



# DISCLAIMER

Publication of  
Merck KGaA, Darmstadt, Germany. In the United States and Canada the  
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umbrella brand EMD.

## Statement on Corporate Governance

The Statement on Corporate Governance contains the Statement of Compliance, relevant information on practices within the company 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 found in a German stock corporation (Aktiengesellschaft) and not toward a corporation with general partners (Kommanditgesellschaft auf Aktien) such as Merck KGaA. Merck KGaA has resolved to apply the Code logically to serve the interests of its 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 one exception, 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. The specific situation at Merck is then described and additional references are made to the General Meeting and shareholder rights.

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

The corporation with general partners is a company that 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 in which 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 115 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

See diagram on page 100

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.

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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.

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

The Annual General Meeting takes place within the first eight months of the fiscal year. The sixteenth General Meeting of Merck KGaA was held in Frankfurt am Main, Germany, on April 18, 2011. At 56.60%, the proportion of share capital represented at the meeting was stable. At 58.22%, the proportion was slightly higher in 2010.

In accordance with Article 21 (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 certain exceptions (such as 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 through a proxy appointed by the company. Voting rights are only subject to special restrictions in accordance with Article 22 (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 election of the auditor, the appointment of special auditors and the resolution on indemnification claims.

A summary explanation of shareholder rights with respect to the General Meeting is available in German on the company's website.

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#### Statement of Compliance

On February 24, 2012, the Executive Board and the Supervisory Board issued, in accordance with section 161 of the German Stock Corporation Act (Aktiengesetz), the following statement of compliance with the recommendations of the German Federal Government Commission on the Corporate Governance Code:

With the exception of the following instance, since the last statement of compliance on February 17, 2011, the Merck Group has complied with the recommendations of the German Federal Government Commission on the Corporate Governance Code published on May 26, 2010, and shall continue to do so in the future.

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

(Sections 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 management board members 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 board members of comparable companies. The Personnel Committee regularly commissions an independent compensation consultant to review the appropriateness of compensation.

#### Features of the compensation system

The compensation paid to the Executive Board members of Merck KGaA in fiscal 2011 comprises fixed components, variable compensation and additions to pension provisions. Benefits in kind and other benefits are additionally granted.

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### Fixed compensation

Fixed compensation is paid in the form of 12 equivalent monthly installments. The following table provides an overview of the amount of the fixed compensation paid in 2010 and 2011:

#### 000 → Compensation of the Executive Board members of Merck KGaA

	Fixed compensation	
€ thousand	2011	2010
Karl-Ludwig Kley	1,100	1,000
Michael Becker*	800	800
Kai Beckmann (since 4/1/2011)	600	n/a
Stefan Oschmann (since 1/1/2011)	1,000	n/a
Bernd Reckmann	1,000	750
Elmar Schnee (until 6/30/2011)**	450	900
Matthias Zachert (since 6/1/2011)	583	n/a
<b>Total</b>	<b>5,533</b>	<b>3,450</b>

\*Michael Becker was the Chief Financial Officer of Merck KGaA until May 31, 2011. After June 1, 2011, Michael Becker remained a General Partner of Merck KGaA, but was no longer a member of the Executive Board.

\*\* Elmar Schnee was a General Partner of Merck KGaA in the period from January 1, 2011 to June 30, 2011, but was no longer a member of the Executive Board of Merck KGaA, nor of the Executive Management Board of Merck Serono S.A. Elmar Schnee received fixed compensation from Merck Serono S.A. in Geneva in line with his contract as a member of the Executive Management Board of the company, which expired on June 30, 2011.

### Variable compensation

Variable compensation is based on the three-year rolling average of profit after tax of the E. Merck Group. Exceptional factors that amount to more than 10% of the Group profit and for which the Executive Board member is not responsible are eliminated. The members of the Executive Board receive an individually fixed per mille rate of the Group profit calculated in this manner. Additionally, the Personnel Committee can decide on a one-time payment based on the achievement of qualitative objectives.

In connection with the acquisition and integration of Millipore, the Personnel Committee made use of this option and decided to grant one-time payments to Karl-Ludwig Kley and Michael Becker (€ 500 thousand each) as well as to Bernd Reckmann (€ 1.2 million). These one-time payments for the achievement of objectives in connection with the Millipore transaction are included in the variable compensation components disclosed for 2011.

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The following table provides an overview of the amount of the variable compensation paid in 2010 and 2011:

€ thousand	Variable compensation	
	2011***	2010****
Karl-Ludwig Kley	3,100	2,189
Michael Becker*	2,084	1,314
Kai Beckmann (since 4/1/2011)	1,188	n/a
Stefan Oschmann (since 1/1/2011)	2,100	n/a
Bernd Reckmann	3,300	1,095
Elmar Schnee (until 6/30/2011)**	1,042	1,752
Matthias Zachert (since 6/1/2011)	1,079	n/a
<b>Total</b>	<b>13,893</b>	<b>6,350</b>

\* Michael Becker was the Chief Financial Officer of Merck KGaA until May 31, 2011. After June 1, 2011, Michael Becker remained a General Partner of Merck KGaA, but was no longer a member of the Executive Board.

\*\* Elmar Schnee was a General Partner of Merck KGaA in the period from January 1, 2011 to June 30, 2011, but was no longer a member of the Executive Board of Merck KGaA.

\*\*\* The variable compensation for 2011 is based on an extrapolation since the consolidated result of the E. Merck Group was not yet available when this information was prepared and includes the aforementioned one-time payments to Karl-Ludwig Kley, Michael Becker and Bernd Reckmann.

\*\*\*\* The variable compensation stated for 2010 deviates from the data provided in 2011 since the consolidated result of the E. Merck Group was not yet available when this information was prepared and was therefore extrapolated.

### Total compensation

Consequently, this results in the following total compensation for the Executive Board members of Merck KGaA:

€ thousand	Fixed compensation		Variable compensation		Total	
	2011	2010	2011	2010	2011	2010
Karl-Ludwig Kley	1,100	1,000	3,100	2,189	4,200	3,189
Michael Becker	800	800	2,084	1,314	2,884	2,114
Kai Beckmann	600	n/a	1,188	n/a	1,788	n/a
Stefan Oschmann	1,000	n/a	2,100	n/a	3,100	n/a
Bernd Reckmann	1,000	750	3,300	1,095	4,300	1,845
Elmar Schnee	450	900	1,042	1,752	1,492	2,652
Matthias Zachert	583	n/a	1,079	n/a	1,662	n/a
<b>Total</b>	<b>5,533</b>	<b>3,450</b>	<b>13,893</b>	<b>6,350</b>	<b>19,426</b>	<b>9,800</b>

### Pension provisions

The individual contractual pension obligations grant the members of the Executive Board entitlement to a lifelong old-age pension or surviving dependents' pension in the event of reaching the individual contractually agreed age limit, permanent disability, or death.

The amount of the old-age pension is determined by a percentage share of pensionable compensation defined by the Personnel Committee.

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The individual values are presented in the following table:

	Pensionable compensation (€ thousand)	Percentage entitlement
Karl-Ludwig Kley	790	70
Michael Becker	560	75
Kai Beckmann	300	41
Stefan Oschmann	500	45
Bernd Reckmann	500	56
Elmar Schnee	570	49
Matthias Zachert	400	40

The percentage entitlement increases up until retirement annually by 2% up to 70% for Michael Beckmann and Matthias Zachert, as well as for Bernd Reckmann, whose pension entitlement was correspondingly increased in fiscal 2011.

The following amounts were added to pension provisions in 2011:

€ thousand	Additions to pension provisions		Amount of pension provisions as of Dec. 31, 2011
	2011	2010	
Karl-Ludwig Kley	-1,699	2,162	5,268
Michael Becker	1,247	1,216	7,302
Kai Beckmann	1,053	n/a	1,825
Stefan Oschmann	498	n/a	498
Bernd Reckmann	693	829	4,309
Elmar Schnee	1,016	777	3,458
Matthias Zachert	153	n/a	153
<b>Total</b>	<b>2,961</b>	<b>4,984</b>	<b>22,813</b>

The surviving dependents' pension grants the spouse a lifelong surviving dependents' pension amounting to 60% of the pension entitlement, dependent children either a half-orphan's or an orphan's pension maximally until the age of 25.

#### Benefits in the event of termination of the duties as an Executive Board member

Above and beyond existing pension obligations, no further obligations exist in the event of the premature termination of the contractual relationships of the Executive Board members.

#### Miscellaneous

The members of the Executive Board additionally receive certain benefits, mainly contributions to insurance policies as well as a company car, which they are entitled to use privately. The members of the Executive Board must declare these benefits in their tax returns. In total, the value of miscellaneous benefits amounted to € 121 thousand in 2011 (2010: € 86 thousand). Of this amount, in 2011 € 28 thousand was attributable to Karl-Ludwig Kley (2010: € 29 thousand), € 22 thousand to Michael Becker (2010: € 24 thousand),

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Kai Beckmann € 14 thousand, € 15 thousand to Stefan Oschmann, € 25 thousand to Bernd Reckmann (2010: € 26 thousand), € 3 thousand to Elmar Schnee (2010: € 7 thousand), and Matthias Zachert € 14 thousand. The members of the Executive Board do not receive additional compensation for serving on the boards of Group companies.

Should members of the Executive Board be held liable for financial losses while executing their duties, under certain circumstances this liability risk is covered by a D&O insurance policy from Merck KGaA. The D&O insurance policy has a deductible in accordance with the legal requirements and the recommendations of the German Corporate Governance Code.

**Payments to former Executive Board members and their surviving dependents**

Pension payments to former members of the Executive Board or their surviving dependants amounted to € 9,734 thousand in 2011 (2010: € 9,091 thousand). Pension provisions totaling € 89,204 thousand exist for pension entitlements of this group of persons (2010: € 90,082 thousand).

**Outlook: Variable compensation as of 2012**

At its meeting on February 7, 2012, the Personnel Committee of the Board of Partners of E. Merck KG resolved to add a long-term variable compensation component to the variable compensation of the members of the Executive Board. This Merck Long-Term Incentive Plan is effective as of January 1, 2012. It aims to enhance the sustainability of the compensation system and to align it not only with the target achievement based on key performance indicators, but above all with a sustainable performance of Merck shares. To prepare for its resolution, the Personnel Committee was supported by an independent external compensation advisor.

Subject to the resolution of the Personnel Committee each year, under the Merck Long-Term Incentive Plan the members of the Executive Board could be eligible to receive a certain number of virtual shares – Merck Share Units (MSUs) – at the end of a three-year performance period. The number of MSUs depends on the total value defined for the respective person and the average closing price of Merck shares in Xetra trading during the last 60 trading days prior to January 1 of the respective fiscal year. In order to participate in the Plan, members of the Executive Board must personally own an investment in Merck shares equivalent to 10% of their respective fixed annual compensation, taking into account the equity interest held in E. Merck KG as a General Partner. It is not permitted to sell these shares during the performance period.

After termination of the three-year performance period, the number of MSUs to be granted is determined based on the development of two key performance indicators (KPIs). These are:

- a) the performance of the Merck share price compared to the DAX® with a weighting of 70%, and
- b) the development of the EBITDA margin, adjusted for exceptional items, during the performance period as a proportion of a defined target value with a weighting of 30%.

Depending on the development of the KPIs, at the end of the respective performance period the members of the Executive Board are granted between 0% and 150% of the MSUs they could be eligible to receive.

The members of the Executive Board receive a payment based on the number of MSUs granted. The value of an MSU corresponds to the average closing price of Merck shares in Xetra trading during the last 60 trading days prior to January 1 after the performance period. The net amount after taking tax into account is invested in Merck shares by the members of the Executive Board. One third of these shares may be sold at the earliest one year after termination of the performance period, another third after two years, and another third after three years.

In fiscal 2012, the members of the Executive Board are eligible to receive MSUs with the following total values: Karl-Ludwig Kley € 1.5 million, Kai Beckmann € 1.0 million, Stefan Oschmann € 1.0 million, Bernd Reckmann € 1.0 million and Matthias Zachert € 1.0 million. The Executive Board resolved to



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introduce a long-term incentive plan for senior management as well. The plan is effective as of January 1, 2012 and its composition largely corresponds to the Merck Long-Term Incentive Plan.

### Compensation of the Supervisory Board members of Merck KGaA

The compensation of the Supervisory Board members is defined by Article 20 of the Articles of Association of Merck KGaA. Apart from reimbursement of their expenses, the members of the Supervisory Board receive fixed and variable compensation.

The fixed compensation amounts to € 7,000 per year. The Chairman receives double this amount and the Vice Chairman receives one and a half times this amount.

The members of the Supervisory Board also receive € 550 for each percent of the dividend resolved by the General Meeting in excess of 6% of the share capital, with a corresponding portion for fractions of a percent. The Chairman receives double this amount and the Vice Chairman receives one and a half times this amount.

Supervisory Board members who have only been in office for part of the fiscal year receive lower compensation in proportion to their term of office. The company reimburses the value-added tax levied on the compensation.

The individual values are presented in the following table:

### 000 → Compensation of the Supervisory Board members of Merck KGaA

€	Fixed compensation		Variable compensation		Total compensation	
	2011	2010	2011	2010	2011	2010
Rolf Krebs <sup>1</sup> (Chairman)	14,000	14,000	56,859	46,288	70,859	60,288
Heiner Wilhelm (Vice Chairman)	10,500	10,500	42,644	34,716	53,144	45,216
Crocifissa Attardo	7,000	7,000	28,429	23,144	35,429	30,144
Mechthild Auge	7,000	7,000	28,429	23,144	35,429	30,144
Johannes Baillou <sup>2</sup>	7,000	7,000	28,429	23,144	35,429	30,144
Frank Binder <sup>3</sup>	7,000	7,000	28,429	23,144	35,429	30,144
Wolfgang Büchele <sup>2</sup>	7,000	7,000	28,429	23,144	35,429	30,144
Michael Fletterich	7,000	7,000	28,429	23,144	35,429	30,144
Edeltraud Glänzer	7,000	7,000	28,429	23,144	35,429	30,144
Michaela Freifrau von Glenck <sup>4</sup>	7,000	7,000	28,429	23,144	35,429	30,144
Frieder Kaufmann	7,000	7,000	28,429	23,144	35,429	30,144
Hans-Jürgen Leuchs <sup>2</sup>	7,000	7,000	28,429	23,144	35,429	30,144
Albrecht Merck <sup>3</sup>	7,000	7,000	28,429	23,144	35,429	30,144
Karl-Heinz Scheider	7,000	7,000	28,429	23,144	35,429	30,144
Theo Siegert <sup>1</sup>	7,000	7,000	28,429	23,144	35,429	30,144
Osman Ulusoy	7,000	7,000	28,429	23,144	35,429	30,144
<b>Total</b>	<b>122,500</b>	<b>122,500</b>	<b>497,509</b>	<b>405,020</b>	<b>620,009</b>	<b>527,520</b>

<sup>1</sup>As members of corporate bodies of E. Merck KG, these Supervisory Board members each received an additional payment of € 150,000 for performing this function in 2011 (2010: € 150,000).

<sup>2</sup>As members of corporate bodies of E. Merck KG, these Supervisory Board members each received an additional payment of € 140,000 for performing this function in 2011 (2010: € 140,000).

<sup>3</sup>As members of corporate bodies of E. Merck KG, these Supervisory Board members each received an additional payment of € 120,000 for performing this function in 2011 (2010: € 120,000).

<sup>4</sup>As members of corporate bodies of E. Merck KG, these Supervisory Board members each received an additional payment of € 80,000 for performing this function in 2011 (2010: € 80,000).

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Section 6.6 of the  
German Corporate  
Governance Code

#### **Ownership, purchase or sale of shares in the company by members of the Executive Board and of the Supervisory Board**

As of December 31, 2011, the members of the Executive Board and of the Supervisory Board either directly or indirectly held 27,892 shares of Merck KGaA. Their total ownership represents less than 1% of the issued shares of Merck KGaA. Transactions executed by members of the Executive Board and of the Supervisory Board are disclosed on the Merck website at [www.merckgroup.com/investors](http://www.merckgroup.com/investors) → Corporate Governance → Directors' Dealings.

### **Information on Corporate Governance Practices**

#### **Reporting**

It is Merck KGaA's objective to provide the latest information to all shareholders, media, financial analysts and interested members of the public, while creating the greatest possible transparency. For this reason, Merck uses a wide range of communication platforms to engage in a timely dialogue with all interested parties about the situation of the company and business changes. Merck's principles include providing factually correct, comprehensive and fair information.

Information subject to disclosure requirements, as well as information that is not, can be accessed worldwide on the Merck KGaA website ([www.merckgroup.com](http://www.merckgroup.com)), which is the company's most important publication platform. Apart from a detailed financial calendar, quarterly and half-year financial reports covering the past six years are available here in German and English. In addition, in line with the legal requirements, ad hoc announcements are published on the website. These contain information on circumstances that could impact the Merck share price.

Regular press conferences, investor meetings on the occasion of investor conferences as well as roadshows offer another platform for dialogue. The company presentations prepared for this purpose are also available on the Merck KGaA website. In addition, the Investor Relations team is always available to private and institutional investors who wish to receive further information.

To ensure the greatest possible transparency, all documents concerning the Annual General Meeting are available on the company website. Additionally, some parts of the Annual General Meeting are webcast live on the Internet.

#### **Dealing with insider information**

Dealing properly with insider information is very important to us. Our insider committee examines the existence of insider information, ensures compliance with legal obligations, and prepares any necessary measures. The members of the insider committee are appointed by the Executive Board; at least two members work in Corporate Legal & Compliance. The insider committee meets at regular intervals, yet also meets when circumstances require. The Chief Financial Officer is vested with the authority to make the final decision on handling potential insider information.

In order to ensure a high level of protection for insider information, in 2011 the Executive Board issued an internal insider guideline applicable throughout the Group worldwide. This guideline informs employees about their responsibilities under insider trading laws and gives clear instructions for compliant behavior. In addition, it describes the function of the insider committee in detail. Moreover, our Code of Conduct, which is binding on all employees, also contains an explicit, detailed reference to the ban on using insider information. Within the scope of obligatory training courses on the Code of Conduct, all employees are instructed on the subject of insider trading.

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### Accounting and audits of financial statements

Merck KGaA prepares its consolidated financial statements and Group management report in accordance with International Financial Reporting Standards (IFRS), as applicable in the EU, as well as the supplementary rules applicable under section 315a (1) of the German Commercial Code (HGB) and as stipulated by our Articles of Association. The Group financial statements and the Group management report are prepared by the Executive Board and examined by an auditor, taking into account the generally accepted standards for the audit of financial statements promulgated by the Institut der Wirtschaftsprüfer (IDW).

The Supervisory Board commissioned KPMG AG Wirtschaftsprüfungsgesellschaft, Berlin, to audit the Group financial statements and the Group management report for 2011. Neither party identified any conflicts of interest. Moreover, the Supervisory Board agreed with KPMG AG that the auditor shall inform the Supervisory Board without delay of any grounds for bias or disqualification occurring during the audit if these cannot be immediately rectified. Additionally, the auditor must immediately report to the Supervisory Board any findings and issues which emerge during the audit that have a direct bearing upon the tasks of the Supervisory Board. The auditor shall inform the Supervisory Board or note in the audit report any circumstances determined during the audit that would render inaccurate the Statement of Compliance made by the Executive Board and the Supervisory Board. It has also been agreed with the auditor that in order to assess whether the Executive Board has fulfilled its obligations in accordance with section 91 (2) AktG, the audit will also cover the company's early warning risk identification system. Moreover, the auditor is required to examine and evaluate the accounting-relevant internal control system insofar as this is necessary and appropriate for assessing the accuracy of financial reporting.

### Values and compliance

In accordance with its Mission Statement, "We at Merck do what we say and then measure ourselves on this basis," Merck relies on a common set of values: courage, achievement, responsibility, respect, integrity, and transparency. Based on a corporate culture that places the fundamental company values at the center of our entrepreneurial actions, the Code of Conduct helps those involved in the business process to implement the values when dealing with one another on a daily basis.

Merck has created the Code of Conduct as a set of rules and regulations intended to help Merck employees to act responsibly and to take the right decisions in their daily work. The Code of Conduct explains the principles for dealings with business associates, general partners, colleagues, and employees, as well as the communities in which we operate. Thus, it supports all employees in acting ethically – not only in their dealings with one another, but also outside the company. The Code of Conduct is thus the main set of rules of our compliance program.

To Merck, compliance means observing legal and company-internal regulations and the basic ethical principles anchored in the company values. With the Code of Conduct and the various unit-specific compliance rules, the values are integrated into daily work and business practice. The Code of Conduct is binding on all employees, both at headquarters as well as the legal entities abroad. The Compliance Office monitors observance of the Code of Conduct with support from corresponding auditing and training programs throughout the Group. All employees are called upon to report compliance violations to their supervisor, Legal, HR or other relevant departments. Merck created the position of Group Compliance Officer (GCO) in 2002. This employee is responsible for setting up, maintaining and further developing our global compliance program. By taking appropriate measures, the GCO helps to lower the risk of serious legal violations of, for instance, antitrust law or anticorruption rules. The role of the Group Compliance Officer is reflected in the legal entities by the approximately 60 local compliance officers, who ensure that compliance measures are implemented in the

The Code of Conduct can be found on the Merck website at:  
[www.merckgroup.com](http://www.merckgroup.com)  
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legal entities in the countries. This Group-wide network is used to steer the global compliance program. Regular regional and global compliance meetings are held to promote the exchange of information within the network. Newcomer training seminars were introduced in 2010 for newly appointed compliance officers. These seminars serve to build up compliance expertise and strengthen teambuilding within the compliance organization.

A high degree of importance is attached to regular compliance seminars, which are conducted as on-site events, as well as via web-based training courses. By presenting various training topics on corruption, antitrust and competition law, health care compliance and the Code of Conduct, they serve to sensitize employees and management to the consequences of compliance violations and to show ways of avoiding them. By setting up a central speak-up line, employees can report compliance violations by telephone or via a web-based application in their respective national language. The speak-up line is available 24 hours a day, free of charge. Case numbers enable anonymous, two-way communication. The reports received are individually reviewed. If a compliance violation exists, corresponding corrective action is taken based on concrete action plans. If necessary, disciplinary measures are taken. These range from a simple warning up to the dismissal of the employee who violated a compliance rule. In 2011, Merck set up a compliance committee to guide these processes. The Compliance Committee consists of members from various Group functions; they are involved in reviewing compliance violations and introducing countermeasures. The joint work in the Compliance Committee enables processes between the various Group functions to be optimized.

In cooperation with Internal Auditing, the Compliance Office regularly reviews the implementation of Group-wide compliance measures at the legal entities abroad. The audits regularly focus on the local compliance structure, the compliance measures taken, as well as the existence of corresponding compliance guidelines and processes.

The Compliance function reports regularly to the Executive Board, informing it of the status of compliance activities, compliance risks as well as serious compliance violations. The Executive Board informs the supervisory bodies at least once a year about the key compliance issues.

#### **Risk and opportunity management**

The Executive Board, the Supervisory Board and the Finance Committee are regularly informed about the current risk portfolio of the Group and the individual companies. More detailed information can be found in the Risk Report on page 84 et seq.

#### **Avoidance of conflicts of interest**

Within the framework of their work, all Executive Board and Supervisory Board members of Merck KGaA are exclusively committed to the interests of the company and pursue neither personal interests nor grant unjustified advantages to third parties.

Before an Executive Board member takes on honorary offices, board positions or other sideline activities, this must be approved by the Personnel Committee of the Board of Partners of E. Merck KG.

The Chairman of the Executive Board, Karl-Ludwig Kley, and the Chief Financial Officer, Matthias Zachert, are both members of the Executive Board of E. Merck KG. This does not, however, lead to conflicts of interest.

In its report to the General Meeting, the Supervisory Board discloses any conflicts of interest involving its members and how they were dealt with. Consultancy agreements as well other service and work contracts of a Supervisory Board member with Merck require the approval of the Supervisory Board. In fiscal 2011, there were neither conflicts of interest nor consultancy agreements or other service or work contracts with Merck KGaA involving Supervisory Board members.

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### Adherence to environmental and safety standards

At Merck, closed-loop thinking guides the way in which we address environmental concerns and environmental protection issues. To this end, we integrate precautionary measures into our planning processes. Our Environment, Health and Safety Policy with its principles and strategies implements the guidelines formulated by the national and international associations of the chemical industry in the Responsible Care® guidelines. The Responsible Care® Global Charter developed by the International Council of Chemical Associations (ICCA) in 2006 puts even more emphasis than before on overall responsibility for products, supply chains and the community. Merck signed this expanded version of Responsible Care® for the entire Group in February 2007.

Many guidelines specify how the sites and employees of the Merck Group are to observe the principles in their daily work. The Group function Environment, Health, Safety, Security & Quality steers these global activities and ensures compliance with regulatory requirements, standards and business needs throughout the entire Group. In this way, Group-wide risks are minimized and continuous improvement is promoted in the areas of Environment, Health, Safety, Security, and Quality. Corporate Responsibility reports are also published at regular intervals.

## Procedures of the Executive Board, Supervisory Board, Board of Partners and its Committees

### Members of the Executive Board of Merck KGaA

Notes on memberships of statutory supervisory boards and comparable German and foreign supervisory bodies (section 285 sentence 1, No. 10 HGB in conjunction with sections 125 (1) sentence 5 AktG)

Member	Memberships of (a) other statutory supervisory boards and (b) comparable German and foreign supervisory bodies of corporations
<b>Karl-Ludwig Kley</b> Darmstadt Chairman	(a) – Bertelsmann AG, Gütersloh – BMW AG, Munich (Vice Chairman) – 1. FC Köln GmbH & Co. KGaA, Cologne (Chairman)
<b>Michael Becker*</b> Darmstadt, Chief Financial Officer (until 5/31/11)	(a) – Symrise AG, Holzminden (since May 2011) (b) – Bâloise Holding AG, Basel, Switzerland
<b>Kai Beckmann</b> Griesheim, Head of Corporate Human Resources (since 4/1/11)	no board positions
<b>Stefan Oschmann</b> Munich, Head of the Pharmaceuticals business sector	(b) – Merck Serono S.A., (Chairman, since 1/10/11)

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Member	Memberships of (a) other statutory supervisory boards and (b) comparable German and foreign supervisory bodies of corporations
<b>Bernd Reckmann</b> Seeheim-Jugenheim, Head of the Chemicals business sector	(b) – Millipore Corp., Billerica, MA, USA (until 9/28/11) – Millipore Corp., Cidra, Puerto Rico (until 9/28/11)
<b>Elmar Schnee**</b> Darmstadt (until 6/30/11)	(b) Member of the Board of Directors: – ChemGenex Pharmaceuticals Ltd., Geelong, Australia – Merck Serono S.A., Coinsins, Switzerland (until 1/10/11)
<b>Matthias Zachert</b> Bonn, Chief Financial Officer (since 6/1/11)	no board positions

\* Michael Becker was Chief Financial Officer of Merck KGaA until May 31, 2011. After June 1, 2011, Michael Becker remained a General Partner of Merck KGaA, but was no longer a member of the Executive Board of Merck KGaA.

\*\* Elmar Schnee was a General Partner of Merck KGaA, but was no longer a member of the Executive Board of Merck KGaA in the period from January 1, 2011 to June 30, 2011.

The general partners with no equity interest (Executive Board) manage the business activities in accordance with the laws, the Articles of Association and the rules of procedure. They are appointed by E. Merck KG with the consent of a simple majority of the other general partners. The members of the Executive Board are jointly responsible for the entire management of the company. Certain tasks are assigned to individual Executive Board members based on a responsibility distribution plan. Each Executive Board member promptly informs the other members of any important actions or operations in his respective business area. The Executive Board is responsible for preparing the annual financial statements of Merck KGaA, the quarterly and half-year financial statements, as well as the annual financial statements of the Merck Group. In addition, the Executive Board ensures that all legal provisions, official regulations and the company's internal policies are abided by, and works to achieve compliance with them by all the companies of the Merck Group. A Group-wide guideline defines in detail which transactions require prior Executive Board approval.

The Executive Board provides the Supervisory Board with regular, up-to-date and comprehensive reports about all company-relevant issues concerning planning, business developments, the risk situation, and risk management. A Supervisory Board resolution regulates further details on the information and reporting duties of the Executive Board vis-à-vis the Supervisory Board.

The Executive Board informs the Board of Partners and the Supervisory Board at least quarterly of the progress of business and the situation of the company. In addition, the Executive Board informs the stated boards at least annually of the company's annual plans and strategic considerations.

The Executive Board passes its resolutions in meetings that are normally held twice a month.

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### Supervisory Board

Member	Memberships of (a) other statutory supervisory boards and (b) comparable German and foreign supervisory bodies of corporations
<b>Rolf Krebs</b> Mainz, Retired physician, Chairman	(a) – Epigenomics AG, Berlin (Chairman) – Ganymed Pharmaceuticals AG, Mainz (Chairman) – Merz GmbH & Co. KGaA, Frankfurt – Merz Pharmaceuticals GmbH, Frankfurt – Senator GmbH & Co. KGaA, Frankfurt (b) – Board of Partners E. Merck KG, Darmstadt – Air Liquide S.A., Paris
<b>Heiner Wilhelm</b> Reinheim, Chairman of the Works Council of the Darmstadt site of Merck KGaA, Vice Chairman	no board positions
<b>Crocifissa Attardo</b> Full-time member of the Works Council of the Darmstadt site of Merck KGaA	no board positions
<b>Mechthild Auge</b> Wehrheim, Strategy manager, Merck KGaA	no board positions
<b>Johannes Baillou</b> Vienna, Austria, Managing Partner of Bondi Immobilien-Consulting GmbH, Vienna	(b) – Board of Partners E. Merck KG, Darmstadt (Vice Chairman)
<b>Frank Binder</b> Zurich, Switzerland, Chief Executive Officer of Novarca Deutschland GmbH, Frankfurt/Main	(a) – Landbell AG für Rückhol-Systeme, Mainz (Chairman) (b) – Board of Partners E. Merck KG, Darmstadt – Board of Directors BMR-Yachting AG, Zurich (Chairman) – Board of Directors Athena AG, Zurich (until 12/16/11)
<b>Wolfgang Büchele</b> Mannheim, Member of the Board of Directors of Kemira Oy, Finland	(b) – Board of Partners E. Merck KG, Darmstadt – BorsodChem Zrt, Kazincbarcika, Hungary (Chairman of the Board until 1/31/11, Member of the Board of Directors from 2/1/11 until 12/31/11) – Kemira Oy, Helsinki, Finland – First Chemical Holding Kft, Budapest, Hungary (until 12/31/11)
<b>Michael Fletterich</b> Gernsheim, Chairman of the Works Council of the Gernsheim site of Merck KGaA	no board positions
<b>Edeltraud Glänzer</b> Wiesbaden, Member of the Managing Board of Industriegewerkschaft Bergbau, Chemie, Energie (IG BCE)	(a) – B. Braun Melsungen AG, Melsungen – Solvay Deutschland GmbH, Hannover (Vice Chairman)
<b>Michaela Freifrau von Glenck</b> Zurich, Switzerland Teacher at a prestigious middle school	no board positions

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Member	Memberships of (a) other statutory supervisory boards and (b) comparable German and foreign supervisory bodies of corporations
<b>Frieder Kaufmann</b> Rossdorf, Full-time member of the Works Council of the Darmstadt site of Merck KGaA	no board positions
<b>Hans-Jürgen Leuchs</b> Ingelheim, Retired graduate chemist	(b) – Board of Partners E. Merck KG, Darmstadt – Zeton B.V., Enschede, Netherlands – Zeton International Inc., Burlington, ONT, Canada
<b>Albrecht Merck</b> Schriesheim, Commercial Director of the Castel Peter winery, Bad Dürkheim	(b) – Board of Partners E. Merck KG, Darmstadt
<b>Karl-Heinz Scheider</b> Gross-Zimmern, Head of Contract Manufacturing Chemicals, Merck KGaA	no board positions
<b>Theo Siegert</b> Düsseldorf, Managing Partner of de Haen Carstanjen & Söhne, Düsseldorf	(a) – Deutsche Bank AG, Frankfurt – E.ON AG, Düsseldorf – Henkel AG & Co. KGaA, Düsseldorf (b) – Board of Partners E. Merck KG, Darmstadt – Board of Directors DKSH Holding Ltd., Zurich, Switzerland
<b>Osman Ulusoy</b> Wiesbaden, Vice Regional Director (Hesse-Thuringia) of Industriegewerkschaft Bergbau, Chemie, Energie (IG BCE)	(a) – Evonik Röhm GmbH, Darmstadt, Vice Chairman (until 8/1/11)

The Supervisory Board performs a monitoring function. It supervises the management of the company by the Executive Board. In comparison with the supervisory board of a German stock corporation, the role of the supervisory board of a corporation with general partners (KGaA) is limited. This is due to the fact that the members of the Executive Board are personally liable partners and therefore are themselves responsible for the management of the company. In particular, the Supervisory Board is not responsible for appointing and dismissing general partners or for regulating the terms and conditions of their contracts. The authority for this belongs to E. Merck KG. Nor does the Supervisory Board have the authority to issue rules of procedure for the Executive Board or a catalog of business transactions requiring approval. This authority likewise belongs to E. Merck KG (Article 13 (3) sentence 1 and (4) sentence 1 of the Articles of Association). However, the fact that the Supervisory Board has no possibilities to directly influence the Executive Board restricts neither its information rights nor audit duties. The Supervisory Board must monitor the Executive Board in terms of legality, regularity, usefulness, and economic efficiency. In particular, the Supervisory Board has the duty to examine the reports provided by the Executive Board. This includes regular reports on the intended business policy, as well as other fundamental issues pertaining to corporate planning, especially financial, investment and HR planning; the profitability of the Merck Group; the progress of business; the risk situation; risk management (including compliance), and the internal auditing system. In addition, by means of consultation with the Executive Board, it creates the basis for supervision of the management of the company by the Supervisory Board according to section 111 (1) of the German Stock Corporation Act (AktG).



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The Supervisory Board deals with the quarterly and half-year consolidated financial statements and examines the annual financial statements of the Merck Group as well as the annual financial statements of Merck KGaA, taking into account the auditor's reports. The adoption of the annual financial statements is not the responsibility of the Supervisory Board, but of the Annual General Meeting. The Supervisory Board normally meets four times a year. Further meetings may be convened if demanded by a member of either the Supervisory Board or the Executive Board. As a rule, resolutions of the Supervisory Board are passed at meetings. At the instruction of the chairman, in exceptional cases a resolution may be passed by other means, details of which are given in the rules of procedure.

The members of the Board of Partners of E. Merck KG and of the Supervisory Board may be convened to a joint meeting if so agreed by the chairmen of the two boards.

The rules of procedure prescribe that the Supervisory Board may form committees as and when necessary. The Supervisory Board currently has no committees. Because of the limited authority of the Supervisory Board, it does not appear appropriate to subdivide it further.

The German Stock Corporation Act (Aktiengesetz) prescribes that the Supervisory Board of a publicly listed company must have at least one independent member on its Supervisory Board who has professional expertise in accounting or auditing. Theo Siegert satisfies these requirements and is furthermore the Chairman of the Finance Committee of the Board of Partners of E. Merck KG.

#### Board of Partners of E. Merck KG

Some of the responsibilities that lie with the supervisory board of a German stock corporation are fulfilled at Merck by E. Merck KG. This applies primarily to the Board of Partners of E. Merck KG. Therefore, the Board of Partners and the composition and procedures of its committees are described in the following.

The Board of Partners has nine members.

Member	Memberships of (a) other statutory supervisory boards and (b) comparable German and foreign supervisory bodies of corporations
<b>Frank Stangenberg-Haverkamp</b> Darmstadt, Vice Chairman of the Executive Board and General Partner of E. Merck KG, Chairman	(a) – Fortas AG, Rösrath (Chairman) – M.A.X. Automation AG, Düsseldorf (since 6/20/11) (b) – Travel Asset Group Ltd., Feltham, United Kingdom (Chairman)
<b>Johannes Baillou</b> Vienna, Austria, Managing Partner of Bondi Immobilien-Consulting GmbH, Vienna	(a) – Supervisory Board of Merck KGaA, Darmstadt
<b>Jon Baumhauer</b> Munich, Chairman of the Executive Board and General Partner of E. Merck KG	no board positions
<b>Frank Binder</b> Zurich, Switzerland Managing Director of Novarca Deutschland GmbH, Frankfurt/Main	(a) – Supervisory Board of Merck KGaA, Darmstadt – Landbell AG für Rückhol-Systeme, Mainz (Chairman) (b) – Board of Directors Athena AG, Zurich (until 12/16/11) – Board of Directors BMR-Yachting AG, Zurich (Chairman)

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Member	Memberships of (a) other statutory supervisory boards and (b) comparable German and foreign supervisory bodies of corporations
<b>Wolfgang Büchele</b> Mannheim, Member of the Board of Directors of Kemira Oy, Finland	(a) – Supervisory Board of Merck KGaA, Darmstadt (b) – BorsodChem Zrt, Kazincbarcika, Hungary (Chairman of the Board until 1/31/11, Member of the Board of Directors from 2/1/11 until 12/13/11) – First Chemical Holding Kft, Budapest, Hungary (until 12/31/11) – Kemira Oy, Helsinki, Finland
<b>Rolf Krebs</b> Mainz, Retired physician	(a) – Supervisory Board of Merck KGaA, Darmstadt – Epigenomics AG, Berlin (Chairman) – Ganymed Pharmaceuticals AG, Mainz (Chairman) – Merz GmbH & Co. KGaA, Frankfurt – Merz Pharmaceuticals GmbH, Frankfurt – Senator GmbH & Co. KGaA, Frankfurt (b) – Air Liquide S.A., Paris
<b>Hans-Jürgen Leuchs</b> Ingelheim, Retired graduate chemist	(a) – Supervisory Board of Merck KGaA, Darmstadt (b) – Zeton B.V., Enschede, Netherlands – Zeton International Inc., Burlington ONT, Canada
<b>Albrecht Merck</b> Schriesheim, Commercial Director of the Castel Peter winery, Bad Dürkheim	(a) – Supervisory Board of Merck KGaA, Darmstadt
<b>Theo Siegert</b> Düsseldorf, Managing Partner of Haen Carstanjen & Söhne, Düsseldorf	(a) – Supervisory Board of Merck KGaA, Darmstadt – Deutsche Bank AG, Frankfurt – E.ON AG, Düsseldorf – Henkel AG & Co. KGaA, Düsseldorf – Board of Directors DKSH Holding Ltd., Zurich, Switzerland

The Board of Partners supervises the Executive Board in its management of the company. It informs itself about the business matters of Merck KGaA, and may inspect and examine the company's accounts and other business documents, and the assets for this purpose. According to Article 13 (4) of the Articles of Association of Merck KGaA, the Executive Board requires the approval of E. Merck for transactions that are beyond the scope of the Group's ordinary business activities. For such transactions to be approved, approval must first be obtained from the Board of Partners of E. Merck KG. The Board of Partners convenes as and when necessary; however, it meets at least four times a year. The members of the Executive Board of Merck KGaA are invited to all meetings of the Board of Partners, unless the Board of Partners resolves otherwise in individual cases. The members of the Board of Partners may convene a joint meeting with the Supervisory Board of Merck KGaA if so agreed by the chairmen of the two boards.

The Board of Partners may confer the responsibility for individual duties to committees. Currently the Board of Partners has three committees in place: the Personnel Committee, the Finance Committee, and the Research and Development Committee.

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#### **Personnel Committee**

The Personnel Committee has four members: Frank Stangenberg-Haverkamp (Chairman), Jon Baumhauer, Rolf Krebs, and Theo Siegert.

The Personnel Committee meets at least twice a year. Further meetings are convened as and when necessary. Meetings of the Personnel Committee are attended by the Chairman of the Executive Board of Merck KGaA unless the Committee decides otherwise.

The Personnel Committee is responsible for, among other things, the following decisions concerning members and former members of the Executive Board: contents of employment contracts and pension contracts, granting of loans and advance payments, approval for taking on honorary offices, board positions and other sideline activities, as well as division of responsibilities within the Executive Board of Merck KGaA. The Personnel Committee passes its resolutions by a simple majority – in matters concerning the Chairman of the Executive Board unanimity is required. The Chairman of the Committee regularly informs the Board of Partners of its activities.

#### **Finance Committee**

The Finance Committee has four members: Theo Siegert (Chairman), Johannes Baillou, Wolfgang Büchele, and Frank Stangenberg-Haverkamp.

The Finance Committee holds at least four meetings a year, at least one of which is a joint meeting with the auditor. Further meetings are convened as and when necessary. Meetings of the Finance Committee are attended by the Chief Financial Officer of Merck KGaA. Other members of the Executive Board of Merck KGaA may attend the meetings upon request by the Committee. These meetings regularly include the Chairman of the Executive Board. The Finance Committee is responsible for, among other things, analyzing and discussing the annual financial statements and the respective auditor's report as well as the quarterly and half-year financial reports. Furthermore, the Finance Committee recommends to the Chairman of the Supervisory Board annual audit focuses for the auditors. It also recommends an auditor for the Supervisory Board's corresponding suggestion to the General Meeting. In addition, the Finance Committee is concerned with the financial position, results of operations and liquidity of Merck, as well as accounting and compliance issues. Upon request of the Board of Partners, the Finance Committee examines capital spending projects that must be approved by the Board of Partners and provides recommendations pertaining thereto.

#### **Research and Development Committee**

The Research and Development Committee has three members: Rolf Krebs (Chairman), Hans-Jürgen Leuchs and Frank Stangenberg-Haverkamp.

The Research and Development Committee is convened as and when necessary, but holds meetings at least twice a year. Meetings of the Research and Development Committee are attended by members of the Executive Board of Merck KGaA upon request of the Committee. These meetings regularly include the Chairman of the Executive Board as well as the members of the Executive Board responsible for the Pharmaceuticals and Chemicals business sectors. The Chairman of the Research and Development Committee is responsible, among other things, for analyzing and discussing the research activities of Pharmaceuticals and Chemicals. The Pharmaceuticals and Chemicals business sectors present the status of their respective research to the Research and Development Committee in special meetings. The Committee deals thoroughly with the pharmaceutical research progress report and with developments of new medicines in Phases II and III of clinical research. The Chairman of the Committee reports to the Board of Partners on the insights gained from the meetings held.

## Report of the Supervisory Board

The Supervisory Board again properly executed its duties in 2011 in accordance with the law as well as the company's Articles of Association and rules of procedure. In particular, the Supervisory Board monitored the work of the Executive Board diligently and regularly.

### Cooperation with the Executive Board

The cooperation with the Executive Board was characterized by intensive, trustworthy exchange. During fiscal 2011, the Executive Board provided the Supervisory Board with regular written and verbal reports on the business development of Merck KGaA and the Merck Group. In particular, the Supervisory Board was informed about the market and sales situation of the company against the background of the macroeconomic development, the financial position of the company and its subsidiaries along with their earnings development, as well as corporate planning. Within the scope of quarterly reporting, the sales and operating results were presented for the Merck Group as a whole, and broken down by division and region. Aside from the Supervisory Board meetings, the Chairman of the Supervisory Board also maintained and continues to maintain a regular exchange of information with the Chairman of the Executive Board.

### Key topics of the Supervisory Board meetings

Four Supervisory Board meetings were held in fiscal 2011. At these meetings, the Supervisory Board discussed the reports of the Executive Board in detail and discussed company developments and strategic issues together with the Executive Board.

At the meeting held on February 17, 2011, the Supervisory Board dealt mainly with the annual financial statements and consolidated financial statements for 2010. The Executive Board reported on business developments in 2010 and the key information contained in the 2010 annual financial statements. In addition, the auditor reported on the examination of the financial statements. Lastly, the Supervisory Board approved the proposals to be made to the Annual General Meeting and adopted the statement on corporate governance including the Statement of Compliance with the German Corporate Governance Code in a joint report of the Executive Board and Supervisory Board.

The meeting held on April 27, 2011 focused on current business developments. In addition, the Supervisory Board closely examined the internal auditing system. Furthermore, The Head of Corporate Auditing submitted his report, which the Supervisory Board accepts and discusses on an annual basis. The report included information on the integration of Millipore into the internal auditing system of the Merck Group. The meeting also focused on reporting as well as a discussion on the work of the Research and Development Committee of the Board of Partners of E. Merck KG.

In its meeting held on July 26, 2011, the Supervisory Board discussed business developments in the first half of 2011 as well as the company's risk management. For this purpose, the company risk manager presented his annual report to the Supervisory Board. He explained the individual risks that had been identified as well as the approach to handling them, and he presented the structure of the risk management process in comparison to the previous risk report. No risks that threaten the continued existence of the company were identified.

The fourth Supervisory Board meeting in fiscal 2011 was held on October 25, 2011. At this meeting, the Supervisory Board discussed the results of the 2011 efficiency audit as well as the report of the Executive Board on the third quarter of 2011. Here, the Executive Board also reported on the realignment of the Merck Group in order to improve processes as well as on the planned program to boost efficiency and reduce costs. In addition, the head of Corporate Legal & Compliance presented the compliance report for 2011 to the Supervisory Board. This report is a standard part of the October meeting every year. Furthermore, the Supervisory Board adopted new rules of procedure for itself.

→ Report of the  
Supervisory Board

### **Annual financial statements**

The annual financial statements of Merck KGaA, the consolidated financial statements of the Merck Group, and the management reports for Merck KGaA and the Merck Group, including the accounts, were audited by KPMG AG Wirtschaftsprüfungsgesellschaft. The auditors issued an unqualified audit opinion on the annual financial statements and management report for Merck KGaA in accordance with German Auditing Standards. For the consolidated financial statements prepared in accordance with International Financial Reporting Standards, the auditors issued the auditor's report, reproduced in the Annual Report of the Merck Group. In addition, the auditors audited the calculation of Merck KGaA's participation in the profits of E. Merck KG in accordance with Article 27 (2) of the Articles of Association. The annual financial statements of Merck KGaA, the consolidated financial statements of the Merck Group, the management reports for Merck KGaA and the Merck Group, and the proposal by the Executive Board for the appropriation of the net retained profit were presented and distributed to the Supervisory Board, together with the auditor's reports.

In accordance with Article 14 (2) of the Articles of Association, the Supervisory Board also examined the annual financial statements of Merck KGaA and the management report for Merck KGaA, the proposal for the appropriation of the net retained profit and the auditor's report presented in accordance with Article 27 (2) of the Articles of Association. It also examined the consolidated financial statements of the Merck Group as well as the management report for the Merck Group, and took note of the auditor's report of KPMG AG Wirtschaftsprüfungsgesellschaft.

The discussion of the relevant agenda item at the Supervisory Board's meeting on February 24, 2012 to approve the financial statements was also attended by the auditors who sign the audit opinion on the annual financial statements of Merck KGaA and the consolidated financial statements of the Merck Group, and who reported on their audit. The Supervisory Board took note of and approved the results of the audit. On completion of its examination, the Supervisory Board raised no objections and thus approves the annual financial statements and management report for Merck KGaA, the consolidated financial statements of the Merck Group and the management report for the Merck Group prepared by the Executive Board, as well as the report presented by the auditors in accordance with Article 27 (2) of the Articles of Association. Following its own examination of the situation, the Supervisory Board gave its consent to the proposal for the appropriation of the net retained profit.

### **Corporate governance and Statement of Compliance**

Corporate governance is a topic of high priority for the Supervisory Board. According to its own estimation, the Supervisory Board consists of a sufficient number of independent members. There were no conflicts of interest, as defined by the German Corporate Governance Code, involving Supervisory Board members during 2011. After addressing corporate governance topics in detail, the Executive Board and Supervisory Board resolved to adopt and issue the updated Statement of Compliance on February 14, 2012 (Executive Board) and on February 24, 2012 (Supervisory Board) in accordance with section 161 of the German Stock Corporation Act (Aktiengesetz). The statement is permanently available on the website of Merck KGaA ([www.merckgroup.com](http://www.merckgroup.com) → Investors → Corporate Governance). More information on corporate governance at Merck KGaA, including the compensation of the Executive Board and Supervisory Board, is given in the Statement of Compliance on pages 101 et seq. of the Annual Report

→ [Report of the  
Supervisory Board](#)

#### **Committees**

The Supervisory Board of Merck KGaA currently has no committees on account of the special features that apply to the Supervisory Board of a corporation with general partners (KGaA) under German company law and because a corresponding need for this has not emerged to date. Therefore, no report is given on the work of committees.

#### **Personnel matters**

No member of the Supervisory Board participated in less than half of the Supervisory Board meetings in fiscal 2011. There were no changes in the composition of the Supervisory Board in 2011. In particular, there were no new elections, new appointments to bodies or formations of new bodies.

Darmstadt, February 24, 2012

The Supervisory Board of Merck KGaA

Unterschrift fehlt

Rolf Krebs  
Chairman

## Objectives of the Supervisory Board with regards to its composition

### Initial situation

According to section 5.4.1 (2) and (3) of the German Corporate Governance Code, the Supervisory Board shall specify concrete objectives regarding its composition which, while considering the specifics of the enterprise, take into account the international activities of the enterprise, potential conflicts of interest, an age limit to be specified for the members of the Supervisory Board, and diversity.

### General notes on the composition of the Supervisory Board

The Supervisory Board of Merck KGaA consists of 16 members, eight of whom represent the shareholders and a further eight who represent the employees. The eight employee representative members are elected by employee delegates pursuant to the provisions of the German Co-determination Act (Mitbestimmungsgesetz - "MitbestG"). These consist of six company employees, including a senior executive, as well as two union representatives. The Supervisory Board has no statutory proposal right with respect to electing the delegates or employee representatives. Owing to a delegation right of E. Merck Beteiligungen KG, two of the eight shareholder representatives are specified. The Supervisory Board likewise has no statutory proposal right with respect to exercising this delegation right. The remaining six shareholder representatives are elected by the General Meeting. In accordance with section 124 (3) sentence 1 AktG, the Supervisory Board shall propose to the General Meeting Supervisory Board members for election. These proposals require a majority of the votes of the shareholder representative members of the Supervisory Board. The next scheduled election to the Supervisory Board shall take place in 2013. The General Meeting is not required to follow the election proposals. The appointment objectives that the Supervisory Board applies as set forth below therefore do not represent requirements to be met by those eligible to elect or to delegate members. Instead, they are intended to express the objectives pursued by the Supervisory Board in office with regard to its advisory and monitoring functions.

### Objectives of the Supervisory Board with respect to its composition

In accordance with section 5.4.1 (2) of the German Corporate Governance Code, the Supervisory Board has specified the following objectives with respect to its composition and reports on the status of their implementation below:

#### Expertise and diversity

Professional qualifications and personal expertise are the two most important prerequisites for appointments to seats on the Supervisory Board. When proposing Supervisory Board candidates for election or delegation, the Supervisory Board will always give top priority to these prerequisites, which are essential for fulfilling its legal duties.

Overall, the Supervisory Board's policy is to optimally meet its monitoring and advisory duties by having a diversity of members. Diversity includes, in particular, internationality as well as different experience backgrounds and career paths. The proportion of women on the Supervisory Board is also considered to be an aspect of diversity. When preparing proposals for election or delegation, due consideration shall be given in individual cases to the extent to which different, yet complementary professional profiles, career and life experiences as well as appropriate representation of both genders can benefit the work of the Supervisory Board. Additionally, the Supervisory Board shall support the Executive Board in its efforts to increase diversity within the company.

→ Objectives of the  
Supervisory Board with  
respect to its composition

**In-depth knowledge of the fields relevant to the company**

The Supervisory Board shall have at least four members with in-depth knowledge and experience in fields that are important to the company, including at least one expert in pharmaceuticals and one in chemicals.

Merck is currently meeting this objective for the composition of the Supervisory Board. At present, the Supervisory Board has more than four members who have in-depth knowledge of and experience on the pharmaceutical and chemical industries. More than four Supervisory Board members also have executive experience in companies that operate specifically in the pharmaceuticals and/or chemicals sector.

**Management experience**

The Supervisory Board shall have at least three members who have experience in managing or supervising a medium- or large-sized company.

The Supervisory Board has more than three members who have the corresponding experience. This includes both Supervisory Board members who were or still are management board members or directors in such companies, as well as Supervisory Board members who have gained experience in supervisory bodies of German and/or foreign companies of this size.

**Family company**

The Supervisory Board shall have at least one member who has experience in managing medium- or large-sized family-owned companies.

The Supervisory Board currently has multiple members who have the appropriate management experience in family-owned companies of this size.

**Internationality**

The Supervisory Board shall have at least three members with business experience in the main sales markets of Merck KGaA. Currently, the main sales markets of Merck KGaA are Europe, North and Latin America, and Asia-Pacific.

The present composition of the Supervisory Board satisfies this objective. More than three Supervisory Board members have entrepreneurial experience in Europe, covering a wide range of countries. More than three Supervisory Board members have experience in management positions in companies that operate globally. Two of these members worked in the United States, one in the United Kingdom, and one was responsible for the Asian region.

**Women on the Supervisory Board**

Four women are currently members of the Supervisory Board of Merck KGaA. This corresponds to 25% of the Supervisory Board. When nominating candidates for election to the Supervisory Board or making proposals for delegation, the Supervisory Board shall examine whether the percentage of women can be increased by suitable candidates.

The Supervisory Board currently consists of 25% women, which it considers a satisfactory percentage. This is based on both the percentage of women in management positions at Merck, as well as the fact that the supervisory boards of other companies have a comparable percentage of women.



→ Objectives of the  
Supervisory Board with  
respect to its composition

#### **No material conflicts of interest**

No one who is likely to have a lasting conflict of interest shall serve as a member of the Supervisory Board. Therefore, no one shall be proposed for election or delegation to the Supervisory Board who simultaneously serves on a body of or advises a major competitor of the company, or owing to another function, e.g. advisor to major contract partners of the company, could potentially become involved in a conflict of interest. Moreover, the Supervisory Board complies with the requirements of the German Corporate Governance Code with respect to conflicts of interest.

No Supervisory Board member serves on a body of or advises a major competitor, or provides consultancy services thereto. No Supervisory Board member performs a function that could lead to a lasting conflict of interest.

#### **No age limit**

An age limit for Supervisory Board members is not specified since age is not a criterion for qualifications and expertise. Moreover, we do not wish to forgo the many years of experience of Supervisory Board members.

The achievement of the aforementioned objectives shall be pursued initially until 2015, taking into account applicable law within the scope of elections and reelections, delegations as well as court appointments of replacement members if these become necessary. All Supervisory Board members will correspondingly influence those eligible to elect or delegate. Taking into consideration the aforementioned criteria and in accordance with its duties under German stock corporation law, the Supervisory Board will also propose to the General Meeting the candidates it believes to be best suited in each case.

Every year, the Supervisory Board will provide information in the Annual Report on the status of implementing its objectives.



**Statement of the Executive Board and the Supervisory Board  
of Merck KGaA  
regarding the recommendations of the  
“Federal Government Commission on the Corporate Governance  
Code” pursuant to section 161 German Companies Act**

With the exception of the following instance, since the last statement of compliance on February 17, 2011, the Merck Group has complied with the recommendations of the German Federal Government Commission on the Corporate Governance Code published on May 26, 2010, and shall continue to do so in the future.

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.

Darmstadt, 24 February 2012

On behalf of the Executive Board

On behalf of the Supervisory Board

Signed Dr. Karl-Ludwig Kley

Signed Prof. Dr. Rolf Krebs