Triodos Investment Management

FRESENIUS MEDICAL CARE AG & CO KGAA

MEETING DATE	Thu, 12 May 2016 10:00 am		TYPE	AGM	ISSUE DATE	Tue, 03 May 2016
MEETING LOCATION	Congress Center Messe Frankfurt Ludwig-Erhard-Anlage 1 60327 Frankfurt am Main, Germany					
CURRENT INDICES	FTSE EuroFirst					
SECTOR	Health Care Providers					

	PROPOSALS	ADVICE
1	**Receive the Annual Report** Disclosure is acceptable and the report was made available sufficiently before the meeting. The auditors have not qualified their opinion. No serious corporate governance concerns have been identified. Acceptable proposal.	**For**
2	**Approve the Dividend** The Board proposes a dividend of EUR 0.80 per share. The dividend is covered by earnings. Acceptable proposal.	**For**
3	**Discharge of personally liable partner** Standard proposal. No concerns have been identified that would lead to a recommendation to oppose the proposal to discharge the General Partner. Acceptable proposal.	**For**
4	**Discharge the Supervisory Board** Standard proposal. No serious concerns have been identified. Acceptable proposal.	**For**
5	**Appoint the Auditors** KPMG proposed. Non-audit fees were approximately 67% of audit fees during the year under review. Non-audit fees over a three year basis were approximately 64% of audit fees. There are concerns that this level of non-audit fees creates a potential for conflict of interest on the part of the independent auditor. Triodos opposes this resolution.	**Oppose**
6	**Approve Remuneration System for Management Board members of personally liable partner** It is proposed to approve the remuneration policy of the General Partner with an binding vote. Variable remuneration does not seem to be consistently capped and as such there are excessiveness concerns as the total potential variable remuneration may exceed 200% of the salary. In addition, the Company has not disclosed quantified targets or performance criteria for its variable remuneration component, which may lead to overpayment against underperformance. In addition, there are no claw back clauses in place over the entirety of the variable remuneration component, which makes is unlikely for shareholders to reclaim that variable remuneration unfairly paid out. On these grounds, Triodos opposes this resolution.	**Oppose**
7.1	**Elect Gerd Krick** Non-Executive Director. Not considered to be independent as he is connected to the company's general partner Fresenius Management SE. In addition, he has served on the Board for more than nine years. There is insufficient independent representation on the Board. Triodos opposes this resolution.	**Oppose**
7.2	**Elect Dieter Schenk** Non-Executive Director. Not considered to be independent as he is connected to the company's general partner Fresenius Management SE. In addition, he has served on the Board for more than nine years and there are concerns over his aggregate time commitments. There is insufficient independent representation on the Board. Triodos opposes this resolution.	**Oppose**
7.3	**Elect Rolf Classon to the Supervisory Board and Joint Committee** This candidate is not considered to be independent. Triodos opposes this resolution.	**Oppose**
7.4	**Elect William Johnston to the Supervisory Board and Joint Committee** This candidate is not considered to be independent. Triodos opposes this resolution.	**Oppose**

7.5 Elect Deborah Mcwhinney **For**
Independent Non-Executive Director candidate.

7.6 Elect Pascale Witz **For**
Independent Non-Executive Director candidate.

8 Approve Fees Payable to the Board of Directors **For**
The board is seeking approval for board and committee membership fees for non-Executive directors. An increase of 10% has been proposed to the current compensation system approved in 2011 (2% annual increase). Acceptable proposal.

9 Authorise Share Repurchase **Oppose**
Authority to repurchase and use capital stock within legal boundaries. The repurchase is limited to 10% of share capital and will be in force for five years. Although the amount of share capital to be repurchased is within guidelines, it is believed that such authorities should have a maximum lenght of 26 months. Triodos opposes this resolution.

10* Amend pooling agreement between Fresenius SE and Co. KGaA and Independent Directors **For**
The Board of Directors proposes to amend the pooling agreement between Fresenius SE and Co. KGaA and Independent Directors. The proposed amendments regard the disclosure of the financial statements. It is proposed to provide the Company with the option to prepare all financial statements to be included in any Securities Filings in accordance with only one of the following accounting principles: the US GAAP or the International Financial Reporting Standards. No serious concerns. Acceptable proposal.

11 Amend All Employee Option Plan **Oppose**
The Board proposes to amend the current incentive plan. Under the plan, the CEO and other executives are allotted stock options, each of which give right to one share. Pursuant to the amendment proposed in Resolution 10, the Board seeks authority to calculate the adjusted basic income per share no longer based on U. S. GAAP but alternatively on the basis of IFRS. In addition, provided the calculation will be prepared on the basis of consolidated financial statements in accordance with IFRS in euros, the influence of fluctuations in the currency exchange rate on determining the targets shall be avoided by use of constant exchange rates. Based on concerns over the changes to the Plan which changes the basis for the calculation of EPS to IFRS from US GAAP, Triodos opposes this resolution.

**** = Special resolution***

SUPPORTING INFORMATION FOR RESOLUTIONS

Proposal 1 - Receive the Annual Report

In November 2014, the Directive 2014/95/EU was published and Member States will have until end of 2016 to transpose the Directive into national legislation and companies will start reporting as of their financial year 2017. The Directive has legislative relevance for all the European Economic Area and as such should be implemented also by members of the European Free Trade Association. Under the Directive, companies should provide disclosure of non-financial information (policy and practice) in the annual report or on a separate report, made available at the latest 6 months after the date of the balance sheet. The European Commission has been tasked with publishing non-binding reporting guidelines by December 2016. Although the provisions contained in the Directive are not yet binding, they are considered to set the bar of best practice. PIRC maintains that corporations should not passively abide by minimum standards set in regulation, but actively exceed minimum thresholds and seek best practice. PIRC will accurately monitor the presence and the quality of non-financial information.

Proposal 5 - Appoint the Auditors

The New EU audit regulatory framework

Starting 1 January 2015, audit within the EU is regulated by Directive 2014/56/EU. This provides for significant harmonization of audit practices within the EU and for substantial changes in auditor’s term and rotation, non-audit fees and clarification on conflicts of interest. EU Member States have two years to implement the provisions included in the Directive. The Directive also has legal relevance for all the States of the European Economic Area (EEA).
Pursuant to the new audit framework, auditors must rotate at least every 10 years, however Member states can provide

for a shorter term. The term can be renewed once but the company must either call a public tender or appoint another audit firm for joint auditing.
Non-audit fees may not exceed 70% of audit fees over the last three years, although Members States can adopt a lower threshold. In addition, a series of non-audit services are prohibited under the Directive, including: provision of tax advice and services linked to the client's financial and investment strategy, including tax compliance, tax advice, corporate finance and valuation services. Member States also have the option to allow certain tax and valuation services on condition that they do not have a direct effect on the financial statements or, if they do, that the effect is immaterial.

Excessive non-audit fees potentially create a conflict of interest and thus hinder an objective audit of the company, and appointment of auditors which have been paid excessive fees may not be supported during the year under review or the three previous years. In addition, appointments of those auditors who did not disclose in detail the nature of their non-audit services may not be supported. In terms of good governance it is considered that auditors should rotate after a maximum term of five years, although annual election would be welcomed.
In November 2014, Directive 2014/95/EU was published on disclosure of non-financial and diversity information by large companies and groups, which will have to be implemented by the 2017 reporting. Companies should provide disclosure of non-financial information (policy and practice) in the annual report or on a separate report, made available 6 months after the date of the balance sheet, at the latest. Statutory auditors are tasked by the Directive to check that such information has been provided.

Proposal 7.3 - Elect Rolf Classon to the Supervisory Board and Joint Committee
The General Partner requires the approval of the Joint Committee if more than 40% of the consolidated sales, consolidated balance sheet or consolidated profit are affected, e.g. from divestitures or acquisitions. In order to grant independent overview to such material transactions, it is considered that the all of the members of the Joint Committee should be independent.

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