

**ANNUAL REPORT OF THE BOARD OF DIRECTORS ON THE STATUTORY FINANCIAL STATEMENTS FOR THE FINANCIAL YEAR ENDED ON 31 DECEMBER 2009 IN ACCORDANCE WITH ARTICLE 96 OF THE BELGIAN COMPANY CODE**

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 2009 till 31 December 2009.

**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 Nyrstar Group. It has registered office in Balen (Belgium) but also a branch office in London, United Kingdom. The registered office in Balen delivers services, such as global IT, purchases, safety and other regional support services to Nyrstar entities. The Company Secretary is based in Balen. The group accounting and consolidation department is also located in Balen. The Management Committee is based in London. The Management Committee is, amongst other things, in charge of finance (including group controlling and corporate tax), operational management, marketing and sales, corporate development, human resources, investor relations and legal.

In 2009 the Company continued its activities. In July 2009 the Company successfully raised €120,000,000 through a convertible bond issue.

**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 draft statutory financial statements were prepared in accordance with Belgian accounting laws.

During the last fiscal year the Company booked a net profit of 49,404 kEUR and a balance sheet total as per 31 December 2009 of 2,058,466 kEUR.

**Operational result**

The operational result shows a loss of 14,209 kEUR. This result derives from an operating income amounting to 43,423 kEUR on the one hand and an operating costs of 57,632 kEUR 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 24,268 kEUR, 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 the personnel in Balen and London office for 21,614 kEUR;

- depreciations charges on the capitalised establishment costs, intangible and tangible fixed assets for in total 6,707 kEUR; and
- additions to provisions for liabilities and charges for 4,778 kEUR.

### **Financial result**

The financial result mainly relates to:

- received dividend from Nyrstar Finance International NV for 75,000 kEUR;
- external interest charges for 6,309 kEUR, related to (i) the initial credit facility amounting to 350 million EUR and (ii) the convertible bond issued in 2009 amounting to 120 million EUR;
- interest charges on received intercompany loans equal to 5,857 kEUR; and
- reversal of the impairment charge on the treasury shares amounting to 1,054 kEUR.

### **Balance sheet**

The fixed assets as per 31 December 2009 mainly consist of :

- formation expenses (establishment costs) with a net book value of 3,479 kEUR;
- intangible fixed assets with a net book value of 4,190 kEUR, relating to capitalised software expenditure;
- tangible fixed assets with a net book value of 4,261 kEUR, mainly referring to the capital expenditures for the offices in Balen and London as well as to capital assets for the Global IT department in Balen; and
- participations in group entities with a carrying value for 2,026,694 kEUR. The increase in 2009 mainly relates to the incorporation of and subsequent capital increase in Nyrstar Sales & Marketing NV amounting to 100,061 kEUR.

The current assets per year-end 2009 mainly consist of :

- trade receivables for 15,402 kEUR, relating to the recharged consultancy services by Nyrstar NV;
- other receivables for 2,053 kEUR, mainly related to VAT and to receivables on intercompany entities;
- treasury shares for 1,733 kEUR;
- cash at bank for 248 kEUR; and
- deferred expenses for 406 kEUR, mainly related to prepaid rent charges.

The equity per 31 December 2009 amounts to 1,552,753 kEUR. The decrease in share capital, share premium and available reserves was decided by the shareholders on the extraordinary shareholder's meeting held on 29 April and 23 May 2009 in order to absorb the retained losses arising from the 2008 impairment charge and thereby to restore the Company's potential future dividend capacity.

The other changes in equity for the financial year 2009 mainly relate to the equity component of the convertible bond accounted for as share premium (amounting to 8,818 kEUR) on the one hand and the profit of the financial year 2009 for 49,404 kEUR on the other hand.

The provisions for liabilities and charges amounting to 7,680 kEUR relate to pension and related liabilities as well as to restructuring charges.

The long-term financial liabilities relate to the debt component of the convertible bond, amounting to 109,543 kEUR as at 31 December 2009.

The current liabilities per year end 2009 mainly relate to :

- financial liabilities for 366,859 kEUR, consisting of received intragroup loans;
- trade payables for 5,023 kEUR; and
- tax and payroll liabilities for 12,306 kEUR.

The other liabilities mainly relate to a dividend payable from the 2009 result amounting to 10,000 kEUR , as proposed by the Board of Directors for approval by the shareholders of the Company.

The accrued charges and deferred income per year end 2009 show an amount of 4,242 kEUR.

### **3. 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 management report on the consolidated financial statements in accordance with article 119 of the Belgian Company Code which is included in the 2009 annual report. The 2009 annual report can be downloaded from the Company's website: [www.nyrstar.com](http://www.nyrstar.com).

### **4. IMPORTANT EVENTS WHICH OCCURRED AFTER THE END OF THE FISCAL YEAR**

On 28 January 2010 the Company entered into a 250 million EUR multi-currency revolving Structured Commodity Trade Finance Credit Facility underwritten by Deutsche Bank. The facility has a maturity of 4 years with a run-off period during the fourth year.

On 10 February 2010 the Company completed its agreement to acquired 1.25 million tonnes of zinc in concentrate from Talvivaara Sotkamo Limited (a member of the Talvivaara Mining Company Plc group) for a purchase price of US\$335 million (approximately 240 million EUR).

### **5. BRANCHES**

The Company established a branch in Wigmore street 101, London, W1U 1QU, United Kingdom. Both the offices in London and Balen have corporate functions.

### **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. RESEARCH AND DEVELOPMENT**

During the year the Company ceased to engage the Research, Development and Innovation department of Umicore in relation to the conduct of research and development activities. The Company continues to undertake research and development through a number of activities at various production sites of the Group.

## **8. INFORMATION PROVIDED IN ACCORDANCE WITH ARTICLE 523 AND 524 OF THE BELGIAN COMPANY CODE**

Any director with a conflicting financial interest (as set forth in Article 523 of the Belgian Company Code) on any matter before the Board 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.

In accordance with the Company's articles of association, the Company may enter into service agreements with a director. At the Board meeting held on 26 February 2009, the Board considered the service agreement in favour of Mr Roland Junck.

Prior to the deliberation and approval of the service agreement to be entered into between Mr Junck and the Company (the "Service Agreement"), Mr Roland Junck made the following statements, as far as necessary and applicable in accordance with Article 523 of the Belgian Company Code. Mr Junck explained that, summarized, pursuant to the Service Agreement, he would benefit under the Service Agreement. As a result, under Article 523 of the Belgian Company Code, he has an interest of a financial nature that could be in conflict with the proposed approval by the Board of the Service Agreement. Mr Junck further stated that he believed that the terms on the proposed Service Agreement are not unusual or uncustomary, especially within the context of listed companies, and that he would advise the Company's Statutory Auditors 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 Service 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 Service Agreement is, summarized, to remunerate Mr Junck for his mandate as Chief Executive Officer of the Company. In order to attract and retain qualified individuals as managing director, the Board believed it is reasonable and necessary for the Company to contractually obligate itself to the Service Agreement. In addition, the Board noted that pursuant to Article 21 of the Company's articles of association, the Board may enter into remuneration arrangements with the persons entrusted with the daily management of the Company. Accordingly, the Board deemed the Service Agreement to be in the interests of the Company.

Following discussion, the Board (with the exclusion of Mr Junck) RESOLVED that:

- (i) The Service Agreement be APPROVED;
- (ii) The Company enter into, execute and deliver the Service Agreement; and

- (iii) The Service Agreement be executed and ratified, as far as necessary, on behalf of the Company by the signature of the Chairman.

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

9. **INFORMATION PROVIDED IN ACCORDANCE WITH ARTICLE 608 OF THE BELGIAN COMPANY CODE**

In July 2009 the Company successfully raised €120,000,000 through a convertible bond issue.

The effect of the issue of the bonds and in particular their conversion for the shareholders of the Company can be summarized and illustrated as follows.

(i) Conversion of the bonds

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 that the full principal amount of all bonds of € 120 million were to be converted, the Company would have to issue 15,747,411 new shares in total based on the aforementioned conversion price.

(ii) Consequences as to share capital and outstanding shares

The share capital of Company amounts to €1,490,760,008.09 represented by 100,000,000 shares without nominal value, each representing one 100,000,000<sup>th</sup> part of the share capital of the Company. The current fractional value of the Company's shares amounts to (rounded) €14.91 per share, which is the result of a fraction, the numerator of which is equal to the Company's share capital (i.e. €1,490,760,008.09) and the denominator of which is equal to the Company's outstanding shares (i.e. 100,000,000 shares).

Based on the simulation referred to in paragraph (i), if all of the bonds were to be converted into shares, the Company's share capital and the number of outstanding shares would be increased, and have a dilutive effect for the shareholders, as indicated below:

	<u>Before the conversion</u>	<u>After the conversion</u>
Share capital	€1,490,760,008.09	€1,610,760,008.09
Outstanding shares	100,000,000	115,747,411
Fractional value	€14.91	€13.92
Dilution	/	13.6%

As illustrated above, the fractional value of the Company's shares would also decrease. Pursuant to Belgian law, certain rights of the Company's shareholders (including in particular the preferential subscription right of shareholders in relation to capital increases in cash and the issue of convertible bonds and warrants, the voting rights attached to shares, and the right to participate in the proceeds following a liquidation in the event of a dissolution of the Company) are determined in function of the fraction of the share capital that is represented by the shares. The decrease of the participation of each share in the share capital following the share capital as illustrated and simulated would go hand in hand with the issue of new shares as a consequence of a conversion of bonds. However, following a conversion, all shares will again represent the same fractional value of the Company's share capital.

(iii) Consequences as to net equity

Based on the audited consolidated annual financial statements of the Company for the financial year ended on 31 December 2008 (which have been prepared in accordance with the International Financial Reporting Standards or IFRS), the consolidated accounting net equity of the Company amounted to €711.10 million or €7.11 per share (based on 100,000,000 shares). Based on the audited non-consolidated annual financial statements of the Company for the financial year ended on 31 December 2008 (which have been prepared in accordance with the Belgian generally accepted accounting principles or Belgian GAAP), the non-consolidated accounting net equity of the Company amounted to €1,494,531,722.00 or €14.95 per share (based on 100,000,000 shares).

Based on the simulation referred to in paragraph (i), if all of the bonds were to be converted into shares, the Company's accounting net equity on a consolidated and non-consolidated basis as per 31 December 2008 as referred to above, would be increased as indicated below:

	<u>Before the conversion</u>	<u>After the conversion</u>
Consolidated net equity (in million)	€711.10	€831.10
Outstanding shares	100,000,000	115,747,411
Consolidated net equity per share	<u>€7.11</u>	<u>€7.18</u>
Non-consolidated net equity	€1,494,531,722.00	€1,614,531,722.00
Outstanding shares	100,000,000	115,747,426
Non- consolidated net equity per share	<u>€ 14.95</u>	<u>€13.95</u>

As indicated above, the conversion price of the bonds is higher, respectively lower than the accounting net equity per-share based on the aforementioned consolidated financial statements and non-consolidated financial statements of the Company for the financial year ended on 31 December 2008. Accordingly, in the event the bonds were to be converted, this would entail, from an accounting perspective, an accretion, respectively a dilution, of the accounting net equity per share, based on the consolidated financial statements and the non-consolidated financial statements of the Company for the financial year ended on 31 December 2008. Whether the same effect would also apply based on future financial statements of the Company, is dependent on the Company's accounting net equity position at the time of conversion.

(iv) Financial considerations

The question of whether a bond will be effectively converted will ultimately depend on the decision of the respective holders of the bond. Such decision will likely be in function of the market price of the shares of the Company at the moment of conversion compared to the conversion price of the bonds. The holder of the bonds could realize a capital gain at the time of conversion of the bonds if the market price of the shares of the Company at that moment is higher than the conversion price of the bonds and if the shares can be sold at such price on the market.

In view hereof, it is not yet certain whether ultimately the bonds will be converted. On the other hand, if the bonds are converted into shares, this will entail a financial dilution of the

existing shareholders, as the basis assumption is that a bondholder will only convert a bond if the conversion price is lower than the prevailing market price of the shares at the time of conversion.

**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 management report on the consolidated financial statements in accordance with article 119 of the Belgian Company Code which is included in the 2009 annual report. The 2009 annual report can be downloaded from the Company's website: [www.nyrstar.com](http://www.nyrstar.com).

**11. INFORMATION PROVIDED IN ACCORDANCE WITH THE ROYAL DECREE DATED 17 DECEMBER 2008**

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. RESULT ALLOCATION (IN EUR)**

Taken into account the loss carried forward from prior accounting year amounting to 705,169,391.77 EUR which is completely absorbed by a capital decrease and taken into account the profit of the financial year 2009 for 49,403,847.10 EUR, the Board of directors proposes to allocate the net profit as follows:

- additions to the legal reserve :	2,470,192.31 EUR
- additions to the undistributable reserves :	1,054,495.86 EUR
- dividend payable :	10,000,000.00 EUR
- profit to be carried forward :	35,879,158.93 EUR

**13. 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 24 February 2010

On behalf of the Board of Directors,

  
\_\_\_\_\_  
Roland Junek

CEO

  
\_\_\_\_\_  
De Wilde J Management BVBA  
represented by its permanent  
representative Julien De Wilde  
Chairman

Attachment: Statutory accounts per 31 December 2009