

**FREE TRANSLATION**

**NYRSTAR NV**

**Statutory auditor's Report to the extraordinary general meeting of shareholders of the company "NYRSTAR NV" on the proposal to approve the physically-settled conversion right attached to bonds issued by the company, with a conversion price permitting the issue of new shares below fractional value (art. 582) and on the proposal to cancel the preferential subscription right (art. 596).**

July 7, 2009

**FREE TRANSLATION**

**STATUTORY AUDITOR'S REPORT TO THE EXTRAORDINARY GENERAL MEETING OF SHAREHOLDERS OF THE COMPANY "NYRSTAR NV" ON THE PROPOSAL TO APPROVE THE PHYSICALLY-SETTLED CONVERSION RIGHT ATTACHED TO BONDS ISSUED BY THE COMPANY, WITH A CONVERSION PRICE PERMITTING THE ISSUE OF NEW SHARES BELOW FRACTIONAL VALUE (ART. 582) AND ON THE PROPOSAL TO CANCEL THE PREFERENTIAL SUBSCRIPTION RIGHT (ART. 596).**

**1. MISSION**

In accordance with the Articles 582 and 596 of the Belgian Company Code, we report on the proposal to approve the physically-settled conversion right attached to bonds issued by the company, with a conversion price permitting the issue of new shares below fractional value and on the proposal to cancel the preferential subscription right at NYRSTAR NV, with registered office in Balen, Zinkstraat 1, and is registered with no. 0888.728.945 in the Turnhout register of legal entities (the "Company").

Extract from the Belgian Company Code, Article 582:

*"Wanneer de uitgifte van aandelen zonder vermelding van nominale waarden beneden de fractiewaarde van de oude aandelen van dezelfde soort op de agenda staat van een algemene vergadering, dan moet de oproeping dit uitdrukkelijk vermelden.*

*Over de verrichting moet een omstandig verslag worden opgesteld door de raad van bestuur dat inzonderheid betrekking heeft op de uitgifteprijs en op de financiële gevolgen van de verrichting voor de aandeelhouders. Er wordt een verslag opgesteld door een commissaris of, bij diens ontstentenis, door een bedrijfsrevisor aangewezen door de raad van bestuur, of door een externe accountant aangewezen op dezelfde manier, waarin deze verklaart dat de in het verslag van de raad van bestuur opgenomen financiële en boekhoudkundige gegevens getrouw zijn en voldoende om de algemene vergadering die over het voorstel moet stemmen, voor te lichten.*

*Die verslagen worden neergelegd op de griffie van de rechtbank van koophandel overeenkomstig artikel 75. Zij worden in de agenda vermeld. Een afschrift ervan kan worden verkregen overeenkomstig artikel 535. Het ontbreken van de verslagen bedoeld in het tweede lid heeft de nietigheid van de beslissing van de algemene vergadering tot gevolg."*

Extract from the Belgian Company Code, Article 596:

*"De algemene vergadering die moet beraadslagen en besluiten over de kapitaalverhoging, over de uitgifte van converteerbare obligaties of over de uitgifte van warrants, kan met inachtneming van de voorschriften inzake quorum en meerderheid vereist voor een statutenwijziging, in het belang van de vennootschap het voorkeurrecht beperken en opheffen. Het voorstel daartoe moet speciaal in de oproeping worden vermeld.*

*De raad van bestuur verantwoordt zijn voorstel in een omstandig verslag, dat inzonderheid betrekking heeft op de uitgifteprijs en op de financiële gevolgen van de verrichting voor de aandeelhouders. Er wordt een verslag opgesteld door de commissaris-revisor of, bij diens ontstentenis, door een bedrijfsrevisor aangewezen overeenkomstig artikel 34§2, ..., waarin deze verklaart dat de in het verslag van de raad van bestuur opgenomen financiële en boekhoudkundige gegevens getrouw zijn en voldoende om de algemene vergadering die over het voorstel moet stemmen, voor te lichten. Die verslagen worden neergelegd op de griffie van de rechtbank van koophandel overeenkomstig artikel 75."*

Our responsibility is to express our opinion on:

- the identification of the transaction
- the adequacy of the information included in the special report of the board of directors on the proposal to approve the physically-settled conversion right attached to bonds issued by the company, with a conversion price permitting the issue of new shares below fractional value and on the proposal to cancel the preferential subscription right.

We conducted our mission in accordance with the legal requirements as issued by the "Institut des Réviseurs d'Entreprises/Instituut der Bedrijfsrevisoren" and entails a review of the special report of the board of directors in relation to the possible issuance price of the new shares that will be created in view of the proposed transaction and the financial consequences of the transaction for the shareholders. Furthermore information was gathered as deemed necessary in view of the mission.

## 2. PROPOSED TRANSACTION

In its special report dated 2 July 2009, the board of directors of the Company, resolved that it will issue bonds for an aggregate principal amount of EUR 105 million, which can be increased with a principal amount of up to EUR 15 million depending on the exercise of an over-allotment option that has been granted within the context of the placement of the bonds and which can be exercised until 7 July 2009. The bonds are intended to be convertible into existing or new shares of the Company. The physically-settled conversion right in respect of new shares attached to the bonds needs to be approved by the extraordinary general shareholders' meeting of the Company.

The shares to be issued upon conversion of the bonds will have the same rights and benefits as, and rank *pari passu* in all respects with the existing and outstanding shares of the Company at the moment of issuance and will participate in the results of the Company not yet allocated at the moment of conversion. For further information on the terms and conditions of the bonds, reference is made to the terms and conditions attached to the aforementioned special report of the board of directors.

The company's current share capital amounts to EUR 1,490,760,008.09 represented by 100,000,000 shares without nominal value, being a fractional value of EUR 14.91 per share.

The conversion price, being the price to convert the bonds in new shares is EUR 7.6203 per share. It should be noted that the initial conversion price of EUR 7.6203 is set at a premium of 27.5% to the volume weighted average price of the Company's ordinary share on Euronext Brussels from launch to pricing on the day the bonds were placed, on the 2 July 2009. In other words, the conversion price includes a premium to the market price of the Company's shares at the time of the placement of the bonds.

The conversion price of EUR 7.6203 is less than the current fractional value of the Company's shares (which amounts to rounded EUR 14.91 per share). The conversion price is less than the current fractional value of the Company's shares because it has been determined with reference to the trading price of the Company's shares prior to the offering, which is currently lower than the fractional value.

In connection with the proposal to approve the conversion right attached to the bonds, it is proposed that, as far as necessary and applicable, the preferential subscription right of the shareholders be cancelled for the benefit of the bondholders.

The adequacy of the information provided by the board of directors as well as the consequences of the possible conversion of all bonds into new shares is explained below.

**3. ADEQUACY OF THE INFORMATION PROVIDED BY THE BOARD OF DIRECTORS AND THE FINANCIAL CONSEQUENCES OF THE POSSIBLE CONVERSION OF ALL BONDS INTO NEW SHARES.**

Upon conversion of the bonds into new shares, the company will have to issue new shares, and the share capital of the company will be increased. Accordingly, summarized and for illustration purposes only, if and to the extent the full principal amount of the bonds of EUR 105 million were to be converted on the date hereof (not including the bonds for a maximum principal amount of EUR 15 million that could still be issued if the over-allotment option is exercised, if at all), the Company would have to issue 13.778.998 new shares, assuming that the aggregate amount to be converted would amount to EUR 105 million and that the applicable conversion price would amount to EUR 7.6203 per share. If the over-allotment option is exercised with respect to bonds for a maximum principal amount of EUR 15 million, the full principal amount of all bonds would be EUR 120 million, and upon conversion of these bonds on the date hereof, the Company would have to issue 15,747,426 new shares in total based on the aforementioned conversion price.

- **Consequences of the transaction on the share capital**

Should all bonds (including the exercise in full of the over-allotment option) be converted in new shares on the date of the special report of the board of directors at a conversion price of EUR 7.6203, the share capital would be increased as follows:

Capital increase EUR 120,000,000 : 7.6203 \* = 15,747,426 shares.

\* conversion price (rounded)

Such capital increase of EUR 120,000,000 million would result in the creation of 15,747,426 new shares without nominal value, each issued at a price of EUR 7.6203 which is below the fractional value of the old shares:

	<u>Amount</u>	<u>%</u>	<u>Capital</u>	<u>Fractional value</u>
Old shares	100.000.000	86,4	1.490.760.008,09	14,91
New shares	15.747.426	13,6	120.000.000,00	7,62
Total number of shares after capital increase	115.747.426	100	1.610.760.008,09	13,92

The above calculation reveals that the current share capital of the existing shareholders is diluted by 13.6%.

- **Consequences of the transaction on equity**

*CONSOLIDATED EQUITY based on the audited 31/12/2008 IFRS financial statements (not taking into account the result of 2009)*

Before the transaction the consolidated equity amounts to:

	<u>EUR million</u>
Equity as per 31 December 2008	711.10

Calculated book value per share:

$$\text{EUR 711.10 million} / 100,000,000 \text{ shares} = \text{EUR 7.11 per share.}$$

After the transaction the consolidated equity amounts to EUR 831.10, calculated as follows:

	<u>EUR million</u>
Equity as per 31 December 2008	711.10
Conversion of all bonds on the date of the special report of the board of directors	120.00
Total	<u>831.10</u>

Calculated book value per share:

$$\text{EUR 831.10 million} / 115,747,427 = \text{EUR 7.18 per share.}$$



The information as recorded in the special report of the board of directors is in accordance with the Articles 582 and 596 of the Belgian Company Code.

Based on our procedures carried out we conclude that the special report provides sufficient information towards the general shareholders' meeting in order to come to a fair conclusion in respect of the proposed transaction.

#### 4. CONCLUSION

Based on our review we conclude that:

- the board of directors comply with the regulations set forth in Articles 582 and 596 of the Belgian Company Code;
- the proposal on the physically-settled conversion right attached to bonds issued by the company, with a conversion right permitting the issue of new shares below fractional value and on the proposal to cancel the preferential subscription right, has been properly supported in a special report of the board of directors, in which the issuance price and the financial consequences for the shareholders have been properly disclosed.
- in the special report of the board of directors the disclosed financial information is fair and sufficient in order for the general shareholders' meeting to decide upon the transaction.

This report only comprehends the requirements of Articles 582 and 596 of the Belgian Company Code and is not intended for use in any other context.

Antwerp, July 7, 2009

PricewaterhouseCoopers Bedrijfsrevisoren,  
Represented by

Peter Van den Eynde,  
Bedrijfsrevisor