



Limited Liability Company (*Naamloze Vennootschap*)  
Zinkstraat 1, 2490 Balen (Belgium)  
Company number VAT BE 0888.728.945 RPR/RPM Turnhout

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## Report of the board of directors ex article 96 Company Code

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Pursuant to articles 95 and 96 of the Belgian Company Code, we are pleased to report to you on the operations of Nyrstar NV (the "Company") with respect to the financial year as from 1 January 2011 till 31 December 2011. This report comprises also the Corporate Governance Statement and Remuneration Report in accordance with article 96 par. 2 and par. 3 Company Code as attached to this report in annex B and C respectively.

### 1. Company Facts and Activities

The Company has its registered office in Balen (Belgium). The Company has been listed on NYSE Euronext Brussels since 29 October 2007.

The Company is the holding company of the Nyrstar Group and in addition delivers a number of support services to the Nyrstar Group, such as, but not limited to, regional purchasing, IT, safety and environment, legal and secretarial support services. The Company Secretary is also based at the registered office in Balen.

### 2. Comments on the Statutory Financial Statements

These comments are based on the balance sheet and the proposed allocation of results and are therefore subject to the approval of the proposed allocation of results by the shareholders of the Company. The statutory financial statements were prepared in accordance with Belgian accounting laws.

During the last fiscal year the Company generated a net profit of EUR 46,696k and a balance sheet total as per 31 December 2011 of EUR 3,068,439k.

#### Operational result

The operational result shows a loss of EUR 12,146k. This result derives from an operating income amounting to EUR 12,484k on the one hand and an operating cost of EUR 24,630k on the other hand.

The operating income is related to the consultancy services performed by Nyrstar NV to the other Nyrstar group entities.

The operating costs mainly concern:

- services and other goods for EUR 9,681k, mainly related to recharged personnel costs from other Nyrstar group entities, to external consultancy services and to the operating costs of the IT department;
- payroll charges for EUR 18,475k, which includes redundancy costs for EUR 8,389k and charges for employee share based payments and management co-investment plan for EUR 8,308k;
- depreciations charges on the capitalised establishment costs, intangible and tangible fixed assets for in total EUR 4,580k; and
- consumptions to provisions for liabilities and charges for EUR 8,389k.

## **Financial result**

The financial result mainly relates to:

- received dividend from Nyrstar Netherlands (Holdings) B.V. for EUR 80,000k;
- external interest charges for EUR 44,708k, mainly related to (i) the convertible bond issued in 2009 amounting to EUR 120 million, (ii) the retail bond issued in 2010 amounting to EUR 225 million and (iii) the retail bond issued in March 2011 amounting to EUR 525 million;
- net loss from foreign exchange results amounting to EUR 677k;
- interest income received on intercompany loans equal to a total of EUR 23,946k.

## **Extraordinary result**

The extraordinary result mainly relates to a gain on disposal on financial fixed assets equal to EUR 15,614k resulting from the 75 % sale of the investment in Nyrstar Finance International NV to Nyrstar Finance International AG.

## **Balance sheet**

The fixed assets as per 31 December 2011 mainly consist of :

- Capitalised establishment assets with a net book value of EUR 11,954k, relating to transaction costs related to the capital increase dated 18 March 2011 amounting to EUR 490,065k ;
- tangible fixed assets with a net book value of EUR 612k, mainly referring to capital assets for the regional and global IT department in Balen; and
- participations in group entities with a carrying value for EUR 2,042,343k. The increase in 2011 mainly relates to the capital increase in Nyrstar Netherlands (Holdings) B.V. by EUR 255,288k. On the other hand 75 % of the participation in Nyrstar Finance International NV was sold in the course of 2011 and also a capital decrease was decided in this related entity, decreasing the Company's participation amounting to EUR 35,000k.
- long-term receivables towards intercompany entities amounting to EUR 151,343k

The current assets per year-end 2011 mainly consist of :

- long-term receivables towards intercompany entities amounting to EUR 98,876k
- trade receivables for EUR 12,765k, relating to the recharged consultancy services by Nyrstar NV;
- other receivables for EUR 678,628k, mainly related to receivables on intercompany entities;
- treasury shares for EUR 57,420k;
- cash at bank for EUR 107k; and
- accrued intercompany interests for EUR 14,389k.

The equity per 31 December 2011 amounts to EUR 2,138,296k.

The changes in equity for the financial year 2011 mainly relate to the changes in share capital and share premium, the profit of the financial year 2011 for EUR 46,696k, the purchase of treasury shares and the contribution to the legal reserve. The provisions for liabilities and charges amounting to EUR 1,416k relate to restructuring charges.

The long-term financial liabilities amounting to EUR 861,982k relate to the debt component of the convertible bond, amounting to EUR 113,521k and the book value of the two retail bonds, amounting in total to EUR 748,461k as at 31 December 2011.

The current liabilities per year end 2011 mainly relate to :

- trade payables for EUR 4,327k; and
- tax and payroll liabilities for EUR 16,366k.

The accrued charges and deferred income per year end 2011 show an amount of EUR 45,737k, mainly related to accrued interest charges on the financial liabilities as well as unrealised foreign exchanges gains to be deferred amounting to EUR 13,734k.

### **3. Result Allocation (in EUR)**

Taken into account the profit carried forward from prior accounting year amounting to EUR 86,576,542.75, the profit for the financial year 2011 of EUR 46,695,829.69, the board of directors proposes to allocate the net profit as follows:

➤ additions to the legal reserve :	EUR 2,334,791.48
- additions to the undistributable reserves :	EUR 26,408,382.67
- profit to be carried forward :	EUR 104,529,198.29

### **4. Risk Management and Management of Uncertainties and information regarding the use by the company of financial instruments**

The Company's objectives and the management of risks and uncertainties and the use of financial instruments are discussed in detail in the board report on the consolidated financial statements in accordance with article 119 of the Company Code which is included in the 2011 annual report. The 2011 annual report can be downloaded from the Company's website: [www.nyrstar.com](http://www.nyrstar.com).

The Company uses hedging instruments for foreign exchange transactions with related parties. The financial value of these contracts is disclosed in section 5.13 of the statutory financial statements.

### **5. Important events which occurred after the end of the fiscal year**

No information regarding important events which occurred after the end of the fiscal year are to be mentioned except that in November 2011, a wholly owned Nyrstar subsidiary and Sims Metal Management Limited reached a conditional agreement to sell Australian Refined Alloys' secondary lead producing facility in Sydney, Australia (ARA Sydney) to companies associated with Renewed Metal Technologies for a total sale price of approximately EUR 60 million (AUD 80 million). Approval of the Australian Competition and Consumer Commission has been received and the sale is expected to be completed by the end of February 2012. The sale price is subject to a customary working capital adjustment. Assuming a sale price of EUR 60 million, the Group expects to achieve a profit on the sale of its 50% share of ARA Sydney of approximately EUR 15 million.

### **6. Information regarding the circumstances that could materially affect the development of the Company**

No information regarding the circumstances that could materially affect the development of the Company are to be mentioned.

## **7. Branches**

The Company has no branches.

## **8. Research and Development**

The Company continues to undertake research and development through a number of activities at various production sites of the Group.

## **9. Information provided in accordance with article 523 and 524 of the Belgian Company Code**

Directors are expected to arrange their personal and business affairs so as to avoid conflicts of interest with the Company. Any director with a conflicting financial interest (as contemplated by article 523 of the Belgian Company Code) on any matter before the board of directors must bring it to the attention of both the statutory auditor and fellow directors, and take no part in any deliberations or voting related thereto. Provision 1.4 of the corporate governance charter sets out the procedure for transactions between Nyrstar and the directors which are not covered by the legal provisions on conflicts of interest. Provision 3.2.4 of the corporate governance charter contains a similar procedure for transactions between Nyrstar and members of the management committee (other than the chief executive officer).

The provisions of Article 523 of the Belgian Companies Code have been complied with in relation to the changes to the services agreement to be entered into between Mr Junck and the Company effective 1 January 2012 at the board meeting dated 6 December 2011 as set out below:

Prior to the deliberation and approval of the changes to the services agreement to be entered into between Mr Junck and the Company, comprising (i) a 10% annual base salary increase and (ii) an increase of the maximum opportunity under the AIP from 100% to 150% of the annual base salary, subject to performance, to be delivered in Company's shares, deferred for twelve months (the "**Revised Services Agreement**"), Mr Junck explained that pursuant to the Revised Services Agreement effective 1 January 2012 he has an interest of a financial nature that could be in conflict with the proposed approval by the Board of the Revised Services Agreement under Article 523 of the Belgian Company Code. Mr Junck further stated that he believed that the terms of the proposed Revised Services Agreement are not unusual or uncustomary, especially within the context of listed companies in the global resource market. Mr Junck also stated that he would advise the Company's Statutory Auditor of the potential conflict of interest.

Subsequently, Mr Junck left the meeting of the Board so as not to take part in the further deliberation and decision relating to the Revised Services Agreement to be entered into with him.

The remaining directors of the Board noted Mr Junck's declaration and subsequently, in accordance with Article 523 of the Belgian Company Code, proceeded with the deliberations on this declaration. The Board noted that the purpose of the Revised Services Agreement is to ensure continued competitiveness within the global resources market. In order to attract and retain qualified individuals, the Board believed it is reasonable and necessary for the Company to reward executive talent for successfully transitioning the Company from a predominantly smelting company to a truly global integrated resources organisation and to retain executive talent that become increasingly attractive to global competitors. In addition, the Board noted the Revised Services Agreement is consistent with market practice as evidenced by the objective data from three independent, globally recognised executive benchmarking organisations. Accordingly the Board deemed the Revised Services Agreement to be in the interest of the Company.

Following discussion, the Board (with the exclusion of Mr Junck) **RESOLVED** that the Revised Services Agreement be **APPROVED**.

There is no information regarding a conflict of interest in accordance with article 524 of the Belgian Company Code.

#### **10. Information provided in accordance with article 34 of the Royal Decree dated 14 November 2007**

The elements that need to be provided in accordance with article 34 of the Royal Decree dated 14 November 2007 to the extent that these elements could have consequences in the event of a public takeover bid are discussed in detail in the Corporate Governance Statement as attached to this report as Annex B.

#### **11. Audit committee**

The audit committee consists of three non-executive members of the board, all of which are independent members. The members of the audit committee have sufficient expertise in financial matters to discharge their functions. The Chairman of the Audit Committee is competent in accounting and auditing as evidenced by his current role as Chief Financial Officer of the Belgacom Group and his previous roles as Chief Financial Officer in Matav and Ameritech International.

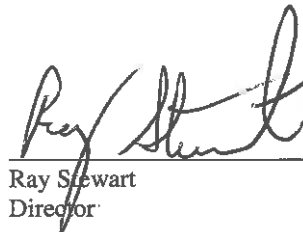
#### **12. Discharge**

The Board of Directors requests the shareholders of the Company to approve the statutory financial statements attached hereto and to grant discharge to the Board of Directors of the Company and to the Statutory Auditor for the exercise of their mandate during this financial year of the Company.

Done at Brussels on 22 February 2012

On behalf of the Board of Directors,

  
\_\_\_\_\_  
Roland Junck  
Director

  
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Ray Stewart  
Director

Annex A: Statutory accounts per 31 December 2011

Annex B: Corporate Governance Statement in accordance with article 96 par. 2 of Belgian Company Code

Annex C: Remuneration Report in accordance with article 96 par. 3 of Belgian Company Code

**Annex A**

**Statutory accounts per 31 December 2011**

*[Separate file]*

*Free English translation for information purposes only*

## **Annex B**

**Corporate Governance Statement in accordance with article 96 par. 2 of Belgian Company Code**

*[See pages 49 to 66 of the 2011 Annual Report]*

*Free English translation for information purposes only*

## **Annex C**

**Remuneration Report in accordance with article 96 par. 3 of Belgian Company Code**

*[See pages 68 to 80 of the 2011 Annual Report]*