUSTRIA
100% FMC Austria GmbH
Vienna

### SWEDEN
100% FMC Sverige AB
Sollentuna

### SWITZERLAND
100% FMC (Schweiz) AG
Stans

### BOSNIA & HERZEGOWINA
100% FMC BH d.o.o. Sarajevo
Sarajevo

### ESTONIA
100% Renculus OÜ
Tartu

## ASIA-PACIFIC

### AUSTRALIA
100% FMC Australia Pty. Ltd.
Sydney

### JAPAN
70% Fresenius-Kawasumi Co. Ltd.
Tokyo

### CHINA
100% FMC Shanghai Co. Ltd.
Shanghai

### HONGKONG
100% FMC Hongkong Ltd.
Hongkong

### SINGAPORE
100% FMC Singapore Pte. Ltd.
Singapore

### TAIWAN
100% FMC Taiwan Co., Ltd.
Taipei

### INDIA
100% FMC India Pvt. Ltd.
New Delhi

### INDONESIA
100% P.T. FMC Indonesia
Jakarta

### MALAYSIA
100% FMC Malaysia Sdn. Bhd.
Kuala Lumpur

### PHILIPPINES
100% FMC Philippines Inc.
Makati City

### SOUTH KOREA
100% FMC Korea Ltd.
Seoul

### THAILAND
100% FMC (Thailand) Ltd.
Bangkok

### PAKISTAN
100% FMC Pakistan Private Ltd.
Lahore

## NORTH AMERICA

### USA
100% Fresenius Medical Care Holdings Inc., New York

100% National Medical Care Inc.
Delaware

100% Fresenius USA Inc.
Massachusetts

100% Renal Care Group, Inc.
Delaware

### MEXICO
100% FMC Mexico S.A.
Mexico City

## LATIN AMERICA

### ARGENTINA
100% FMC Argentina S.A.
Buenos Aires

### COLOMBIA
100% FMC Colombia S.A.
Santa Fé de Bogotà

### BRAZIL
100% FMC Ltda.
Rio de Janeiro

### CHILE
100% Pentafarma S.A.
Santiago de Chile

### VENEZUELA
100% FMC de Venezuela, C.A.
Valencia

### PERU
100% FMC del Peru S.A.
Lima

*Simplified chart of Fresenius Medical Care's regional organization. Line of Business in 2008 in respective country.*
*Production* *Selling* *Dialysis Care* *Some percentage of subsidiaries represent direct and indirect shareholdings.*

# 06.3 MAJOR SUBSIDIARIES

*Table 06.3.1* **MAJOR SUBSIDIARIES 2008**

| *$ in million, except employees* | | *Ownership[1] in %* | *Revenue[2]* | *Net income/ (-loss)[2]* | *Equity Dec. 31[2]* | *Employees Dec. 31[4]* |
|---|---|---|---|---|---|---|
| **Name and Location** | | | | | | |
| **Europe** | | | | | | |
| Germany | FMC Deutschland GmbH, Bad Homburg v. d. H. | 100 | 1,767.0 | 0.0 | 1,485.8 | 3,334 |
| France | FMC France S.A.S., Fresnes | 100 | 124.7 | 4.4 | 19.3 | 163 |
| | SMAD S.A., L'Arbresle | 100 | 130.9 | 9.0 | 43.9 | 360 |
| Great Britain | FMC (UK) Ltd., Nottinghamshire | 100 | 127.0 | 0.2 | 29.5 | 196 |
| Italy | FMC Italia S.p.A., Palazzo Pignano/Cremona | 100 | 132.4 | 8.0 | 55.1 | 170 |
| | SIS-TER S.p.A., Palazzo Pignano/Cremona | 100 | 87.9 | 4.6 | 17.4 | 270 |
| Spain | FMC Espana S.A., La Roca del Vallès | 100 | 118.6 | 8.6 | 43.3 | 118 |
| | NMC of Spain S.A., Madrid | 100 | 13.3 | (5.8) | 66.4 | 1,454 |
| South Africa | FMC South Africa (Pty.) Ltd., Johannesbourg | 100 | 20.0 | 0.2 | 5.7 | 209 |
| Turkey | Fresenius Medikal Hizmetler A.S., Istanbul | 100 | 127.6 | 5.6 | 48.3 | 233 |
| Belgium | FMC Belgium N.V., Antwerp | 100 | 39.8 | 3.6 | 9,6 | 53 |
| Marocco | FMC Maroc S.A., Casablanca | 100 | 16.0 | 0.8 | 3.5 | 46 |
| Serbia | FMC Srbjia d.o.o., Vrsac | 100 | 60.8 | 8.0 | 26.6 | 336 |
| Poland | FMC Polska S.A., Poznan | 100 | 42.9 | 2.1 | 14.8 | 72 |
| Portugal | FMC Portugal S.A., Moreira | 100 | 48.5 | 0.4 | 10,1 | 38 |
| | NMC Centro Médico Nacional, S.A., Lisbon | 100 | 102.4 | 42.9 | 50.1 | 794 |
| Romania | FMC Romania S.r.l., Bucharest | 100 | 38.0 | 3.0 | 12.5 | 66 |
| Slovakia | FMC Slovensko spol s.r.o., Piestany | 100 | 20.8 | 2.4 | 12.3 | 20 |
| Slovenia | FMC Slovenija d.o.o., Zrece | 100 | 8.1 | 0.2 | 3.1 | 12 |
| | Nefrodial d.o.o., Zrece | 100 | 14.7 | 1.4 | 3.0 | 96 |
| Czech Republic | FMC Česká Republika spol. s ro., Prague | 100 | 48.6 | 6.3 | 27.5 | 54 |
| Hungary | FMC Hungary Ltd., Budapest | 100 | 38.1 | 0.2 | 33.0 | 62 |
| | FMC Dializis Center Kft., Budapest | 100 | 55.8 | 0.2 | 1.9 | 649 |
| Denmark | FMC Danmark A.S., Albertslund | 100 | 13.4 | 0.8 | 2.8 | 19 |
| Finland | FMC Suomi OY, Helsinki | 100 | 19.3 | 0.6 | 4.8 | 22 |
| Lebanon | FMC Lebanon S.a.r.l., Beirut | 99 | 3.8 | (0.1) | 0.8 | 10 |
| The Netherlands | FMC Nederland B.V., Nieuwkuijk | 100 | 30.0 | 2.1 | 5.8 | 37 |
| Austria | FMC Austria GmbH, Vienna | 100 | 24.6 | 1.1 | 3.4 | 23 |
| Russia | ZAO Fresenius S.P., Moscow | 100 | 50.0 | 1.1 | 11.4 | 129 |
| Sweden | FMC Sverige AB, Sollentuna | 100 | 19.2 | 0.8 | 4.8 | 24 |
| Switzerland | FMC (Schweiz) AG, Stans | 100 | 34.5 | 3.5 | 10.2 | 42 |
| Estonia | Renculus OÜ, Tartu | 100 | 2.7 | 0.0 | 0.5 | 15 |

*Table 06.3.1* **MAJOR SUBSIDIARIES 2008**

| *$ in million, except employees* | | *Ownership[1] in %* | *Revenue[2]* | *Net income/ (-loss)[2]* | *Equity Dec. 31[2]* | *Employees Dec. 31[4]* |
|---|---|---|---|---|---|---|
| **Name and Location** | | | | | | |
| **North America** | | | | | | |
| USA | FMC Holdings Inc., New York | 100 | 7,008.0 | 442.1 | 4,749.1 | 39,306 |
| Mexico | FMC de Mexico S.A. Mexico City[3] | 100 | 95.7 | (10.3) | 18.1 | 1,203 |
| **Latin America** | | | | | | |
| Argentina | FMC Argentina S.A., Buenos Aires | 100 | 149.9 | 7.6 | 68.0 | 2,375 |
| Colombia | FMC Colombia S.A., Santa Fé de Bogota | 100 | 110.7 | 9.9 | 85.2 | 1,032 |
| Brazil | FMC Ltda., Rio de Janeiro | 100 | 112.1 | (10.1) | 48.5 | 477 |
| Chile | Pentafarma S.A., Santiago de Chile | 100 | 10.7 | 0.1 | 3.3 | 61 |
| Venezuela | FMC de Venezuela C.A., Valencia | 100 | 36.1 | 6.4 | 20.7 | 579 |
| Peru | FMC del Peru S.A., Lima | 100 | 5.4 | 0.3 | 1.5 | 21 |
| **Asia-Pacific** | | | | | | |
| Australia | FMC Australia Pty. Ltd., Sydney | 100 | 83.2 | (1.4) | 16.1 | 274 |
| Japan | FMC Japan K.K., Tokyo | 100 | 75.7 | (13.4) | (6,5) | 660 |
| | Fresenius-Kawasumi Co. Ltd., Tokyo | 70 | 17.6 | 3.0 | 19.7 | 63 |
| China | FMC Shanghai Co. Ltd., Shanghai | 100 | 61.7 | 7.5 | 15.2 | 133 |
| | Fresenius Medical Care (Jiangsu) Co. Ltd., Changshu | 100 | 2.6 | (2.6) | 11.4 | 207 |
| Hongkong | FMC Hong Kong Ltd., Hongkong | 100 | 28.8 | (1.3) | 43.7 | 40 |
| | BioCare Technology Co. Ltd., Hongkong | 100 | 12.4 | (1.7) | 18.9 | 7 |
| | Excelsior Renal Service Co. Ltd., Hongkong | 51 | 12.4 | 1.9 | 2.3 | 645 |
| Singapore | FMC Singapore Pte. Ltd., Singapore | 100 | 6.3 | 0.3 | 3.3 | 65 |
| Taiwan | FMC Taiwan Co., Ltd., Taipei | 100 | 49.2 | 0.7 | 14.0 | 94 |
| | Jiate Excelsior Co., Ltd., Taipei | 51 | 27.6 | 3.0 | 26.3 | 311 |
| India | FMC India Pvt. Ltd., New Dehli | 100 | 2.6 | 0.0 | 0.2 | 23 |
| Indonesia | P.T. FMC Indonesia, Jarkata | 100 | 6.9 | 0.5 | 4.9 | 28 |
| Malaysia | FMC Malaysia Sdn. Bhd., Kuala Lumpur | 100 | 14.4 | 1.1 | 8.7 | 79 |
| Philippines | FMC Philippines Inc., Makati City | 100 | 9.1 | 1.1 | 4.5 | 27 |
| | FMC Renalcare Corp., Makati City | 100 | 0.1 | (0.1) | 0.1 | 15 |
| South Korea | FMC Korea Ltd., Seoul | 100 | 73.2 | (3.3) | 44.3 | 143 |
| | NephroCare Korea Inc., Seoul | 100 | 3.2 | 0.4 | 0.7 | 5 |
| Thailand | FMC Thailand Ltd., Bangkok | 100 | 13.6 | 0.5 | 5.9 | 62 |
| Pakistan | FMC Pakistan Private Limited, Lahore | 100 | 3.6 | 0.2 | 0,4 | 17 |

*[1] Direct and indirect interest*
*[2] These figures comply with the financial statements prepared in accordance with the specific generally accepted accounting principles of each country and do not reflect the amounts included in the Consolidated Financial Statements. Shareholders' equity and earnings are translated at the year-end current rate, and sales are translated at the average rate of the year.*
*[3] Included in US-GAAP-closing of FMC Holdings Inc.*
*[4] Full-time equivalents*

# 06.4 5-YEAR SUMMARY

*Table 06.4.1* **5-YEAR SUMMARY**

| *$ in thousands, except share data* | *2008* | *2007* | *2006* | *2005* | *2004* |
|---|---|---|---|---|---|
| **Statements of Earnings** | | | | | |
| Net revenue | 10,612,323 | 9,720,314 | 8,499,038 | 6,771,819 | 6,228,002 |
| Cost of revenue[1] | 6,983,475 | 6,364,519 | 5,621,482 | 4,563,681 | 4,266,203 |
| Gross profits[1] | 3,628,848 | 3,355,795 | 2,877,556 | 2,208,138 | 1,961,799 |
| Selling, general and administrative expenses[1] | 1,876,177 | 1,709,150 | 1,548,369 | 1,218,265 | 1,058,090 |
| Gain on sale of legacy clinics | – | – | (40,233) | – | – |
| Research and development expenses | 80,239 | 66,523 | 51,293 | 50,955 | 51,364 |
| Operating income (EBIT) | 1,672,432 | 1,580,122 | 1,318,127 | 938,918 | 852,345 |
| Interest expenses, net | 336,742 | 371,047 | 351,246 | 173,192 | 183,746 |
| Income before income taxes and minority interests | 1,335,690 | 1,209,075 | 966,881 | 765,726 | 668,599 |
| Income tax expense, net | 489,142 | 465,652 | 413,489 | 308,748 | 265,415 |
| Minority Interest | 28,941 | 26,293 | 16,646 | 2,026 | 1,186 |
| **NET INCOME** | **817,607** | **717,130** | **536,746** | **454,952** | **401,998** |
| Income per ordinary share | 2.75 | 2.43 | 1.82 | 1.56 | 1.39 |
| Income per preference share | 2.78 | 2.45 | 1.85 | 1.58 | 1.41 |
| Earnings before interest and taxes, depreciation and amortization (EBITDA) | 2,088,103 | 1,943,451 | 1,626,825 | 1,190,370 | 1,084,931 |
| Personnel expenses | 3,506,423 | 3,189,348 | 2,766,599 | 2,174,719 | 2,011,890 |
| Depreciation | 368,304 | 329,327 | 265,488 | 211,103 | 199,732 |
| Amortization | 47,367 | 34,003 | 43,210 | 40,349 | 32,853 |
| **Before one-time costs[2]** | | | | | |
| EBITDA | 2,088,103 | 1,943,451 | 1,623,503 | 1,212,764 | 1,084,931 |
| EBIT | 1,672,432 | 1,580,122 | 1,314,805 | 961,312 | 852,345 |
| Net income | 817,607 | 717,130 | 574,386 | 471,556 | 401,998 |
| Earnings per share | 2.75 | 2.43 | 1.95 | 1.62 | 1.39 |
| **Balance Sheet** | | | | | |
| Current assets | 4,211,997 | 3,859,472 | 3,411,916 | 2,460,938 | 2,445,970 |
| Non-current assets | 10,707,679 | 10,310,793 | 9,632,765 | 5,522,162 | 5,515,571 |
| **TOTAL ASSETS** | **14,919,676** | **14,170,265** | **13,044,681** | **7,983,100** | **7,961,541** |
| Short-term debt | 1,139,599 | 974,387 | 495,941 | 296,139 | 655,093 |
| Other current liabilities | 2,004,813 | 2,052,106 | 1,879,764 | 1,282,101 | 1,282,760 |
| Current liabilities | 3,144,412 | 3,026,493 | 2,375,705 | 1,578,240 | 1,937,853 |
| Long-term debt | 4,598,075 | 4,668,008 | 5,083,169 | 1,894,964 | 1,824,330 |
| Other non-current liabilities | 1,214,907 | 900,547 | 715,645 | 536,190 | 564,542 |
| Non-current liabilities | 5,812,982 | 5,568,555 | 5,798,814 | 2,431,154 | 2,388,872 |
| Total liabilities | 8,957,394 | 8,595,048 | 8,174,519 | 4,009,394 | 4,326,725 |
| Shareholders' equity | 5,962,282 | 5,575,217 | 4,870,162 | 3,973,706 | 3,634,816 |
| **TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY** | **14,919,676** | **14,170,265** | **13,044,681** | **7,983,100** | **7,961,541** |
| Total debt incl. accounts receivable securitization program | 5,737,674 | 5,642,395 | 5,579,110 | 2,191,103 | 2,479,423 |
| Working capital[3] | 2,322,184 | 1,922,366 | 1,647,152 | 1,296,378 | 1,285,295 |
| **Credit Rating** | | | | | |
| Standard & Poor's[4] | | | | | |
| Corporate credit rating | BB | BB | BB | BB+ | BB+ |
| Subordinated debt | BB | B+ | B+ | BB– | BB– |
| Moody's | | | | | |
| Corporate credit rating | Ba1 | Ba2 | Ba2 | Ba2 | Ba1 |
| Subordinated debt | Ba3 | B1 | B1 | B1 | Ba2 |
| Fitch | | | | | |
| Corporate credit rating | BB | | | | |
| Subordinated debt | B+ | | | | |

*Table 06.4.1* **5-YEAR SUMMARY**

| *$ in thousands, except share data* | *2008* | *2007* | *2006* | *2005* | *2004* |
|---|---|---|---|---|---|
| **Cash Flow** | | | | | |
| Net cash provided by operating activities | 1,016,398 | 1,199,574 | 907,830 | 670,304 | 827,843 |
| Capital expenditure, net[5] | (673,510) | (543,053) | (445,627) | (288,296) | (250,147) |
| Free cash flow[5] | 342,888 | 656,521 | 462,203 | 382,008 | 577,696 |
| Acquisitions and investments, net of cash acquired and net purchases of intangible assets[5] | (276,473) | (263,395) | (4,311,190) | (134,199) | (114,720) |
| Proceeds from divestitures | 58,582 | 29,495 | 515,705 | – | – |
| **Share data** | | | | | |
| Year-end share price Frankfurt, XETRA € | | | | | |
| Ordinary shares | 33.31 | 36.69 | 33.66 | 29.67 | 19.74 |
| Preference shares | 33.50 | 35.39 | 31.67 | 26.28 | 14.22 |
| Year-end ADS share price New York $ | | | | | |
| Ordinary shares | 47.18 | 52.75 | 44.43 | 35.03 | 26.80 |
| Preference shares | 43.00 | 46.84 | 40.00 | 31.20 | 19.15 |
| Weighted average number of ordinary shares | 293,233,477 | 291,929,141 | 290,621,904 | 210,000,000 | 210,000,000 |
| Weighted average number of preference shares | 3,795,248 | 3,739,470 | 3,575,376 | 80,369,448 | 78,729,177 |
| Total dividend amount *€ in thousands* | 172,767 | 160,220 | 138,800 | 120,497 | 109,429 |
| Dividend per ordinary share €[6] | 0.58 | 0.54 | 0.47 | 0.41 | 0.37 |
| Dividend per preference share €[6] | 0.60 | 0.56 | 0.49 | 0.43 | 0.39 |
| **Employees** | | | | | |
| Full-time equivalents | 64,666 | 61,406 | 56,803 | 47,521 | 44,526 |
| **Operational ratios** *in %* | | | | | |
| EBITDA margin[7] | 19.7 | 20.0 | 19.1 | 17.6 | 17.4 |
| EBIT margin[7] | 15.8 | 16.3 | 15.5 | 13.9 | 13.7 |
| EPS growth | 13.5 | 32.9 | 17.0 | 12.6 | 21,4 |
| Organic revenue growth (currency-adjusted) | 7.3 | 6.4 | 10.2 | 7.4 | 6.3 |
| Return on invested capital (ROIC)[8] | 8.6 | 8.4 | 7.4 | 8.0 | 7.5 |
| Return on operating assets (ROOA)[8] | 12.3 | 12.5 | 11.3 | 12.6 | 11.8 |
| Return on equity before taxes[8] | 22.4 | 21.7 | 20.0 | 19.3 | 18.4 |
| Return on equity after taxes[8] | 13.7 | 12.9 | 11.8 | 11.4 | 11.1 |
| Cash flow return on invested capital (CFROIC)[8] | 14.5 | 14.4 | 16.0 | 14.5 | 13.5 |
| Leverage ratio (totald ebt/EBITDA)[9] | 2.7 | 2.8 | 3.2 | 1.8 | 2.3 |
| Gearing(( totald ebt – cash)/equity) | 0.9 | 1.0 | 1.1 | 0.5 | 0.7 |
| EBITDA/Intereste xpenses | 6.2 | 5.2 | 4.6 | 6.9 | 5.9 |
| Cash from operating activities in percent of revenue | 9.6 | 12.3 | 10.7 | 9.9 | 13.3 |
| Equityr atio( equity/totalas sets) | 40.0 | 39.3 | 37.3 | 49.8 | 45.7 |
| **Dialysis Care Data** | | | | | |
| Treatments *in millions* | 27.9 | 26.4 | 23.7 | 19.7 | 18.8 |
| Patients | 184,086 | 173,863 | 163,517 | 131,450 | 124,400 |
| Clinics | 2,388 | 2,238 | 2,108 | 1,680 | 1,610 |

*[1] Certain items in prior years have been reclassified to conform with the current periods presentation. The reclassifications include $124.5 million for 2005 and $124.1 million for 2004 relating to rents for clinics which were removed from selling, general and administrative expenses for the International segment and included in cost of revenue for dialysis care.*

*[2] In 2006 excluding restructuring costs and in-process R&D, one-time costs associated with the transformation of legal form, the gain from the sale of dialysis clinics and the write-off of deferred financing costs related to the 2003 senior credit facility but including costs related to the change of accounting principles for stock options (FAS 123 R) of $14.3 million pre-tax and $9.7 million after tax; in 2005 before one-time costs for the transformation of legal form and the settlement and related legal fees of the shareholders suit. Effective January 1, 2006 the Company adopted the provisions of FAS 123 R using the modified prospective transition method (see note 1t and 15).*

*[3] Current assets less current liabilities (excluding current debt and accruals for special charge included in accrued expenses and other current liabilities).*

*[4] Standard & Poor's lowered the corporate credit rating to 'BB' and the subordinated debt rating to 'B+' relates to completion of the Renal Care Group acquisition in 2006.*

*[5] 2007, 2006, 2005, 2004: Capital expenditures, net, have been restated to exclude spendings for purchases of intangible assets. Acquisitions and investments, net of cash acquired, and net purchases of intangible assets have been restated, accordingly.*

*[6] 2008: Proposal for approval at the Annual General Meeting on May 7, 2009.*

*[7] 2006: EBITDA margin of 19.1% and EBIT margin of 15.5% before restructuring costs and in-process R&D, before one-time costs associated with the transformation of legal form and the gain from the sale of dialysis clinics but including one-time costs related to the change of accounting principles for stock options (FAS 123 R) of $14.3 million; in 2005 EBITDA margin of 17.9% and EBIT margin of 14.2% before one-time costs for the transformation of legal form and the settlement and related legal fees of the shareholders suit.*

*[8] 2006: Pro forma including RCG, after FTC mandated divestitures, excluding restructuring costs and in process R&D, excluding gain from divested clinics and excluding the write-off of deferred financing costs related to the 2003 senior credit facility.*

*[9] Correction of non-cash charges of $44.4 million in 2008, $40.7 million in 2007, $35.0 million pro forma including RCG, after FTC mandated divestitures, excluding restructuring costs and in-process R&D and excluding gain from divested clinics in 2006; correction of non-cash charges of $14.0 million in 2005 and $12.7 million in 2004.*

# 06.5 INDEX