

NYRSTAR  
LIMITED LIABILITY COMPANY ("NAAMLOZE VENNOOTSCHAP")  
Registered Office: Zinkstraat 1, 2490 Balen, Belgium  
Company Number VAT BE 0888.728.945 RPR/RPM Antwerp, division Turnhout  
[www.nyrstarnv.be](http://www.nyrstarnv.be)  
(the "Company")

**REVISED EXPLANATORY NOTE**  
**ANNUAL GENERAL MEETING**  
to be held on 27 June 2023 at 11.00 a.m. CEST

## Introduction

This explanatory note has been prepared on behalf of the Board of Directors of Nyrstar NV (the "Company") in connection with the various items on the agenda of the annual general shareholders' meeting of the Company, to be held on 27 June 2023. Pursuant to Article 7:129, §3, 4° of the Belgian Code of Companies and Associations, this note contains for each of the items on the agenda of the aforementioned annual general shareholders' meeting a proposed resolution or, if the item does not require a resolution, a commentary on behalf of the Board of Directors.

For further information on date, hour and venue of the annual general shareholders' meeting, the manner in which the holders of shares issued by the Company can participate to the meeting and the background documentation regarding the meeting, reference can be made to the notice convening the annual general shareholders' meeting.

## Revised agenda

On 5 June 2023, the Company received a request pursuant to Article 7:130 of the Belgian Code of Companies and Associations from shareholders jointly owning 7.83% of the outstanding shares of the Company to add an additional item to the agenda of the annual general shareholders' meeting, which was published on 26 May 2023. This additional agenda item for the general shareholders' meeting is set out below under "Agenda". Pursuant to Article 7:130 of the Belgian Code of Companies and Associations, the Company has made available amended forms for voting by mail and representation by proxy, as well as a revised explanatory note. Proxies and votes by mail that reach the Company prior to the publication of the revised agenda, remain valid for the agenda items to which the proxies and votes by mail apply, subject, however, to applicable law and the further clarifications set out in the proxy form and the voting by mail form.

## AGENDA

**Agenda and proposed resolutions:** The agenda and proposed resolutions of the annual general shareholders' meeting of the Company, which, as the case may be, can be amended at the meeting on behalf of the Board of Directors, are as follows:

### 1. Reports on the statutory financial statements

*Explanation:* This agenda item relates to the submission of, and discussion on, the annual report of the Board of Directors and the report of the statutory auditor on the statutory financial statements for the financial year ended on 31 December 2022. Copies of these documents are available on the Company's website.

Submission of, and discussion on, the annual report of the Board of Directors and the report of the statutory auditor on the statutory financial statements for the financial year ended on 31 December 2022.

## 2. Approval of the statutory financial statements

*Explanation:* This agenda item relates to the approval of the statutory financial statements for the financial year ended on 31 December 2022, and of the proposed allocation of the result. Pursuant to the Belgian Code of Companies and Associations, the annual general shareholders' meeting must decide on the approval of the statutory financial statements and the proposed allocation of the Company's profit or loss. A copy of this document is available on the Company's website.

Approval of the statutory financial statements for the financial year ended on 31 December 2022, and of the proposed allocation of the result.

*Proposed resolution:* The general shareholders' meeting approves the statutory financial statements for the financial year ended on 31 December 2022, as well as the allocation of the result as proposed by the Board of Directors.

## 3. Discharge from liability of the Directors

*Explanation:* This agenda item relates to the release from liability for the Directors for the performance of their mandate during 2022. Pursuant to the Belgian Code of Companies and Associations, the annual general shareholders' meeting must each year, after the approval of the statutory financial statements, decide separately on the release from liability of the Directors. For an overview of the Directors who were in office in 2022, reference can be made to the Corporate Governance Statement included in the annual report of the Board of Directors that is referred to in item 1 of the agenda of the annual general shareholders' meeting.

*Proposed resolution:* The general shareholders' meeting grants discharge from liability to each of the Directors who was in office during the previous financial year, for the performance of his or her mandate during that financial year.

## 4. Discharge from liability of the Statutory Auditor

*Explanation:* This agenda item relates to the release from liability for the statutory auditor for the performance of its mandate during 2022. Pursuant to the Belgian Code of Companies and Associations, the annual general shareholders' meeting must each year, after the approval of the statutory financial statements, decide on the release from liability of the statutory auditor.

*Proposed resolution:* The general shareholders' meeting grants discharge from liability to the statutory auditor which was in office during the previous financial year, for the performance of its mandate during such period.

## 5. Re-appointment of the Statutory Auditor

*Explanation:* This agenda item relates to the proposed re-appointment of the Statutory Auditor for a new statutory term of 3 years in view of the expiry of the Statutory Auditor's previous mandate.

Taking into account the advice and the proposal of the Audit Committee, which is followed by the Board of Directors, the Board of Directors proposes that the Statutory Auditor be re-appointed in view of the expiry of the Statutory Auditor's previous mandate.

*Proposed resolution:* Upon advice and proposal of the Audit Committee, the general shareholders' meeting re-appoints BDO Bedrijfsrevisoren BV, with registered office at Da Vincilaan 9, 1930 Zaventem, Belgium, represented by Gert Claes, auditor, as Statutory Auditor

of the Company. The mandate of the Statutory Auditor shall have a term of three years, ending immediately after the annual general shareholders' meeting to be held in 2026 which will decide upon the financial statements for the financial year to end on 31 December 2025.

For the period of its mandate, the annual compensation of the Auditor will be EUR 145,000 (excluding VAT and expenses, as applicable) for the audit of the statutory financial statements of the Company.

## 6. Approval of the remuneration report

*Explanation:* This agenda item relates to the submission of, discussion on and approval of the remuneration report prepared by the Nomination and Remuneration Committee. Pursuant to the Belgian Code of Companies and Associations, the annual general shareholders' meeting must decide separately on the approval of the remuneration report. The remuneration report is included in the annual report of the Board of Directors that is referred to in item 1 of the agenda of the annual general shareholders' meeting.

Submission of, discussion on and approval of the remuneration report prepared by the Nomination and Remuneration Committee, and included in the annual report of the Board of Directors for the financial year ended on 31 December 2022.

*Proposed resolution:* The general shareholders' meeting approves the remuneration report included in the annual report of the Board of Directors for the financial year ended on 31 December 2022.

## 7. Re-appointment of Mr. Martyn Konig

*Explanation:* This agenda item relates to the proposed re-appointment of Mr. Martyn Konig as Director of the Company for a term of 4 years in view of the expiry of his previous mandate.

Taking into account the advice of the Nomination and Remuneration Committee, the Board of Directors recommends that Mr. Martyn Konig be re-appointed as Director of the Company for a term of 4 years. For further information regarding Mr. Martyn Konig and his resume, reference is made to the corporate governance statement included in the annual report of the Board of Directors for the financial year ended on 31 December 2022.

*Proposed resolution:* Mr. Martyn Konig is re-appointed as Director for a term up to and including the closing of the annual general shareholders' meeting to be held in 2027 which will have decided upon the financial statements for the financial year ended on 31 December 2026. Unless decided otherwise by the general shareholders' meeting, the mandate shall be remunerated as set out in the remuneration policy as approved by the general shareholders' meeting on 29 June 2021.

## 8. Re-appointment of Ms. Jane Moriarty

*Explanation:* This agenda item relates to the proposal to re-appoint Ms. Jane Moriarty as Director of the Company for a term of 4 years in view of the expiry of her previous mandate.

Taking into account the advice of the Nomination and Remuneration Committee, the Board of Directors recommends that Ms Jane Moriarty be re-appointed as Director of the Company for a term of 4 years. For further information regarding Ms Jane Moriarty and her resume, reference is made to the corporate governance statement included in the annual report of the Board of Directors for the financial year ended on 31 December 2022.

*Proposed resolution:* Ms Jane Moriarty is re-appointed as independent non-executive Director within the meaning of Article 7:87 of the Belgian Code of Companies and Associations and Provisions 3.4 and 3.5 of the Belgian Corporate Governance Code of 9 May 2019, for a term up to and including the closing of the annual general shareholders' meeting to be held in 2027

which will have decided upon the financial statements for the financial year ended on 31 December 2026. It appears from information available to the Company and from information provided by Ms Jane Moriarty that she satisfies the applicable requirements with respect to independence. Unless decided otherwise by the general shareholders' meeting, the mandate shall be remunerated as set out in the remuneration policy as approved by the general shareholders' meeting on 29 June 2021.

## 9. Appointment of Mr. Marc Taeymans

*Explanation:* This agenda item relates to the proposed appointment of Mr. Marc Taeymans as new Director of the Company for a term of 4 years.

Taking into account the advice of the Nomination and Remuneration Committee, the Board of Directors recommends that Mr. Marc Taeymans is appointed as Director of the Company for a term of 4 years.

Mr. Marc Taeymans holds law degrees from KU Leuven and the University of Virginia. He has a career of almost 30 years with listed companies operating in an international context (Fortis, BNP Paribas, Barco and Generale Bank). In that capacity, he gained experience in litigation related to restructuring in the past. From 2013 to 2018, he was a director at the Institute of Company Auditors. He has also been an accredited mediator in civil and commercial matters since 2005. He regularly lectures and writes on legal topics.

*Proposed resolution:* Mr. Marc Taeymans is appointed as independent non-executive Director within the meaning of Article 7:87 of the Belgian Code of Companies and Associations and Provisions 3.4 and 3.5 of the Belgian Corporate Governance Code of 9 May 2019, for a term up to and including the closing of the annual general shareholders' meeting to be held in 2027 which will have decided upon the financial statements for the financial year ended on 31 December 2026. It appears from information available to the Company and from information provided by Mr. Marc Taeymans that he satisfies the applicable requirements with respect to independence. Unless decided otherwise by the general shareholders' meeting, the mandate shall be remunerated as set out in the remuneration policy as approved by the general shareholders' meeting on 29 June 2021.

## 10. Appointment of Mr. Thierry Buytaert as independent director of the Company

*Explanation:* The Board of Directors notes that the explanation regarding agenda item 10 in the Revised Invitation was taken verbatim from the letter the Company received on 5 June 2023 from Mr. Kris Vansanten, Bee Inspired BV and Quanteus Group BV, shareholders. The Board wishes to clarify that that explanation represents the views of the shareholders concerned, and not of the Company. Therefore, the comments in that explanation on the Company's policy and BDO's audit are solely for the account of the shareholders concerned. In particular, the Board wishes to emphasise that the annual accounts and accompanying documentation were prepared and drawn up applying the relevant rules and standards.

In the light of the Belgian Corporate Governance Code and the Company's Corporate Governance Charter, the Nomination and Remuneration Committee and the Board of Directors have invited Mr. Thierry Buytaert for a meeting. On this basis, the Nomination and Remuneration Committee will formulate a recommendation to the Board of Directors regarding the proposal to appoint Mr. Thierry Buytaert as an independent director, after which the Board of Directors will announce its recommendation in this regard to the shareholders as soon as possible.

On 5 June 2023, the Company received a request pursuant to Article 7:130 of the Belgian Code of Companies and Associations from Kris Vansanten, Bee Inspired BV and Quanteus Group BV, shareholders jointly owning 7.83% of the outstanding shares of the Company, to add the current additional item and proposed resolutions, as set out below in the words of the shareholders concerned, to the agenda of the meeting.

"1. The general shareholders' meeting of shareholders is reminded that, since 25 September 2019, the Company has been under investigation by the Financial Services and Markets Authority (FSMA) for market manipulation, amongst others in connection with certain commercial transactions between the Company and its main shareholder Trafigura in the period prior to the restructuring of 31 July 2019. The general shareholders' meeting should further note that on 30 September 2022, the FSMA Management Committee decided to initiate sanction proceedings against the Company and extend its investigation to the directors who were in office at the time of the alleged violations.

The general meeting of shareholders will also note that the Company's auditor (then Deloitte Bedrijfsrevisoren CVBA) issued a statement in its report on the Company's 2019 financial statements with the following reservation:

"With respect to the financial year ended 31 December 2018, we have not been able to gather sufficient and appropriate audit evidence about the completeness of the information regarding related party transactions and disclosures about the relationship with Trafigura Group Pte. Ltd. and its related companies (collectively "Trafigura") and also on the completeness of the information relating to the successive events since October 2018 that have resulted in a review of the balance sheet structure of the Company and its subsidiaries (collectively, the "Group" up to 31 July 2019) (the "Balance Sheet Structure Review") [...]"

This reservation was made for the first time in relation to financial year 2018 and repeated in 2019. This reservation was not repeated, without justification, in the report of the Company's current statutory auditor (BDO Bedrijfsrevisoren BV, with registered office at Da Vincilaan 9, 1930 Zaventem, Belgium, represented by Gert Claes, company auditor; the "Statutory Auditor") on the 2020, 2021 and 2022 financial statements. This can only be explained by the fact that the Statutory Auditor judged that he had the necessary elements to no longer withhold the reservation and therefore took a different position from his predecessor. However, the FSMA procedure casts a different light on the reservation formulated by Deloitte Bedrijfsrevisoren CVBA and on the decision of BDO Bedrijfsrevisoren BV to no longer withhold this reservation.

2. In addition, it appears that the Company's current Statutory Auditor neither addressed nor considered the decision of the FSMA's Management Committee of 30 September 2022, nor the examination and report of the FSMA's auditor on which it is based, in his report on the 2022 statutory financial statements, which will be submitted for approval to the general shareholders' meeting of 27 June 2023.

In that regard, it is recalled that in an order dated 12 May 2023 pronounced in summary proceedings between the Company and certain minority shareholders of the Company, the Chairman of the Enterprise Court of Antwerp ruled that the report of the FSMA's auditor "essentially concludes (inter alia) the following facts (summarised here extremely summarily):

- Serious indications of market manipulation through the dissemination of false or misleading information and the disregard of the duty of notification. The indications of market manipulation concern communications by Nyrstar about its commercial relationship with its main shareholder Trafigura. The investigation reveals that Nyrstar's communications about Trafigura were inconsistent with internal information available at the time.
- The investigation uncovers a pattern of positive reporting and reassuring messages on various topics that contrasts sharply with the effective non-public factual developments at the time of such reporting
- In summary, the administrative investigation shows that Nyrstar's disclosures on her commercial and financial relationship with Trafigura its solvency and liquidity position in the fourth quarter of 2018, and on the expected profit contribution "Port Pirie" were inaccurate and misleading."

According to the International Standard on Auditing No 250 (ISA 250), with which the Statutory Auditor is required to comply, the Statutory Auditor must "respond appropriately to non-compliance or suspicions of non-compliance with laws and regulations identified during the audit", which according to this Standard requires the Statutory Auditor to carry out the following checks:

- As part of gaining an understanding of the entity and its environment in accordance with ISA 315, the auditor should gain a general understanding of:
  - (a) the legislative and regulatory framework applicable to the entity and the industry or sector in which the entity operates; and
  - (b) how the entity complies with that framework.
- In furtherance of identifying instances of non-compliance with other laws and regulations that may have a material impact on the financial statements, the auditor should perform the following audit procedures:
  - (a) ask management and, as appropriate, those charged with governance inquire about the entity's compliance with such laws and regulations; and
  - (b) inspect any correspondence with the relevant licensing or regulatory or supervisory authorities.
- If the auditor becomes aware of information regarding an instance or suspicion of non-compliance with laws and regulations, the auditor should obtain the following:
  - (a) an understanding of the nature of the act and the circumstances under which it occurred; and
  - (b) further information to evaluate the potential impact on the financial statements.
- If the auditor concludes that the non-compliance has a material impact on the financial statements and is not adequately reflected in the financial statements, the auditor should express a qualified opinion or an adverse opinion on the financial statements in accordance with ISA 705 (Revised).
- If the auditor is prevented by management or those charged with governance from obtaining sufficient and appropriate audit evidence to evaluate whether there has been or is likely to have been non-compliance that could have a material effect on the financial statements, the auditor should express a qualified opinion or a disclaimer of opinion on the financial statements based on a limitation in the scope of the audit in accordance with ISA 705 (Revised).
- If, because of limitations caused by circumstances and not imposed by management or those charged with governance, the auditor is unable to determine whether non-compliance has occurred, the auditor should, in accordance with ISA 705 (Revised), evaluate its impact on the auditor's opinion.

It is clear that the report of the FSMA - mentioned in the decision of the Chairman of the Enterprise Court of Antwerp - as well as the decision of the Management Committee of the FSMA to (i) initiate a sanction procedure and (ii) refer the matter to the Public Ministry, are critical elements occurring during the 2022 financial year or before the general meeting convened to approve the 2022 financial statements.

Apparently, the auditor ruled that the FSMA proceedings would not have an impact on the current and past years' financial statements.

The Audit Committee of the Company should have also ensured that a proper audit was conducted by the Auditor in application of the above ISA 250.

3. The general meeting of shareholders is also reminded that the group to which the Company's current Statutory Auditor belongs has (or until recently had) a business relationship outside Belgium with Trafigura, and has not provided any information to the Company's shareholders as to how such (real or perceived) lack of independence in relation to a major shareholder would be treated.

This matter is still pending before the FSMA's Supervisory Board of Company Auditors (CSR).

4. The recent decision by the Management Committee of the Financial Services and Markets Authority to initiate sanction proceedings against the Company for market manipulation in connection with the Company's transactions with Trafigura, as well as the inappropriate relationships of the Company's current statutory auditor with Trafigura itself, indicate that this auditor is wholly deficient in discharging his legal duties and providing sufficient and accurate information to the Company's shareholders.

5. In view of the above, the general meeting deems it appropriate to strengthen the board of directors by appointing Mr. Thierry Buytaert as an independent director, whose specific expertise and experience will be of great benefit to the Company in the context of the sanctions procedure and investigation, and will ensure integrity and transparency towards the Company's shareholders and the markets.

Thierry Buytaert holds a law degree from the University of Ghent. He has almost 50 years of experience in the legal sector, both as in-house legal counsel (Generale Bank 1976-1990, Ageas 2011-2016) and lawyer (Mayer Brown 1990-1995, Jones Day 1995-2011). In those roles, Mr. Buytaert acquired extensive expertise in corporate, regulatory and banking law, including in relation to corporate restructurings, dealing with regulatory and market authorities, and securities and shareholder disputes (including litigation, arbitration, ADR, mediation and negotiation).

At Generale Bank (1976-1990), he headed the Corporate and International Section of the Legal Department and was responsible for reviewing all legal issues relating to General Bank's international operations, major subsidiaries and transactions with its major corporate clients. In that role, Mr. Buytaert oversaw a large team of more junior members of the bank's legal team.

After 15 years in the banking sector, Mr. Buytaert changed path to become a lawyer at the Brussels Bar, where he further developed his expertise in corporate, financial and economic law. He first headed the Brussels office of Mayer Brown (1990-1995), a renowned Chicago business law firm with offices in Asia, Europe, North and South America and the Middle East. His practice concentrated on European and US corporate, financial and banking law. Later, Mr. Buytaert joined the European banking, finance and capital markets team of Jones Day's Brussels office as Of Counsel (1995-2011), where he managed complex corporate, finance and shareholder files. Jones Day is considered one of the best law firms in the world and has built a solid reputation in Belgium for its expertise in financial matters.

Subsequently, Mr. Buytaert became Ageas Group General Counsel (2011-2016) where he managed all legal aspects of the Ageas group's corporate, commercial and insurance activities in Continental Europe, the UK and Asia. In this capacity, Mr. Buytaert was also responsible for the legal disputes and settlement negotiations of the Fortis legacy file. Thierry Buytaert also has management experience. He was appointed director and later executive director of Royal Park Investment NV (2012-2018), where he was responsible for the sale of Royal Park Investment's portfolio and the management of a related class action and securities fraud litigation in the US. He was also a director of Stichting Forsettlement and Stichting Forclaims (2016-2018), two Dutch foundations charged with implementing the settlement arrangements of the Fortis legacy file.

Finally, Mr. Buytaert regularly advises commercial and industrial companies on various restructuring, management and shareholder issues, as well as securities transaction disputes.

Given his extensive expertise in shareholder disputes and listed companies, Mr. Buytaert is ideally placed to represent and defend the interests of all shareholders of the Company following the restructuring implemented on 31 July 2019.

In light of recent developments and the FSMA's decision to investigate certain board members, Mr. Buytaert's experience with financial regulators will be paramount in managing the crisis. It is noted that no other candidate for appointment or reappointment to the board possesses Mr. Buytaert's track record, reputation for integrity and excellent relationship with financial regulators.

*As Mr. Buytaert is nominated on the initiative of a minority shareholder of the Company, his appointment will also send a strong positive signal to the markets that the current situation is being addressed in a transparent and fair manner.*

*Mr. Buytaert is fluent in Dutch, French, English and German.*

*Proposed resolution: Mr. Thierry Buytaert is appointed as independent non-executive Director within the meaning of Article 7:87 of the Belgian Code of Companies and Associations and Provisions 3.4 and 3.5 of the Belgian Corporate Governance Code of 9 May 2019, for a term up to and including the closing of the annual general shareholders' meeting which will be held in 2027 and which will decide upon the financial statements for the financial year ended on 31 December 2026. It appears from information available to the Company and from information provided by Mr. Thierry Buytaert that he satisfies the applicable independence requirements. Unless decided otherwise by the general shareholders' meeting, the mandate shall be remunerated as set out in the remuneration policy approved by the general shareholders' meeting on 29 June 2021."*

\* \* \*

Done on 11 June 2023

On behalf of the Board of Directors