

# President of the Antwerp Corporate Court appoints panel of experts to investigate Nyrstar restructuring

*Diegem, November 2, 2020*

## **Decision by the President of the Corporate Court confirms that minority shareholders request is well founded**

In her decision of 30 October 2020, the President of the Antwerp Corporate Court has granted the request for the nomination of a Panel of Experts to further investigate the allegations of wrong doing to the detriment of Nyrstar NV, and the subsequent restructuring to a UK company 98% owned by Nyrstar's reference shareholder Trafigura, as made by a syndicate of minority shareholders grouped around RSQ Investors, a division of the Quanteus Group.

The President also convicted Nyrstar NV to provision the costs of the Panel of Experts.

In her decision, the President states explicitly that **"In today's proceedings, they [=the minority shareholders] bring indications that the interests of the company may be endangered by the actions of its organs if certain transactions are not independently ordered. For this reason, the claim is well founded for the appointment of experts with a mandate as described in the enacting terms."** (free translation from Dutch)

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## **Important step towards full transparency and justice**

With her decision, the President confirms that our allegations are sufficiently important and well-founded to warrant an exceptional discovery by the experts. She also confirms that Nyrstar and its Board have not adequately addressed all concerns and allegations of their shareholders as to the complete story behind the collapse of Nyrstar and the alternative options that were available versus an effective takeover by Trafigura.

Kris Vansanten, Managing Partner of RSQ Investors said: "We appreciate that the Court has taken the time to carefully listen to and support our arguments on why further investigation is warranted into what actually transpired at Nyrstar during its critical last months as a Belgian operating company as well as over the period where Trafigura placed Board Members and people in key management positions of Nyrstar, and signed a Shareholder's Agreement and a Commercial Agreement with Nyrstar."

"We see this decision as an important further victory in our fight for justice, which has three objectives: (i) demonstrate how one-sided *Cuckoo capitalism* as shown in the Nyrstar case leads to the disappearance of Belgian companies to the sole benefit of foreign companies & their advisors abusing the existing legal system, governance codes and codes of conduct, and create public support for a more conscious capitalism and policy measures to increase the protection of minority

shareholders, Belgian companies & institutions, the rule of law and ultimately of our collective welfare, (ii) get proper, punitive and significant compensation for the damages caused by Trafigura and its allies, and (iii) keep Nyrstar NV alive as an investment fund giving it the opportunity to play an important role in our Belgian economy.”

### **Key allegations brought forward by the minority shareholders**

“The last year we spent significant time, effort and resources to solidify our initial hypotheses into tangible allegations. As a result, we are more than ever convinced that Trafigura followed a well-thought through *Cuckoo* strategy to acquire the assets of Nyrstar at below market value to the detriment of all the other shareholders (called ‘minority shareholders’, but effectively together owning more than 75% (!) of Nyrstar), by (i) committing infringements against the corporate governance rules and corporate law, (ii) positioning Trafigura loyalists in key board and management positions, ensuring effective control of the company, (iii) granting excessive commercial discounts to Trafigura despite the agreement to apply the principles of “arm’s length” and “on normal commercial conditions”, as communicated to the shareholders, (iv) disposing mining assets at below market prices, (v) contributing themselves to a avoidable liquidity crisis to cover the resulting cash needs at strangling conditions and guarantees and (vi) finally, when all forward looking parameters were turning positive and promising, take the lead in a restructuring effort in which minority shareholders were efficiently ruled out, and in which Trafigura took a 98% ownership of the operational assets of Nyrstar, leaving the other shareholders empty-handed. According to our finetuned estimates, this resulted in a loss for Nyrstar in the range of at least € 1.2-1.8 billion, while Trafigura is now essentially the sole beneficiary of the estimated annual € 400 million+ EBITDA cash flows.”

“In the past months we found ample additional strong indications that, during Trafigura’s reign at Nyrstar, the Nyrstar board failed in its fiduciary duty to the company and to all shareholders”, adds Evelyne van Wassenhove, Partner at RSQ Investors. “Despite the significant hurdles facing minority shareholders - the most important of which are (i) the asymmetric access to information, (ii) the important costs associated with conducting legal proceedings, (iii) an uneven access to the established advisory and expert firms, and (iv) an existing legal and regulatory system that has important built-in impediments for swift and effective preventive action by minority shareholders when their interests are violated - we were able to identify important indications of wrong doing that will now be subject to further analysis by the Panel of Experts. We are determined to pursue our efforts until full transparency is created and justice has been done.”

### **Fight for justice**

“We will not accept that Trafigura has taken away the operating assets of a promising Belgian stock quoted multinational to a company in the UK, where 98% of the future cash flows make their way to companies based in Malta, Singapore and Curaçao to name a few. If we let this kind of Cuckoo capitalism prevail, the credibility of our institutions will be challenged as well as the trust in the mere foundations of the rule of law on which our collective prosperity has been built.

We simply want to help defend what is right for Belgian minority shareholders, Belgian companies, Belgian workers, the Belgian Stock Exchange; simply put for Belgium. Consequently, we believe it is in the interest of the Belgian establishment to join us in our fight for justice, in the interest of the mere survival of our welfare state as we know it.”

## **Call for support**

Kris Vansanten concludes: “We would like to express our sincerest gratitude to the shareholders who joined our syndicate and to our team of experts and advisors that surrounded us in the previous months and that helped us reach this important milestone. Without their help and commitment to the merits of our case, we would not have been able to stand up in our uphill battle.

We also call on other former and current shareholders or investors who adhere to our principles of conscious capitalism to join us in our fight for justice and, by doing so, make us stronger. We are convinced that, in line with an increasing conscientization in Europe, it is time to change our current way of doing business and to move towards a conscious capitalism embedded in our true Western European social economic values, whereby profit seeking goes hand in hand with a relentless pursuit for societal impact and stakeholder well-being, in a true win-win-win spirit for all.”

If Nyrstar NV shareholders band together, we hope and believe that we can win justice and that Nyrstar NV can be dotted with the proceeds from damages won to reinvest in Belgium, particularly in small and medium-sized companies that can become the fabric of a revitalized economic engine for employment and growth for the Belgium economy.”

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## **About RSQ Investors**

RSQ Investors focuses on companies undergoing restructuring or in a special situation, from the point of view of corporate social responsibility. RSQ Investors only invests in cases in which it can make a significant if not decisive impact to help realise the identified potential.

## **About Quanteus Group:**

Since its foundation in 2004, Quanteus Group has systematically expanded its field of action with the creation and acquisition of several companies. By doing so, Quanteus Group achieves its objective of bridging the gap between strategy and implementation. Quanteus Group focuses on impact, while maximizing the opportunities offered by two major business economic and social transformations, namely the digital transformation and the transformation of the economic business model from pure profit maximization to a socially responsible capitalism based on sustainability and win-win thinking, resulting in healthy profitability. Quanteus Group propagates values driven entrepreneurship and consists of The House of Marketing, Upthrust, BrightWolves, HighMind, QuantIM and RSQ Investors, who in a complementary way combine general knowledge with specific expertise and the capacity to develop solutions. In this way, Quanteus Group helps its clients to have more impact and to transform themselves into market leaders. While doing so, the group wants to contribute to social welfare and prosperity.

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