

FRESENIUS MEDICAL CARE CORP

Form 20-F

March 18, 2003

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

FORM 20-F

REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934

OR

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2002

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Commission file number _____

FRESENIUS MEDICAL CARE AKTIENGESELLSCHAFT

(Exact name of Registrant as specified in its charter)

FRESENIUS MEDICAL CARE CORPORATION

(Translation of Registrant's name into English)

Germany

(Jurisdiction of incorporation or organization)

Else-Kröner Strasse 1, 61352 Bad Homburg, Germany

(Address of principal executive offices)

Securities registered or to be registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
American Depositary Shares representing Preference Shares	New York Stock Exchange
Preference Shares, no par value	New York Stock Exchange⁽¹⁾
American Depositary Shares representing Ordinary Shares	New York Stock Exchange
Ordinary Shares, no par value	New York Stock Exchange⁽¹⁾

Securities registered or to be registered pursuant to Section 12(g) of the Act: None

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Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act: 7 7/8% USD Trust Preferred Securities due 2008, 7 3/8% DM Trust Preferred Securities due 2008, 7 7/8% USD Trust Preferred Securities due 2011, 7 3/8% Euro Trust Preferred Securities due 2011

(1) Not for trading, but only in connection with the registration of American Depositary Shares representing such shares.

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report:

Preference Shares, no par value 26,188,575

Ordinary Shares, no par value 70,000,000

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days.

Yes No

Indicate by check mark which financial statement item the registrant has elected to follow.

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CONSENT of KPMG

Pages from Prospectus dated 20 July 2000

Certification LIPPS

Certification SCHEIDER

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INTRODUCTION

Forward Looking Statements

This report contains forward-looking statements within the meaning of section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, which are based upon our current expectations, assumptions, estimates and projections about us and our industry that address, among other things:

our business development, operating development and financial condition;

our expectations of growth in the patient population regarding renal dialysis products and services;

our expansion and acquisition plans and our capital expenditures budget;

the impact of our expansion on our revenue potential, cost basis and margins;

our ability to remain competitive in the markets for our products and services;

the effects of regulatory developments, legal proceedings and our settlement of government investigations into our business;

possible changes in government reimbursement policies and those of private payors;

our ability to develop and maintain additional sources of financing; and

other statements of our expectations, beliefs, future plans and strategies, anticipated development and other matters that are not historical facts.

When used in this report, the words *expects*, *anticipates*, *intends*, *plans*, *believes*, *seeks*, *estimates* and similar expressions are generally intended to identify forward looking statements. Although we believe that the expectations reflected in such forward-looking statements are reasonable, forward-looking statements are inherently subject to risks and uncertainties, many of which cannot be predicted with accuracy and some of which might not even be anticipated. Future events and actual results, financial and otherwise, could differ materially from those set forth in or contemplated by the forward-looking statements contained elsewhere in this report. Important factors that could contribute to such differences are noted in this report under *Business Overview* in *Item 4. Information on the Company*, *Item 5. Operating and Financial Review and Prospects* and *Item 8.A.7. Legal Proceedings*.

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Not applicable

Item 2. Other Statistics and Expected Timetable

Not applicable

Item 3. Key Information**Selected Financial Data**

The following table summarizes the consolidated financial information for our business for each of the years 1998 through 2002. We derived the selected financial information from our consolidated financial statements. We prepared our financial statements in accordance with accounting principles generally accepted in the United States of America and KPMG Deutsche Treuhand-Gesellschaft Aktiengesellschaft Wirtschaftsprüfungsgesellschaft, independent accountants, audited these financial statements. You should read this information together with our consolidated financial statements and the notes to those statements appearing elsewhere in this document and the information under Item 5. Operating and Financial Review and Prospects .

	2002 ^(C)	2001 ^(A)	2000	1999 ^(B)	1998 ^(C)
	(In millions)				
Statement of Operations Data:					
Net revenues	\$ 5,084	\$ 4,859	\$ 4,201	\$ 3,840	\$ 3,506
Cost of revenues	3,428	3,220	2,734	2,463	2,243
Gross profit	1,656	1,639	1,467	1,377	1,263
Selling, general and administrative	914	966	814	785	743
Research and development	47	36	32	32	31
Special charge		258		601	
Operating income (loss)	695	379	621	(41)	489
Interest expense, net	207	223	216	218	220
Income (loss) before income taxes, minority interest and extraordinary loss	488	156	405	(259)	269
Income (loss) from continuing operations before extraordinary loss and cumulative effect of accounting change	302	63	212	(249)	132
Net income (loss)	\$ 290	\$ 63	\$ 212	\$ (249)	\$ 19
Weighted average of:					
Preference shares outstanding	26,185,178	26,035,330	19,002,118	9,023,341	9,023,341
Ordinary shares outstanding	70,000,000	70,000,000	70,000,000	70,000,000	70,000,000

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Basic income (loss) from continuing operations before extraordinary loss per Ordinary share	\$ 3.12	\$ 0.65	\$ 2.37	\$ (3.15)	\$ 1.62
Fully diluted income (loss) from continuing operations before extraordinary loss per Ordinary share	3.12	0.64	2.36	(3.15)	1.62
Basic income (loss) per Ordinary share	3.00	0.65	2.37	(3.15)	0.20

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	2002 ^(C)	2001 ^(A)	2000	1999 ^(B)	1998 ^(C)
	(In millions)				
Fully diluted income (loss) per Ordinary share	3.00	0.64	2.36	(3.15)	0.20
Basic income (loss) from continuing operations before extraordinary loss per Preference share	3.18	0.70	2.43	(3.15)	1.78
Fully diluted income (loss) from continuing operations before extraordinary loss per Preference share	3.18	0.69	2.42	(3.15)	1.78
Basic income (loss) per Preference share	3.06	0.70	2.43	(3.15)	0.36
Fully diluted income (loss) per Preference share	3.06	0.69	2.42	(3.15)	0.36
Basic and fully diluted net income (loss) per Ordinary ADS	1.00	0.22	0.79	(1.05)	0.07
Basic and fully diluted net income (loss) per Preference ADS	1.02	0.23	0.81	(1.05)	0.12
Dividends declared per Ordinary share (⁽⁹⁾)	0.94(b)	0.85	0.78	0.69	0.59
Dividends declared per Preference share (⁽⁹⁾)	1.00(b)	0.91	0.84	0.75	0.64
Dividends declared per Ordinary share (\$) ^(a)	(b)	0.78	0.72	0.64	0.61
Dividends declared per Preference share (\$) ^(a)	(b)	0.84	0.78	0.69	0.66
Balance Sheet Data					
Working capital	\$ 526	\$ 402	\$ 191	\$ (229)	\$ 448
Total assets	6,780	6,516	5,979	5,752	5,679
Total long-term debt ^(c)	2,234	2,165	1,611	1,618	2,070
Shareholders' equity (net assets)	2,807	2,617	2,679	2,002	2,357
Capital Stock - Preference shares - Nominal Value	70	70	64	28	28
Capital Stock - Ordinary shares - Nominal Value	229	229	229	229	229

(A) Includes the special charge to address 1996 merger related legal matters, estimated liabilities and legal expenses arising in connection with the W.R. Grace Chapter 11 proceedings and the cost of resolving pending litigation and other disputes with certain commercial insurers. You can find a more detailed discussion of this special charge in Item 5.A. Operating Results - Year ended December 31, 2001 compared year ended December 31, 2000 - Special Charge for Legal Matters - and in Note 3 of the Notes to our Consolidated Financial Statements.

(B) Reflects the impact of the special charge relating to the settlement agreement with the U.S. government regarding U.S. government investigations. You can find a more detailed discussion of the final terms of the settlement in Note 2 of the Notes to our Consolidated Financial Statements.

(C) Includes the effect of an accounting change. In 1998 the accounting change relates to the early adoption of Statement of Position No. 98-5, *Reporting on the Costs of Start-up Activities*. The accounting change in 2002 relates to the adoption of SFAS No. 142, *Goodwill and Other Intangible Assets*, as of January 1, 2002 (see Note 1 of the Notes to our Consolidated Financial Statements).

(a) Amounts shown for each year from 1998 to 2001 represent dividends paid with respect to such year. The actual declaration and payment of the dividend was made in the following year, after approval of the dividend at our general meeting.

(b) Our managing board and our supervisory board have proposed dividends for 2002 of 1.00 per Preference share and 0.94 per Ordinary share. These dividends are subject to approval by our shareholders at our annual general meeting to be held on May 22, 2003.

(c) Total long-term debt represents long-term debt and capital lease obligations, less current portions and (i) at December 31, 1998, 1999 and 2000, the mandatorily redeemable preferred securities of Fresenius Medical Care Capital Trust, Fresenius Medical Care Capital Trust II,

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and Fresenius Medical Care Capital Trust III, (ii) at December 31, 2001, the mandatorily redeemable preferred securities of Fresenius Medical Care Capital Trust, Fresenius Medical Care Capital Trust II, Fresenius Medical Care Capital Trust III, Fresenius Medical Care Capital Trust IV, and Fresenius Medical Care Capital Trust V and (iii) at December 31, 2002, the mandatorily redeemable preferred securities of Fresenius Medical Care Capital Trust II, Fresenius Medical Care Capital Trust III, Fresenius Medical Care Capital Trust IV, and Fresenius Medical Care Capital Trust V. On February 14, 2002, we redeemed the entire \$360 million aggregate liquidation amount of the trust preferred securities of Fresenius Medical Care Capital Trust.

RISK FACTORS

Risks Relating to Litigation and Regulatory Matters in the U.S.

If we do not comply with the many governmental regulations applicable to our business or with the corporate integrity agreement between us and the U.S. government, we could be excluded from government health care reimbursement programs or our authority to conduct business could be terminated, either of which would result in a material decrease in our revenue

Our operations in both our provider business and our products business are subject to extensive governmental regulation in virtually every country in which we operate. The applicable regulations, which differ from country to country, relate in general to the safety and efficacy of medical products and supplies, the operation of manufacturing facilities, laboratories and dialysis clinics, the rate of, and accurate reporting and billing for, government and third-party reimbursement, and compensation of medical directors and other financial arrangements with physicians and other referral sources. We are also subject to other laws of general applicability, including antitrust laws.

Fresenius Medical Care Holdings is party to a corporate integrity agreement with the U.S. government. This agreement requires that Fresenius Medical Care Holdings staff and maintain a comprehensive compliance program, including a written code of conduct, training programs, regulatory compliance policies and procedures, annual audits and periodic reporting to the government. The corporate integrity agreement permits the U.S. government to exclude Fresenius Medical Care Holdings and its subsidiaries from participation in U.S. federal health care programs if there is a material breach of the agreement that Fresenius Medical Care Holdings does not cure within thirty days after Fresenius Medical Care Holdings receives written notice of the breach. We derive approximately 43% of our consolidated revenue from U.S. federal health care benefit programs. Consequently, if Fresenius Medical Care Holdings commits a material breach of the corporate integrity agreement that results in the exclusion of Fresenius Medical Care Holdings or its subsidiaries from continued participation in those programs it would significantly decrease our revenue and have a material adverse effect on our business, financial condition and results of operations.

While we rely upon our management structure, regulatory and legal resources, and the effective operation of our compliance program to direct, manage and monitor these activities, if employees, deliberately or inadvertently, failed to adhere to these regulations then our authority to conduct business could be terminated or our operations could be significantly curtailed. Any such terminations or reductions could materially reduce our revenues with a resulting adverse impact on our business, financial condition and results of operations.

A reduction in U.S. government reimbursement for dialysis care would materially decrease our revenues

For the twelve months ended December 31, 2002 approximately 43% of our consolidated revenues resulted from Medicare and Medicaid reimbursement. Legislative changes may affect the reimbursement rates for the services we provide, as well as the scope of Medicare and Medicaid coverage. A decrease in Medicare or Medicaid reimbursement rates or covered services could have a material adverse effect on our business, financial condition and results of operations.

A change in reimbursement for or utilization of EPO could materially reduce our revenue and operating profit

Reimbursement and revenue from the administration of erythropoetin, or EPO, accounted for approximately 26% of dialysis care revenue in our North America segment for the twelve months ended December 31, 2002. EPO is produced by a single source manufacturer, Amgen Inc. Our current contract with Amgen covers the

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period from January 2002 to December 2003. A reduction in reimbursement for EPO, a significant change in utilization of EPO, an interruption of supply or our inability to obtain satisfactory purchase terms for EPO could reduce our revenues from, or increase our costs in connection with the administration of EPO, which could materially adversely affect our business, financial condition and results of operations.

Creditors of W.R. Grace & Co. Conn. have asserted claims against us

We were formed in 1996 as a result of a series of transactions with W.R. Grace & Co that we refer to as the merger. At the time of the merger, W.R. Grace & Co.-Conn. had, and continues to have, significant liabilities arising out of product-liability related litigation (including asbestos), pre-merger tax claims and other claims unrelated to its dialysis business; in connection with the merger, W.R. Grace & Co.-Conn. and other Grace entities agreed to indemnify Fresenius Medical Care and its subsidiaries against all liabilities of W.R. Grace & Co., whether relating to events occurring before or after the merger, other than liabilities arising from or relating to National Medical Care's operations.

In addition, the merger was consummated as a tax free organization. Pre-merger tax claims or other tax claims that would arise if events were to violate the tax-free nature of the merger could ultimately be the obligation of our principal subsidiary, Fresenius Medical Care Holdings, Inc. (FMCH). In particular, W.R. Grace & Co. has publicly disclosed that its tax returns for the years 1993 through 1996 are under audit by the U.S. Internal Revenue Service, that it has paid tax and interest with respect to certain deductions taken prior to 1993 and that similar deductions were taken in the years under audit. Subject to certain representations made by W.R. Grace & Co.-Conn, FMCH and Fresenius AG, W.R. Grace & Co.-Conn. and other Grace entities also agreed to indemnify us against any such tax liability. W.R. Grace & Co.-Conn. and many of its affiliates have filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code (Grace Chapter 11 Proceedings). If W.R. Grace & Co.-Conn.'s (and its affiliates in and out of bankruptcy) obligations to indemnify us are terminated or limited as a result of bankruptcy proceedings, and we are held liable for pre-merger obligations of W.R. Grace & Co.-Conn. or if the merger is determined to be a taxable transaction, our business, financial condition and results of operations could be adversely affected.

Claims have been brought against W.R. Grace & Co. and FMCH by plaintiffs claiming to be creditors of W.R. Grace & Co.-Conn. (asbestos creditors), principally alleging that the merger was a fraudulent conveyance, violated the uniform fraudulent transfer act, and constituted a conspiracy. We are also engaged in litigation with Sealed Air Corporation (with which W.R. Grace & Co.-Conn. conducted a multistep transaction subsequent to the merger) over our entitlement to indemnification from Sealed Air for losses and expenses we incur relating to pre-merger tax liabilities of W.R. Grace & Co. and merger-related claims.

In February 2003, the Company reached an agreement with the asbestos creditors' committees in the Grace Chapter 11 Proceedings to settle these claims. For additional information concerning the Grace Chapter 11 Proceedings and the settlement agreement see Item 8.A.7 Legal Proceedings. The proposed settlement is subject to bankruptcy court approval and to confirmation of a final plan of reorganization of W.R. Grace & Co. that meets the requirements of the settlement agreement or is otherwise satisfactory to the Company. If the proposed settlement with the asbestos creditors' committees is not approved by the court or confirmed in such a final plan of reorganization, the plaintiffs' claims may be reinstated. If the claims are reinstated and the merger is determined to be a fraudulent transfer and if material damages are proved by the plaintiffs and we are not able to collect, in whole or in part, on the indemnity from any of our indemnitors, a judgment could have a material adverse effect on our business, financial condition and results of operations. We recorded a pre-tax accrual of \$172,034,000 at December 31, 2001 to reflect our estimated exposure for liabilities and expenses related to the Grace Chapter 11 Proceedings. See Note 3 to our consolidated financial statements.

We are defendants in litigation by private insurance companies alleging inappropriate billing practices

FMCH, National Medical Care, and subsidiaries of National Medical Care are defendants in litigation brought by private payors alleging inappropriate billing practices for nutritional therapy, diagnostic and clinical laboratory tests and misrepresentations. For information regarding these proceedings, see Item 8.A.7 Legal Proceedings. In July of 2002, FMCH entered into an agreement with Aetna Life Insurance Company that

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resolves these claims and the Company's counterclaims relating to overdue payments for services rendered by the Company to the Aetna's beneficiaries. We are still in litigation with some payors, and other private payors have contacted FMCH and have asserted that National Medical Care received excess payments and may file their own lawsuit seeking reimbursement and other damages from National Medical Care. Although we cannot predict the ultimate outcome on us of these proceedings at this time, an adverse result could have a material adverse effect on our business, financial condition and results of operations since an adverse determination could result in substantial liability or changes in our reimbursement arrangements with private insurers. In light of the Aetna agreement we established a pre-tax accrual of \$55,489,000 at December 31, 2001 to provide for the settlement of the Aetna lawsuit and estimated legal expenses related to the continued defense of other commercial insurer claims and resolution of these claims, including overdue payments for services we rendered to these insurers' beneficiaries (see Note 3 to our consolidated financial statements). We cannot assure that the costs associated with resolving the Aetna settlement, the overdue payments, and the other commercial insurers' claims will not exceed the \$55,489,000 pre-tax accrual.

As health maintenance organizations and other managed care plans grow, amounts paid for our services and products by non-governmental payors may decrease

We obtain a significant portion of our revenues from reimbursement provided by non-governmental third-party payors. Although non-governmental payors generally pay at higher reimbursement rates than governmental payors, managed care plans generally negotiate lower reimbursement rates than indemnity insurance plans. Some managed care plans also utilize a capitated fee structure or limit reimbursement for ancillary services.

As managed care programs have increased market share, there has been increased pressure to reduce the amounts paid for our services and products. These trends may be accelerated if future changes to the U.S. Medicare ESRD program require private payors to assume a greater percentage of the total cost of care given to dialysis patients over the term of their illness, or if managed care plans otherwise significantly increase their enrollment of renal patients.

If substantially more of our patients join managed care plans or such plans reduce reimbursements, our revenues from non-governmental payors could decrease, and our financial condition and results of operations could be materially adversely affected.

Proposals for health care reform could decrease our revenues

Proposals to modify the current health care system in the U.S. to improve access to health care and control its costs are continually being considered by the federal and certain state governments. We anticipate that the U.S. Congress and state legislatures will continue to review and assess alternative health care reforms, and we cannot predict whether these reform proposals will be adopted, when they may be adopted or what impact they may have on us. Any spending decreases or other significant changes in the Medicare program could reduce our revenues and profitability and have a material adverse effect on our business, financial condition and results of operations.

Other countries, especially those in Western Europe, have also considered health care reform proposals and could materially alter their government-sponsored health care programs by reducing reimbursement payments. Any reduction could affect the pricing of our products and the profitability of our services, especially as we expand our international business. This potential development could have a material adverse effect on our business, financial condition and results of operations.

Risks Relating to our Business

Our competitors could develop superior technology, impact our product sales, or drive up acquisition prices, which would adversely affect our ability to make acquisitions

We face numerous competitors in both our dialysis services business and our dialysis products business, some of which may possess substantial financial, marketing or research and development resources. Competition could materially adversely affect the future pricing and sale of our products and services. In particular,

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technological innovation has historically been a significant competitive factor in the dialysis products business. The introduction of new products by competitors could render one or more of our products obsolete.

We are engaged in both manufacturing dialysis products and providing dialysis services. We compete in the dialysis services business with many customers of our products business. As a result, independent dialysis clinics, those operated by other chains and dialysis centers acquired by other products manufacturers may elect to limit or terminate their purchases of our dialysis products so as to avoid purchasing products manufactured by a competitor. In addition, as consolidation in the dialysis services business continues and other vertically integrated dialysis companies expand, the external market for our dialysis products could be reduced. Possible purchase reductions could decrease our product revenues, with a material adverse effect on our business, financial condition and results of operations.

We also compete with other dialysis products and services companies in seeking selected acquisitions. If we are not able to continue to effect acquisitions in the provider business upon reasonable terms, particularly in our International segment, there could be an adverse impact on the growth of our business and our future growth prospects.

We face products liability and other claims which could result in significant liability

Health care companies are subject to claims alleging negligence, products liability, breach of warranty, malpractice and other legal theories that may involve large claims and significant defense costs whether or not liability is ultimately imposed. Health care products may also be subject to recalls. Although product liability claims and recalls have not had a material adverse effect on our businesses in the past, we cannot assure that we will not suffer one or more significant claims or product recalls in the future. Product liability claims or recalls could result in judgments against us or significant compliance costs, which could materially adversely affect our business, financial condition and results of operations.

While we have been able to obtain liability insurance in the past, it is possible that such insurance may not be available in the future either on acceptable terms or at all. A successful claim in excess of the limits of our insurance coverage could have a material adverse effect on our results of operations and financial condition. Liability claims, regardless of their merit or eventual outcome, also may have a material adverse effect on our business and reputation, which could in turn reduce our revenues and profitability.

If physicians and other referral sources cease referring patients to our dialysis clinics or cease purchasing our dialysis products, our revenues would decrease

Our dialysis services business is dependent upon patients choosing our clinics as the location for their treatments. Patients may select a clinic based, in whole or in part, on the recommendation of their physician. We believe that physicians and other clinicians typically consider a number of factors when recommending a particular dialysis facility to an ESRD patient, including, but not limited to, the quality of care at a clinic, the competency of a clinic's staff, convenient scheduling, and a clinic's location and physical condition. Physicians may change their facility recommendations at any time, which may result in the movement of our existing patients to competing clinics, including clinics established by the physicians themselves. At most of our clinics, a relatively small number of physicians account for the referral of all or a significant portion of the patient base. If a significant number of physicians ceased referring their patients to our clinics, this could reduce our dialysis care revenue and materially adversely affect our overall operations. Our operations are also affected by referrals from hospitals, managed care plans and other sources.

The decision to purchase our dialysis products and other services or competing dialysis products and other services will be made in some instances by medical directors and other referring physicians at our dialysis clinics and by the managing medical personnel and referring physicians at other dialysis clinics, subject to applicable regulatory requirements. A decline in physician recommendations or purchases of our products or ancillary services could reduce our dialysis product and other services revenue, and materially adversely affect our business, financial condition and results of operations.

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If we are unable to attract and retain skilled medical, technical and engineering personnel, we may be unable to manage our growth or continue our technological development

Our continued growth in the provider business will depend upon our ability to attract and retain skilled employees, such as highly skilled nurses and other medical personnel. Competition for those employees is intense. Moreover, we believe that future success in the provider business will be significantly dependent on our ability to attract and retain qualified physicians to serve as medical directors of our dialysis clinics. Our dialysis products business depends on the development of new products, technologies and treatment concepts. Competition is also intense for skilled engineers and other technical research and development personnel. If we are unable to obtain the services of key personnel, the ability of our officers and key employees to manage our growth would suffer and our operations could suffer in other respects. These factors could preclude us from integrating acquired companies into our operations, which could increase our costs and prevent us from realizing synergies from acquisitions. Lack of skilled research and development personnel could impair our technological development, which would increase our costs and impair our reputation for production of technologically advanced products.

We face additional costs and uncertainties from international operations

We intend to expand our international presence. As a result, we expect that revenues from countries other than the U.S. and Germany will account for an increasing portion of future revenues.

Revenues from international operations are subject to a number of risks, including the following:

Fluctuations in exchange rates could adversely affect profitability;

We may face difficulties in enforcing and collecting accounts receivable under some countries' legal systems;

Local regulations may restrict our ability to obtain a direct ownership interest in dialysis clinics or other operations;

Political instability, especially in developing countries, could disrupt our operations;

Some customers and governments may have longer payment cycles, with resulting adverse effects on our cash flow; and

Some countries could impose additional taxes or restrict the import of our products.

The continuing financial crisis in Latin America and the decline of many of its major currencies against the U.S. dollar have affected our international operations and caused us to test our Latin America operations for impairment. See Item 5, Operating and Financial Review and Prospects Financial Condition and Results of Operations Year ended December 31, 2002 compared to year ended December 31, 2001. Any one or more of these factors, or any difficulty in integrating businesses we acquire into our operations, could increase our costs, reduce our revenues, or disrupt our operations, with possible material adverse effects on our business, financial condition and results of operations.

Other Risks

Our significant indebtedness may limit our ability to pay dividends or implement certain elements of our business strategy

We are substantially leveraged. As of December 31, 2002, our total consolidated liabilities were \$3.97 billion, including obligations with respect to all our trust preferred securities of approximately \$1.1 billion, our total consolidated assets were \$6.78 billion and our stockholders equity was \$2.81 billion. Our substantial level of debt presents the risk that we might not generate sufficient cash to service our indebtedness or that our leveraged capital structure could limit our ability to finance acquisitions and development of additional projects, to compete effectively or to operate successfully under adverse economic conditions.

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Our senior credit agreement and the indentures relating to our trust preferred securities include covenants that require us to maintain certain financial ratios or meet other financial tests. Under our senior credit agreement, we are obligated to maintain a minimum consolidated net worth and a minimum consolidated fixed charge ratio (ratio of consolidated earnings before interest, taxes, depreciation, amortization and rent (EBITDAR) to fixed charges) and we are subject to a limit on our consolidated leverage ratio (ratio of consolidated funded debt to EBITDA).

Our senior credit agreement and our indentures include other covenants which, among other things, restrict or have the effect of restricting our ability to dispose of assets, incur debt, pay dividends, create liens or make capital expenditures, investments or acquisitions. These covenants may otherwise limit our activities. The breach of any of the covenants could result in a default under the credit agreement or the indentures, which could, in turn, create additional defaults under the agreements relating to our other long term indebtedness.

Because we are not organized under U.S. law, we are subject to certain less detailed disclosure requirements under U.S. federal securities laws

Under pooling agreements that we have entered into for the benefit of minority holders of our Ordinary shares and holders of our Preference 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 Securities and Exchange Commission, to prepare annual and quarterly financial statements in accordance with U.S. generally accepted accounting principles, and to file information with the Securities and Exchange Commission with respect to annual and general meetings of our shareholders. However, we are a foreign private issuer, as defined in the Securities and Exchange Commission's regulations, and consequently we are not subject to all of the same disclosure requirements applicable to domestic companies. We are exempt from the Securities and Exchange Commission's proxy rules, and our annual reports contain less detailed disclosure than reports of domestic issuers regarding such matters as management, executive compensation and outstanding options, beneficial ownership of our securities and certain related party transactions. Also, our officers, directors and beneficial owners of more than 10% of our equity securities are exempt from the reporting requirements and short-swing profit recovery provisions of Section 16 of the Securities Exchange Act of 1934. These limits on available information about our company may adversely affect the market prices for our securities.

Item 4. Information on the Company

A. History and Development of the Company

General

Fresenius Medical Care AG is a stock corporation (Aktiengesellschaft) organized under the laws of Germany. It was incorporated on August 5, 1996. Fresenius Medical Care AG is registered with the commercial register of the local court (*Amtsgericht*) of Hof an der Saale, Germany under HRB 2460. Our registered office (*Sitz*) is Hof an der Saale, Germany. Our business address is Else-Kröner-Strasse 1, 61352 Bad Homburg, Germany, telephone ++49-6172-609-0.

History

Fresenius Medical Care AG was created by the conversion of Sterilpharma GmbH, a limited liability company under German law organized in 1975, into a stock corporation under German law (*Aktiengesellschaft*). A shareholder's meeting on April 17, 1996 adopted the resolutions for this conversion and the commercial register registered the conversion on August 5, 1996.

On September 30, 1996, we completed a series of transactions to consummate an Agreement and Plan of Reorganization entered into on February 4, 1996 by Fresenius AG and W.R. Grace which we refer to as the Merger elsewhere in this report. Pursuant to that agreement, Fresenius AG contributed Fresenius Worldwide

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Dialysis, its global dialysis business, including its controlling interest in Fresenius USA, Inc., in exchange for 35,210,000 Fresenius Medical Care Ordinary shares. Thereafter, we acquired:

all of the outstanding common stock of W.R. Grace, whose sole business at the time of the transaction consisted of National Medical Care, Inc., its global dialysis business, in exchange for 31,360,000 Ordinary shares; and

the publicly-held minority interest in Fresenius USA, in exchange for 3,430,000 Ordinary shares.

Effective October 1, 1996, we contributed all our shares in Fresenius USA to Fresenius Medical Care Holdings, which conducts business under the trade name Fresenius Medical Care North America, and which is the holding company for all of our operations in the U.S. and Canada and manufacturing operations in Mexico.

Capital Expenditures

We invested, by business segment and geographical areas, the following amounts during the three fiscal years ended December 31, 2002, 2001 and 2000 and have budgeted the following amounts for the year 2003:

	Actual (in millions)			Budget 2003
	2002	2001	2000	
Acquisitions				
North America	\$ 38	\$ 412	\$ 116	
International				
Germany			11	