



August 21, 2020

Dr. Dieter Schenk
Chair, Supervisory Board
Fresenius Medical Care AG & Co. KGaA
Else-Kroener-Str. 1
61352 Bad Homburg
Germany

Dear Dr. Schenk,

We urge Fresenius Medical Care AG & Co. KGaA (“Fresenius” or “the Company”) to strengthen its processes regarding the consideration of diverse candidates, particularly with respect to race and ethnicity, when searching for new supervisory board nominees. As long-term investors, we believe diversity is an important attribute of a well-functioning board, and an indicator of sound corporate governance. Moreover, given both mounting pressure to address racial inequality in the US, and the clear misalignment between the demographics of the Company’s patients and that of its supervisory board members, we view increasing the diversity of experience represented on Fresenius’ board to be a matter of the utmost urgency. We hope to hear responses to these concerns at the Company’s upcoming annual meeting on August 27.

The CtW Investment Group works with union-sponsored pension funds to enhance long-term stockholder value through active ownership. These efforts have included engagements that resulted in the adoption of recruitment policies that ensure applicants from diverse ethnic and racial backgrounds are included in the slate of candidates considered for every open board seat, also known as the “Rooney Rule.” The funds the Investment Group works with have over \$250 billion in assets under management and are substantial Fresenius shareholders.

Fresenius’ Lack of Diversity out of Step with Patients, Peers

Fresenius and its dialysis provider peers serve a population of patients that are disproportionately comprised of racial and ethnic minorities. For instance, according to data compiled for the Dialysis Facilities reports, in 2018, Black patients comprised just over 34% of those treated at the Company’s facilities, while Hispanic, Asian/Pacific Islander, Native American patients comprised 16.5%, 3.7%, and 0.4% respectively.¹ Given that these groups together amount to only 36% the total U.S. population, the disproportionate weight of racial and ethnic minorities in Fresenius’s patient pool is evident. Moreover, other U.S.-based dialysis providers serve comparably diverse patient populations, with the combined share of the groups listed above ranging from 53% to 77% of patients treated.

¹ All data in this paragraph calculated from <https://data.cms.gov/dialysis-facility-reports>.

However, in contrast to the majority of other leading U.S. based dialysis providers, Fresenius has no supervisory board directors who are members of any of these racial or ethnic minority groups. Three of the other leading dialysis providers have at least one director of color on their boards. For instance, DaVita, which together with Fresenius accounts for over 80% of dialysis treatment in the U.S., has four of nine directors who self-identify as racial or ethnic minorities.²

Given the heightened attention to racial justice in the United States, and the particular focus on racial inequalities in health care access and outcomes, in employment, and in economic opportunity, it would clearly behoove Fresenius to increase racial and ethnic diversity on its supervisory board.

Existing Nomination Process Lacks Effective Mechanisms to Ensure Diversity

After reviewing available governance documents, we believe that Fresenius's candidate Board recruitment policy could be stronger when it comes to ensuring the consideration of qualified diverse candidates. For instance, while Fresenius notes that as a company operating in over 120 countries "the Supervisory Board is to include an appropriate number of members having, due to their origin, education or business experience, a particular relation to the international markets relevant for Fresenius Medical Care," it does not describe any mechanism at the supervisory board level to ensure compliance with this standard.³ In contrast, and consistent with Germany's corporate governance code, the board explicitly requires that at least 30% of its supervisory board members are women.

Therefore, we urge the supervisory board formally adopt a policy requiring that racial and ethnic minority candidates be included in the initial list of qualified candidates for every open board seat. Below is sample language that serves as a guide for you in drafting a diverse search policy aligned with best practice:

Require that the Initial List of candidates from which new supervisory board director nominees are chosen by the Nomination Committee include, but need not be limited to, qualified candidates who are members of racial and ethnic minority groups. The Policy provides that any third-party consultant asked to furnish an Initial List will include such candidates.

Adopting a policy that requires the consideration of racial and ethnic minority candidates for every open director seat enhances the nomination process, and assists the Committee in developing a diverse board. A 2016 study published by the Harvard Business Review found that including more than one woman or minority in a finalist pool changes the status quo to help combat unconscious bias among interviewers. The researchers found that the odds of hiring a

² In this paragraph, Fresenius is compared to five large dialysis provider peers, DaVita, DCI, US Renal Care, ARA, and Satellite. Board composition for each company relied on both self-descriptions provided in board biographies and visual inspection of board member photos.

³https://www.freseniusmedicalcare.com/fileadmin/data/com/pdf/About_us/Supervisory_Board/Profile_of_skills_and_expertise.pdf

woman were 79 times greater when there were at least two women in the finalist pool, and the odds of hiring a minority were 193 times greater when there were at least two minority candidates in the finalist pool.⁴

Investor Consensus Supports Board Diversity

There is consensus among academics, industry specialists, and financial analysts that a diverse board creates shareholder value.⁵ In a recent McKinsey study, “Companies in the top quartile for gender diversity on their executive teams were 21% more likely to experience above-average profitability than companies in the fourth quartile.” Furthermore, McKinsey found, “Companies in the top quartile for racial and ethnic diversity are 33% more likely to outperform on profitability than companies in the bottom quartile.”⁶

Diverse search policies have been adopted by the Nominating and Governance Committees of Amazon, Facebook, Intel, Costco Wholesale, Home Depot, Oracle, McDonald’s, Marathon Petroleum, and United Continental, among many others. Additionally, we recognize that key leaders in the business community support this policy direction. In its Principles of Corporate Governance, the Business Roundtable calls on boards to “develop a framework for identifying appropriately diverse candidates that allows the nominating/governance committee to consider women, minorities, and others with diverse backgrounds as candidates for each open board seat.”⁷

We would be happy to discuss this proposal and any questions about it you may have at your convenience next month. Please contact me at dieter.waizenegger@ctwinvestmentgroup.com.

Sincerely,



Dieter Waizenegger
Executive Director

⁴ Stefanie K. Johnson, David R. Hekman, and Elsa Chan, “If There’s Only One Woman in Your Candidate Pool, There’s Statistically No Chance She’ll Be Hired”, Harvard Business Review, April 26, 2016, available at: <https://hbr.org/2016/04/if-theres-only-one-woman-in-your-candidate-pool-theres-statistically-no-chance-shell-be-hired>.

⁵ Lucinda Shen, “The Retirement of Amex’s Ken Chenault Means Just 3 CEOs on the Fortune 500 Are Black”, October 18, 2017, available at: <https://fortune.com/2017/10/18/american-express-ceo-ken-chenault-black/>; Credit Suisse, “Gender Diversity and Corporate Performance”, August 2012, available at: https://www.calstrs.com/sites/main/files/file-attachments/csr_gender_diversity_and_corporate_performance.pdf; Yaron Nili, “Beyond the Numbers: Substantive Gender Diversity in Boardrooms,” October 20, 2017, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3117131; David Larcker and Brian Tayan, “Diverse Boards: Research Spotlight,” Standard Graduate School of Business, April 2016, available at: <https://www.gsb.stanford.edu/sites/gsb/files/publication-pdf/qg-diverseboards.pdf>;

⁶ McKinsey & Company, “Why Diversity Matters,” January 2015, available at: <https://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters>.

⁷ Business Roundtable, “Corporate Governance,” available at: <https://www.businessroundtable.org/policy-perspectives/corporate-governance>.