

## CORPORATE GOVERNANCE

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NPS EX. 2145  
Part 2  
CFAD v. NPS  
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## STATEMENT ON CORPORATE GOVERNANCE

The Statement on Corporate Governance contains the Statement of Compliance, relevant information on practices within the company, the compensation report as well as a description of the procedures of the corporate bodies.

### JOINT REPORT OF THE EXECUTIVE BOARD AND THE SUPERVISORY BOARD ACCORDING TO SECTION 3.10 OF THE GERMAN CORPORATE GOVERNANCE CODE INCLUDING STATEMENT OF COMPLIANCE

The German Corporate Governance Code is geared exclusively toward the conditions at a German stock corporation (Aktiengesellschaft). Merck KGaA has resolved to apply the Code correspondingly to a corporation with general partners (Kommanditgesellschaft auf Aktien) to serve the interests of shareholders. In order to enable shareholders to compare the situation at other companies more easily, we base corporate governance on the conduct recommendations made by the Code Commission relating to management and supervision (governance) and forego having our own, equally permissible, code. With a few exceptions, the recommendations of the Code, the intent and meaning of which are applied, were complied with in the past and will continue to be complied with in the future.

For a clearer understanding, the following gives a general explanation of the Kommanditgesellschaft auf Aktien (KGaA) company form followed by the specific situation at Merck with additional references to the General Meeting and shareholder rights.

#### **Corporation with general partners (Kommanditgesellschaft auf Aktien)**

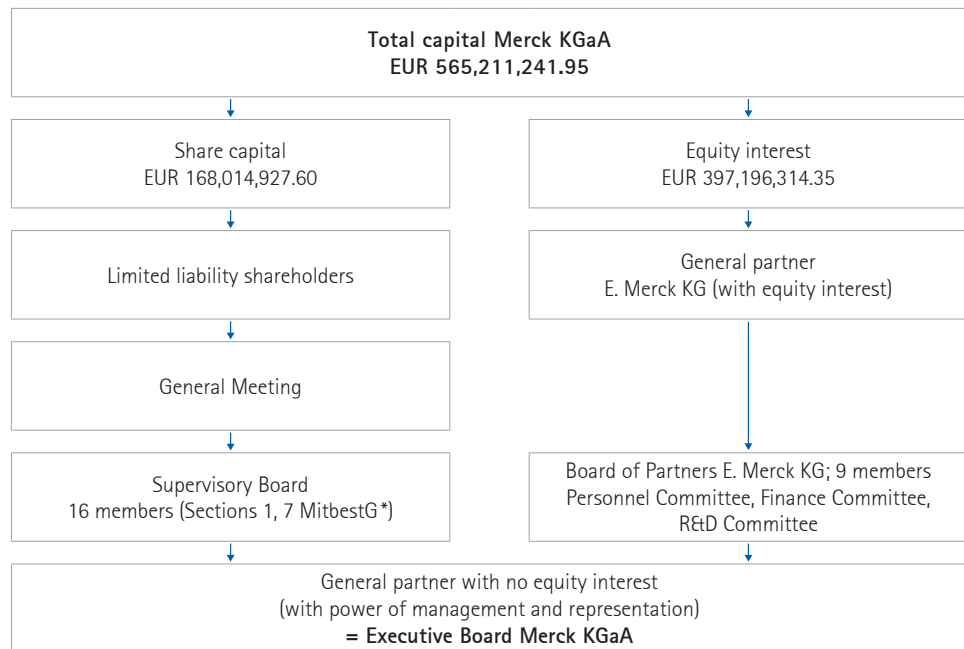
"The corporation with general partners is a company which constitutes a separate legal entity, in which at least one partner has unlimited liability with regard to the creditors of the company (general partner) and the other shareholders are not personally liable for the obligations of the company (limited shareholders) (section 278 (1) of the German Stock Corporation Act – hereinafter referred to as "AktG"). It is therefore a hybrid of an Aktiengesellschaft (German stock corporation) and a Kommanditgesellschaft (limited partnership) with a focus on German stock corporation law. Distinctive differences to the Aktiengesellschaft include the presence of general partners, who essentially also manage the company's business activities, the absence of a management board, and the restriction of rights and obligations of the supervisory board (see page 125 for a description of the supervisory board procedures). This legal form also involves special features with regard to the General Meeting. For example, many of the resolutions made require the consent of the general partners (section 285 (2) AktG), including the adoption of the annual financial statements (section 286 (1) AktG). A large number of the conduct recommendations contained in the Code, which is geared toward Aktiengesellschaften, can therefore only be applied to a KGaA as appropriate.

### Merck KGaA

The general partner E. Merck KG holds around 70% of the total capital of Merck KGaA (equity interest); the shareholders hold the remainder, which is divided into shares (share capital). E. Merck KG is excluded from the management of business activities. The general partners with no equity interest (Executive Board), on the other hand, manage business activities. Nevertheless, due to its substantial capital investment and unlimited personal liability, E. Merck KG has a strong interest in the businesses of Merck KGaA operating efficiently and in compliance with procedures, and exercises its influence accordingly. Merck KGaA's participation in the profit/loss of E. Merck KG in accordance with Articles 26 et seq. of the Articles of Association further harmonizes the interests of the shareholders and of E. Merck KG.

E. Merck KG appoints and dismisses the Executive Board. In addition, E. Merck KG has created bodies – complementing the expertise and activities of the Supervisory Board – to monitor and advise the Executive Board. This task applies primarily to the Board of Partners of E. Merck KG. Based on the provisions of the German Stock Corporation Act, the Articles of Association of Merck KGaA and the rules of procedure of the various committees, Merck KGaA has a set of rules for the Executive Board and its supervision that meet the requirements of the Code. The investors, who bear the entrepreneurial risk, are protected as provided for by the Code.

This is illustrated by the following chart:



\*German Co-Determination Act

### **The General Meeting of Merck KGaA**

The Annual General Meeting takes place within the first eight months of the fiscal year. The fifteenth General Meeting of Merck KGaA was held in Frankfurt am Main, Germany, on April 9, 2010. With 58.22% of the share capital represented, shareholder participation at the meeting was stable. At 59% in 2009, the rate was only marginally higher.

In accordance with Article 21 para 3 of the company's Articles of Association, the annual financial statements, the management report, the report of the Supervisory Board, and the proposal on the appropriation of net retained profit must be presented to the General Meeting and explained during the General Meeting. In particular, the Annual General Meeting passes resolutions concerning the approval of the annual financial statements, the appropriation of net retained profit, the approval of the actions of the Executive Board members and the Supervisory Board members, as well as the choice of the auditor. At the same time, the General Meeting has the power to pass resolutions concerning changes to the Articles of Association. With the exception of the measures listed in section 285 (2) sentence 2 AktG, the resolutions of the General Meeting require the approval of the general partners.

All the documents and information concerning upcoming General Meetings are posted on our website. Moreover, the General Meeting is webcast live on the Internet from its commencement until the end of the speech by the Chairman of the Executive Board. The introductory speeches by the Chairman of the Executive Board and the Chairman of the Supervisory Board are recorded in order to make them available to interested members of the public at any time after the meeting. In this way, we are satisfying our own high transparency requirements.

### **Shareholder rights**

The shareholders of Merck KGaA exercise their rights at the General Meeting. Each Merck share grants the holder one vote at the General Meeting.

Shareholders may exercise their voting rights personally, through an authorized representative, or a proxy appointed by the company. Voting rights are only subject to special restrictions in accordance with Article 22 para 5 of the company's Articles of Association. Accordingly, insofar as general partners hold shares, they cannot exercise the voting rights deriving from their shares with respect to the election and dismissal of the Supervisory Board, the approval of the actions of the Executive Board members and the Supervisory Board members, the choice of the auditor, the appointment of special auditors and the resolution on indemnification claims.

A summary explanation of shareholder rights is available in German on the company's website.

### **Deviations from the Corporate Governance Code:**

1. Until June 30, 2010, for its Executive Board and Supervisory Board members Merck KGaA maintained a Directors & Officers ("D&O") liability insurance policy that did not include a deductible in accordance with section 93 (2) sentence 3 AktG and section 3.8 (2) and (3) of the German Corporate Governance Code. The company dispensed with a deductible in the past because D&O insurance policies with the required deductible were not actively offered by the insurance industry and the individual agreement on a deductible is not offset by a substantial reduction in the premium.

Effective July 1, 2010, Merck KGaA introduced a deductible in accordance with section 93 (2) sentence 3 AktG and section 3.8 (2) and (3) of the German Corporate Governance Code. This takes into account the minimum requirements specified by the German Corporate Governance Code, since a deductible of at least 10% of the loss up to at least one and a half times the fixed annual compensation of the Executive Board member or Supervisory Board member has been agreed.

2. Contrary to section 5.4.1 sentence 2, an age limit is not taken into account when proposing candidates for election to the Supervisory Board. The age of Supervisory Board members is not a criterion for their qualifications and competence. Moreover, we do not wish to forgo the many years of experience of Supervisory Board members.

### **COMPENSATION REPORT**

(Section 4.2.5 and 5.4.6 of the German Corporate Governance Code)

The compensation report is part of the audited Notes to the Consolidated Financial Statements.

#### **Compensation of members of the Executive Board of Merck KGaA**

Contrary to members of the Board of Management of German stock corporations, the members of the Executive Board of Merck KGaA are not employed officers of the company. Rather, they are personally liable general partners of both Merck KGaA and the general partner E. Merck KG, and in this capacity they receive profit-based compensation from E. Merck KG. Therefore, the obligation to individually publish the compensation of management board members of publicly listed German stock corporations does not apply to the Executive Board of Merck KGaA. The following presentation of individual compensation is therefore being made on a voluntary basis.

Contrary to publicly listed German stock corporations, at Merck KGaA it is not the Supervisory Board, but the Board of Partners of E. Merck KG that decides on the amount and composition of compensation. E. Merck KG has transferred the execution of this right to its Personnel Committee. Among other things, the Personnel Committee is responsible for the following decisions: contents of contracts with Executive Board members, granting of loans and advance salary payments, approval for taking on honorary offices, board positions and other sideline activities, as well as the division of responsibilities within the Executive Board of Merck KGaA. The compensation system defined by the Personnel Committee for Executive Board members takes into account various compensation-relevant aspects, including the responsibility of the individual Executive Board members, their individual performance, the performance of the company, as well as the amount of compensation paid to executive board and management

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