



Limited Liability Company (*Naamloze Vennootschap*)
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**Report of the Board of Directors
in accordance with Article 596 of the Belgian Company Code**

1. Introduction

This special report has been prepared by the Board of Directors of Nyrstar NV (the "**Company**") in accordance with Article 596 of the Belgian Company Code in relation to the proposal to disapply the statutory preferential subscription right of the Company's existing shareholders, in connection with the proposal to increase the Company's share capital with the issue of new shares to be subscribed for in cash.

The proposed capital increase and disapplication of the preferential subscription right of the Company's shareholders will be decided by the Board of Directors within the framework of its powers under the authorised capital, as provided for in Article 9 of the Company's Articles of Association.

In accordance with Article 9 of the Company's Articles of Association in relation to the authorised capital, it is intended that the new shares will be offered via a rights offering, i.e. an offering whereby existing shareholders will have a preferential right to subscribe for the new shares and that such right will be separately tradable on Euronext Brussels during the subscription period. As a technical matter, however, the Company will structure such preferential subscription right as a "non-statutory" preferential right. A "non-statutory" preferential right structure presents the same essential economic features as a "statutory" preferential subscription right structure, as further described below, but allows deviation from certain technical requirements of Articles 592 and following of the Belgian Company Code, since those formally do not apply. From a technical perspective, a "non-statutory" preferential right structure involves a formal disapplication of shareholders' statutory preferential subscription rights as organised by the Belgian Company Code, coupled with a voluntary application of a "non-statutory" preferential right to subscribe for the new shares, based on the same fundamental economic principles.

The Board of Directors believes that a "non-statutory" structure, which protects the interests of existing shareholders to the same extent as a conventional rights issue, while offering greater flexibility in its practical organisation, has become the market standard for documented capital raisings by Belgian issuers in recent years. The Board of Directors therefore believes such structure to be appropriate, based on applicable financial and securities law requirements and based on the prevailing market conditions and other circumstances.

Accordingly the disapplication of the statutory preferential subscription right and the financial consequences of the transaction for existing shareholders are further discussed below in accordance with the provisions of Article 596 of the Belgian Company Code.

As required by law, the Statutory Auditor of the Company will issue a special report in accordance with Article 596 of the Belgian Company Code.

2. Proposed capital increase

The Board of Directors proposes to increase the Company's share capital in cash with a maximum amount of € 300,000,000 (including issue premium), and to delegate to certain directors and to senior executive management of the Company the powers to further implement the capital increase. The capital increase will take place within the framework and scope of, and subject to the limitations of, the authorised capital as approved by the Company's extraordinary general shareholders' meeting of May 19, 2014, and as set out in Article 9 of the Company's Articles of Association (as amended by the Company's extraordinary general shareholders' meeting of August 20, 2014). So far, the Board of Directors has not yet made use of its powers under the authorised capital. The main terms of the contemplated transaction can be summarised as follows:

- (a) **Capital increase:** The share capital shall be increased with a maximum amount of € 300,000,000 (including issue premium) through the issue of new shares without nominal value in consideration of a contribution in cash, subject to the terms and conditions of the authorised capital as set out in Article 9 of the Company's Articles of Association.
- (b) **Issue price and number of new shares:** The number and the issue price of the new shares to be issued, as well as the mechanism to determine their number and issue price, shall be determined by a committee (the "**Placement Committee**") consisting of at least (i) one Director and one member of the Company's management committee, or (ii) two members of the Company's management committee, within the framework of the offering of the new shares, taking into consideration the advice of the underwriters referred to below (or, as the case may be, the lead underwriter if several underwriters are appointed). As is customary in the case of a rights offering, the issue price will be determined and announced immediately before the start of the subscription period.
- (c) **Nature of the new shares:** The new shares to be issued within the framework of the capital increase shall have the same rights and benefits as, and shall rank *pari passu* in all respects, including as to entitlement to dividends, with, the existing and outstanding shares of the Company at the moment of their issue and will be entitled to distributions in respect of which the relevant record date or due date falls on or after the date of issue of the shares.
- (d) **Offering and allocation of the new shares:** Subject to applicable company, financial and securities law rules, the new shares (and/or the rights thereto or the remainder of such rights after the initial offering period) shall be offered via a public offering in Belgium. Depending on further determination by the Placement Committee, and subject to the relevant provisions of applicable law, the new shares may also be offered via one or more public offerings and/or private placements to institutional, qualified or professional investors in other jurisdictions abroad.
- (e) **Rights offering:** In the offering and allocation of the new shares, the existing shareholders of the Company at the time of the offering shall be granted preference via a non-statutory preferential right to subscribe for the new shares. Subject to applicable company, financial and securities law rules, the Placement Committee shall further determine the practical implementation of the offering and allocation.
- (f) **Start of the offering, the offering period and termination of the offering:** The Placement Committee shall determine the start of the offering of the new shares and the duration of the offering period(s). The capital increase contemplated by the foregoing provisions is to be completed by October 30, 2014 at the latest. The Placement Committee shall have the power not to pursue the offering, or, in case the offering has already started, suspend or cancel the completion of the offering if the Placement Committee determines that market circumstances do not allow for the occurrence or completion of the capital increase in circumstances satisfactory to it. Additional conditions precedent to the start of the offering and the completion of the offering can be set out in the agreements between the Company and the underwriters (such as, inter alia, the underwriting agreement, as the case may be).

- (g) **Underwriting:** One or more banks or financial institutions shall be appointed by the Company as underwriters for the purpose of the offering, underwriting, allocation and placement of the new shares. To the extent preferential rights are not exercised and cannot be sold, the underwriters may be offered the ability, or be required, to acquire and exercise such rights.
- (h) **Disapplication of the statutory preferential subscription right:** For the purpose of the offering as contemplated above, the statutory preferential subscription rights of the existing shareholders shall be disappplied. This shall be without prejudice to the aforementioned principle that the offering would be structured as a rights offering.
- (i) **Power of attorney to further implement the capital increase:** The Placement Committee is granted the flexibility and power to further implement the capital increase. The Placement Committee shall have the right to sub-delegate (in whole or in part) the exercise of these powers.

3. Reasons for the proposed capital increase

The contemplated capital increase with non-statutory subscription rights for existing shareholders (the **"Rights Offering"**) is part of a comprehensive strategic financing that, in addition to the Rights Offering, consists of an offering of additional senior unsecured notes by Nyrstar Netherlands (Holdings) B.V., a wholly owned subsidiary of the Company, to institutional investors in the high yield bond market (the **"New Notes Offering"**) and a tender offer by Nyrstar Netherlands (Holdings) B.V. for Nyrstar's outstanding retail bonds (the **"Tender Offer"**). The comprehensive strategic financing plan consisting of the contemplated New Notes Offering, Rights Offering and Tender Offer is the culmination of an extensive review by the Company of a range of financing options and is consistent with its strategy of continuing to invest in the business while maintaining an appropriate financial position and financial flexibility.

The net proceeds from the New Notes Offering and the Rights Offering are in first instance intended to be used for a Tender Offer to repurchase any-and-all of the Company's outstanding bonds due 2015 (the **"2015 Bonds"**) for an aggregate principal amount of €220 million and, for an aggregate principal amount of up to €100 million, the company's outstanding bonds due 2016 (the **"2016 Bonds"**, and together with the 2015 Bonds, the **"Existing Bonds"**). By offering holders of Existing Bonds the opportunity to sell their Existing Bonds in the Tender Offer, the Company can proactively manage its debt position and improve the maturity profile of its outstanding debt, by addressing in full debt maturing in 2015, and addressing a portion of the outstanding 2016 Bonds ahead of schedule. The extent to which this goal can be achieved through the Tender Offer will depend on the number of Existing Bonds that will be tendered in the Tender Offer, given the voluntary nature of the Tender Offer. It is the intention to maintain cash available to repay any 2015 Bonds remaining after the tender offer in full at maturity.

The remainder of the net proceeds will be used to fund capital expenditures required for the Company's continued transformation through capital projects comprising the Smelting Strategic Review (SSR) investment programme and the Port Pirie Redevelopment, to reduce net debt (towards a targeted Net Debt / EBITDA ratio of 2.5x) and for general corporate purposes.

The comprehensive strategic financing is intended to allow the Company and its subsidiaries to continue with the implementation of the Company's stated strategy to capture the maximum value inherent in mineral resources and concurrently to enhance the Company's financial position and financial flexibility. The comprehensive strategic financing plan is aimed at strengthening the Company's financial flexibility and ability to maximise long-term growth opportunities.

4. Proposed issue price of the new shares

The number and the issue price of the new shares to be issued have not yet been finally determined, and will remain unknown until prior to the launch of the offer. As indicated in section 2 of this report, it is proposed that the issue price and number of new shares to be issued, as well

as the mechanism to determine such number and issue price, will be determined by the Placement Committee.

As is customary in similar transactions, the issue price will be set immediately before launch of the offering, and is likely to involve a discount to the price of the Company's shares on Euronext Brussels at that time.

Furthermore, at the date of this report, the subscribed share capital of the Company amounts to €17,002,254.40. The share capital is fully paid up and is represented by 170,022,544 shares, each representing the same fraction of the Company's share capital. The fractional value of the shares of the Company amounts to €0.10. The fractional value of a share is calculated as a fraction of which the numerator is the amount of the Company's subscribed share capital, and the denominator of which is the total number of issued and outstanding shares.

As noted above, the offering will take the form of a rights offering, whereby existing shareholders of the Company at the time of the offering will be granted non-statutory preferential rights to subscribe for the new shares. The rights will be tradable separately from the existing shares during the subscription period, thus meaning that shareholders will have the choice between subscribing for the new shares (thus neutralising the dilution of their share in the Company's share capital and of their proportional entitlement to the Company's profits) or selling their rights (thus monetising to some extent the value of the financial dilution resulting from the transaction).

In any event, taking into account the aforementioned benefits of the transaction for the Company (see section 3 above), the Board of Directors is of the opinion that the proposal regarding the determination of the issue price is consistent with the requirements of, and market practice for, transactions such as the offering, and is reasonable and balanced.

5. Disapplication of the statutory preferential subscription right

5.1. Rights offering

As noted above, the offering of the new shares will take the form of a rights offering. Accordingly, all existing shareholders of the Company at the time of the offering will have non-statutory preferential rights to subscribe for the new shares, based on a ratio of existing shares to new shares to be determined at the time of launch of the offering in function of the actual number of shares to be issued and their issue price.

The preferential rights will be separately traded on Euronext Brussels during the subscription period, such that, subject to applicable financial and securities law rules:

- shareholders will be able, at their option, to use their rights (and any additional rights they would acquire on the secondary market) in order to subscribe for the new shares, or instead to sell their rights on the secondary market, or to do neither; and
- investors other than existing shareholders will also be able to purchase preferential rights on Euronext Brussels and thus subscribe for the new shares.

5.2. Technical disapplication of statutory preferential subscription rights

From an economic and practical perspective, the rights will not differ from statutory preferential rights, and the offering procedure will not differ substantively from the procedure that would otherwise have applied if the offering of the new shares had taken place with the statutory preferential rights as provided for by the Belgian Company Code. In particular, the rights will be separated from the underlying existing shares and, as Article 593 of the Belgian Company Code, had it applied, would have required, will be freely and separately tradable on the regulated market of Euronext Brussels during the subscription period for the new shares, which will have a term of 15 days (but this term could potentially be shorter). This will allow shareholders to exercise or sell their rights on the same terms and during the same period as if the offering of the new shares had been made with statutory preferential rights in accordance with the provisions of Articles 592 and

593 of the Belgian Company Code. As an exception to the procedure that would have applied if the offering of the new shares had taken place with statutory preference rights, the Placement Committee has the ability not to publish a notice in the Belgian Official Gazette (*Moniteur Belge/Belgisch Staatsblad*) and the press announcing the term of the subscription period eight days prior to the start of subscription period in accordance with Article 593 of the Belgian Company Code. The Placement Committee may opt not to publish such notice as it may wish to finalise as closely as possible prior to the start of the subscription period the final terms of the offering and as announcing the start of the offering before determination of, and independently from, such final terms could be confusing to the market.

The structure of a non-statutory preferential right has been used by a number of Belgian issuers in the recent past. It involves a formal disapplication of shareholders' statutory preferential subscription rights, coupled with a voluntary application of a non-statutory preferential right to subscribe for the new shares, based on the same economic principles.

In order to retain flexibility, the Company must take such steps and comply with such procedures as are required in order to disapply shareholders' preferential subscription rights. For the reasons described above, the Board of Directors believes that such (technical) disapplication is in the Company's interest.

5.3. Sale of unexercised rights – Backstop

Subject to applicable company, financial and securities law rules, the preferential rights of the shareholders will be tradable on Euronext Brussels and can be used to subscribe for the new shares. To the extent that preferential rights are not exercised during a first offering period, such rights, as the case may be in the form of a scrip, shall, subject to applicable financial and securities law rules, be sold or placed during a subsequent offering period via a private placement or bookbuilding (accelerated or not) to institutional, qualified or professional investors in Belgium and, subject to further determination by the Placement Committee, abroad.

The buyers of such rights or scrips shall be obliged to subscribe for the new shares. The proceeds of the sale or placement of such rights or scrips (after deduction of relevant transaction costs and expenses and applicable taxes, as applicable) shall be distributed on a pro rata basis to the holders of rights that did not exercise their right, provided that the net proceeds shall be no less than €0.01 per right or scrip. If the net proceeds are less, these shall accrue to the Company.

To the extent that preferential rights are not exercised during the first offering period and cannot be sold or are not exercised pursuant a subsequent offering period as contemplated above, it is proposed that the Board of Directors (or the Placement Committee that shall be appointed) can determine that the underwriters shall be able, or be required, to acquire such remaining rights and exercise such rights. This mechanism would allow ensuring that the capital increase is fully subscribed. The terms and conditions of the services and underwriting by the underwriters shall be further set out in the agreements between the Company and the underwriters.

6. **Financial consequences of the transaction for the shareholders**

6.1. Introduction and disclaimer

The actual effects of the proposed transaction cannot yet be determined with any certainty, as the key financial parameters of the offering such as the number and the issue price of the new shares to be issued, are unknown as at the date of this report, and will not be known until immediately before the launch of the offering.

Furthermore, once started, depending on the circumstances the offering could still be postponed or cancelled.

Accordingly, the discussion herein of the financial consequences of the transaction for existing shareholders is purely illustrative and hypothetical, and is based on purely indicative financial parameters. The actual issue price and the level of discount it

represents to the then prevailing share price and/or the theoretical ex-rights price (TERP), as well as the number, of the new shares to be issued in connection with the offering may vary significantly from the hypothetical values used in this report.

6.2. Illustrative description of effect of the offering

Subject to the methodological reservations noted above, the table below reflects the impact of the offering at various issue price levels, assuming an absolute aggregate amount of gross proceeds of the offering of € 300,000,000.00. The table below assumes for the sake of the theoretical computation of the dilutive effect, that existing shareholders would subscribe for none of the new shares (maximal dilution), which of course is unlikely to be the case. The table also assumes that none of the outstanding convertible bonds have been converted (see also section 6.4 below). Finally, pursuant to the terms and conditions of the authorised capital as set out in Article 9 of the Company's Articles of Association, the maximum number of shares that can be issued by the Board of Directors under the authorised capital is 170,022,544.

Current data:

–	Current Share capital:	€17,002,254.40
–	Current number of shares:	170,022,544
–	Capital increase (including issue premium):	€300,000,000.00
–	Maximum number of shares issuable:	170,022,544

Issue price	€1.25	€1.50	€1.75	€2.00	€2.25	€2.50	€2.75	€3.00	€3.25
Number of new shares	170,022,544	170,022,544	170,022,544	150,000,000	133,333,333	120,000,000	109,090,909	100,000,000	92,307,692
Capital increase (including issue premium)	212,528,180.00	255,033,816.00	297,539,452.00	300,000,000.00	299,999,999.25	300,000,000.00	299,999,999.75	300,000,000.00	299,999,999.00
Total number of shares post-issue	340,045,088	340,045,088	340,045,088	320,022,544	303,355,877	290,022,544	279,113,453	270,022,544	262,330,236
Existing share-holders' share of share capital*	50.00%	50.00%	50.00%	53.13%	56.05%	58.62%	60.92%	62.97%	64.81%
Dilution	50.00%	50.00%	50.00%	46.87%	43.95%	41.38%	39.08%	37.03%	35.19%

* Assuming, which is highly unlikely, no subscription of new shares by existing shareholders

From an accounting perspective, the aggregate amount of the capital increase (including issue premium) will be allocated in its entirety to the accounting net equity of the Company. If the issue price of the new shares is higher, or lower, respectively, than the accounting net equity of the Company on a per-share basis prior to the completion of the offering, this would entail, from an accounting perspective, an accretion or a dilution of the accounting net equity per share.

6.3. Financial dilution in rights offerings

The hypothetical discussion above should be read in light of the fact that, since the offering will be structured as a rights offering, existing shareholders will be able to prevent dilution by subscribing for their *pro rata* entitlement to the new shares, or to neutralise the immediate financial impact of

the issuance of the new shares at that time by selling all or part of their preferential rights on Euronext Brussels. Assuming the pricing of the rights on the secondary market is equal to their theoretical value, the proceeds of the sale of the rights (before any transaction costs or taxes) would normally offset the financial dilution impact of the issuance for those shareholders who do not subscribe and decide to sell their rights instead. However, it cannot be guaranteed that in practice shareholders will be able to trade their preferential right at a price equal to the theoretical value.

6.4. Convertible bonds

It should be noted that the Company has outstanding convertible bonds (issued in 2013) in a principal amount of €120 million. These bonds can be converted into a maximum of 24,106,067 new shares, based on a conversion price of €4.9780 per share. The bonds can be converted at any time. If all convertible bonds are entirely converted, the number of issued shares of the Company would amount to 194,128,611 shares, resulting in a dilution of 12.42% of the existing shares based on 170,022,544 outstanding shares. For an overview of the terms of the convertible bonds and the effects thereof, reference can be made to the special report that has been prepared by the Board of Directors in accordance with Articles 582, 583 and 596 of the Belgian Company Code and that has been submitted to the extraordinary general shareholders' meeting of the Company held on December 23, 2013 (which is available on the Company's website).

If the convertible bonds are not converted prior to the completion of the offering, the conversion price of the bonds can be adjusted downwards on the basis of a formula in a number of circumstances, including in the event of an issue of new shares, whereby the new shares are issued at a price that is more than 5 per cent. lower than the applicable market price of the Company's shares at the time of the offering. It is expected that in the case of the offering, the new shares will be issued at a discount to the then applicable market price. Hence, it can be expected that in the event of the offering, the conversion price of the bonds will be adjusted downwards. In case the conversion price of the convertible bonds is adjusted downwards, the

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Theoretically, the value of the preferential right of the shareholders could be determined as the difference between the theoretical ex-rights price of the Company's shares and the subscription price of the new shares to be issued, multiplied by the applicable ratio of the number of new shares issuable to the number existing shares prior to completion of the offering. The theoretical ex-rights price or "TERP" is determined as the theoretical price of the Company's shares following completion of the rights offering. It can be determined (on a per-share-basis) as the result of the following formula:

$$TERP = \frac{(S \times P) + (S_n \times P_n)}{S + S_n}$$

whereby the factor "S" represents the number of outstanding shares prior to the launch of the offering, "P" represents the stock price of the Company's shares (on a per-share-basis) prior to the launch of the offering and prior to the separation of the preferential right from the shares (i.e. before trading ex-rights), "S_n" represents the maximum number of new shares issuable in the rights offering, and "P_n" represents the issue price of the new shares issuable in the rights offering.

Based on the foregoing, the theoretical value ("TV") of the preferential subscription right of the shareholders can be determined as the result of the following formula:

$$TV = (TERP - P_n) \times \frac{S_n}{S}$$

whereby the factors "S", "S_n" and "P_n" have the same meaning as in the TERP formula referred to above.

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Summarised, the conversion price would be multiplied with a fraction, the numerator of which would be equal to the number of outstanding shares plus the number of new shares that would be issued in the offering had the issue price been equal to the prevailing market price, and the denominator of which would be equal to the number of outstanding shares plus the number of new shares issued in the offering. Further reference is made to Condition 5(b) of the terms and conditions of the convertible bonds.

dilutive effect of the convertible bonds will be greater, as more shares would need to be issued than before the downward adjustment of the conversion price. The exact downward adjustment cannot yet be definitively determined at the date of this report, as the discount to the market price is not known.

6.5. Treasury shares

As per 30 June 2014, the Company owned 12,697,734 of its own shares. The Company shall not exercise the preferential rights attached to the shares that it holds, but intends to sell these rights in context of the offering.


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Done on 29 August 2014,

On behalf of the Board of Directors,

By: 

Juffen De Wilde
Chairman

By: 

Roland Junck
Director