



Limited liability Company (*Naamloze Vennootschap*)
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**Report by the Committee of Independent Directors
in accordance with Article 524 of the Belgian Companies Code**

Introduction

On 18 November 2018, Mr Martyn Konig, Mrs Carole Cable and Mrs Anne Fahy, independent directors to the Board of Directors of Nyrstar NV (the "**Company**") (together, the "**Committee**"), have been requested to prepare all necessary steps to be able comply with, as a precautionary measure, article 524 of the Belgian Companies Code (the "**BCC**") in connection with the proposed decisions of the Board of Directors of the Company (the "**Board**") to be taken on or around 3 December 2018 with regards to the trade facility framework agreement ("**Agreement**"), to be entered into between Nyrstar Sales & Marketing AG (Swiss company number CH-020.3.034.867-3) with registered office at Tessinerplatz 7, 8002 Zurich, Switzerland ("**NSM**"), a wholly-owned subsidiary of the Company, and Trafigura Pte. Ltd. ("**Trafigura**") (the "**Transaction**"). The Board had requested this as a precautionary measure only, as it considered that Belgian law does not deem Trafigura and its affiliates to be an affiliate because of its relatively low shareholding, the fact that it has not exercised control as defined in the BCC and the restrictions included in the Relationship Agreement.

Pursuant to this request, the Committee has prepared this report (the "**Report**"), as a precautionary measure, in line with article 524, §2 BCC.

The Committee has considered the Transaction and all documentation and analyses related thereto made available to it by the Company, and discusses this in detail below. The list of reviewed documents is attached to this report as Annex 1.

The Company has engaged Grant Thornton UK LLP ("**GT**") as independent expert in line with article 524, §2 BCC to assess whether the transaction is on terms not less favourable than might have been obtained in a comparable transaction at such time on an arm's length basis from a third party that is not an "Affiliate", in accordance with an engagement letter has been agreed between GT, the Committee and the Company, which has been entered into by the Company for acceptance of the fees and expenses which will be payable by the Company to GT. GT has confirmed that it is independent from (i) the Company and its affiliates; (ii) Trafigura and its affiliates (as the counterparty to the proposed transaction); and (iii) in respect of the proposed Transaction. On the basis of the information provided to it by GT and the Company, the Committee has established that GT satisfies the independence requirements in article 524, §2 BCC. GT's opinion is attached to this report as Annex 2.

GT has also prepared a Letter of Understanding (“**LoU**”), which sets out their understanding of a number of factual matters pertaining to the Company and its subsidiaries (together with the Company, the “**Group**”), and through which they have received confirmation from the Company as to the accuracy and completeness of the LoU. The LoU also contains a summary of key provisions of the Group’s existing funding agreements. Both the LoU and this summary are attached to this report as Annex 3.

The independent directors have discussed the Transaction several times and reviewed the information made available to it by the Company. On 3 December 2018, GT presented its draft opinion to the Committee during a conference call with the Committee at 16:00 CET on 3 December 2018 and gave further explanation and background to the opinion and its conclusion. The Committee also discussed the Transaction with the other members of the Board and the Company’s executive management, and has been able to discuss the Transaction with Freshfields Bruckhaus Deringer and Morgan Stanley, who advise the Board in respect of the Transaction.

This Report is addressed to the Board in line with article 524 BCC.

Task of the Committee

Article 524, §2 jo. §5 BCC requires that, prior to any decision or transaction between (a subsidiary of) a listed company and any affiliated company of a listed company, a committee of three independent directors provides an assessment thereof. Such committee shall be assisted by one or more independent experts appointed by the committee.

Further pursuant to article 524, §2 BCC, the committee of independent directors must:

- (a) detail the nature of the decision or transaction,
- (b) assess its costs and benefits for the company and its shareholders,
- (c) estimate its financial impact; and
- (d) advise whether the proposed transaction may imply a disadvantage to the company that, in light of its current policies, would be manifestly illegitimate, or if the committee does not believe the decision to be manifestly illegitimate but nevertheless to create a disadvantage for the company, identify the advantages of the decision that outweigh any disadvantages.

The committee of independent directors must issue a written substantiated advice to the board of directors, mentioning each of the above-mentioned elements.

The Committee has, upon the request of the Board, prepared this report as a precautionary measure.

Description of the Transaction

The Agreement consists of: (1) a USD450,000,000 prepayment tranche in relation to the supply of metals to Trafigura (which is to include the USD220,000,000 provided under the Prepayment Agreement) and (2) USD 200,000,000 of additional working capital support through an extension of payment terms on concentrate supplied by Trafigura and by

Trafigura providing guarantees to support letters of credit issued at the request of NSM. The main proposed terms of the Transaction, including the guarantees and security (as listed in Schedule 4 to the Agreement) to be granted, and the undertakings and representations and warranties to be given, to Trafigura in this respect, are also summarised in the LoU attached as Annex 3 and in the binding term sheet that was entered into by NSM on 21 November 2018, attached as Schedule A.5 to the LoU.

The Agreement will mature on 30 June 2020 and will replace and supersede the Working Capital Facility Agreement originally dated 4 May 2016 as amended and restated on 1 November 2016 and 10 November 2017 (the “**WC Facility**”).

Fees and expenses

The USD450,000,000 prepayment facility tranche of the Agreement will have a margin of 6-month LIBOR + 500bps p.a. on advance payments, and the USD200,000,000 suppliers credit tranche of the Agreement will have a margin of 600bps p.a. on the amount of supporting guarantees made available by Trafigura at any time and open account trades. The Agreement also provides for payment by NSM of an upfront fee of an amount equal to 1% of the total commitments (i.e. USD6,500,000) on the date that the Agreement is entered into.

Clause 26 of the Agreement provides that NSM is to pay Trafigura the amount of:

- All costs and expenses (including professional fees, subject to any applicable limit agreed between NSM and Trafigura) properly incurred by it in connection with the negotiation, preparation, printing and entry into of the Finance Documents (as defined in the Agreement) and of any arrangements with any bank or financial institution to finance the performance by Trafigura of its obligations under the Finance Documents. Trafigura may deduct such costs, to the extent notified to NSM in advance, from any Utilisation.
- All costs and expenses (including professional fees, subject to any applicable limit agreed between NSM and Trafigura) properly incurred by it in connection with:
 - o the negotiation, preparation, printing and entry into of any Finance Document executed after the date of this Agreement;
 - o any amendment, waiver or consent requested by or on behalf of a Transaction Obligor (as defined in the Agreement) or specifically allowed by this Agreement; and
 - o the release of any Security Document (as defined in the Agreement).
- All costs and expenses (including legal fees) incurred by it in connection with the enforcement of, or the preservation of any rights under, any Finance Document.
- All costs and expenses incurred by Trafigura as a result of any change in law or application of any banking law or regulation, as well as compliance with any banking law or regulation made after the date of the Agreement.

Guarantees and security

The following Guarantees and Security are included in the Agreement:

- Guarantees from each of the Group companies that are currently the guarantors/issuers under the Group's bonds, being the Nyrstar Finance International AG; Nyrstar Netherlands (Holdings) B.V.; Nyrstar Budel B.V.; Nyrstar Hobart Pty Ltd; Nyrstar Belgium NV; the Company; Breakwater Resources Ltd.; Nyrstar Myra Falls Ltd.; Nyrstar Tennessee Mines – Gordonsville LLC; Nyrstar Tennessee Mines – Strawberry Plains LLC; Nyrstar Clarksville, Inc. and Nyrstar France SAS. The guarantees cover the obligations of NSM and each of the guarantors under the Agreement and related Finance Documents, which include the Security Documents and the right to participate letter.
- Pledges over shares of Nyrstar France SAS; Nyrstar Clarksville Inc; Nyrstar Tennessee Mines Strawberry Plains; Nyrstar Tennessee Mines Gordonsville LLC; Nyrstar Belgium NV; Nyrstar Budel BV; Nyrstar Hobart Pty Ltd and Nyrstar Port Pirie Pty Ltd (see further below on the Port Pirie Pty Ltd, Nyrstar Budel B.V. and Nyrstar Hobart Pty Ltd).
- Pledges over the US fixed assets and the fixed assets of Nyrstar Belgium, Budel and Hobart.
- Security over certain inventory and receivables.

Events of default

The Events of Default as listed in Clause 23 of the Agreement are in line with those under the WC Facility, except that the Agreement will have two additional events of default: (1) certain Events of Default (as defined in the Group's commercial contracts with Trafigura or its affiliates for the supply of metals/concentrates to the Group that are subject to deferred payment pursuant to the Agreement and in certain of the Group's commercial contracts for the purchase of metals by Trafigura) by NSM (or its affiliates) will constitute an event of default under the Agreement; and (2) the insolvency event of default in the Agreement will include an event of default if an Obligor under the Agreement "is deemed unable to pay its debt or to be insolvent for the purposes of any applicable law".

The Events of Default that are in line with the WC Facility, relate to non-payment under the Agreement, non-compliance with the Agreement, material misrepresentations, cross-default, other insolvency events or proceedings, creditors' process, cessation of business, unlawfulness and invalidity, ownership of the Obligors, material adverse change, repudiation, litigation and US bankruptcy laws. The delivery of a Request under the WC Facility (which is replaced and superseded by the Agreement) would also constitute an event of default.

Acceleration

Until the date on which NSM finally provides all guarantees and security required to be granted as a condition subsequent to the Agreement, Trafigura's rights in respect of any event of default under the Agreement will be as provided in the WC Facility, i.e., Trafigura may accelerate the debt and enforce the Agreement and related security upon notice to NSM while an Event of Default is continuing.

On and after the date on which NSM finally provides all guarantees and security required to be granted as a condition subsequent to the Agreement, Trafigura will only

be entitled to accelerate or enforce the Agreement and related security if a 'Major Event of Default' occurs. A Major Event of Default covers non-payment, insolvency proceedings, repudiation, default on other financial indebtedness or the cancellation of commitments for financial indebtedness and litigation in relation to the security granted in connection with the Agreement.

Right to participate

The Agreement will also include a "right to participate" undertaking to the effect that no member of the Group shall agree to enter into any financing (other than any trade financing in the ordinary course of business), new money and/or any recapitalisation arrangement for, or for the benefit of, the Group in respect of its debt or equity capital structure (a "**Capital Arrangement**") with any other person than Trafigura until the date falling two years after the date of the Agreement, unless Trafigura has been invited to participate in substantive discussions regarding the proposed Capital Arrangement, and has been provided with sufficient details of the proposed Capital Arrangement to make an informed determination of whether it would wish to enter into the Capital Arrangement with the Group on equivalent terms, at least 30 days before the Group takes any step to enter into the Capital Arrangement; and if Trafigura notifies NSM that it (or one of its affiliates) wishes to participate in the Capital Arrangement within 30 days, the Group shall not take any step to enter into the Capital Arrangement with any other person unless Trafigura (or its affiliate) is able to participate in such Capital Arrangement on equivalent terms in equal and rateable proportions (not exceeding 50%) as Trafigura may require.

Information undertakings

The Agreement also includes information undertakings from the Group towards Trafigura in line with those under the WC Facility, except that the Agreement will also benefit from additional information undertakings, comprising: (1) monthly management accounts; (2) weekly rolling 13-week cash flow projection; (3) a monthly statement of indebtedness signed by 2 directors of NSM identifying in reasonable detail all material indebtedness of the Group and the key terms thereof; (4) a weekly statement of the cash and cash equivalent position of the Group; (5) a business plan for the Group by no later than 31 December 2018; and (6) an independent business review commenting on the business plan by no later than 31 January 2019.

In addition, NSM must procure that senior management and professional advisors are available for a weekly conference call to discuss progress on NSM's capital structure and establish a technical and planning committee with Trafigura to oversee issues relating to the financing, capital expenditure and operations of those mines and smelters and associated businesses that form part of the secured assets. The committee will be advisory and consultative only.

Port Pirie-related undertakings

On the date of the Agreement, 19.9% of the shares in Port Pirie Pty Ltd, Nyrstar Budel B.V. and Nyrstar Hobart Pty Ltd is pledged, but this will automatically increase to 100% of these shares if Trafigura obtains the approval of the Treasurer of the Commonwealth

of Australia under the Foreign Acquisitions and Takeovers Act 1975 (Cth). The Agreement includes the following undertakings in respect of Port Pirie:

- a limitation on Port Pirie incurring any further indebtedness or guarantees, making any disposal of fixed assets, or making any distributions, in order to protect the equity value of Port Pirie;
- a provision that if the Treasurer of the Commonwealth of Australia makes an adverse order under the Foreign Acquisitions and Takeovers Act 1975 (Cth), rejects a request to provide a no objection notification or approves it subject to conditions which are not acceptable to Trafigura (acting reasonably), or makes any other objection, in each case in respect of the security to be granted over the shares in Port Pirie, then NSM must within 20 business days (1) commence a sales process in relation to the shares in Port Pirie and place the net proceeds in an account secured in favour of Trafigura on terms satisfactory to it (acting reasonably), (2) provide Trafigura with alternative security of a value at least equivalent to the value of the shares in Port Pirie on terms satisfactory to Trafigura (acting reasonably), (3) pay Trafigura all amounts owing under the Agreement (including accrued interest), (4) arrange for all amounts owing under the Agreement to be acquired from Trafigura at par and transferred to a new lender to Trafigura's satisfaction (acting reasonably), or (5) make such other alternative arrangements as Trafigura may agree (acting reasonably provided that such arrangements provide similar or better protection to Trafigura against a default in performance by NSM of its obligations under the Agreement as would have been offered by the security over the shares in Port Pirie). No other consequences are included in the Agreement; and
- NSM must provide all assistance and information reasonably required by Trafigura for the purpose of submitting an application to the Treasurer of the Commonwealth of Australia in connection with the grant of security over the shares in Port Pirie and responding to any requests for information arising in relation to such application.

Financial covenants

The financial covenants that will be included in the Agreement will be the same as those included in the WC Facility, the Revolving Structured Commodity Trade Finance Facility, the Prepayment Facilities provided by JP Morgan, the Politus Prepayment Facility, and the Prepayment Facilities provided by Goldman Sachs. The Agreement provides that if the financial covenants to be tested on 31 December 2018 under the Revolving Structured Commodity Trade Finance Facility are amended or waived, the same will automatically apply to the Agreement.

The financial covenants include (i) Consolidated Total Tangible Net Worth not to be less than EUR 400,000,000; and (ii) Net Debt to Equity Ratio not to exceed 2.5:1, as defined in Clause 21 of the Agreement.

Cash cover

Clause 9.3 of the Agreement also provides that, where Trafigura provides guarantees to support the issuance of letters of credit by NSM to third parties and that guarantee is not released on the date required under the Agreement, NSM is required to provide

cash cover. Cash cover is provided either by NSM depositing an amount equivalent to the Trafigura guarantee in a secured account with Trafigura's bank or by paying that amount to Trafigura.

The Committee has considered the discussions by the Board of Directors, including on 8, 12, 18 and 20 November 2018 and on 3 December 2018 on the negotiations that have led to the Transaction (including the fact that the Company had endeavoured to limit security and other terms of the Transaction but that this proved impossible for the Company faced with its liquidity situation) and the lack of credible alternative (at similar commercial terms or in the timeframe). The Committee has also considered and discussed the LoU in detail with the Board.

The Committee understands from these discussions, and from the discussions it has had with the Company's executive management, Freshfields Bruckhaus Deringer and Morgan Stanley, that the Transaction would enable the Company to restructure its balance sheet on a sustainable basis and that, without an expedient entry into the Transaction, the liquidity shortfall that is currently projected in the near term may prompt involuntary restructuring scenarios.

Opinion of the independent expert

The GT opinion attached in Annex 2 contains the following conclusion:

Based on and subject to the foregoing, it is our opinion, as of the date hereof, that the Transaction is on terms not less favourable than might have been obtained in a comparable transaction at such time on an arm's length basis from a Person (as defined above) who is not an Affiliate (as defined above)."

The conclusion in GT's opinion is subject to the assumptions, limitations and other caveats set out in full in the opinion attached at Annex 2.

Opinion of the Committee

Assessment of the costs and benefits for the Company and the Company's shareholders

In view of these considerations, the Committee deems the Transaction to be in the interest and to the benefit of the Company and all stakeholders. In particular, the Committee considers that time is of the essence in securing the Transaction, failing which the liquidity shortfall that is currently projected in the near term may prompt involuntary restructuring scenarios, which the Committee does not deem suited given the Company's sound operational prospects. The Committee is of the opinion that the Transaction is required to enable the Company to restructure its balance sheet on a sustainable basis in accordance with the Company's ongoing capital structure review, which is in the interest of the Company and all of its stakeholders.

The Committee considers on this basis, and on the basis of the opinion provided by GT attached at Annex 2, that the fees to be paid, security to be granted, and the undertakings

and representations and warranties to be given, to Trafigura under the Agreement, are outweighed by the above-mentioned advantages to the Company.

Assessment of the financial consequences of the Transaction

The financial consequences of the Transaction consist in the following main components:

Impact on liquidity position of the Company

The Company has to date received USD220m of interim prepayments in contemplation of entering into the Agreement. These interim prepayments have enabled the Company to continue to trade by providing urgently required liquidity against a deteriorating liquidity position. Upon signing the Agreement, the Company will additionally receive USD130m one business day after signing and USD100m within five business days after signing. The USD200m supplier credit / LC tranches will further support liquidity over time as shown from the Company's most recent cash flow forecast (attached).

Absent the aggregate USD450m cash prepayments to be provided under the Agreement, the Company forecast a significant liquidity need arising in the short term in excess of the total USD250m then available under the Company's working capital facility with Trafigura, assuming such amounts could be fully drawn.

Consequently before entering into the Agreement, the Company would have expected to have insufficient liquidity available to it to meet its financial obligations falling due. Following entry into the Agreement, the Company has a materially strengthened liquidity position per the forecast attached as Annex A.1 to the LoU.

In addition, although not strictly financial consequences, the Committee considered the following consequences of the Agreement:

Positive impact on payment and trading terms from renewed market confidence

In addition, the Committee believes that the Agreement may help to restore market confidence, following a tightening of supplier credit terms. Over time, it is hoped that this will enable the Company to secure better payment terms with suppliers and prepayment terms with customers.

Possibility to restructure

Importantly, the Committee believes that the Agreement will provide sufficient liquidity for the Company to continue to operate into 2019, giving it time to pursue a comprehensive balance sheet recapitalisation in conjunction with its financial stakeholders, to address the Company's solvency situation over the longer term and provide a sustainable capital structure. Such recapitalisation, the Committee believes, can only be facilitated by securing the required funding under the Agreement to enable such a transaction to be concluded.

Alternative to the Agreement

In view of (i) the urgency of a solution for the Group's liquidity position, (ii) the size of the liquidity amount needed, (iii) the structural requirements for such solution under the Company's existing debt facilities and (iv) the likely difficulty in achieving such funding from other sources, the Committee believes that the Agreement is likely to represent the only source of sufficient liquidity practically available to enable the Company to continue trading on a solvent basis.

To the extent the Agreement is not entered into, in view of the rapidly deteriorating liquidity situation, the Committee believes that some form of insolvency filing of the Group is the most likely alternative outcome. Under the current circumstances, such a filing would have to be done with very little preparation and the route to filing, as well as the appropriate forum, is to date, unclear. Consequently such a filing is likely to constitute an unplanned, 'free-fall' event. Given the Group's complex structure and operations, the Committee believes it is reasonable to conclude that such a filing would materially negatively impact the value of the Group to the detriment of all stakeholders, as well as eliminating the possibility of discussions occurring with creditors to pursue a consensual recapitalisation. Consequently, the Committee believes that entering into the Agreement is likely to lead to improved recovery prospects vs an insolvent free-fall alternative.

The Committee also considered the fees and expenses that will or may become payable by NSM, as mentioned above. The Committee also considered the accounting advice the Board has received and considered upon approval of the term sheet, that the perpetual securities issued by Port Pirie Pty Ltd will likely be treated as debt instead of (the current) equity treatment for accounting purposes, and considered the implications thereof on the financial covenants of the Group.

Further, the Committee considered that the executive management considers the value of the security to be offered to Trafigura to be uncertain, now and in an enforcement scenario. However, the Committee also considered that any amounts secured by this security are limited to the amounts effectively outstanding under the Agreement at the relevant time of enforcement. In addition, in respect of the pledge granted over the shares of Port Pirie Pty Ltd, Australian law does not permit Trafigura to appropriate the shares without public sale at then prevailing market value (absent court approval (which the Committee has been advised is a procedure that is barely used)).

Finally, the Committee also considered that an event of default as defined in the Agreement, may allow Trafigura to accelerate the debt and enforce its security that has been granted. The Committee does note, however, that (i) until all guarantees and security required by the Agreement have been provided and perfected in full, Trafigura's rights in respect of any events of default are as provided in the WC Facility (other than the two additional events of default mentioned above); and (ii) after all guarantees and security has been provided and perfected in full, an Event of Default will entitle Trafigura to accelerate the Agreement only in a very limited number of circumstances, as listed in the Agreement and the term sheet.

Conclusion of the Committee

On the basis of the considerations set out above, including the opinion issued by GT, the Committee is of the opinion that the Transaction is not such as to imply a disadvantage to the Company that, in light of its current policies, would be manifestly illegitimate.

Furthermore, the Committee is of the opinion that it is unlikely that the Transaction would lead to disadvantages for the Company which will not be outweighed by the benefits for the Company of the Transaction.

This conclusion shall be included in the annual report of the Company.

By: [signed]

Martyn Konig
Chairman

By: [signed]

Carole Cable
Independent Director

By: [signed]

Anne Fahy
Independent Director

Annex 1

List of reviewed documents

- Minutes of the Board meeting held on 8 November 2018
- Minutes of the Board meeting held on 12 November 2018
- Minutes of the Board meeting held on 18 November 2018
- Minutes of the Board meeting held on 20 November 2018
- Minutes of the Board meeting held on 3 December 2018
- The draft Agreement and the right to participate letter

Annex 2
GT's opinion

[see separate document]

Annex 3

Letter of understanding and summary of key provisions

[see separate document]