

D. Risk Factors

Before you invest in our securities, you should be aware that the occurrence of any of the events described in the following risk factors or elsewhere in this report, and other events that we have not predicted or assessed could have a material adverse effect on our results of operations, financial condition and business. If the events described below or other unpredicted events occur, then the trading price of our securities could decline and you may lose all or part of your investment.

Risks Relating to Litigation and Regulatory Matters.

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

For the twelve months ended December 31, 2011, approximately 30% of our consolidated revenues resulted from Medicare and Medicaid reimbursement. Legislative changes or changes in government reimbursement practice may affect the reimbursement rates for the services we provide, as well as the scope of Medicare and Medicaid coverage. A decrease in Medicare or Medicaid reimbursement rates or covered services could have a material adverse effect on our business, financial condition and results of operations. Effective January 1, 2011, Medicare implemented a new ESRD prospective payment system ("ESRD PPS") that expands the scope of the products and services covered by the bundled rate and results in lower reimbursement per treatment than under the reimbursement system in place until December 31, 2010. Beginning in 2012, the ESRD PPS payment amounts are subject to annual adjustment based on a statutory formula reflecting increases in the costs of a "market basket" of certain healthcare items and services, less an adjustment reflecting productivity. The Centers for Medicare and Medicaid Services ("CMS") accordingly updated ESRD PPS rates by 2.1% for 2012. For a discussion of the new ESRD PPS, see Item 5, "Operating and Financial Review and Prospects – Overview." Effective January 1, 2012, the ESRD PPS includes a quality incentive program ("QIP") in which full payment of the Medicare ESRD rate to a dialysis facility is contingent upon such dialysis facility's achievement of certain minimum performance criteria, focusing in 2012 on anemia management and dialysis adequacy and in subsequent years on additional measures to determine whether dialysis patients are receiving high quality care. Failure to achieve these minimum criteria in any year subjects the facility to up to a 2% reduction in Medicare reimbursement two years later. Reimbursement in 2012 is dependent in part upon quality achievements in 2010 and is based on three quality standards. On December 15, 2011, CMS released QIP reduction reimbursement amounts. The Company expects that the impact of these reductions on the Company's earnings will not be material. CMS changed the QIP performance measures for 2013 by retiring the lower level of the anemia management range and equally weighting the upper level of such range and hemodialysis adequacy. For 2014, CMS has adopted four additional measures to determine whether dialysis patients are receiving high quality care. The new measures include (i) prevalence of catheter and A/V fistula use; (ii) reporting of infections to the Centers for Disease Control and Prevention; (iii) administration of patient satisfaction surveys; and (iv) monthly monitoring of phosphorus and calcium levels. A material failure by the Company to achieve the minimum clinical quality standards under the QIP could materially and adversely affect the Company's business, financial condition and results of operations.

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

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

If we do not comply with the many governmental regulations applicable to our business, we could be excluded from government healthcare reimbursement programs or our authority to conduct business could be terminated, either of which would result in a material decrease in our revenue.

Our operations in both our provider business and our products business are subject to extensive governmental regulation in virtually every country in which we operate. We are also subject to other laws of general applicability, including antitrust laws. The applicable regulations, which differ from country to country, cover areas that include:

- the quality, safety and efficacy of medical and pharmaceutical products and supplies;
- the operation of manufacturing facilities, laboratories and dialysis clinics;
- product advertising and other promotion;
- accurate reporting and billing for government and third-party reimbursement; and
- compensation of medical directors and other financial arrangements with physicians and other referral sources.

Failure to comply with one or more of these laws or regulations, may give rise to a number of legal consequences. These include, in particular, monetary and administrative penalties, increased costs for compliance with government orders, complete or partial exclusion from government reimbursement programs or complete or partial curtailment of our authority to conduct business. Any of these consequences could have a material adverse impact on our business, financial condition and results of operations.

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

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

By virtue of this regulatory environment, our business activities and practices are subject to extensive review by regulatory authorities and private parties, and continuing audits, investigative demands, subpoenas, other inquiries, claims and litigation relating to the Company's compliance with applicable laws and regulations. We may not always be aware that an inquiry or action has begun, particularly in the case of "qui tam" or "whistle blower" actions brought by private plaintiffs under the False Claim Act, which are initially filed under seal. We are the subject of a number of governmental inquiries and civil suits by the federal government and private plaintiffs, including a suit in which a judgment for \$82.6 million has been entered against us under the False Claims Act, which we have appealed. For information about certain of these pending investigations and lawsuits, see Note 20 of the Notes to our Consolidated Financial Statements, "Commitments and Contingencies – Other Litigation and Potential Exposures."

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

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

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

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

Proposals for healthcare reform, or relating to regulatory approvals, could decrease our revenues and operating profit.

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

In recent years, significant healthcare reform legislation and other budgetary legislation affecting or that could potentially affect healthcare reimbursement has been enacted in the United States. Such legislation includes:

- The Medicare Improvements for Patients and Providers Act of 2008, or “MIPPA”;
- The Patient Protection and Affordable Care Act, enacted in March 2010 and subsequently amended by the Health Care and Educational Affordability Reconciliation Act (as amended, “ACA”);
- the U.S. Budget Control Act of 2011 (“Budget Control Act”) enacted in August 2011; and
- the Temporary Payroll Tax Cut Continuation Act of 2011 enacted in December 2011.

See Item 4, “Information on the Company – Business Overview – Regulatory and Legal Matters – Reimbursement” and “– Healthcare reform:” and Item 5, “Operating and Financial Review and Prospects – Financial Condition and Results of Operations – Overview” for information regarding the impact of the ESRD PPS on our business, our efforts to mitigate some of its effects, and the anticipated effects of ACA on our business, as well as additional information regarding the legislation and other matters discussed above.

In addition, there may be legislative or regulatory proposals that could affect FDA procedures or decision-making for approving medical or pharmaceutical products. Any such legislation or regulations, if adopted, could result in a delay or denial of regulatory approval for our products. If any of our products do not receive regulatory

approval, or there is a delay in obtaining approval, this also could have a material adverse effect on our business, financial condition and results of operations.

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

Risks Relating to Our Business

A significant portion of our North American profits are dependent on the services we provide to a minority of our patients who are covered by private insurance.

In recent reviews of dialysis reimbursement, the Medicare Payment Advisory Commission, also known as MedPAC, has noted that Medicare payments for dialysis services are lower than the average costs that providers incur to provide the services. Since Medicaid rates are comparable to those of Medicare and because Medicare only pays us 80% of the Medicare allowable amount (the patient, Medicaid or secondary insurance being responsible for the remaining 20%), the amount we receive from Medicare and Medicaid is less than our average cost per treatment. As a result, the payments we receive from private payors both subsidize the losses we incur on services for Medicare and Medicaid patients and generate a substantial portion of the profits we report. We estimate that Medicare and Medicaid are the primary payors for approximately 76% of the patients to whom we provide care in North America but that for 2011, we derived only 52% of our North America Dialysis Care net revenues from Medicare and Medicaid. Therefore, if the private payors who pay for the care of the other 24% of our patients reduce their payments for our services, or if we experience a material shift in our revenue mix toward Medicare or Medicaid reimbursement, then our revenue, cash flow and earnings would materially decrease.

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

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

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

Healthcare companies are typically subject to claims alleging negligence, product liability, breach of warranty, malpractice and other legal theories that may involve large claims and significant defense costs whether or not liability is ultimately imposed. Healthcare products may also be subject to recalls and patent infringement claims which, in addition to monetary penalties, may restrict our ability to sell or use our products. We cannot assure you that such claims will not be asserted against us; for example, that significant adverse verdicts will not be reached against us for patent infringements or that large scale recalls of our products will not become necessary. In addition, the laws of some of the countries in which we operate provide legal rights to users of pharmaceutical products that could increase the risk of product liability claims. Product liability and patent infringement claims, other actions for negligence or breach of contract and product recalls or related sanctions could result in significant costs. These costs could have a material adverse effect on our business, financial condition and results of operations. See Note 20 of the Notes to Consolidated Financial Statements, "Commitments and Contingencies."

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

The Company is vigorously defending certain patent infringement lawsuits described in Note 20 of the Notes to Consolidated Financial Statements, "Legal Proceedings – Commercial Litigation". While we believe we have valid defenses to these claims, an adverse determination in any of these matters could have a material adverse effect on the Company's business, financial condition and results of operations.

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

The healthcare industry has experienced significant consolidation in recent years, particularly in the dialysis services sector. Our ability to make future acquisitions depends, in part, on our available financial resources and could be limited by restrictions imposed by the United States or other countries' competition laws or under our credit documents. We financed our acquisition of International Dialysis Centers ("IDC") and American Access Holdings, LLC ("AAC"), using cash from operations, available borrowing capacity and debt. We expect to finance the Liberty Dialysis Holdings acquisition (see Item 4, "Information on the Company – History and Development of the Company – History") from cash from operations and debt. If we make future acquisitions, we may need to borrow additional debt or assume significant liabilities, either of which might increase our financial leverage and cause the prices of our debt securities to decline. In addition, any financing that we might need for future acquisitions might be available to us only on terms that restrict our business. Acquisitions that we complete are also subject to risks relating to, among other matters, integration of the acquired businesses (including combining the acquired company's infrastructure and management information systems with ours, harmonization of its marketing, patient service and logistical procedures with ours and, potentially, reconciling divergent corporate and management cultures), possible non-realization of anticipated synergies from the combination, potential loss of key personnel or customers of the acquired companies, and the risk of assuming unknown liabilities not disclosed by the seller or not uncovered during due diligence. If we are not able to effect acquisitions on reasonable terms, there could be an adverse effect on our business, financial condition and results of operations.

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

We face specific risks from international operations.

We operate dialysis clinics in approximately 40 countries and sell a range of equipment, products and services to customers in more than 120 countries. Our international operations are subject to a number of risks, including but not limited to the following:

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

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

International growth and expansion into emerging markets, such as China, Eastern Europe, the Middle East and Africa, could cause us difficulty due to greater regulatory barriers than in the United States or Western Europe, the necessity of adapting to new regulatory systems, and problems related to entering new markets with different economic, social, and political systems and conditions. For example, unstable political conditions or civil unrest could negatively impact our operations and sales in a region or our ability to collect receivables or reimbursements or operate or execute projects in a region.

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

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

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

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

Our pharmaceutical product business could lose sales to generic drug manufacturers or new branded drugs.

Our branded pharmaceutical product business is subject to significant risk as a result of competition from manufacturers of generic drugs and other new competing medicines or therapies. We are obligated to make certain minimum annual royalty payments under certain of our pharmaceutical product license agreements, irrespective of our annual sales of the licensed products. Either the expiration or loss of patent protection for one of our products, or the "at-risk" launch by a generic manufacturer of a generic version of one of our branded pharmaceutical products, the launch of new branded drugs that compete with one or more of our products or the launch of new branded drugs that compete with one or more of our products, could result in the loss of a major portion of sales of that branded pharmaceutical product in a very short time period, which could materially and adversely affect our business, financial condition and results of operations.

Our competitors could develop superior technology or otherwise impact our sales.

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

Global economic conditions may have an adverse effect on our businesses.

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

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

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

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

Our continued growth in the provider business will depend upon our ability to attract and retain skilled employees, such as highly skilled nurses and other medical personnel. Competition for those employees is intense and the current nursing shortage has increased our personnel and recruiting costs. Moreover, we believe that future success in the provider business will be significantly dependent on our ability to attract and retain qualified physicians to serve as medical directors of our dialysis clinics. If we are unable to achieve that goal or if doing so requires us to bear increased costs this could adversely impact our growth and results of operations.

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

Diverging views of fiscal authorities could require us to make additional tax payments.

We are in dispute with the German tax authorities and the U.S. Internal Revenue Service (IRS) on certain tax deductions disallowed in past and current tax audits and from time to time with other jurisdictions. We are also subject to ongoing tax audits in the U.S., Germany and other jurisdictions. We have received notices of unfavorable adjustments and disallowances in connection with certain of these audits and we may be subject to additional unfavorable adjustments and disallowances. We are contesting, and in some cases appealing certain of the unfavorable determinations. If our objections, audit appeals or court claims are unsuccessful, we could be required to make additional tax payments, which could have a material adverse impact on our results of operations and operating cash flow in the relevant reporting period. See Item 5, "Operating and Financial Review and Prospects – B. Liquidity and Capital Resources – Liquidity" as well as Note 20 of the Notes to Consolidated Financial Statements, "Commitments and Contingencies – Legal Proceedings."

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

At December 31, 2011, we had consolidated debt of \$7,211 million and consolidated total shareholders' equity of \$8,061 million. Additionally, in January 2012, we issued approximately \$1,800 million principal amount of Senior Notes, see Note 2 of the Notes to the Consolidated Financial Statements, "Subsequent Events." Our debt could have significant consequences to our operations and our financial condition. For example, it could require us to dedicate a substantial portion of our cash flow from operations, as well as the proceeds of certain financings and asset dispositions, to payments on our indebtedness, thereby reducing the availability of our cash flow and such proceeds to fund working capital, capital expenditures and for other general corporate purposes.

Our Amended 2006 Senior Credit Agreement, Senior Notes, European Investment Bank ("EIB") Agreements and Euro Notes include covenants that require us to maintain certain financial ratios or meet other financial tests. Under our Amended 2006 Senior Credit Agreement, we are obligated to maintain a minimum consolidated fixed charge ratio (ratio of EBITDAR – consolidated earnings before interest, taxes, depreciation and amortization (EBITDA) plus rent – to consolidated fixed charges (interest, rent, scheduled debt maturities, restrictive payments and cash tax payments)) and we are subject to a maximum consolidated leverage ratio (ratio of consolidated funded debt to EBITDA).

Our Amended 2006 Senior Credit Agreement and the indentures related to our Senior Notes includes other covenants which, among other things, restrict or have the effect of restricting our ability to dispose of assets, incur debt, pay dividends and other restricted payments, create liens or make investments or acquisitions. These covenants may otherwise limit our activities. The breach of any of the covenants could result in a default and acceleration of the indebtedness under the credit agreement or the indentures, which could, in turn, create additional defaults and acceleration of the indebtedness under the agreements relating to our other long-term indebtedness which would have an adverse effect on our business, financial condition and results of operations

Fresenius SE owns 100% of the shares in the General Partner of our Company and is able to exercise management control of FMC-AG & Co. KGaA.

Fresenius SE owns approximately 31.3% of our voting ordinary shares as of February 17, 2012, and 100% of the outstanding shares of the General Partner of the Company. As the sole shareholder of Management AG, the General Partner of the Company, Fresenius SE has the sole right to elect the supervisory board of the General Partner which, in turn, appoints the management board of the General Partner. The management board of the General Partner is responsible for the management of the Company. Through its ownership of the General Partner, Fresenius SE is able to exercise de facto management control of FMC-AG & Co. KGaA even though it owns less than a majority of our outstanding voting shares. Such de facto control limits public shareholder influence on management of the Company and precludes a takeover or change of control of the Company without Fresenius SE's consent, either or both of which could adversely affect the prices of our shares.

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

Under the pooling agreement that we have entered into for the benefit of minority holders of our ordinary shares and holders of our preference shares (including, in each case, holders of American Depositary Receipts representing beneficial ownership of such shares), we have agreed to file quarterly reports with the SEC, to prepare annual and quarterly financial statements in accordance with United States generally accepted accounting principles ("U.S. GAAP"), and to file information with the SEC with respect to annual and general meetings of our shareholders. These pooling agreements also require that the supervisory board of Management AG, our General Partner, include at least two members who do not have any substantial business or professional relationship with Fresenius SE, Management AG or FMC-AG & Co. KGaA and its affiliates and requires the consent of those independent directors to certain transactions between us and Fresenius SE and its affiliates.

We are a "foreign private issuer," as defined in the SEC's regulations, and consequently we are not subject to all of the same disclosure requirements applicable to domestic companies. We are exempt from the SEC's proxy rules, and our annual reports contain less detailed disclosure than reports of domestic issuers regarding such matters as management, executive compensation and outstanding options, beneficial ownership of our securities and certain related party transactions. Also, our officers, directors and beneficial owners of more than 10% of our equity securities are exempt from the reporting requirements and short – swing profit recovery provisions of Section 16 of the Securities Exchange Act of 1934. We are also generally exempt from most of the governance rules applicable