

**NYXOAH SA**  
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B-1435 Mont-Saint-Guibert  
VAT: BE 0817.149.675  
Register of legal entities of Walloon Brabant

(hereinafter the "**Company**")

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**ADVICE OF THE COMMITTEE OF INDEPENDENT DIRECTORS  
PURSUANT TO ARTICLE 7:97 OF THE CODE OF COMPANIES AND ASSOCIATIONS  
(the "**Advice**")**

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**1 INTRODUCTION**

**1.1 CONTEXT**

The Company has the intention to increase its share capital within the framework of the authorised capital by way of a contribution in cash against issuance of new shares with cancellation of the preferential subscription rights for the benefit of the investors, whereby the contemplated capital increase shall consist of a follow-on offering by way of an accelerated placement with compilation of an order book ("*accelerated bookbuilding*") in the context of a public offering in the United States of America and a private placement to certain qualified and/or institutional investors outside the United States of America, including within the European Union (the "**ABB**") and whereby the new shares to be issued shall be admitted to listing and trading on The Nasdaq Global Market and Euronext Brussels under symbol "NYXH" (the "**Offering**"). The ABB would take place via Cantor Fitzgerald & Co. and Degroof Petercam NV/SA (the "**Underwriters**").

In the context of the Offering, the Board intends to decide within the framework of the authorised capital and with cancellation of the preferential subscription rights for the benefit of the Underwriters and indirectly for the investors purchasing Offered Shares or Option Shares, subject to completion of the Offering, on a capital increase by way of a contribution in cash with issuance of up to 8,333,333 new shares (the "**Offered Shares**") for an aggregate amount (excluding issue premium) of (rounded) EUR 1,431,666.61 (the "**Capital Increase**"). The final amount of the Capital Increase and the number of Offered Shares to be issued will depend on the final subscription price per Offered Share (the "**Offering Price**") and the number of Offered Shares subscribed to under the Capital Increase (the "**Shares to be Issued**").

In the underwriting agreement to be entered into between the Company and the Underwriters in connection with the Offering (the "**Underwriting Agreement**"), the Company will grant to the Underwriters an option to subscribe to additional new shares of the Company (the "**Option Shares**") at the Offering Price per Option Share, for use solely in covering any over-allotments made by the Underwriters in the sale and distribution of the Offered Shares (the "**Over Allotment Option**"). No Option Shares can be subscribed to unless Offered Shares previously have been, or simultaneously are subscribed to. The number of Option Shares shall not exceed 15% of the number of Offered Shares subscribed to in the Offering.

Therefore the Board intends to decide, within the framework of the authorised capital and with cancellation of the preferential subscription rights for the benefit of the Underwriters, subject to completion of the Offering and exercise of the Over Allotment Option, on a capital increase by way of contribution in cash (the "**Over Allotment Capital Increase**") with issuance of up to 1,249,999 Option Shares for an aggregate amount (excluding issue premium) of (rounded) EUR 214,749.83. The final amount of the Over Allotment Capital Increase and the number of Option Shares to be issued will depend on the Offering Price and the number of Option Shares for which the Over Allotment Option is exercised (the "**Option Shares to be Issued**").

## **1.2 POTENTIAL INTEREST OF RELATED PARTIES**

Mr. Robert Taub, chairman of the board of directors of the Company (the "**Board**") and directly and indirectly (including via Robelga SRL and BMI Estate) controlling 11.82% of the outstanding shares with voting rights in the Company, who may qualify as "related party" to the Company in the meaning of Article 7:97 of the Belgian Code of Companies and Associations (the "**CCA**"), (the "**Related Party**") has expressed interest to participate in the ABB and potentially purchase (either directly or indirectly through entities controlled/managed by him or otherwise) Offered Shares or Option Shares.

It also cannot be excluded that other existing shareholders (like for example Cochlear Investments Pty Ltd, that may qualify as "related party" to the Company in the meaning of Article 7:97 CCA) may be interested in participating in the Offering.

The Board believes that the contemplated Offering would be in the interest of the Company and that allowing the Related Party (and other "related parties" to the Company in the meaning of Article 7:97 CCA interested in participating in the Offering, if any) to participate in the Offering (together the "**Transaction**") would imply additional demand for the Offered Shares in the ABB process.

Therefore, and even though the Offering would involve an ABB process and the Related Party (and any such other interested related party) would not be entitled to any guaranteed allocation of any Offered Shares or Option Shares, the Board has decided to apply – even if only out of precaution – the related party procedure in accordance with Article 7:97 CCA and has requested a committee of three independent directors (the "**Committee**") to issue a written advice as referred to in Article 7:97 CCA in relation to the contemplated Transaction.

### **1.3 LEGAL FRAMEWORK**

The scope of the procedure provided for in Article 7:97 CCA, *inter alia*, extends to any decision or any transaction made in execution of a decision of the board of directors of a listed company, which relates to a related party.

Within the framework of this procedure, a committee composed of three independent directors of the listed company must first submit a written and reasoned advice to the board of directors of the listed company, describing at least the following elements: the nature of the decision or transaction, a description and estimate of its financial consequences, a description of any other consequences, as well as the advantages and disadvantages for the company, where applicable over time. In this respect, the committee must place the proposed decision or transaction in the context of the company's strategy, and indicate whether, if it entails disadvantages for the company, these are compensated by other elements of this strategy, or are manifestly illegitimate.

### **1.4 COMPOSITION OF THE COMMITTEE**

The Committee is composed of the following independent directors of the Company:

- Mr. Jürgen Hambrecht;
- Mr. Kevin Rakin; and
- Wildman Ventures, LLC, represented by Mr. Daniel Wildman.

Each of the Committee members confirms, to the extent necessary, that they are independent directors within the meaning of Article 7:87 CCA.

### **1.5 BASIS FOR THIS ADVICE**

This Advice is issued based on preliminary Board discussions regarding the potential Offering and certain draft documentation related to the Offering, including the draft Underwriting Agreement, that has been made available to the Committee.

The Committee met, via video conference, on May 22, 2024. Prior to that meeting, the Committee members consulted each other and exchanged information and views.

This Advice of the Committee is addressed to the Board, which will resolve on the Transaction.

### **1.6 NO INDEPENDENT EXPERT**

Given the features of the Transaction, the Committee has not instructed an independent expert to assist and/or advise in respect of its assessment of the Transaction.

## **2 DESCRIPTION OF THE TRANSACTION**

### **2.1 GENERAL BACKGROUND**

The Board frequently considers various options to raise additional equity in order to fund its operations. In that context, the Board is now contemplating to launch the Offering.

As set out in further detail in section 1.1 above, the contemplated Offering would consist of a follow-on offering by way of an accelerated placement with compilation of an order book ("*accelerated bookbuilding*") in the context of a public offering in the United States of America and a private placement to certain qualified and/or institutional investors outside the United States of America, including within the European Union. The ABB process would be conducted by the Underwriters, Cantor Fitzgerald & Co. and Degroof Petercam NV/SA.

Based on the preliminary Board discussions regarding the potential Offering, the principal purposes of the Offering are to use the funds raised:

- for pre-commercialization and commercialization activities in the United States;
- to continue gathering clinical data and to support physician initiated clinical research projects related to OSA patient treatments;
- to further finance research and development activities related to the next generation of the Genio system and to continue to build a pipeline of new technologies and explore potential collaboration opportunities in the field of monitoring and diagnostics for OSA; and
- for other general corporate purposes, including, but not limited to, working capital, capital expenditures, investments, acquisitions, should the Company choose to pursue any.

In the context of market sounding discussions with a limited number of potential investors (subject to customary confidentiality and standstill undertakings) prior to deciding on the Offering, the Company / Underwriters also had confidential discussions with the Related Party, who indicated that he would be interested to participate in the ABB and potentially purchase (either directly or indirectly through entities controlled/managed by him or otherwise) Offered Shares or Option Shares.

### **2.2 CANCELLATION OF PREFERENTIAL SUBSCRIPTION RIGHT**

The Offering would be decided by the Board within the framework of the authorised capital, with cancellation of the preferential subscription rights of each existing shareholder, and – as far as needed and applicable – of each holder of existing subscription rights (*droits de souscription / inschrijvingsrechten*) issued by the Company, in relation to the Capital Increase and the Over Allotment Capital Increase. Such cancellation would be for the benefit of the Underwriters and indirectly for the benefit of the investors purchasing Offered Shares and/or Option Shares in the Offering.

### **2.3 DESCRIPTION OF THE FINANCIAL AND OTHER CONSEQUENCES OF THE TRANSACTION**

If the Related Party would be allowed to participate in the Offering, the final subscription price per Offered Share and Option Share and the number of Offered Shares or Option Shares that may be allocated to the Related Party (if any) will depend on the outcome of the ABB.

As part of the ABB process, eligible interested investors (including the Related Party and potentially other "related parties" to the Company in the meaning of Article 7:97 CCA interested in participating in the Offering (if any) if allowed to participate) may express to the Underwriters their interest to subscribe for Offered Shares, as well as the number of Offered Shares and the issue price at which they are willing to subscribe for Offered Shares. The ABB process would be conducted by the Underwriters in line with market practice and based on objective criteria.

The Offering Price (including issue premium) will be determined by the Board (or, as the case may be, by the Board's specially authorised representative(s)) in consultation with the Underwriters, taking into account, *inter alia*, the results of the bookbuilding process. It cannot be excluded that the Offering Price will be lower than the price at which the Company's shares are traded on The Nasdaq Global Market or Euronext Brussels immediately prior to the launch of the Offering.

The Option Price shall be equal to the Offering Price.

The aggregate net (after deduction of fees and expenses relating to the Offering) amount of the subscription price for the Shares to be Issued and for the Option Shares to be Issued shall strengthen the net equity and liquidity position of the Company.

The Shares to be Issued and the Option Shares to be Issued pursuant to the Offering (if any) will be ordinary shares and will rank *pari passu* with all other shares in the Company and will be fully entitled to dividend over the entire current financial year during which they are issued and over the subsequent financial years.

The Capital Increase and the Over Allotment Capital Increase is expected to result in a significant dilution of the participations of the existing shareholders in the Company. As is also the case for their voting power and their part in the capital and net equity, the *pro rata* right of the existing shareholders to share in the profits and, if applicable, the liquidation bonus of the Company will dilute.

The actual impact of the Capital Increase and the Over Allotment Capital Increase on the patrimonial and membership rights of the existing shareholders will depend on the Offering Price and Option Price respectively, and the number of Shares to be Issued and the number of Option Shares to be Issued respectively. However, it is impossible at this time to accurately calculate the dilution that the Capital Increase and the Over Allotment Capital Increase will entail as no exact data is currently available in respect of the Offering Price (and hence also the Option Price) and the number of Shares to be Issued and Option Shares to be Issued. The Committee notes that the special report that the Board will draw up in accordance with articles 7:179, 7:191 and 7:193 CCA in relation to the Offering will contain some hypothetical simulations of the effect of the Capital Increase, the Over Allotment Capital Increase and the cancellation of the preferential subscription rights on the financial and membership rights of the existing shareholders.

### 3 OPINION OF THE COMMITTEE

In view of the above, the Committee has considered the following:

- the Transaction, the Capital Increase and the Over Allotment Capital Increase will support the execution of the Company's strategy and extend the cash runway of the Company;
- the accelerated bookbuilding process is a fair and objective method on the basis of which a responsible Offering Price (and hence Option Price) can be determined. After all, the Board (or, as the case may be, the Board's specially authorised representative(s)) shall, in consultation with the Underwriters, determine the Offering Price (and hence the Option Price) and the number of Shares to be Issued, taking into account various parameters, including, *inter alia*, the number of Offered Shares for which subscription applications were received, the size of the subscription applications received, the quality of the investors who submitted such subscription applications and the prices at which such applications were submitted, as well as the market conditions and the market price of the Company's share at that time;
- in addition, the accelerated bookbuilding process is a customary method to determine the market value of the shares in the framework of a follow-on offering of shares in the United States of America and outside the United States of America, including within the European Union;
- the cancellation of the preferential subscription rights will be for the benefit of the Underwriters and indirectly for the investors purchasing Offered Shares in the Offering. In the current market environment, it is difficult to raise equity on the financial markets and the speed at which one must act to seize opportunities on the financial markets does not allow one to wait for the expiry of the time periods that should be taken into account in a capital increase with preferential subscription rights. The cancellation of the preferential subscription rights allows the Company to rapidly respond to potential opportunities in the financial markets, and hence to rapidly have access to additional financing in a fast and efficient manner;
- in addition, the cancellation of the preferential subscription rights allows the Company to implement the Capital Increase very quickly and thus mitigate the execution risk relating to the implementation of the Capital Increase, which reduces the risks associated with market volatility;
- the Related Party (and other "related parties" to the Company in the meaning of Article 7:97 CCA that may be interested to participate in the Offering, if any) does not benefit from different investment terms compared to the other investors that will participate in the Offering;
- the participation of the Related Party (and other "related parties" to the Company in the meaning of Article 7:97 CCA that may be interested to participate in the Offering, if any) in the Offering demonstrates that he continues to support the Company;

- the proposed timing may nevertheless be considered suboptimal in terms of stock price, which makes the equity raise under the Offering more dilutive to the non-participating shareholders than in a more favourable context with a higher stock price.

#### 4 CONCLUSION

Based on the information provided, the Committee considers that the proposed Transaction is in line with the strategy pursued by the Company, will be done on market terms, and is unlikely to lead to disadvantages for the Company and its shareholders (in terms of dilution) that are not sufficiently compensated by the advantages that the Transaction offers the Company.

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Drawn up by the committee of independent directors on May 22, 2024.

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Mr. Jürgen Hambrecht  
Director

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Mr. Kevin Rakin  
Director

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Wildman Ventures, LLC,  
represented by Mr. Daniel Wildman  
Director