In light of these expectations, among other aspects, we have incorporated sustainability as a performance target for the compensation of our Management Board. Should management fail to meet these outcomes, investors and/or debt providers may not deem us the correct fit for their investment or financing purposes, thereby negatively impacting our share price or our ability to source funding through debt financing. Our €2 billion syndicated multicurrency sustainability-linked revolving credit facility agreement (Syndicated Credit Facility), which serves as a backup facility, includes a sustainability component, pursuant to which the credit facility's margin will rise or fall depending on our sustainability performance.

A heightened focus on ESG topics may result in more extensive regulatory requirements aimed at mitigating the effects of climate change and other current and future ESG concerns. Should further regulation (such as the SEC's proposed disclosure requirements regarding climate-related matters and cybersecurity, see Item 16.G, "Corporate Governance"), or stakeholder expectations be more stringent in the future, we may experience increased compliance burdens and costs to meet regulatory obligations and we cannot currently estimate what impact existing and future regulations will have on our business, financial condition and results of operations.

Risks relating to taxation and accounting

There are significant risks associated with estimating the amount of health care service revenues that we recognize that could impact the timing of our recognition of revenues or have a significant impact on our operating results and financial condition.

There are significant risks associated with estimating the amount of revenues from health care services that we recognize in a reporting period.

- The billing and collection process is complicated due to a number of factors including insurance coverage changes, geographic coverage differences, differing interpretations of plan benefits and managed care contracts, and uncertainty about reimbursement from payors with whom we are not contracted.

- Laws and regulations governing Medicare, Medicaid and other federal programs are extremely complex, changing and subject to interpretation.

- Determining applicable primary and secondary insurance coverage for an extensive number of patients at any point in time, together with the changes in patient coverage that occur each month or changes in plan benefits, requires complex, resource-intensive processes. Errors in determining the correct coordination of benefits may result in refunds to payors.

- The complexity of estimating revenues from a primary payor also brings complexity to estimating revenues from secondary payors and patients.

- Collections, refunds and payor retractions may continue to occur for up to three years or longer after services are provided.

If our estimates of revenues are materially inaccurate, it could impact the timing and amount of our recognition of revenues and have a significant impact on our operating results and financial condition. For further information regarding our revenue recognition policies, see note 1 k) of the notes to the consolidated financial statements included in this report.

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

We are subject to ongoing tax audits in Germany, the U.S. and other jurisdictions. We could potentially receive notices of unfavorable adjustments and disallowances in connection with certain of these audits. If we are unsuccessful in contesting unfavorable determinations, we could be required to make additional tax payments, which could have a material adverse impact on our business, financial condition and results of operations in the relevant reporting period. See Item 5, "Operating and financial review and prospects – IV. Financial position." For further information on the German tax authorities' objections to our previously filed tax returns, see note 22 of the notes to the consolidated financial statements included in this report.

A dependency on the payment behavior and decision-making of our business partners can affect the collectability of accounts receivable.

Our health care product business and our dialysis services business differ across the regions in which we operate. In many cases, our products and services are paid for, either directly or indirectly, by government institutions. We believe the risk of default from a government payor is generally low to moderate worldwide which could, however, prove to be wrong, particularly in the event of a government shutdown which could result in significant payment delays even if it does not create a default. On a country level, the payor base is characterized by distinct customer or payor groups which can range in volume from a few customers to a considerable amount of customer types which have varying levels of risk associated with default or non-payment of receivables as well as risks for dependencies based upon the competition within low volume customer base environments. In certain cases, a resulting dependency on the payment behavior and decision-making of our business partners can affect the collectability of accounts receivable and can adversely affect our business, results of operations and financial condition. Our measures aiming to mitigate these risks by actively negotiating long-term contracts with major customers, targeted marketing activities, developing new product and pricing models as well as improving the quality of our services and products, could be insufficient or ineffective.

Risks relating to our financial condition and our securities

Our indebtedness may prevent us from fulfilling our debt-service obligations or implementing certain elements of our business strategy.

At December 31, 2022, we had consolidated debt (including lease liabilities) of €13,213 M and consolidated total shareholders’ equity of €15,449 M. Our debt could jeopardize the successful execution of our business strategy, increase our vulnerability to general adverse economic conditions, limit our ability to obtain necessary financing to fund future working capital needs, capital expenditures, payment of dividends and other general corporate requirements, 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 other purposes, limit our flexibility in reacting to changes in our business and the industry in which we operate, place us at a competitive disadvantage compared to our competitors that have less debt, limit our ability to pursue possible future acquisitions and sell assets, make it more difficult for us to satisfy our obligations under our debt securities, and limit our ability to borrow additional funds. Additionally, a deterioration of our current rating could lead to a reintroduction of financial covenants, could limit our financial flexibility, increase our financing costs or limit access to funding.

Our leverage makes us vulnerable to a downturn in the operating performance of our business, larger than normal fluctuations or volatility in our cash flow, or a downturn in economic conditions. Our ability to make payments on and to refinance our indebtedness will depend on our ability to generate cash in the future, which is dependent on various factors. These factors include governmental and private insurer reimbursement rates for medical treatment and general economic, financial, competitive, legislative, regulatory, and other factors that are beyond our control. If our cash flow is not sufficient to meet our debt service and principal payment requirements, we could be required to refinance our obligations or to dispose of assets in order to meet such requirements. In addition, from time to time we need to refinance our existing debt as and when it matures. In either case, there is no guarantee that we will be able to refinance our existing indebtedness on terms comparable to those governing our existing indebtedness. If our cash flow is not sufficient to meet our debt service and principal payment requirements, or if we are unable to refinance our existing indebtedness on acceptable terms, it could have a material adverse effect on our business, financial condition, or results of operations. For information about our outstanding indebtedness, see note 13 and note 14 of the notes to our consolidated financial statements included in this report.

On July 1, 2021, we entered into our Syndicated Credit Facility. Our Syndicated Credit Facility and certain of our other financing instruments include covenants which, among other things, restrict or could have the effect of restricting our ability to dispose of assets and create liens, and restrict the indebtedness of our subsidiaries. These covenants may otherwise limit our activities as well. The breach of any of the covenants could result in a default and acceleration of the indebtedness under the respective financing agreements, 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.

Despite our existing indebtedness, we may still be able to incur significantly more unsecured debt in the future. The covenant in our 4.75% bonds due 2024 limiting our ability to incur unsecured debt is currently suspended and will remain so as long as two of the three credit ratings assigned to these bonds by S&P Global Ratings Europe Limited (S&P), Moody’s Deutschland GmbH (Moody’s) and Fitch Ratings Ireland Limited (Fitch) are at least BBB- or Baa3 (as the case may be) or higher, or, in each case, the equivalent investment grade rating of the rating categories of any rating agencies substituted for S&P, Moody’s or Fitch. The headwinds described in this report that impacted our performance in 2022, and that we expect will continue in 2023, could increase the possibility of a ratings downgrade. Nevertheless, should we lose our investment grade rating, we may still be able to incur substantial unsecured debt in compliance with that covenant if we maintain an interest coverage ratio (as defined in the applicable indenture) of at least 2.0 to 1.0, as is presently the case, or as otherwise permitted by that covenant, regardless of our credit rating or interest coverage ratio, including under our Syndicated Credit Facility and our accounts receivable securitization program (Accounts Receivable Facility). If additional debt is added to our current debt levels, the related risks that we now face could intensify.

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 32.2% of our outstanding shares as of February 14, 2023. Fresenius SE also owns 100% of the outstanding shares of Management AG, the General Partner of the Company. As the sole shareholder of the General Partner, Fresenius SE has the sole right to elect the supervisory board of the General Partner which, in turn, appoints the General Partner’s Management Board. 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 price of our shares. Our Articles of Association require that the General Partner or a parent company of the General Partner hold more than 25% of our share capital. The Articles of Association also provide that the General Partner ceases to be the general partner if the shares of the General Partner are acquired by a person who does not make an offer to acquire the shares of the Company’s other shareholders within three months of the acquisition of the General Partner. In either case, the necessity for such a significant investment in connection with an acquisition of the General Partner could also discourage or preclude a change of control through acquisition of the General Partner, which also could adversely affect the price of our shares. For information regarding the Management Board’s resolution to initiate plans for a change in the legal form of the Company, see Item 4, “Information on the Company — A. History and development of the Company,” below.

Because we are not organized under U.S. law, we are subject to certain less detailed disclosure requirements under U.S. federal securities laws, and we are exempt from most of the governance rules of the New York Stock Exchange.

Under the pooling agreement that we have entered into for the benefit of public holders of our 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 and to file information with the SEC with respect to annual and general meetings of our shareholders. The Chief Executive Officer and Chief Financial Officer of our general partner issue the certifications required by §302 and §906 of the Sarbanes-Oxley Act of 2002 (S-OX) on a quarterly basis (with the filing of our quarterly reports and our annual report on Form 20-F) rather than on an annual basis as is the practice of most foreign private issuers. As of June 2016, the pooling agreement provides that we may prepare such financial statements in accordance with U.S. Generally Accepted Accounting Principles (U.S. GAAP) or International Financial Reporting Standards (IFRS) and, commencing with our report for the first quarter of 2017, we prepare our quarterly and annual consolidated financial statements in accordance with IFRS with the euro as our reporting currency. The pooling agreement also requires 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 (other than as members of the supervisory board of Management AG, FMC AG & Co. KGaA, or both) and requires the consent of a majority of the independent directors (as defined in the pooling agreement), to certain transactions between us and Fresenius SE and its affiliates. See Item 6.A., “Directors, senior management and employees – Directors and senior management – Supervisory Board of the General Partner.”