

Our material agreements include the settlement agreement that we, FMCH and NMC entered into with the Official Committee of Asbestos Injury Claimants, and the Official Committee of Asbestos Property Damage Claimants of W.R. Grace & Co., a description of which appears in Note 20 of the Notes to Consolidated Financial Statements, "Legal and Regulatory Matters," and the Merger agreement among us, FMCH and RCG.

#### **D. Exchange controls**

##### ***Exchange Controls and Other Limitations Affecting Security Holders.***

At the present time, Germany does not restrict the export or import of capital, except for certain restrictions on transactions based on international embargo or terror prevention resolutions concerning for example Iraq, Iran, the People's Republic of Korea, Russia, Sudan or Syria. However, the Federal Ministry of Economics and Technology (*Bundesministerium für Wirtschaft und Technologie*) may - in exceptional cases - review and prohibit the direct or indirect acquisition of 25% or more of the shares or voting rights in a German company by a person or company resident outside of the European Union or the European Free Trade Area if such acquisition constitutes a sufficiently serious threat to the public security or order. This provision is also applicable on other means of acquisition, e.g asset deals, and mergers. Further, for statistical purposes only, every resident individual or corporation residing in Germany must report to the German Federal Bank (*Deutsche Bundesbank*), subject only to certain immaterial exceptions, any payment received from or made to an individual or a corporation resident outside of Germany if such payment exceeds €12,500 (or the corresponding amount in other currencies). In addition, residents must report (i) monthly any claims against, or any liabilities payable to, non-resident individuals or corporations, if such claims or liabilities, in the aggregate exceed €5 million at the end of any month and (ii) quarterly claims against, or liabilities payable to, non-residents arising under derivative financial instruments (*derivative Finanzinstrumente*) if the claims, or liabilities, under (i) exceed €500 million at the end of the quarter. Further, residents must report yearly the value (*Stand*) of the assets (*Vermögen*) of (i) non-resident companies in which either 10% or more of the shares or of the voting rights in the company are attributed to the resident, or more than 50% of the shares or of the voting rights are attributed to the resident and/or to one or more non-resident companies which are controlled by the resident and (ii) of the resident's non-resident branch offices and permanent establishments. Likewise, residents must report yearly the value of the assets of (i) resident companies in which either 10% or more of the shares or of the voting rights in the company are attributed to a non-resident, or more than 50% of the shares or the voting rights are attributed to a non-resident and/or to one or more resident companies which are controlled by a non-resident and (ii) of a non-resident's resident branch offices and permanent establishments.

There are no limitations imposed by German law or our Articles of Association (*Satzung*) on the right of a non-resident to hold the shares or the ADSs evidencing shares.

#### **E. Taxation**

##### **U.S. and German Tax Consequences of Holding ADSs**

The discussion below is intended only as a descriptive summary and does not purport to be a complete analysis of all potential German tax and U.S. federal income tax ("USFIT") tax consequences of holding ADSs of the Company. Each holder of ADSs should consult their own tax advisors with respect to the particular German and USFIT tax consequences applicable to them as a result of holding ADSs of the Company.

This summary is based on the current tax laws of Germany and the United States, including the current "Convention between the United States of America and the Federal Republic of Germany for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital and to Certain Other Taxes", as amended through the 2006 Protocol ("Protocol") to the conventions which entered into force on December 28, 2007 (the "Treaty"). The Protocol is effective in respect of withholding taxes for amounts paid on or after January 1, 2007. Changes related to other taxes on income became effective on January 1, 2008.

##### **German Taxation**

###### ***Tax Treatment of Dividends***

German corporations are required to withhold tax on dividends paid to resident and non-resident shareholders. The German Business Tax Reform 2008 increased the withholding tax rate on dividends to

25% (plus solidarity surcharges) starting January 1, 2009. Also effective January 1, 2009 for corporate non-German holders, forty percent (40%) of the withheld and remitted withholding tax may be refunded upon application at the German Federal Tax Office (at the address noted below), which would generally result in a net withholding of 15% (plus solidarity surcharge). The entitlement of corporate non-German holders to further reductions of the withholding tax under an applicable income tax treaty remains unaffected. A partial refund of this withholding tax can be obtained by U.S. holders under the Treaty (see discussion below).

#### *Taxation of Capital Gains*

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

#### *Refund Procedures*

To claim a refund under the Treaty, the U.S. Holder must submit a claim for refund to the German tax authorities, with the original bank voucher, or certified copy thereof issued by the paying entity documenting the tax withheld within four years from the end of the calendar year in which the dividend is received. Claims for refund are made on a special German claim for refund form, which must be filed with the German Federal Tax Office: Bundeszentralamt für Steuern, An der Kuppe 1, D-53225 Bonn, Germany. The claim refund forms may be obtained from the German Federal Tax Office at the same address where the applications are filed, or from the Embassy of the Federal Republic of Germany, 4645 Reservoir Road, N.W., Washington, D.C. 20007-1998, or from the Office of International Operations, Internal Revenue Service, 1325 K Street, N.W., Washington, D.C. 20225, Attention: Taxpayer Service Division, Room 900 or can be downloaded from the homepage of the Bundeszentralamt für Steuern ([www.bzst.bund.de](http://www.bzst.bund.de)).

U.S. Holders must also submit to the German tax authorities certification of their last filed U.S. federal income tax return. Certification is obtained from the office of the Director of the Internal Revenue Service Center by filing a request for certification with the Internal Revenue Service Center, Foreign Certificate Request, P.O. Box 16347, Philadelphia, PA 19114-0447. Requests for certification are to be made in writing and must include the U.S. Holder's name, address, phone number, social security number or employer identification number, tax return form number and tax period for which certification is requested. The Internal Revenue Service will send the certification back to the U.S. Holder for filing with the German tax authorities.

#### *Other German Taxes*

There are no German transfer, stamp or other similar taxes that would apply to U.S. holders who purchase or sell ADSs.

#### **United States Taxation**

The following discussion describes the material USFIT consequences, ownership and disposition of the ADSs by a U.S. Holder (as defined below). The information provided below is based on the Internal Revenue Code of 1986, as amended (the "Code"), Internal Revenue Service ("IRS") rulings and pronouncements, and judicial decisions all as now in effect and all of which are subject to change or differing interpretations, possibly with retroactive effect. The discussion below is intended only as a descriptive summary and does not purport to be a complete analysis of all of the potential U.S. tax consequences of holding ADSs of the Company. In particular, the U.S. tax consequences to certain U.S. Holders (as defined below), such as insurance companies, tax-exempt entities, investors holding ADSs through partnerships or other fiscally transparent entities, investors liable for the alternative minimum tax, investors that hold ADSs as part of a straddle or a hedge, investors whose functional currency is not the U.S. dollar, financial institutions and dealers in securities, and to non-U.S. Holders may be different from that discussed herein. U.S. Holders (as defined below) should consult their tax advisors regarding U.S. federal, state and local tax consequences of owning and disposing ADSs.

For purposes of this discussion, a "U.S. Holder" is a beneficial owner of ADSs that for USFIT purposes, is (1) an individual who is a citizen or resident of the United States; (2) a corporation, or other

entity treated as a corporation for USFIT purposes, created or organized under the laws of the United States, any state thereof or the District of Columbia; (3) an estate, the income of which is subject to USFIT regardless of its source; or (4) a trust, if it (i) is subject or the primary supervision of a U.S. court and the control of one or more U.S. persons or (ii) has a valid election in effect under applicable U.S. Treasury Regulations to be treated as a U.S. person, and (5) any beneficial owner otherwise subject to USFIT on net income bases with respect to the ADSs (including a non-resident alien individual or foreign corporation that holds, or is deemed to hold, any ADSs in connection with the conduct of a U.S. trade or business). If a partnership (including for this purpose any entity treated as a partnership for USFIT purposes) is a beneficial owner of ADSs, the USFIT consequences to a partner in the partnership will generally depend on the status of the partner and the activities of the partnership. A holder of ADSs that is a partnership and the partners in such partnership should consult their own tax advisors regarding the USFIT consequences of the ownership and disposition of ADSs.

#### *Tax Treatment of Dividends*

For U.S. federal income tax purposes, U.S. Holders are taxable on dividends paid by German corporations subject to a foreign tax credit for certain German income taxes paid. The amount of the refund of German withholding tax and the determination of the foreign tax credit allowable against USFIT depend on whether the U.S. Holder is a corporation owning at least 10% of the voting stock of the German corporation ("Corp U.S. Holder").

In the case of a Corp U.S. Holder, the 26.375% German withholding tax is reduced under the Treaty to 5% of the gross amount of the dividend. Such a holder may, therefore, apply for a refund of German withholding tax in the amount of 21.375% of the gross amount of the dividends. A Corp U.S. Holder will generally not be eligible for the "dividends-received deduction" under Section 243 of the Code with respect to such dividends.

In the case of any U.S. holder other than a Corp U.S. Holder ("Non-Corp U.S. Holder"), the German withholding tax is partially refunded under the Treaty to reduce the withholding tax to 15% of the gross amount of the dividend. In this case, for each \$100 of gross dividend that we pay to a Non-Corp U.S. Holder, the dividend is subject to withholding tax of \$26.38, \$11.38 which is refunded, resulting in a net tax of \$15. For U.S. foreign tax credit purposes, the Non-Corp U.S. Holder would report dividend income of \$100 (to the extent paid out of current and accumulated earnings and profits) and foreign taxes paid of \$15, for purposes of calculating the foreign tax credit or the deduction for taxes paid.

If you are a Non-Corp U.S. Holder, dividends paid to you that constitute qualified dividend income will be taxable to you at a reduced maximum USFIT rate of 20% (rather than the higher rates of tax generally applicable to items of ordinary income, the maximum of which is 39.6%), provided that the ADSs in respect of which such dividend is paid have been held for at least 61 days during the 121 day period beginning 60 days before the ex-dividend date and meet other requirements. Periods during which you hedge a position in our ADSs or related property may not count for purposes of the holding period test. The dividends would also not be eligible for the lower rate if you elect to take dividends into account as investment income for purposes of limitations on deductions for investment income. Non-Corp U.S. holders should consult their own tax advisors regarding the availability of the reduced dividend rate in light of their own particular circumstances.

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

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

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

### *Taxation of Capital Gains*

Upon a sale or other disposition of the ADSs, a U.S. Holder will recognize gain or loss for USFIT purposes in an amount equal to the difference between the amount realized and the U.S. Holder's tax basis in the ADSs. Such gain or loss will generally be capital gain or loss if the ADSs are held by the U.S. holder as a capital asset, and will be long-term capital gain or loss if the U.S. holder's holding period for the ADSs exceeds one year. Individual U.S. Holders are generally taxed at a maximum 20% rate on net long-term capital gains.

### *Taxation of foreign currency gains upon refund of German withholding taxes.*

U.S. Holders of ADSs who receive a refund attributable to reduced withholding taxes under the Treaty may be required to recognize foreign currency gain or loss, which will be treated as ordinary income or loss, to the extent that the dollar value of the refund received by the U.S. Holders differs from the dollar equivalent of the refund on the date the dividend on which such withholding taxes were imposed was received by the depositary or the U.S. Holder, as the case may be.

### *Passive Foreign Investment Company Considerations*

Special adverse USFIT rules apply to U.S. Holders owning shares of a Passive Foreign Investment Company ("PFIC"). In general, if you are a U.S. Holder, we will be a PFIC with respect to you if for any taxable year in which you held our ADSs or ordinary shares: (i) at least 75% of our gross income for the taxable year is passive income or (ii) at least 50% of the value, determined on the basis of a quarterly average, of our assets is attributable to assets that produce or are held for the production of passive income. The determination of whether we are a PFIC will be made annually. Accordingly, it is possible that we may become a PFIC in the current or any future taxable year due to changes in our asset or income composition.

Although we do not believe that we are currently a PFIC, the determination of PFIC status is highly factual and based on technical rules that are difficult to apply. Accordingly, there can be no assurances that we will not be a PFIC for the current year or any future taxable year. U.S. holders should consult their own tax advisors regarding the application of the PFIC rules to their investment in our ADSs.

### *Tax on Net Investment Income*

In addition to regular USFIT, certain U.S. Holders that are individuals, estates, or trusts are subject to a 3.8% tax on all or a portion of their "net investment income," which may include all or a portion of their dividend income and net gain from the sale, exchange or other disposition of their ADSs.

### *United States Information Reporting and Backup Withholding*

Dividends paid on, and proceeds on a sale or other dispositions of, ADSs paid to a U.S. Holder within the United States or through U.S.-related financial intermediaries are subject to information reporting and may be subject to backup withholding unless you (1) are a corporation or other exempt recipient or (2) provide a taxpayer identification number and certify (on IRS Form W-9) that no loss of exemption from backup withholding has occurred.

Non-U.S. Holders are generally subject to information reporting or backup withholding. However, a non-U.S. holder may be required to provide a certification (generally on IRS Form W-8BEN) of its non-U.S. status in connection with payments received in the United States or through a U.S.-related financial intermediary in order to establish its exemption from information reporting and backup withholding.

### **U.S. and German Gift and Inheritance Tax Considerations**

The U.S.-Germany estate, inheritance and gift tax treaty provides that an individual whose domicile is determined to be in the U.S. for purposes of such treaty will not be subject to German inheritance and gift tax, the equivalent of the U.S. federal estate and gift tax, on the individual's death or making of a gift unless the ADSs are part of the business property of a permanent establishment located in Germany or are part of the assets of a fixed base of an individual located in Germany and used for the performance of independent personal services. An individual's domicile in the U.S., however, does not prevent imposition of German inheritance and gift tax with respect to an heir, donee, or other beneficiary who is domiciled in Germany at the time the individual died or the gift was made.