| | 2005(A) | 2004(A) | 2003(A) | 2002(A) | 2001(B) |
|---|---|---|---|---|---|
| | | | (In millions) | | |
| **Balance Sheet Data** | | | | | |
| Working capital | $ 883 | $ 508 | $ 794 | $ 526 | $ 402 |
| Total assets | 7,983 | 7,962 | 7,503 | 6,780 | 6,516 |
| Total long-term debt(c) | 1,895 | 1,824 | 2,354 | 2,234 | 2,165 |
| Shareholders' equity | 3,974 | 3,635 | 3,244 | 2,807 | 2,617 |
| Capital Stock — Preference shares — Nominal Value | 74 | 70 | 70 | 70 | 70 |
| Capital Stock — Ordinary shares — Nominal Value | 229 | 229 | 229 | 229 | 229 |

(A) Includes the effect of an accounting change in 2002 relating to the adoption of SFAS No. 142, *Goodwill and Other Intangible Assets,* as of January 1, 2002

(B) Includes the special charge to address 1996 merger related legal matters, estimated liabilities and legal expenses arising in connection with the W.R. Grace Chapter 11 proceedings and the cost of resolving pending litigation and other disputes with certain commercial insurers. You can find a more detailed discussion of this special charge in Notes 8 and 18 of the Notes to our Consolidated Financial Statements.

(a) Amounts shown for each year from 2001 to 2005 represent dividends paid with respect to such year. The actual declaration and payment of the dividend was made in the following year, after approval of the dividend at our Annual General Meeting.

(b) Our general partner's Management Board has proposed dividends for 2005 of €1.23 per Ordinary share and €1.29 per Preference share. These dividends are subject to approval by our shareholders at our Annual General Meeting to be held on May 9, 2006.

(c) Total long-term debt represents long-term debt and capital lease obligations, less current portions and (i) at December 31, 2001, the mandatorily redeemable preferred securities of Fresenius Medical Care Capital Trust, Fresenius Medical Care Capital Trust II, Fresenius Medical Care Capital Trust III, Fresenius Medical Care Capital Trust IV, and Fresenius Medical Care Capital Trust V, (ii) at December 31, 2002, 2003, 2004, and 2005, the mandatorily redeemable preferred securities of Fresenius Medical Care Capital Trust II, Fresenius Medical Care Capital Trust III, Fresenius Medical Care Capital Trust IV, and Fresenius Medical Care Capital Trust V. On February 14, 2002, we redeemed the entire $360 million aggregate liquidation amount of the trust preferred securities of Fresenius Medical Care Capital Trust.

## RISK FACTORS

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

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

Our operations in both our provider business and our products business are subject to extensive governmental regulation in virtually every country in which we operate. 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;
- the rate of, and accurate reporting and billing for, government and third-party reimbursement; and
- compensation of medical directors and other financial arrangements with physicians and other referral sources.

If we fail to comply with one or more of these laws or regulations, this may give rise to a number of legal consequences. These include, in particular, monetary and administrative penalties, increased costs for compliance with government orders or a 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.

Fresenius Medical Care Holdings, Inc. (“FMCH”), our principal North American subsidiary, is party to a corporate integrity agreement with the U.S. government. This agreement, which was signed on January 18, 2000 in conjunction with a settlement of claims previously asserted against FMCH, requires that FMCH maintain a comprehensive compliance program, including a staff of sufficient compliance personnel, a written code of conduct, training programs, regulatory compliance policies and procedures, annual audits and periodic reporting to the government. The corporate integrity agreement permits the U.S. government to exclude FMCH and its subsidiaries from participation in U.S. federal health care programs (in particular, Medicare and Medicaid) if there is a material breach of the agreement that FMCH does not cure within thirty days after FMCH receives written notice of the breach. We derive approximately 36% of our consolidated revenue from U.S. federal health care benefit programs. Consequently, if FMCH commits a material breach of the corporate integrity agreement that results in the exclusion of FMCH or its subsidiaries from continued participation in those programs, it would significantly decrease our revenue and have a material adverse effect on our business, financial condition and results of operations.

We rely upon our 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 and the corporate integrity agreement. If employees were to deliberately or inadvertently fail to adhere to these regulations, then our authority to conduct business could be terminated and our operations could be significantly curtailed. Such actions could also lead to 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.

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

On April 1, 2005, FMCH was served with a subpoena from the office of the United States Attorney for the Eastern District of Missouri in connection with a joint civil and criminal investigation of our company. The subpoena requires production of a broad range of documents relating to our operations, including documents related to, among other things, clinical quality programs, business development activities, medical director compensation and physician relations, joint ventures and our anemia management program. The subpoena covers the period from December 1, 1996 through the present. We are unable to predict whether proceedings might be initiated against us, when the investigation might be concluded or what the impact of this joint investigation might be on our business, financial condition and results of operations.

***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, 2005, approximately 36% 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. In December 2003, the Medicare Prescription Drug Modernization and Improvement Act was enacted. For information regarding the effects of this legislation on reimbursement rates, see Item 4.B, “Information on the Company — Business Overview Regulatory and Legal Matters — Reimbursement.”

***A reduction in reimbursement for or 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***

Reimbursement and revenue from the administration of erythropoietin, or EPO, accounted for approximately 21% of total revenue in our North America segment for the year ended December 31, 2005. EPO is produced by a single source manufacturer, Amgen Inc. Our new contract with Amgen USA, Inc., a subsidiary of Amgen, Inc. covers the period from January 1, 2006 to December 31, 2007. Pricing is based on Amgen's list price and is subject to change. An increase in Amgen price for EPO without a corresponding and timely increase in CMS's reimbursement for EPO, a reduction of the current overfill amount in EPO vials which 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), an interruption of supply or our inability to obtain satisfactory purchase terms for EPO after our current contract expires could reduce our revenues from, or increase our costs in connection with, the administration of EPO, which could materially adversely affect our business, financial condition and results of operations.

On April 1, 2006, the Centers for Medicare and Medical Services ("CMS") will implement a new national policy for claims for EPO and Aranesp administered to ESRD patients in renal dialysis facilities. Specifically, CMS will expect a 25% reduction in the dose administered to an ESRD patient whose hematocrit level exceeds 39.0 (or hemoglobin of 13.0). If the dose is not reduced by 25%, CMS will pay the claim as if the dose reduction had occurred. See "Item 4.B, "Information on the Company — Business Overview Regulatory and Legal Matters — Reimbursement." A decrease in EPO reimbursement or a change in EPO utilization, caused, for example, by CMS' new anemia monitoring policy, could have a material adverse effect on our business, financial condition, and results of operations.

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

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

Pre-merger tax claims or tax claims that would arise if events were to violate the tax-free nature of the merger could ultimately be our obligation. In particular, W.R. Grace & Co. has disclosed in its filings with the SEC that: its tax returns for the 1993 to 1996 tax years are under audit by the Internal Revenue Service (the "Service"); W.R. Grace & Co. has received the Service's examination report on tax periods 1993 to 1996 and that during those years W.R. Grace & Co. deducted approximately $122 million in interest attributable to corporate owned life insurance ("COLI") policy loans. W.R. Grace & Co. has already paid $21 million in tax and interest related to COLI deductions made in tax years prior to 1993.

In October 2004, W.R. Grace & Co. obtained bankruptcy court approval to settle its COLI claims with the Service. In January 2005, W.R. Grace & Co., FMCH and Sealed Air Corporation executed a settlement agreement with respect to the Service's COLI related claims and other tax claims. On April 14, 2005, W.R. Grace & Co. paid the Service approximately $90 million in connection with taxes owed for the tax periods 1993 to 1996 pursuant to a bankruptcy court order directing W.R. Grace & Co. to make such payment. Subject to certain representations made by W.R. Grace & Co., Fresenius Medical Care AG and Fresenius AG, W.R. Grace & Co. and certain of its affiliates agreed to indemnify us against this and other pre-merger and merger-related tax liabilities.

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

In 2003, we reached an agreement with the asbestos creditors' committees and W.R. Grace & Co. in the Grace Chapter 11 Proceedings to settle all fraudulent conveyance and tax claims related to us that arise out of the Grace Chapter 11 Proceedings. The settlement agreement has been approved by the U.S. District Court. The proposed settlement is subject to confirmation of a final plan of reorganization of W.R. Grace & Co. that meets the requirements of the settlement agreement or is otherwise satisfactory to us. At December 31, 2005 our provision for special charges for legal matters was $118 million, including a provision for payment of $115 million pursuant to the settlement agreement. If the proposed settlement with the asbestos creditors' committees and W.R. Grace & Co. is not confirmed in such a final plan of reorganization, the claims could be reinstated. If the claims are reinstated and the merger is determined to be a fraudulent transfer and if material damages are proved by the plaintiffs and we are not able to collect, in whole or in part, on the indemnity from any of our indemnitors, a judgment could have a material adverse effect on our business, financial condition and results of operations. For additional information concerning the Grace Chapter 11 Proceedings and the settlement agreement see Item 8.A.7, "Financial Information — Legal Proceedings."

***Managed care plans usually negotiate lower reimbursement rates than other health plans. As such plans grow, amounts paid for our services and products by non-governmental payors could decrease***

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

The increasing consolidation in the commercial insurance sector in the United States has put us under increasing pressure to reduce the prices for our services and products. If managed care plans in the United States reduce reimbursements, our sales could decrease. This could have a material adverse effect on our financial condition and results of operations.

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

The U.S. federal and certain U.S. state governments have been considering proposals to modify their current health care systems to improve access to health care and control costs. See Item 4.B, "Information on the Company — Business Overview Regulatory and Legal Matters — Reimbursement — U.S." for a discussion of the Medicare Prescription Drug Modernization and Improvement Act of 2003. Other countries, especially those in Western Europe, are also considering health care reform proposals that could materially alter their government-sponsored health care programs by reducing reimbursement payments. Any reduction could affect the pricing of our products and the profitability of our services, especially as we intend to expand our international business. 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.

**Risks Relating to our Business**

***Our competitors' recent combination could foreclose certain sales to an important customer***

We are engaged in both manufacturing dialysis products and providing dialysis services. We compete in the dialysis services business with many customers of our products business. As a result, independent dialysis clinics,

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

On October 5, 2005, DaVita Inc. ("DaVita"), the second largest provider of dialysis services in the U.S. and one of the largest customers of our North America Products Division, completed its acquisition of Gambro Healthcare, Inc. ("Gambro Healthcare"), the third largest provider of dialysis services in the U.S., and agreed to purchase a substantial portion of its dialysis product supply requirements from Gambro Renal Products, Inc. during the next seven years. The long-term product supply contract between Davita and Gambro could result in substantial future reductions in DaVita's purchases of our dialysis products. Any such reduction in DaVita's purchases will decrease our product revenues and could result in a material adverse effect on our business, financial condition and results of operations. Any further consolidation involving dialysis service providers and dialysis product manufacturers would likely have similar effects.

***The risks associated with the Renal Care Group merger and other acquisitions could have an adverse effect on our financial condition and results of operation***

On May 3, 2005, we entered into a definitive merger agreement for the acquisition of Renal Care Group, Inc., or RCG, for an all cash purchase price of approximately $3.5 billion. The acquisition is subject to certain conditions, including expiration or termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and other regulatory approvals. Item 4.B., "Information on the Company — Business Overview — Proposed Acquisition of Renal Care Group, Inc." and Item 5.B, "Operating and Financial Review and Prospects — Liquidity and Capital Resources — Proposed Acquisition." The RCG merger and other potential future acquisitions present challenges for the financing and management of our business. Following an acquisition, the infrastructure of an acquired company (including its management information systems) must be integrated into our own infrastructure; legal issues (including regulatory issues and contractual matters) arising from the acquisition must be resolved; marketing, patient services and logistical procedures must be harmonized; and, in some cases, divergent corporate and management cultures need to be reconciled. There is also the risk that key managers may leave the company during the integration process. These departures could affect the company's day-to-day business and relations with customers and employees. The integration process could also turn out to be more difficult, time-consuming and costly than expected. If there are delays in the receipt of required governmental approvals for an acquisition, it may not be possible to consummate the acquisition and to recover costs that have been incurred in connection with the acquisition. In addition, difficulties regarding the acquisition or the newly acquired company's business activities that we may have failed to identify could materialize or that we had regarded as immaterial could turn out to be material in the end. In addition, potential benefits of an acquisition may fail to materialize or may not materialize as anticipated. If we are unable to successfully meet the challenges associated with one or more of our acquisitions, particularly, the acquisitions of RCG, this could have an adverse effect on our business, financial condition and results of operations.

On October 25, 2004, RCG received a subpoena from the office of the United States Attorney for the Eastern District of New York. The subpoena requires the production of documents related to numerous aspects of their business and operations, including those of RenaLab, Inc., their laboratory. The subpoena includes specific requests for documents related to testing for parathyroid hormone (PTH) levels and vitamin D therapies. RCG has announced that it intends to cooperate with the government's investigation.

On August 9, 2005, RCG received a subpoena from the office of the United States Attorney for the Eastern District of Missouri in connection with a joint civil and criminal investigation. The subpoena requires the production of documents related to numerous aspects of RCG's business and operations. The areas covered by the subpoena include RCG's supply company, pharmaceutical and other services that RCG provides to patients, RCG's relationships to pharmaceutical companies, RCG's relationships with physicians, medical director

compensation and joint ventures with physicians and its purchase of dialysis equipment from us. RCG has announced that it intends to cooperate with the government's investigation.

Upon the closing of the proposed acquisition, the Company will assume RCG's obligations to comply with these subpoenas.

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

The health care industry has experienced significant consolidation in recent years, particularly in the dialysis services sector. Our ability to make future acquisitions depends, in part, on our available financial resources or could be limited by restrictions imposed in North America by the federal government or under our credit agreements. If we make future acquisitions, we may issue ordinary shares for non-cash consideration without first offering the shares to our existing shareholders, which could dilute the holdings of these shareholders. We may also need to borrow additional debt, assume significant liabilities or create additional expenses relating to intangible assets, any of which might reduce our reported earnings or our earnings per share and cause our stock price to decline. In addition, any financing that we might need for future acquisitions might be available to us only on terms that restrict our business. Acquisitions that we complete are also subject to the risk that we might not successfully integrate the acquired businesses or that we might not realize anticipated synergies from the combination. If we are not able to effect acquisitions 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. 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.

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

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

***We are exposed to products liability 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***

Health care companies are subject to claims alleging negligence, products liability, breach of warranty, malpractice and other legal theories that may involve large claims and significant defense costs whether or not liability is ultimately imposed. Health care products may also be subject to recalls and patent infringement claims. We cannot assure you that significant claims will not be asserted against us, that significant adverse verdicts will not be reached against us for patent infringements or that large scale recalls of our products will not become necessary. In addition, 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 Item 8.A.7, "Financial Information — Legal Proceedings."

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

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

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

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

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

***We face additional risks from international operations***

We operate dialysis clinics in 27 countries and sell a range of equipment, products and services to customers in over 100 countries. Our international operations are subject to a number of risks, including the following:

- The economic situation in developing 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 and economic instability, especially in developing and newly industrializing countries, could disrupt our operations;
- Some customers and governments could have longer payment cycles, with resulting adverse effects on our cash flow; and
- Some countries could impose additional taxes or restrict the import of our products.

Any one or more of these factors 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.

***Diverging views of the financial authorities could require us to make additional tax payments***

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 these audits. We are contesting, and in some cases appealing certain of these unfavorable determinations. We may be subject to additional unfavorable adjustments and disallowances in connection with ongoing audits. If our objections and any final audit appeals are unsuccessful, we could be required to make additional tax payments. We are not currently able to determine the timing of these potential additional tax payments. If all potential additional tax payments were to become due contemporaneously, it could have a material adverse impact on our operating cash flow in the relevant reporting period.

**Risks Relating to our Securities**

***Capital markets may be unfamiliar with the KGaA form, which may adversely affect our share price***

Our preference shares and our ordinary shares are listed on the Frankfurt Stock Exchange and ADSs representing such shares are listed on the New York Stock Exchange. However, we are presently aware of only a few companies organized in KGaA form in Germany whose shares are publicly traded, and no such other company’s shares are listed on any national stock exchange in the United States or quoted in the Nasdaq Stock Market. We completed our transformation of legal form without any interruption in stock market trading of our shares, but additional time could be required until capital markets are fully familiar with the KGaA form. We cannot give any assurances as to the prices at which our shares or ADSs representing our shares will trade.

***The public market for our preference shares and our preference share ADSs is limited and highly illiquid. The delisting of or preference share ADSs would further reduce the market for our preference shares***

Our preference shares are listed on the Frankfurt Stock Exchange and ADSs representing the preference shares are listed on the New York Stock Exchange (“NYSE”). However, as a result of the conversion and transformation, the number of our preference shares outstanding has been reduced from 27,762,179 to 1,132,757. As a result, the public market for our preference shares is limited and highly illiquid. At February 10, 2006, upon registration of the conversion and the transformation in the commercial register in Germany, the number of preference shares outstanding included 63,891 preference shares in the form of 191,673 American Depositary Shares. We have been advised by the NYSE that if the number of publicly-held FMC-AG & Co. KGaA preference share ADSs falls below 100,000, the preference share ADSs are likely to be delisted from the NYSE. Without a New York Stock Exchange or a Nasdaq Stock Market listing, the market for our preference share ADSs would be further reduced or eliminated.

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

We have a substantial amount of debt. At December 31, 2005, we have consolidated debt of $2.19 billion, including $1.19 billion of our trust preferred securities, and consolidated total shareholders’ equity of $3.97 billion, resulting in a ratio of total debt to equity of .55. After the completion of the RCG acquisition (see Item 5.B, “Operating and Financial Review and Prospects — Liquidity and Capital Resources — Proposed Acquisition”), our debt will increase (on a pro forma basis as of December 31, 2005) to approximately $6.40 billion and our pro forma total shareholders’ equity will be approximately $3.97 billion, resulting in a pro

forma ratio of total debt to equity of 1.61. Our substantial level of debt and the higher level of debt to be incurred in connection with the RCG acquisition present the risk that we might not generate sufficient cash to service our indebtedness or that our leveraged capital structure could limit our ability to finance acquisitions and develop additional projects, to compete effectively or to operate successfully under adverse economic conditions.

Our 2003 Senior Credit Agreement and the indentures relating to our trust preferred securities include, and the new senior credit agreements that we will enter into in connection with the acquisition of RCG will include, covenants that require us to maintain certain financial ratios or meet other financial tests. Under our senior credit agreement, we are obligated to maintain a minimum consolidated net worth and a minimum consolidated interest coverage ratio (ratio of consolidated earnings before interest, taxes, depreciation and amortization (EBITDA) to consolidated net interest expense) and a certain consolidated leverage ratio (ratio of consolidated funded debt to EBITDA).

Our 2003 Senior Credit Agreement and our indentures include, and the new senior credit agreements that we will enter into in connection with the acquisition of RCG will include other covenants which, among other things, restrict or have the effect of restricting our ability to dispose of assets, incur debt, pay dividends, create liens or make capital expenditures, investments or acquisitions. These covenants may otherwise limit our activities. The breach of any of the covenants could result in a default 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 AG owns 100% of the shares in the general partner of our Company and is able to control our management and strategy***

Prior to the transformation of legal form and the conversion, Fresenius AG held approximately 50.8% of our voting securities. As a result, Fresenius AG had the ability to elect the members of the supervisory board (*Aufsichtsrat*) of the Company and, through its voting power, to approve many actions requiring the vote of the shareholders of the Company. This controlling ownership had the effect of, among other things, preventing a change in control and precluding a declaration or payment of dividends without the consent of Fresenius AG. While the conversion and transformation have reduced Fresenius AG's ownership of our voting ordinary shares to approximately 36.8%, Fresenius AG owns 100% of the outstanding shares of the general partner of the Company. As its sole shareholder, Fresenius AG has the sole right to elect the supervisory board of the general partner. Although our pooling agreement requires that one third of the members of the general partner's supervisory board be persons with no significant business or professional relationship with us, Fresenius AG, or any of our affiliates. The general partner's supervisory board elects the management board of the general partner, which is responsible for the management of the Company. Accordingly, through its ownership of the general partner, Fresenius AG is able to exercise substantially the same degree of control over the management and strategy of FMC-AG & Co. KGaA that it previously exercised as majority shareholder of FMC-AG, notwithstanding that it no longer owns a majority of our outstanding voting shares. Such control limits shareholder influence on management of the Company and precludes a takeover or change of control of the Company without Fresenius AG'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 U.S. generally accepted accounting principles, and to file information with the SEC with respect to annual and general meetings of our shareholders. These pooling agreements also require that the supervisory board of Fresenius Medical Care Management AG, our general partner, include at least two members who do not have any substantial business or professional relationship with Fresenius AG, Fresenius Medical Care Management AG or FMC-AG & Co. KGaA and its