



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 2015 until 31 December 2015. 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, environment, innovation and development, continuous improvement and legal 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 financial year the Company generated a net loss of EUR 1,162,446k and has a balance sheet total as per 31 December 2015 of EUR 1,932,934k.

#### Operational result

The operational result shows a loss of EUR 11,926k. This result derives from an operating income amounting to EUR 9,526k offset by an operating cost of EUR 21,452k.

The operating income is related to the consultancy services performed by Nyrstar NV for the other Nyrstar group entities and the recharges of the costs (e.g. long term incentive plans).

The operating costs mainly relate to:

- services and other goods for EUR 10,782k, mainly related to recharged personnel costs from other Nyrstar group entities and to external consultancy services;
- payroll charges for EUR 3,089k;
- depreciation charges on the capitalised establishment costs and tangible fixed assets for in total EUR 3,163k; and
- increase of provisions for liabilities and charges for EUR 4,418k.

### Financial result

The financial result mainly relates to:

- interest income received on intercompany loans equal to a total of EUR 21,047k.
- net foreign exchange gains for EUR 964k;
- impairment of the treasury shares for EUR 16,757k;
- interest charges for EUR 41,596k, mainly related to (i) the retail bond issued in 2010 amounting to EUR 225 million (this bond was repaid in April 2015) , (ii) the retail bond issued in March 2011 amounting to EUR 525 million and (iii) the convertible bond issued in September 2013 amounting to EUR 120 million;
- net foreign exchange losses for EUR 8,389k.

### Extraordinary result

- For accounting year 2015 an impairment charge on financial fixed assets has been recognized for EUR 1,037,430k. This charge is based on the outcome of the impairment review of the carrying value of the Nyrstar NV's participating interests that was based on the impairment assessment of the underlying performance and the prospects of the related group entities. The review was triggered by the decrease of the Company's market capitalisation that was linked to adverse market conditions for zinc and other metals and to the underperformance of the Nyrstar's mining assets and the recent operational and commercial estimates. The review was carried out using a variety of data, including recent externally sourced forecasts of commodity prices, foreign exchange rates, treatment charges, discount rates, production assumptions and capital and operating costs.
- An additional exceptional expense was recognized in relation to the waiver of the interests receivable from Nyrstar Campo Morado SA de CV for an amount of EUR 77.383k. Given its current financial situation, Nyrstar Campo Morado SA de CV does not have the ability to pay the accumulated interest related to the Credit Agreement. The Board of Directors of Nyrstar NV therefore decided to unilaterally, unconditionally and irrevocably waive the accrued interest income on this intragroup loan.

### Income taxes

The income tax benefit amounting to EUR 8,902k mainly relates to the reversal of the foreign withholding taxes on interest income from Nyrstar Campo Morado SA de CV recognized in prior years, which have been waived as explained above.

### Balance sheet

The fixed assets as per 31 December 2015 mainly consist of:

- capitalised establishment assets with a net book value of EUR 6,639k, relating to transaction costs related to the capital increase dated 25 September 2014 amounting to EUR 5,424k and the transaction costs related to the issuing of the convertible bond for EUR 120 million dated 25 September 2013 amounting to EUR 1,215k;
- participations in group entities with a carrying value (after impairment) for EUR 1,496,752k. On 10 September 2015, The Company received preferred shares in Nyrstar Canada (Holdings) Ltd by a contribution in kind of its loan receivable towards Nyrstar Campo Morado SA de CV for an amount equal to EUR 114,381k. On 18 December 2015, the Company received Class A preferred shares in Breakwater Resources Ltd by means of a contribution in kind of its loan receivable towards this entity for an amount equal to EUR 132,249k. Both participations have been fully impaired and this impact is included in the extraordinary result as explained above.

The current assets per year-end 2015 mainly consist of:

- long-term receivables towards intercompany entities amounting to EUR 400,000k;
- trade receivables for EUR 2,015k, relating to the recharged consultancy services by Nyrstar NV and the recharges of the expenses in relation to the share based option plans towards the concerned group entities;
- other receivables for EUR 429k, mainly related recoverable VAT and various prepayments;
- treasury shares for EUR 20,076k;
- cash at bank for EUR 1,647k and
- accrued intercompany interests for EUR 5,351k.

The equity per 31 December 2015 amounts to EUR 1,273,617k.

The changes in equity for the financial year 2015 relate to the transfer of undistributable reserves to distributable reserves of EUR 17,030k and the decrease of the profit carried forward of EUR 1,162,446k.

The provisions for liabilities and charges amount to EUR 7,900k. This mainly consists of EUR 133k related to provisions for early retirement and EUR 7,767k related to the liability for share-based option plans for Nyrstar employees.

The long-term financial liabilities amounting to EUR 110,530k relate to the debt component of the convertible bond issued in 2013, amounting to EUR 120,000k.

The current liabilities per year end 2015 mainly relate to:

- the book value of the retail bond, amounting to EUR 514,916k at 31 December 2015 which becomes due in May 2016. EUR 99,972k of the outstanding retail bond was acquired by Nyrstar NV's subsidiary, Nyrstar Netherlands (Holdings) BV in the course of 2014.
- trade payables for EUR 3,085k;
- tax and payroll liabilities for EUR 840k; and
- other payables for EUR 2,860k related mainly to cash pooling payables to intercompany entities

The accrued charges and deferred income per year end 2015 show an amount of EUR 19,184k, mainly related to accrued interest charges on the financial liabilities for EUR 19,116k as well as unrealised foreign exchanges gains to be deferred amounting to EUR 68k.

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

Taking into account the profit carried forward from prior accounting year amounting to EUR 205,285,009 and the loss for the financial year ended 31 December 2015 of EUR 1,162,446,183 the Board of Directors proposes to allocate the net result as follows:

- loss to be carried forward: EUR 957,161,174

### **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 2015 annual report. The 2015 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.

The Company is a holding company that derives the substantial majority of its operating income and cash flows from its subsidiaries. Nyrstar's business, results of operations and financial condition are therefore dependent on the trading performance of members of the Group. Nyrstar's ability to service its debt and to pay dividends will depend upon the level of distributions, if any, received from Nyrstar's operating subsidiaries and interests, any amounts received on capital raisings (including the Offering) and asset disposals and the level of cash balances. These subsidiaries are not required and may not be able to pay dividends to Nyrstar, and a number of Nyrstar's subsidiaries are located in countries that may impose regulations restricting the payment of dividends outside of the country through exchange control regulations. Certain of Nyrstar's operating subsidiaries and associated companies may, from time to time, be subject to restrictions on their ability to make distributions to Nyrstar, including as a result of restrictive covenants contained in loan agreements, foreign exchange limitations, tax and company law constraints and other regulatory restrictions.

#### **5. Justification of the application of the valuation rules under the assumption of continuity**

As the Company's balance sheet at year end 2015 shows accumulated losses, the application of valuation rules based on the going concern assumption must be justified. In accordance with Article 96.6° of the Belgian Company Code, the Board of Directors consider the application of the going concern assumption to be appropriate.

At the date of authorisation of the 31 December 2015 consolidated financial statements, the Company is of the opinion that, taking into account its available cash and cash equivalents (including undrawn committed facilities), the net proceeds from the intended rights offering (Note 6), an assumed zinc price of USD1,600 per tonne (consistent with current spot prices) and continued operation of its mining assets, it has sufficient liquidity to meet its present obligations and cover its working capital needs for a period of at least 12 months from the date of the authorisation of the 31 December 2015 consolidated financial statements."

The Company and its subsidiaries have two principal financial covenants that are linked to total consolidated tangible net worth and net debt to equity. Compliance with the covenants is particularly sensitive to movements in commodity prices and exchange rates as well as tangible and intangible asset impairments due to their effect on the Company's consolidated profit or loss for the year and hence on the Company's consolidated equity. Whilst the Company and its subsidiaries are in compliance with the covenants as at 31 December 2015, there is limited financial flexibility without including net proceeds from the intended rights offering. In the event the planned rights offering is not completed, or there is a significant deterioration in commodity prices, or if mining assets are sold significantly below carrying values or further impaired, there is a material uncertainty the Company and its subsidiaries will remain compliant with the financial covenants for the period of at least 12 months from the date of authorising the financial statements. In the event of a breach of covenants, the Company and its subsidiaries would need to request a waiver from the relevant lenders. In the absence of the Company and its subsidiaries being able to remedy the breach, the outstanding balances of the relevant liabilities would become due. As at 31 December 2015 the amount of liabilities subject to the covenants included in the consolidated financial statements of the Company amounted to EUR 294.5 million. Additionally, a breach of the covenants may result in a cross default of other liabilities.

The Company has a significant amount of outstanding debt, of which EUR 415 million matures in May 2016. Significant further deterioration in commodity prices over the period of 12 months from the approval of the financial statements, would present a challenge for the Company and its subsidiaries to generate sufficient cash flows to continue to fund its operations. Should the zinc price decrease below USD 1,350 per tonne and applying the same assumptions noted above, the Company would be required to implement additional measures which include, changing its current business plans and strategy, reviewing currently scheduled investment programs and introducing further cost cutting programs. In addition, the Company and its subsidiaries are exploring additional funding options, including, but not limited to advanced payments for future delivery of commodities or accessing the bond markets. There is a risk the Company will be required to dispose some of its

assets (in particular the mining assets) at prices below fair market value, and below current carrying values. Significant losses on the sale of the mining assets has the potential of resulting in a covenant breach.

The Board of Directors acknowledges uncertainty remains over the ability of the Company to meet its funding requirements and requirements to repay its bonds in May 2016. However, as described above, Management expects the rights offering will be completed in February 2016 on the basis it is underwritten by Trafigura and Deutsche Bank and KBC Securities, and will enable the Company and its subsidiaries to have adequate resources to continue in operational existence for the foreseeable future. As such, the Company's financial statements have been prepared on a going concern basis. No adjustments have been recorded with respect to the valuation or the classification of certain balance sheet items, which would be required, should the Company no longer be able to meet its funding requirements and no longer have access to adequate and sufficient financial resources to continue its operations for the foreseeable future.

#### **6. Important events which occurred after the end of the financial year**

At 18 January 2016 the Company's extraordinary general shareholders' meeting ("EGM") approved a proposal to permit a rights offering. The planned rights offering consists of a capital increase in cash with a maximum amount of EUR 275 million (including issue premium), with statutory preferential subscription rights for the existing shareholders of the Company to subscribe for the new shares. The same EGM also approved the cancellation of the treasury shares disclosed in Note 10.

At 7 January 2016 the Company announced the formal launch of the sale process for all or the majority of the mining assets owned by its subsidiaries. The sale process is expected to require a period of several months and may or may not result in a sale of all or the majority of the Company's mining assets.

With the exception of the events stated above, there have been no material reportable events subsequent to 31 December 2015.

#### **7. 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.

#### **8. Branches**

The Company has no branches.

#### **9. Research and development**

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

#### **10. Information provided in accordance with article 624 of the Belgian Company Code**

As at 31 December 2015, the Group held a total of 12,571,225 of the Company's shares (31 December 2014: 12,664,057).

During 2015 the Group settled its LTIP Grants and Deferred Shares Awards. A total of 92,832 shares (2014: 204,152) were allocated to the employees as a part of this settlement.

Issued shares	2015
Shares outstanding	327,473,863
Treasury shares	12,571,225
<b>As at 31 Dec</b>	<b>340,045,088</b>

Movement in shares outstanding	2015
As at 1 Jan	327,381,031
Employee shared based payment plan	92,832
<b>As at 31 Dec</b>	<b>327,473,863</b>
Movement in treasury shares	2015
As at 1 Jan	12,664,057
Employee shared based payment plan	(92,832)
<b>As at 31 Dec</b>	<b>12,571,225</b>

On 18 January 2016, Nyrstar's extraordinary general meeting approved the cancellation of all treasury shares. Following the cancellation the company does not hold any treasury shares.

#### 11. Information provided in accordance with Articles 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 key terms of the proposed indemnification agreement between the Company and Mr Cox and the proposed indemnification agreement between the Company and Mr Konig at the Board meeting on 17 June 2015.

An excerpt from such meeting is set out below:

Prior to the deliberation and approval of the indemnification agreements to be entered into between Mr Cox and the Company on the one hand and between Mr Konig and the Company on the other hand (the "Indemnification Agreements"), both Mr Cox and Mr Konig made the following statements, as far as necessary and applicable in accordance with Article 523 of the Belgian Company Code. Mr Cox and Mr Konig explained that pursuant to the Indemnification Agreements, in the event they were to incur a liability in the performance of each mandate as a director of the Company, they would benefit from an indemnification by the Company against the financial damages and other costs in connection with such liability. As a result, under Article 523 of the Belgian Company Code, they both have an interest of a financial nature that could be in conflict with the proposed approval by the Board of the Indemnification Agreements. Mr Cox and Mr Konig further stated that they believed that the terms of the proposed Indemnification Agreements are not unusual or uncustomary, especially within the context of listed companies, and that the Company's Statutory Auditors would be advised of the potential conflict of interest.

Subsequently, Mr Cox and Mr Konig both left the meeting at 10:30PM so as not to take part in the further deliberation and decision relating to the Indemnification Agreements to be entered into with them.

The remaining directors of the Board noted the declarations by Mr Cox and Mr Konig 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 Indemnification Agreements is to indemnify the directors against financial damages and other costs in connection with a liability that each would incur in the exercise of their mandate as a director of the Company. In order to attract and retain qualified individuals as director, the Board believed it is reasonable, prudent and necessary for the Company to contractually obligate itself to provide such indemnification. In addition, the Board noted the existence of

indemnification agreements between publicly listed companies and their directors is consistent with market practice. Furthermore, the Board noted that pursuant to Article 21 of the Company's articles of association, the Board may enter into indemnification arrangements with the directors and take out directors and officers insurance coverage. The Board also noted that financial consequences would only accrue to the Company under the Indemnification agreement in the event that a claim was made against a director in relation to which the director was entitled to indemnification under the Indemnification Agreement and the claim was not otherwise insured. No such claim currently existed. In addition, the indemnification would not apply in certain instances, such as in the event of fraud or wilful misconduct by the director concerned, and to the extent the indemnification would apply to the payment of criminal fines. Accordingly the Board deemed the Indemnification Agreements to be in the interest of the Company.

Following discussion, the Board (with the exclusion of Mr Cox and Mr Konig) unanimously **RESOLVED** that:

- (a) the Indemnification Agreements be **APPROVED**;
- (b) the Company enter into, execute and deliver the Indemnification Agreement; and
- (c) the Indemnification Agreement be executed and ratified, as far as necessary, on behalf of the Company by the signature of the Chairman.

To the knowledge of the Company, there are, on the date of this report, no potential conflicts of interests between any duties to the Company's directors and their private interests and/or other duties, except that Mr. Cox is a member of the Supervisory Committee of Trafigura Group Pte. Ltd.

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

## **12. 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.

## **13. Audit committee**

The audit committee consists of four non-executive members of the board, of which three are independent members of the Board of Directors and one is non-independent member. 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 previous roles as Chief Financial Officer of the Belgacom Group, Chief Financial Officer of Matav and Chief Financial Officer of Ameritech International.

## **14. 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.

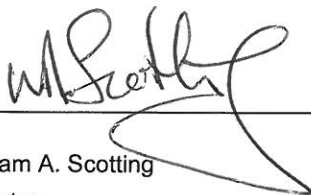
Done at Brussels on 3 February 2016.

On behalf of the board of directors,



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Julien De Wilde  
Director



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William A. Scotting  
Director

Annex A: Statutory accounts per 31 December 2015

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