

NYXOAH SA
Rue Edouard Belin 12
B-1435 Mont-Saint-Guibert
VAT: BE 0817.149.675
Register of legal entities of Walloon Brabant

(hereinafter the "**Company**")

**SPECIAL REPORT OF THE BOARD OF DIRECTORS IN ACCORDANCE WITH
ARTICLES 7:198 JUNCTO 7:179 §1, 7:191, AND 7:193 OF THE BELGIAN CODE OF
COMPANIES AND ASSOCIATIONS**

1 INTRODUCTION

This special report is drawn up by the board of directors of the Company (the "**Board**") in accordance with Articles 7:198 *juncto* 7:179, 7:191, and 7:193 of the Code of Companies and Associations (the "**CCA**") in the context of the proposed increase of the registered capital of the Company for an amount equal to EUR 351,768.06 (excluding issue premium) by way of contributions in cash for an aggregate amount of EUR 13,350,000 (including issue premium) against issuance of 2,047,544 new shares within the framework of the authorised capital and with cancellation of the preferential subscription rights for the benefit of the Investors (as defined below in Section 2.2) (the "**Capital Increase**").

In accordance with Articles 7:198 *juncto* 7:179, 7:191 and 7:193 CCA, the Board shall include in this report, *inter alia*, a justification of the transaction and the issue price in light of the interest of the Company taking into account the financial position of the Company, the identity of the beneficiaries, the nature and the size of the contributions, a description of the reasons for the cancellation of the preferential subscription rights, and the effect on the patrimonial and membership rights of the shareholders.

This report should be read in conjunction with the report of EY Réviseurs d'Entreprises SRL, a limited liability company (*société à responsabilité limitée*) under Belgian law, having its registered office at De Kleetlaan 2, 1831 Diegem, Belgium, represented by Carlo-Sébastien D'Addario, company auditor, being the statutory auditor of the Company (the "**Statutory Auditor**"), prepared in accordance with Articles 7:198 *juncto* 7:179, §1 and 7:191 and 7:193 CCA.

2 DESCRIPTION OF THE CAPITAL INCREASE

2.1 Available amount of the authorised capital

As set out in article 7 of the articles of association of the Company, the extraordinary shareholders' meeting of 7 September 2020 has explicitly authorised the Board to increase the share capital in one or more times for an (aggregate) amount of EUR 3,680,297.39 in the framework of the authorised capital.

Article 7 of the articles of association of the Company provides, *inter alia*, the following:

"Every capital increase decided upon by the board of directors in the context of authorised capital shall be effected in accordance with the modalities to be determined by the board of

director, and may amongst others be achieved (i) by contributions in cash or in kind, or a combination of both, (ii) by capitalisation of reserves, whether available or unavailable for distribution, and capitalisation of issue premiums, (iii) with or without the issuance of new shares (at, above or below the par value and with or without issue premium), with or without voting rights, that will have the rights as will be determined by the board of directors, or (iv) with issuance of convertible bonds or warrants, bonds with warrants or other securities.

The board of directors is authorised, when exercising its powers within the framework of the authorised capital, to restrict or cancel, in the interest of the company, the preferential subscription rights of each shareholder, and – as far as needed and applicable – of each holder of subscription rights issued by the Company. This restriction or cancellation of the preferential subscription rights can also be done in favour of members of the personnel of the company or of its subsidiaries, or in favour of one or more persons other than members of the personnel of the company or of its subsidiaries."

Since the authorization by the extraordinary shareholders' meeting on 7 September 2020, the Board has used the authorised capital (i) on 25 June 2021 in the framework of the capital increase by means of a contribution in cash through an initial public offering in the United States and the exercise of an over-allotment option, in the aggregate amount of EUR 560,110.95 (excluding issue premium), (ii) on 8 September 2021 for the issuance of warrants under the 2021 Warrants Plan, in the aggregate amount of EUR 240,520.00, (iii) on 22 December 2022 in the framework of the conditional capital increase by means of a contribution in cash in the context of a so called "at the market" offering, in an amount of up to EUR 1,030,800 (excluding issue premium), and (iv) on 28 December 2022 for the issuance of warrants under the 2022 Warrants Plan, in the aggregate amount of EUR 120,260.

On the date of this report, the available authorised capital therefore amounts to EUR 1,728,606.44 (excluding issue premium), which is more than sufficient for the Capital Increase.

2.2 Description of the structure of the Capital Increase

The Board has the intention to increase the registered capital of the Company, within the framework of the authorised capital, with an amount equal to EUR 351,768.06 (excluding issue premium) by way of contributions in cash for an aggregate amount equal to EUR 13,350,000 (including the issue premium) against issuance of 2,047,544 new shares in the Company (the "**New Shares**") that will be subscribed for by the persons listed in the below table (the "**Investors**") for the amounts set out next to their names:

Investor	Subscription amount (in EUR) (rounded numbers)	Number of New Shares (rounded down)
Resmed Inc.	4,600,000 EUR	705,521
Together	2,900,000 EUR	444,785
BMI Estate (controlled by Mr. Robert Taub)	3,700,000 EUR	567,484
JH Capital GmbH (controlled by Mr. Jürgen Hambrecht)	1,900,000 EUR	291,411
Rudolf Fuchs Kapitalanlagegesellschaft GmbH	250,000 EUR	38,343
TOTAL	13,350,000 EUR	2,047,544

As a result of the Capital Increase, the registered capital of the Company shall increase from EUR 4,507,614.39 to EUR 4,859,382.45 and the number of issued and outstanding shares shall increase from 26,239,441 to 28,286,985.

Pursuant to Article 7 of the Company's articles of association, the Board is authorised to restrict and/or cancel the preferential subscription rights in accordance with the CCA.

The Board proposes to cancel 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 for the benefit of the Investors.

2.3 The issue price

The issue price per New Shares shall be EUR 6.52, of which (i) EUR 0.1718 (being the current, rounded, par value of the existing shares) shall be recorded as capital, and (ii) EUR 6.3482 shall be recorded as issue premium on a separate unavailable account on the passive side of the balance sheet called "issue premiums".

2.4 Rights attached to the New Shares

On the date of this report, all shares outstanding and issued shares belong to the same class and have the same rights attached to them.

The New Shares will belong to the same class of shares as the existing shares, will rank *pari passu* with all other shares in the Company and will be fully entitled to dividend over the entire financial year during which they are issued and over the subsequent financial years.

The New Shares will be registered shares and will not have a nominal value. Each New Share will represent the same fraction of the Company's registered capital as the other outstanding shares of the Company.

2.5 Listing

It is the intention that the New Shares will be admitted to trading on Euronext Brussels. Once the New Shares are issued, the Company will request the admission of the New Shares to trading on Euronext Brussels.

3 JUSTIFICATION

3.1 Justification of the Capital Increase

The Board is of the opinion that the Capital Increase is justified and in the interest of the Company as it will (further) strengthen the Company's cash position to support the execution of the Company's strategy.

The principal purpose of the Capital Increase is to increase the Company's financial flexibility to support:

- the progress of the commercialization of the Genio system outside of the United States;
- the ongoing DREAM study in the United States; and
- other general corporate purposes.

The Company's cash and cash equivalents in aggregate amounted to EUR 95 million on 31 December 2022, which indicates that the Company does not urgently need to raise additional financing. Nevertheless, taking into account the volatility of financial markets and the ongoing geopolitical tensions, it is clearly in the interest of the Company to extend its cash runway, and even more so when this can be done without having to accept a discount on current trading prices, which is the case for the Capital Increase (see Section 3.3). The Capital Increase will extend the Company's cash runway beyond mid 2024.

3.2 Justification of the cancellation of the preferential subscription rights

The Board is of the opinion that the cancellation of the preferential subscription rights of the existing shareholders of the Company 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 for the benefit of the Investors is justified for, *inter alia*, the following reasons:

- 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 (i) to rapidly respond to the interest currently expressed by the Investors to provide additional financing to the Company at market price, and hence (ii) to rapidly have access to additional financing in a fast and (cost) efficient manner without having to accept a discount;
- 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 is of great importance given the current volatility of the financial markets.

3.3 Justification of the issue price

The issue price per New Share is set at EUR 6.52 (including issue premium), which is the closing price of the Company's share (on Euronext Brussels) on March 23, 2023, being the trading day on which the principle of the Capital Increase was approved by the Board and the subscription commitments were given by the Investors. This means that the Investors will not benefit from any discount compared to the market price.

Therefore the Board is of the opinion that the aforementioned issue price per New Share is justified and in the interest of the Company.

3.4 Effect of the Capital Increase and the cancellation of the preferential subscription right on the patrimonial and membership rights of the existing shareholders

On the date of this report, the registered capital of the Company amounts to EUR 4,507,614.39, represented by 26,239,441 shares, without mention of nominal value, which are fully paid up.

In addition, on the date of this report there were 2,457,030 subscription rights (*droits de souscription / inschrijvingsrechten*) outstanding (the "**Existing Warrants**") that have been issued by the Company under existing share-based incentive plans¹, entitling the warrant holders to subscribe to in aggregate 2,534,375 new shares in the Company upon exercise, in accordance with the conditions applicable to the relevant subscription rights. Of such Existing Warrants, (i) 1,294,770 warrants have been granted and accepted, entitling the warrant holders to subscribe to in aggregate 1,372,115 new shares in the Company upon exercise (the "**Granted Existing Warrants**") and (ii) 1,162,260 warrants have either been granted but not yet accepted or are still available for grant, entitling the warrant holders (if granted and accepted) to subscribe to in aggregate 1,162,260 new shares in the Company upon exercise (the "**Available Existing Warrants**").

Furthermore, on 22 December 2022, in the context of a so-called "at the market" offering (the "**ATM Offering**"), the Board decided, within the framework of the authorised capital and subject to completion of the effective placement(s) and subscription(s) under the ATM Offering (each, a "**Placement**"), on a conditional capital increase by way of contribution in cash with issuance of up to 6,000,000 new shares in aggregate (the "**ATM Offered Shares**") for an aggregate amount (excluding issue premium) of up to EUR 1,030,800. The final amount of that capital increase and the number of ATM Offered Shares that effectively will be issued in the framework of the ATM Offering will depend on the number of ATM Offered Shares subscribed to in the various Placements and the final subscription price per ATM Offered Share for each Placement. In the context of a Placement of ATM Offered Shares, on 29 March 2023 the registered capital of the Company was increased from EUR 4.440.069,16 to EUR 4,507,614.39 and the number of issued and outstanding shares was increased from 25,846,279 to 26,239,441.

The New Shares will rank *pari passu* with all other shares in the Company and will be fully entitled to dividend over the entire financial year during which they are issued and over the subsequent financial years.

The issuance of the New Shares will result in a dilution of the participations of the (then) 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 (that do not participate in the Capital Increase) to share in the profits and, if applicable, the liquidation bonus of the Company will dilute.

The impact of the Capital Increase with the issuance of the New Shares on the patrimonial and membership rights of the existing shareholders that do not participate in the Capital Increase is described in some further detail in Annex 1 to this report. It should be noted that, for the purposes of the

¹ The warrants of the Company issued on 3 November 2016 under the 2016 Warrants Plan, on 12 December 2018 under the 2018 Warrants Plan, on 21 February 2020 under the 2020 Warrants Plan, on 8 September 2021 under the 2021 Warrants Plan and on 28 December 2022 under the 2022 Warrants Plan.

calculations set out in Annex 1, (a) the Available Existing Warrants and the ATM Offered Shares (except for 393,162 ATM Offered Shares that were issued on 29 March 2023) are disregarded and (b) it is assumed that all Granted Existing Warrants are exercised.

4 CONCLUSION

The Board believes that the Capital Increase, the cancellation of the preferential subscription rights of each existing shareholder, and – as far as needed and applicable – of each holder of existing subscription rights issued by the Company, in the context of the Capital Increase, are in the interest of the Company.

This special report of the Board as well as the Statutory Auditor's report(s) will be filed and published in accordance with Articles 2:8 and 2:14, 14° CCA.

Drawn up by the Board on 30 March 2023.

On behalf of the Board,

Name:	Mr. Olivier Taelman
Capacity:	Director – Proxyholder

Annex 1 - Simulation of the effect of the Capital Increase and the cancellation of the preferential subscription right on the patrimonial and membership rights of the existing shareholders

	Total number of shares, on a <i>fully diluted basis</i> ² , immediately before the issuance of the New Shares pursuant to the Capital Increase		Total number of shares, on a <i>fully diluted basis</i> ³ , immediately after the issuance of the New Shares pursuant to the Capital Increase	
	Number	%	Number	%
Existing shares	26,239,411	95.03%	26,239,411	88.47%
Shares to be issued upon exercise of the Granted Existing Warrants	1,372,115	4.97%	1,372,115	4.63%
New Shares to be issued pursuant to the Capital Increase	-	-	2,047,544	6.90%
TOTAL	27,611,526	100%	29,659,070	100%
Dilution (on a <i>fully diluted basis</i>)⁴ of the existing shareholders that do not participate in the Capital Increase compared to prior to the issuance of the New Shares pursuant to the Capital Increase			6.90%	

² I.e., assuming exercise of all Granted Existing Warrants and issuance of the corresponding shares but disregarding the Available Existing Warrants and the ATM Offered Shares (except for 393,162 ATM Offered Shares that were issued on 29 March 2023).

³ I.e., assuming exercise of all Granted Existing Warrants and issuance of the corresponding shares but disregarding the Available Existing Warrants and the ATM Offered Shares (except for 393,162 ATM Offered Shares that were issued on 29 March 2023).

⁴ I.e., assuming exercise of all Granted Existing Warrants and issuance of the corresponding shares but disregarding the Available Existing Warrants and the ATM Offered Shares (except for 393,162 ATM Offered Shares that were issued on 29 March 2023).

	Capital ⁵ (EUR)	Net Equity ⁶ (EUR)
A. Prior to the issuance of the New Shares pursuant to the Capital Increase – on an <i>undiluted</i>⁷ basis		
Amount represented by each share	0.1718	5.1333
Total	4,507,614.39	134,695,008.85
B. Prior to the issuance of the New Shares pursuant to the Capital Increase – on a <i>fully-diluted</i>⁸ basis		
Amount represented by each share	0.1718	5.6904
Total	4,743,343.75	157,120,102.29
C. Immediately after the issuance of the New Shares pursuant to the Capital Increase – on a <i>fully-diluted</i>⁹ basis		
Amount represented by each share	0.1718	5.7477
Total	5,095,111.81	170,470,089.17

⁵ Calculated starting from the registered capital of Nyxoah SA as at the date of this report, being EUR 4,507,614.39.

⁶ Calculated starting from the net equity of Nyxoah SA as at 31 December 2022, being EUR 134,695,008.85 (Belgian GAAP; non-consolidated).

⁷ Disregarding the Available Existing Warrants and the potential issuance of the corresponding shares upon exercise of such warrants, and disregarding the ATM Offered Shares (except for 393,162 ATM Offered Shares that were issued on 29 March 2023).

⁸ I.e., assuming exercise of all Granted Existing Warrants and issuance of the corresponding shares but disregarding the Available Existing Warrants and the ATM Offered Shares (except for 393,162 ATM Offered Shares that were issued on 29 March 2023).

⁹ I.e., assuming exercise of all Granted Existing Warrants and issuance of the corresponding shares but disregarding the Available Existing Warrants and the ATM Offered Shares (except for 393,162 ATM Offered Shares that were issued on 29 March 2023).