



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

January 13, 2006

**Via Facsimile and US Mail**

Robert A. Grauman  
Baker & McKenzie  
1114 Avenue of the Americas  
New York, New York 10036

**Re: Conversion Offer by Fresenius Medical Care AG to Holders of its  
Non-Voting Preference Shares  
TP No. 06-24**

Dear Mr. Grauman:

This is in response to your letter to James A. Brigagliano, Mauri L. Osheroff, Brian V. Breheny and Michael Pressman dated January 13, 2006 as supplemented by telephone conversations with the staff of the Divisions of Corporation Finance and Market Regulation, with regard to your request for exemptive relief. A copy of your letter is attached with this response. By including a copy of your correspondence, we avoid having to repeat or summarize the facts you presented. The defined terms in this letter have the same meaning as in your letter, unless otherwise noted.

The United States Securities and Exchange Commission (Commission) hereby grants an exemption from Rule 14e-5 under the Securities Exchange Act of 1934 (Exchange Act) on the basis of your representations and the facts presented, but without necessarily concurring in your analysis. The exemption from Rule 14e-5 is to permit Fresenius Medical Care AG to purchase or arrange to purchase FMC AG Preference Shares pursuant to the German Offer during the U.S. Offer. You do not request, and we do not grant, any relief regarding purchases or arrangements to purchase shares or ADSs other than pursuant to the U.S. and German Offers.

Based on the representations in your January 13, 2006 letter but without necessarily concurring in your analysis, the Commission also hereby grants exemptions from:

- Rule 13e-4(f)(8)(i), to permit the U.S. Offer to be made available to all holders of FMC AG Preference Share ADSs; and

- Rule 13e-4(f)(6), to permit purchases of FMC AG Preference Shares pursuant to the German Offer during the U.S Offer and the 10 business days following the expiration of the U.S. Offer.

The foregoing exemptions are based solely on the representations and the facts presented in your letter, as supplemented by telephone conversations with the staff. The relief is strictly limited to the application of the rules listed above to this transaction. You should discontinue this transaction pending further consultations with the staff if any of the facts or representations set forth in your letter change.

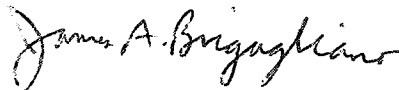
We also direct your attention to the anti-fraud and anti-manipulation provisions of the federal securities laws, including Sections 14(e), 10(b) of the Exchange Act, and Rule 10b-5 thereunder. The participants in this transaction must comply with these and any other applicable provisions of the federal securities laws. The Divisions of Corporation Finance and Market Regulation express no view on any other questions that may be raised by the proposed transaction, including but not limited to, the adequacy of disclosure concerning and the applicability of any other federal or state laws to the proposed transaction.

For the Commission  
By the Division of Corporation Finance  
pursuant to delegated authority



Mauri L. Osheroff  
Associate Director, Regulatory Policy  
Division of Corporation Finance

For the Commission  
By the Division of Market Regulation  
pursuant to delegated authority



James A. Brigagliano  
Assistant Director  
Division of Market Regulation

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January 13, 2006

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RE: Conversion Offer by Fresenius Medical Care AG to holders of its Non-Voting Preference Shares, including Preference Shares Represented by ADSs  
Our File No. 56176174-000003

Ladies and Gentlemen:

I am writing on behalf of our client, Fresenius Medical Care AG ("FMC-AG" or the "Company"), a stock corporation (*Aktiengesellschaft*) organized under German law, in connection with its offers (the "Conversion Offers") to the holders of its Non-Voting Preference Shares of the opportunity to convert their Preference Shares into Ordinary Shares. The Company filed a registration statement on Form F-4 with respect to the Conversion Offers on October 7, 2005, File No. 333-128899, with the Securities and Exchange Commission (the "Commission"). The Company filed Amendment No. 1 to the Registration Statement on November 17, 2005 and Amendment No. 2 to the Registration Statement on December 23, 2005 (said registration statement, as amended to date and as it may be further amended, the "Registration Statement"). The Registration Statement has not yet been declared effective. The Company filed a Schedule TO on October 11, 2005 (inadvertently tagged as a Schedule TO-I) that incorporated the preliminary prospectus in the Registration Statement, as originally filed, a pre-commencement Schedule TO-C that incorporated the preliminary prospectus, as contained in Amendment No. 1 to the Registration Statement, on November 17, 2005 and a pre-commencement Schedule TO-C that incorporated the

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Via Federal Express

preliminary prospectus, as contained in Amendment No. 2 to the Registration Statement, on December 23, 2005. Amendment No. 3 to the Registration Statement was filed upon the opening of the Edgar system on January 4, 2006. Amendment No. 3 was filed solely to place on file revised tax opinions dated January 4, 2006, the effective date of the Registration Statement, as requested in the comment letter dated October 24, 2005 from Michael Pressman, Esq., Special Counsel in the Office of Mergers and Acquisitions in the Division of Corporation Finance.

## 1. The Company

The Company is a multinational “foreign private issuer” within the meaning of Rule 3b-4(c) having its corporate seat in the Federal Republic of Germany.<sup>1</sup> The Company operates in the fields of dialysis products and dialysis services. Based on publicly reported sales and number of patients treated, the Company is the largest dialysis company in the world. (Source: *Nephrology News & Issues*, July 2005; company data of significant competitors.) Its dialysis business is vertically integrated, providing dialysis treatment at its own dialysis clinics and supplying these clinics with a broad range of dialysis products. The Company also sells dialysis products to other dialysis service providers. At September 30, 2005, the Company provided dialysis treatment to approximately 130,400 patients in 1,670 clinics worldwide located in 27 countries. In the U.S., the Company also performs clinical laboratory testing and provides inpatient dialysis services, therapeutic aphaeresis, hemoperfusion and other services under contract to hospitals. In 2004 and the first nine months of 2005, the Company provided 18.8 million and 14.7 million dialysis treatments, respectively. The Company also develops and manufactures a full range of equipment, systems and disposable products, which it sells to customers in over 100 countries. For the year ended December 31, 2004, the Company had net revenues of \$6.2 billion.

The Company has two classes of shares – Ordinary Shares and Preference Shares – listed on the Frankfurt Stock Exchange and, in ADS form, on the New York Stock Exchange (the “NYSE”) and registered pursuant to Section 12(b) of the Securities Exchange Act of 1934 (the “Exchange Act”). The Company files annual reports on Form 20-F and interim reports on Form 6-K. The Company is current in its filing obligations under the Exchange Act. Subject to certain exceptions, the Ordinary Shares are the Company’s sole voting shares.

## 2. The Conversion Offers and the Transformation of Legal Form

### A. The Transformation of Legal Form

On August 30, 2005, the Company’s shareholders approved a resolution for the transformation of FMC-AG’s legal form (the “Transformation”) from a stock corporation

<sup>1</sup> All information in this letter regarding the provisions and effects of German law has been provided by Nörr Stiefenhofer Lutz, the Company’s German corporate counsel.

(*Aktiengesellschaft*) under German law into a partnership limited by shares (*Kommanditgesellschaft auf Aktien*) under German law to be called Fresenius Medical Care AG & Co. KGaA ("FMC-KGaA"). Upon registration of the Transformation with the German Commercial Register, the share capital of FMC-AG will become the share capital of FMC-KGaA, and shareholders in FMC-AG will become shareholders of FMC-KGaA. The Company intends to arrange for the registration of the Transformation with the German Commercial Register following completion of the Conversion Offers, and it will not register the Conversion of Preference Shares into Ordinary Shares pursuant to the Conversion Offers unless it is satisfied that the Transformation of legal form will occur. Upon registration of the transformation of legal form, the Company's Ordinary Shares will be transformed into ordinary shares of FMC-KGaA. Accordingly, holders of FMC-AG Preference Shares (including Preference Shares represented by ADSs) who elect to convert their shares in the Conversion Offers will receive FMC-KGaA Ordinary Shares and holders of FMC-AG Preference Shares (including Preference Shares represented by ADSs) who do not elect to convert their shares in the Conversion Offers will become preference shareholders of FMC-KGaA. The Company has applied to list the FMC-KGaA Ordinary Shares and Preference Shares on the NYSE. Information regarding the Transformation is provided solely for purposes of background, and we are not requesting any relief with respect to the Transformation.<sup>2</sup>

#### B. The Conversion Offers

Also on August 30, 2005, holders of the Company's Ordinary Shares and Preference Shares approved the Conversion and related amendments to its charter documents to permit the conversion of Preference Shares into Ordinary Shares by eliminating the preferences held by Preference Shares tendered for conversion. These amendments will become effective upon filing with the German Commercial Register after completion of the Conversion Offers. Only Preference Shares held by holders who accept the Conversion Offer will be converted; remaining Preference Shares will retain their preferential rights.

Upon effectiveness of the Registration Statement, the Company will offer holders of its Preference Shares resident in the United States, including Preference Shares represented by ADSs (the "U.S. Offer"), the opportunity to convert their Preference Shares into Ordinary Shares on the basis of one Ordinary Share for one Preference Share plus a conversion premium of €9.75 per share. One Preference Share ADS and one Ordinary Share ADS represent one-third of a Preference Share and one-third of an Ordinary Share, respectively, and the conversion premium per ADS, therefore, will be €3.25. A separate Conversion Offer (the "German Offer"), to be made pursuant to a prospectus approved by the German

<sup>2</sup> The offer and sale of FMC-KGaA Ordinary Shares and Preference Shares that may be deemed to have occurred in connection with the Company's solicitation of shareholder approval for the Transformation was separately registered on a Registration Statement on Form F-4 that was declared effective by the Commission on July 20, 2005 (Registration No. 333-124759).

Federal Financial Supervisory Authority (the *Bundesanstalt für Finanzdienstleistungsaufsicht* or “BaFin”) will be open to holders of Preference Shares (other than Preference Shares represented by ADSs) who are located in Germany and, if permitted pursuant to applicable local laws and regulations, other locations outside the United States.

Together, the Conversion Offers are being made with respect to all issued and outstanding FMC-AG Preference Shares, including Preference Shares represented by ADSs and Preference Shares that are or may become issuable prior to the expiration of the Conversion Offers due to the exercise of outstanding FMC-AG stock options. All offers of the conversion privilege and all conversions made pursuant to the German Offer will be made outside of the United States. The U.S. Offer is being made on terms at least as favorable as those offered to preference shareholders under the German Offer, and completion of each of the Conversion Offers is subject to the same conditions.

The Registration Statement relates to the registration under the Securities Act of 1933, as amended, of up to 7,304,322<sup>3</sup> Ordinary Shares, including Ordinary Shares to be represented by FMC-KGaA ADSs, to be outstanding in connection with the U.S. Offer. As indicated above, the Ordinary Shares that will ultimately be issued upon completion of the Conversion Offers and the Transformation will be FMC-KGaA Ordinary Shares. Both FMC-AG and FMC-KGaA are co-registrants under the Registration Statement, and both are identified as “issuers” on the Schedule TO filed by the Company.<sup>4</sup>

The U.S. Offer will be conducted as a “Tier II” offer pursuant to the provisions of Rule 13e-4(i) under the Securities and Exchange Act of 1934, as amended (the “Exchange Act”). To facilitate the Conversion Offers, we hereby respectfully request that, with respect to the Conversion Offers, that Staff grant exemptive relief from the provisions of the following Rules under the Exchange Act:

<sup>3</sup> As indicated in Part 3 below, the Company has identified 6,954,322 Preference Shares held in the U.S. The additional registered shares are intended to take into account possible option exercises by U.S. residents during the pendency of the Conversion Offers.

<sup>4</sup> It should be noted that a new separate legal entity will not be created to effect the Transformation. The Company will not, in connection with the Transformation, (i) transfer any assets to another entity, (ii) merge into or with or consolidate with another entity, or (iii) acquire the shares of any other entity. Rather, the transformation of the Company’s legal form will become effective upon the filing with the commercial register of the resolution approving the Transformation, and will occur as a matter of German law, rather than as the result of an asset transfer or other separately identifiable transaction. Upon consummation of the Conversion, the Company’s legal form will be changed from a stock corporation to a KGaA under German law. Under that law, the KGaA will be the same legal entity as, rather than a successor to, the stock corporation. Accordingly, because the Transformation has not yet occurred, the Registration Statement and the Schedule TO were signed by the corporation that will be the general partner of FMC-KGaA, on behalf of the KGaA to be formed upon the transformation of legal form of FMC-AG.

- Rule 13e-4(f)(8)(i), to permit the U.S. Offer to extend to all holders of Preference Share ADSs, wherever located;
- Rule 14e-5, to permit conversions of Preference Shares pursuant to the German Offer; and
- Rule 13e-4(f)(6), to permit conversions of Preference Shares pursuant to the German Offer.

3. Qualification for Tier II Relief

In separating the Conversion Offers into the U.S. Offer and the German Offer, and in conducting the U.S. Offer on the terms described in this letter and the U.S. Prospectus, the Company is relying on Rule 13e-4(i) under the Exchange Act, which provides relief from certain otherwise applicable rules for issuers conducting issuer tender offers under certain conditions. To qualify, holders of FMC-AG Preference Shares who are resident in the United States (“U.S. Holders”) may not hold more than 40% of the outstanding FMC-AG Preference Shares, including Preference Shares represented by FMC-AG Preference Share ADSs.

FMC AG’s ability to determine beneficial ownership of its Preference Shares is limited because the shares are in bearer form. FMC-AG used the following procedures to confirm its entitlement to Tier II relief:

- It has assumed (though not required to do so) that all Preference Shares represented by ADSs (representing 763,506 preference shares) are held by U.S. Holders.
- With the assistance of a shareholder communication consultant, FMC-AG has made inquiries of banks, brokers and other financial intermediaries in Germany and the United States and identified significant institutional and other major holders of its Preference Shares.

The Company has 27,762,179 preference shares outstanding. The assumptions and efforts described above have enabled FMC-AG to identify the holders of approximately 75% of its outstanding Preference Shares, including one (non-U.S.) holder of 3,299,000 preference shares (i.e., greater than 10% of the outstanding preference shares). Of its outstanding preference shares, FMC-AG identified 6,954,322 shares as held by U.S. residents. Except for such 6,954,322 shares, FMC-AG does not know or have reason to know that its bearer Preference Shares are held by U.S. residents. Because the unidentified shares are bearer shares, under Securities Act Release Nos. 33-7759 (the “Cross-Border Release”), FMC-AG may treat the holders of the unidentified shares as held by persons other than United States residents. (Cross-Border Release, footnote 75.) After exclusion of preference shares held by

the 10% holders, the 6,954,322 Preference Shares identified as held by U.S. residents represent approximately 28.4% of FMC-AG's outstanding Preference Shares at December 5, 2005, as a result of which Tier II relief is available.

#### 4. Summary of the Terms of the Offers

As described above, the Company has structured the Conversion Offers as two separate offers – the U.S. Offer and the German Offer. Solicitation of conversions of Preference Shares ADSs and conversions of Preference Shares held by U.S. residents will be made by means of the prospectus included in the Registration Statement. The U.S. Offer is structured to be conducted in accordance with U.S. federal securities laws, including Rule 13e-4 and Regulation 14E, except to the extent of any exemptive relief granted pursuant to this letter, as well as in accordance with applicable German law and regulations. The German Offer will be made in accordance with applicable laws and regulations of Germany, including the German Securities Sales Prospectus Act and will be made in accordance with a prospectus that will be reviewed and approved by the BaFin. However, under German law, the Conversion is considered to be an internal restructuring transaction between the Company and its shareholders rather than a takeover bid, and the German Takeover Code does not apply to the Conversion. The following summarizes other terms of the Conversion Offers:

- *Financial Terms:* The Conversion Offers will be made on the same financial terms – one Preference Share may be converted into one Ordinary Share upon tender of such Preference Share plus a conversion premium of €9.75 per share. One Preference Share ADS, which represents one-third of a Preference Share, may be converted into one Ordinary Share ADS, representing one-third of an Ordinary Share, upon tender of such ADS plus a conversion premium of €3.25 per share.
- *Conditions to Consummation:* The Company's obligation to complete the Conversion Offers is not subject to the conversion of a specified minimum number of Preference Shares. Completion of the Conversion Offers is subject to the satisfaction or waiver of the condition that the Company is satisfied that the Transformation will be registered with the commercial register immediately following registration of the Conversion. Any waiver of or determination not to waive a condition precedent will apply to both offers. As a result, assuming all conditions are satisfied or waived, the Company will not complete one offer without completing the other. Should a condition not be satisfied, the Company will not terminate one offer without also terminating the other. If the Conversion Offers are not completed successfully, tendered preference shares and conversion premiums will be returned to tendering holders promptly following announcement of termination of the Conversion Offers.



- Duration; Extension; Amendment.* The commencement and expiration dates of the U.S. Offer and the German Offer will be the same. As indicated above, the Conversion is not subject to the German Takeover Code, and the Conversion Offers are not subject to that Code's maximum duration provisions. The Company will notify Preference shareholders of any amendment or extension of the Conversion Offers by the issuance of an announcement or press release under German law and a press release in the United States, and will file an amendment to its Schedule TO to reflect such amendment or extension. If an amendment constitutes a material change in the terms of the offers, the U.S. Offer will remain open for the applicable period required by Rule 13e-4(e)(3). The Conversion Offers will be open to all Preference shareholders and, because the Company is obligated to conduct the Conversion Offers on the terms approved by its shareholders on August 30, there will be no changes in the consideration offered (one Ordinary Share for one Preference Share plus €9.75; one ordinary ADS for one preference ADS plus €3.25) or the percentage of Preference Shares sought.
- Acceptance of the Conversion Offers.* In general, holders of Preference Shares (other than FMC-AG Preference Shares represented by ADSs) will accept the Conversion Offers by notifying the appropriate authorized bank, financial institution, custodian, brokerage or other intermediary at which such holders maintain accounts for FMC-AG Preference Shares ("Intermediaries"), at any time prior to expiration of the Conversion Offers, of the holder's desire to tender and completing transmittal materials provided by such Intermediary. Holders of FMC-AG Preference Share ADSs will accept the U.S. Offer by delivering to the ADS exchange agent their ADSs together with an executed Letter of Transmittal, any other documents required by such letter, and the applicable conversion premium, or by notifying the Intermediary through which they hold their Preference Share ADSs.
- Subsequent Offering Period.* The Company does not intend to provide a subsequent offering period.
- Withdrawal Rights.* Holders of Preference Shares participating in the U.S. Offer will have withdrawal rights as required by the Exchange Act and the rules and regulations thereunder. Although German law does not require the Company to provide withdrawal rights to participants in the German Offer, the Company has nevertheless determined to provide withdrawal rights in the German offer.

5. Discussion and Relief Requested

A. Rule 13e-4(f)(8)(i): Inclusion of all ADS holders, wherever located, in the U.S. Offer

The Conversion Offers have been structured to permit U.S. holders of the Company's Preference Shares to participate in the transaction through the U.S. Offer on terms at least as favorable as the German Offer.

The U.S. Offer will be open to all holders of FMC-AG Preference Share ADSs, wherever located, and to holders of FMC-AG Preference Shares who are located in the United States, and the German Offer will be open to holders of FMC-AG Preference Shares (other than Preference Shares represented by ADSs) who are located in Germany or who are located outside of Germany and the United States if, pursuant to the local laws and regulations applicable to such holders, they are permitted to participate in the German Offer.

Rule 13e-4(f)(8) under the Exchange Act provides that no person shall make an issuer tender offer unless the offer is open to all security holders of the class of securities subject to the issuer tender offer (the "All Holders Rule"). Rule 13e-4(i)(2)(ii) provides an exemption from this provision and allows a bidder that qualifies for Tier II relief to separate its offer "into two offers: one offer made *only* to U.S. holders and another offer made only to non-U.S. holders" (emphasis added). It is a condition of this relief that the "offer to U.S. holders must be made on terms at least as favorable as those offered any other holder of the same class of securities that is the subject of the tender offer."

Notwithstanding the Company's eligibility for Tier II relief, literal application of Rule 13e-4(i)(2)(ii) would not exempt the dual offer structure described herein from the application of the All Holders Rule because that Rule contemplates a U.S. offer that is made only to U.S. holders and another that is made only to non-U.S. holders. Here, the U.S. Offer is made to U.S. holders of FMC-AG Preference Shares (other than shares represented by ADSs) and to all holders of FMC-AG Preference Share ADSs, wherever located.

We do not believe that this technical difference should disqualify the Conversion Offers from the exemption available under Rule 13e-4(i)(2)(ii). The German Offer will be made "only to non-U.S. holders." Any U.S. holder of any FMC-AG Preference Shares, including U.S. holders of ADSs (as well as some non-U.S. holders of ADSs) will be tendering in an offer that is conducted in accordance with the Exchange Act. No FMC-AG Preference Shares held by U.S. holders will be converted except in response to the U.S. Offer, which will be conducted in accordance with the U.S. federal securities laws, including Rule 13e-4 and Regulation 14E under the Exchange Act, except to the extent of any exemptive relief granted pursuant to this letter. Participation in the U.S. Offer also is the most convenient way for all ADS holders to participate in the Conversion Offers, since they will tender their

ADSs directly to the ADS exchange agent appointed by the Company. We note that the Staff has permitted other similar dual offer structures involving U.S. offers made for both shares held by U.S. holders and for ADSs held by holders, wherever located, including in cases where the Tier II exemption under the Commission's tender offer rules was not available due to the level of U.S. ownership. See *Offer by Sanofi-Synthélabo for any and all ordinary shares, including ordinary shares represented by ADSs, of Aventis* (June 10, 2004) (hereafter, *Sanofi-Synthélabo No-Action Letter*)<sup>5</sup>; *Offer by Alcan, Inc. for Common Shares, ADSs, Bonus Allocation Rights and OCEANES of Pechiney* (Oct. 8, 2003) (hereafter, *Alcan/Pechiney No-Action Letter*); *Serono S.A. Offer for All Outstanding Ordinary Shares, ADSs, OCEANES and Warrants of Genset* (Sept. 12, 2002) (hereafter, *Serono/Genset No-Action Letter*); *Saipem SpA Offer for Shares and ADSs of Bouygues Offshore S.A.* (July 29, 2002); *Proposed Exchange Offer by Technip, S.A., for all of the outstanding ordinary shares and American Depositary Shares of Coflexip, S.A.* (Aug. 30, 2001) (hereafter, *Technip/Coflexip No-Action Letter*); *In the Matter of the Exchange Offer by Banco Bilbao Vizcaya Argentaria, S.A. for ordinary shares and American Depositary Shares of BBVA Banco Frances* (Apr. 19, 2001) (hereafter, *Banco Bilbao Vizcaya Argentaria S.A. No-Action Letter*).

Accordingly, on behalf of FMC-AG, we respectfully request exemptive relief under Rule 13e-4(f)(8)(i) to permit the Conversion Offers to be conducted according to the dual-offer structure described in this letter (i.e., with the U.S. Offer being extended to all holders of preference share ADSs, wherever located), notwithstanding that read literally Rule 13e-4(i)(2)(ii) contemplates Tier II exemptive relief only for a dual offer structure in which one offer is made "only" to U.S. holders and "another offer" is made only to non-U.S. holders.

#### B. Rule 14e-5: Purchases (Conversions) Outside U.S. Offer

Rule 14e-5 under the Exchange Act prohibits an issuer or its affiliate making a tender or exchange offer for an equity security from, directly or indirectly, purchasing or making any arrangement to purchase such security or any security which is immediately convertible into or exchangeable for such security except pursuant to such offer. The prohibition on purchases outside the offer under Rule 14e-5 continues from the time of the public announcement of the offer until expiration of the offer, including any extensions thereof. The Rule provides an express exception for purchases or arrangements to purchase in cross-border issuer tender offer excepted under Rule 13e-4(h)(8), which requires that less than 10% of the subject securities are held by U.S. holders and that certain other conditions have been met. See Rule 14e-5(b)(10). Rule 14e-5 does not provide a comparable exemption for cross-border tender offers that qualify for Tier II treatment under Rule 13e-4(i)(1)(ii). However, pursuant to Rule 14e-5(d), upon written application or upon its own motion, the

<sup>5</sup> The Sanofi-Synthélabo No-Action Letter also granted relief where there were three offers made under Rule 13e-4(i)(2)(ii) – a U.S. offer, a French offer and a German offer, but all ADS holders participated in the U.S. offer.

Commission may grant an exemption from the provisions of Rule 14e-5. The Company is not requesting any relief under Rule 14e-5 other than the relief required to “purchase” Preference Shares pursuant to the German Offer while the U.S. Offer is pending.

A literal application of Rule 14e-5 could be interpreted to prohibit conversions of FMC-AG Preference Shares pursuant to the German Offer after the announcement of the U.S. Offer. Notwithstanding that a dual offer structure is expressly contemplated and permitted under the Tier II Relief provided by Rule 13e-4(2)(i), we understand it to be the Commission's position that an individual exemption from Rule 14e-5 may still be needed for a dual offer structure. See, e.g., Manual of Publicly Available Telephone Interpretations, Third Supplement, Regulation M-A, Part L. Rule 14e-5, Question 3 (SEC Division of Corporation Finance, July 2000).

As required in order to qualify for Tier II relief, holders of FMC-AG Preference Shares who are located in the United States will be entitled to participate in the U.S. Offer on economic terms as favorable as those offered to holders of FMC-AG Preference Shares in the German Offer. The Company has taken steps to ensure (i) that the procedural terms of the Offers will be as equivalent as practicably possible, given the considerations of local law and customary local practice, and (ii) that the consideration in the Offers will be the same, except that in order to tender their shares for conversion, U.S. holders must tender the conversion premium in a sufficient amount of U.S. dollars to pay the conversion premium in euro at the then-prevailing current exchange rate.

Assuming that the Conversion Offers will result in purchases of Preference Shares by the Company during the period in which such purchases are prohibited by Rule 14e-5,<sup>6</sup> the only offers to purchase and the only purchases of FMC-AG Preference Shares by the Company that are made outside the U.S. Offer will be made pursuant to the German Offer. Because the proposed dual offer structure involves purchases pursuant to a foreign tender offer, it does not present the same risks as would open market or private purchases, and we believe that the policies forming the basis for Rule 14e-5 will not be violated if the exemption requested is granted. Moreover, the Company's intention to conduct the German Offer and to make “purchases” pursuant to the German Offer is fully disclosed in the Prospectus to holders of FMC-AG Preference Shares and, pursuant to the U.S. Offer, holders who tender

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<sup>6</sup> Unlike a conventional tender offer or even a conventional exchange offer, the Company will not reacquire Preference Shares to be converted. Such shares will not be surrendered to the Company or “exchanged” for Ordinary Shares or held as treasury shares after completion of the Conversion Offers. Rather, by operation of German law, tendered Preference Shares will be converted into and will become Ordinary Shares. There will be no change in the aggregate Ordinary Shares and Preference Shares outstanding after the Conversion – instead, the number of Ordinary Shares will increase and the number of Preference Shares will decrease due to the Conversion. While we are not relying on this argument to justify the Company's request for exemptive relief, it could be argued that, in fact, the Company is not purchasing any shares during the restricted period.

in the U.S. Offer will be entitled to receive the same consideration upon conversion as will be received pursuant to conversions under the German Offer.

We believe that the exemptive relief requested in this letter is consistent with the dual offer structure expressly permitted by the Tier II Relief provided by Rule 13e-4(i). Relief under Rule 14e-5 has specifically been granted in connection with issuer tender offers conducted by foreign issuers as dual offers. See *AB Electrolux* (May 12, 2004).

Accordingly, on behalf of the Company, we hereby respectfully request exemptive relief pursuant to Rule 14e-5(d) from the provisions of Rule 14e-5 with regard to conversions of FMC-AG Preference Shares pursuant to the German Offer.

C. Rule 13e-4(f)(6): Purchases (Conversions) Outside U.S. Offer

Like Rule 14e-5, Rule 13e-4(f)(6) also prohibits an issuer conducting a tender offer from purchasing, other than pursuant to the tender offer, any security that is the subject of the tender offer or any right to purchase such security and, in an issuer exchange offer, any security that is offered in the exchange offer or any right to purchase such security. The prohibition under Rule 13e-4(f)(6) extends until the expiration of 10 business days following expiration of the tender offer. While not expressly referenced in the Telephone Interpretations Manual discussion of Rule 14e-5 cited in part 5B above, it appears that the Commission's position as to the need for exemptive relief is equally applicable under Rule 13e-4(f)(6).<sup>7</sup>

We believe that the same considerations that support our request for relief under Rule 14e-5 also support the request under Rule 13e-4(f)(6). Both rules are intended to prevent manipulative and deceptive practices in tender offers whereby an issuer purchases or arranges to purchase shares outside of a tender offer – either during the offer or promptly following its completion. Those practices include artificially increasing the price of a company's stock, avoiding proration rules, taking advantage of the market's response to a tender offer and offering different prices. We believe that the potential for such abuses is not present in connection with the Company's Conversion Offers. As indicated above, the U.S. Offer is being made on terms no less favorable than those offered in the German Offer. The offers are being made on the same economic terms to all shareholders. The offers will be made for the same period, and completion of both offers is subject to the same conditions. The only "purchases" outside the U.S. Offer are those to be made in the German Offer. Such "purchases" will not enable the Company to avoid proration requirements, since the U.S. and German Offers are, in the aggregate, open to all holders of the Company's preference shares, so that there will be no proration of shares submitted for conversion. As a result, "purchases" in the German Offer will effectively be made on the same economic and

<sup>7</sup> The possible need for such relief was expressly raised in the Staff's comments on Amendment No. 1 to the Registration Statement.

other terms and conditions as those in the U.S. Offer, avoiding the manipulative effects targeted by both rules.

Relief under Rule 13e-4(f)(6) for purchases of securities in dual offers such as the Company's Conversion Offers has also specifically been granted in combination with a request for similar relief under Rule 14e-5. See *Compania Anonima Nacional Telefonos de Venezuela (CANTV)* (November 20, 2001); *E.I. Du Pont de Nemours and Company/Conoco Inc.* (June 17, 1999) (Grant of exemption under Rule 10b-13 for issuer's purchases of shares in a cash offer made to non-U.S. shareholders during the pendency of an exchange offer made to U.S. shareholders).<sup>8</sup> Such relief also appears to be consistent with the exemptive relief granted under Rule 14e-5 in connection with third party tender offers similarly structured as dual offers, including some dual offers that did not qualify for Tier II Relief. See *AB Electrolux*, supra; *Sanofi-Synthelabo No-Action Letter*; *Alcan/Pechiney No-Action Letter*, supra; *Serono/Genset No-Action Letter*, supra; *Technip/Coflexip No-Action Letter*, supra; *Banco Bilbao Vizcaya Argentaria S.A. No-Action Letter*, supra; *In the Matter of TotalFina S.A., Exchange Offer for Securities of Elf Aquitaine* (July 21, 1999) (granted pursuant to former Rule 10b-13, the predecessor rule to Rule 14e-5).

In connection with this request under Rule 13e-4(f)(6), the Company confirms that it is not seeking any relief other than relief required to "purchase" preference shares pursuant to the German Offer while the U.S. Offer is open and will otherwise comply with the restrictions of Rule 13e-4(f). Accordingly, on behalf of the Company, we hereby respectfully request exemptive relief from the provisions of Rule 13e-4(f)(6) with regard to conversions of FMC-AG Preference Shares pursuant to the German Offer.

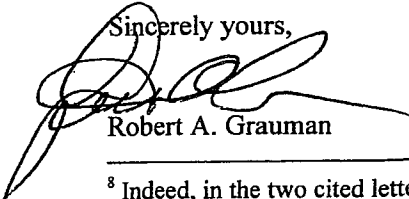
\* \* \*

The Registration Statement was declared effective on January 4, 2006, and the U.S. Offer commenced on January 6, 2006 by the mailing of the prospectus to holders of ADSs representing Preference Shares and U.S. holders of Preference Shares.

Should you have any questions or require additional information, please contact the undersigned at 212 891-3587 or Charles F. Niemeth at 212 891-3586.

Thank you very much for your consideration of this request.

Sincerely yours,



Robert A. Grauman

<sup>8</sup> Indeed, in the two cited letters, neither the request for relief and related discussion of Rules 13e-4(f)(6) and Rule 14e-5 nor the grant of relief separately considered or analyzed the two rules.

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Michael Pressman, Esq.

January 13, 2006

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