

**Rosier SA**  
*Société anonyme*  
Route de Grandmetz (MO) 11 box a  
7911 Frasnes-lez-Anvaing  
0401.256.237 (RLE Tournai)

(the **Company**)

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**ADVICE FROM THE COMMITTEE OF INDEPENDENT DIRECTORS TO THE BOARD OF THE  
COMPANY IN ACCORDANCE WITH ARTICLE 7:97 §3 OF THE BCCA**

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In accordance with article 7:97 §§1-2 of the Belgian Code of Companies and Associations (the **BCCA**), for any envisaged resolution of the board of directors or any transaction in execution of a board resolution in a listed company that relates to such listed company's related party within the meaning of IAS 24 (except if the related party is a subsidiary of that listed company), the procedure as set out in article 7:97 §§3-4/1 must be applied (the so-called "related party procedure").

Pursuant to article 7:97 §3 of the BCCA, any envisaged resolution or transaction as referred to in article 7:97 §§1-2 of the BCCA must be submitted beforehand to a committee of three independent directors. This committee is required to issue a written advice to the board of directors in respect of such resolution or transaction. If the committee deems it necessary, it can appoint one or more independent experts to assist.

The written advice must contain at least the following information: (i) a description of the nature of the relevant resolution or transaction, (ii) a description and computation of the financial consequences and a description of any other consequences and (iii) a description of the advantages and disadvantages of the decision or transaction for the company, if applicable in the long term. Furthermore, the committee is required to (iv) describe how the proposed resolution or transaction fits within the company's policy and, in case this resolution or transaction causes disadvantages to the company, an indication whether the resolution or transaction compensates with other elements of the company's policy or whether it is manifestly illegitimate in view to the company's policy. Any comments from the expert(s) are also incorporated in or attached to the advice of the committee.

The present advice of the Company's committee of three independent directors (the **Committee**) has been prepared in accordance with this article 7:97 §3 of the BCCA and reflects the discussions held during the Committee's meeting of 22 September 2022.

The Committee is composed of the following directors: (i) Anba BV, represented by Anne-Marie Baeyaert, (ii) Exploration BV, represented by Dina De Haeck and (iii) NADECE BV, represented by Nathalie De Ceulaer. The aforementioned directors are independent directors within the meaning of article 7:87 §1 of the BCCA.

**1. NATURE OF THE ENVISAGED DECISIONS OR TRANSACTIONS AND APPLICATION  
OF ARTICLE 7:97 §3 OF THE BCCA**

**1.1 Proposed Transaction**

On 10 August/21 October 2020, the Company and Rosier Nederland B.V. (the Company's wholly owned subsidiary), on the one hand, and Borealis L.A.T GmbH, a wholly owned subsidiary of Borealis AG (the Company's controlling shareholder), on the other hand, entered into an agreement for the supply of hot ammonium nitrate solution (NASC) by Borealis to the Company (the **Supply Agreement**).

The Company, together with Rosier Nederland B.V., and Borealis L.A.T GmbH now intend to enter into a side letter to the Supply Agreement (the **Side Letter**) to amend and clarify certain terms of the Supply Agreement and their contractual relationship.

## **1.2 Application of article 7:97 of the BCCA**

Borealis AG, as controlling shareholder of the Company (with a participation of approximately 98.09% in the Company (*i.e.* 2,947,550 shares)), is a “related party” of the Company within the meaning of IAS 24. Borealis L.A.T GmbH, as a wholly owned subsidiary of Borealis AG, is also a “related party” of the Company within the meaning of IAS 24.

In light thereof, the Board has decided to apply the procedure provided for in article 7:97 of the BCCA, before any decision is made in relation to the Side Letter.

Accordingly, the Board has assigned the Committee with the responsibilities set out in article 7:97 §3 of the BCCA. The Committee has the possibility, as it deems necessary, to appoint any independent expert to support the Committee in the exercise of these responsibilities. Considering that the Side Letter generally improves the terms of the Supply Agreement for the Company and most of the amendments are based on the recommendations of the expert appointed at the time of the evaluation of the initial Supply Agreement, the Committee decided not to appoint an independent expert for the evaluation of the Side Letter.

The Committee is composed of the following independent directors within the meaning of article 7:87 §1 of the BCCA:

- Anba BV, represented by Anne-Marie Baeyaert ;
- Exploration BV, represented by Dina De Haeck; and
- NADECE BV, represented by Nathalie De Ceulaer.

The Committee convened to discuss and assess the Side Letter on 22 September 2022, through a virtual “Teams” meeting.

## **2. FINANCIAL AND OTHER CONSEQUENCES OF THE TRANSACTION**

### **2.1 Financial consequences**

Since the formula for calculating the purchase price is not modified by means of the Side Letter, there are no financial consequences from the point of view of the cost for the product.

The conclusion of the Side Letter could nevertheless have a financial impact for the Company since certain conditions applicable to the NASC supply will be modified, such as the new (mutual) monthly volume commitment. The financial impact of such commitment cannot be estimated at this time but it is expected that this new commitment will have a positive effect for the Company, as it will improve the plannability and reliability of NASC supply by Borealis (see also further below).

## **3. ADVANTAGES AND DISADVANTAGES OF THE TRANSACTION**

The expected advantages and disadvantages of the Side Letter could be described as follows, based on the current version of the Side Letter presented to the Committee for evaluation:

### **3.1 Advantages**

- (a) *New monthly volume commitment*

The Supply Agreement currently does not include any commitment on the part of Borealis to supply a minimum monthly amount of NASC. It only includes an annual commitment. On the other hand, it imposes on the Company the obligation to place a monthly order with Borealis, which may be accepted or declined at the discretion of Borealis.

The Side Letter now provides for a commitment by Borealis, as of January 2022, to deliver to the Company a monthly minimum quantity of NASC corresponding to 30% of the respective volume allocation of the annual quantity to the relevant calendar month and site, except in cases of force majeure or hardship (which are further defined in the Supply Agreement).

This monthly supply commitment aims to ensure the plannability and reliability of NASC supply by Borealis, as such plannability and reliability are essential to enable the Company to plan and pursue its business in an effective and prosperous manner.

*(b) Change of control*

The Side Letter provides for a mutual waiver of each party's rights to terminate the Supply Agreement in the event of a change of control over Borealis Nitro or over the Company and/or Rosier Nederland B.V. respectively. This amendment is deemed to be in the Company's interest since it will allow the Supply Agreement to be maintained (and NASC supply to be ensured) notwithstanding a potential change of control.

*(c) Termination notice in case of a reduction of the volumes*

Whereas the Supply Agreement allows either party to terminate the Supply Agreement for convenience with a notice period of 12 months prior to each renewal date (the next being 30 April 2023), the Side Letter provides that ordinary termination ("for convenience") requires 18 months' prior notice instead (after written termination notice end of month).

Extending the notice period would allow the Company to adequately prepare for the transition in the event of termination of the Supply Agreement.

*(d) Adjustment to pro rata termination*

Under the Supply Agreement, Borealis has the right to prematurely terminate the Supply Agreement subject to a six months' prior notice, in the event that the production of NASC is terminated in full or reduced by more than 20% of the average in fact production volume of the latest three full contract years.

In case Borealis uses such termination right and sends such termination notice, the parties to the Supply Agreement shall use their best efforts to agree in good faith on the consequences of such circumstances relating to the continuation of the supply of NASC until the expiry of the Supply Agreement on a lower volume level and to the extent such is economically reasonable.

It appears that this termination right in the Supply Agreement does not entirely or adequately reflect the spirit of the Supply Agreement.

Therefore, the Side Letter provides that, in the event that a definitive and irrevocable decision has been made to reduce for a period of 12 months or longer, the production of NASC by 20% or more of the actual average volume of the supply within the three previous contract years, the agreed annual supply volume and monthly volume commitments shall be reduced "*pro rata*" corresponding to the extent of the reduction of the production of NASC. Borealis would only have a termination right if the production of NASC is ceased entirely. In the event of termination, the obligation of Borealis to deliver the monthly volume commitments would continue to apply until the termination of the Supply Agreement has become effective, unless the parties agree otherwise during their good faith discussions.

### 3.2 Disadvantages

#### *(a) Monthly supply commitment*

The Committee pointed out that, while the Side Letter would impose a monthly supply commitment on Borealis, on the flip side, pursuant to clause 2.1 of the Supply Agreement, it would also result in a monthly purchase commitment on behalf of the Company, corresponding to 30% of the annual volume allocation to the relevant month. The Committee considers such reciprocity in commitment to be reasonable and to not be a point of concern given the Company's needs in NASC.

#### *(b) Termination for convenience*

The Supply Agreement currently provides for an initial fixed term of three years until 30 April 2023, with automatic renewal for successive periods of two years, unless Borealis or the Company terminate the Supply Agreement with a minimum of 12 months' notice prior to each renewal date of the Supply Agreement. The Side Letter would modify the term and termination conditions of the Supply Agreement, which would then be of indefinite duration (notwithstanding other termination options pursuant to the Supply Agreement) and could be terminated at any time by either of the parties with a minimum of 18 months' prior written notice.

This means that each party would be entitled to terminate the Side Letter (and the supply of NASC pursuant to the Supply Agreement) at any time upon the end of a given calendar month by submitting written termination notice to the other party.

#### *(c) Adjustment to pro rata termination*

Although the Committee considers that the removal of Borealis' full termination right in the event of a total shutdown or reduction of more than 20% of NASC's production (as described in section 3.1(d) above) is an advantage for the Company, the Committee noted that the replacement provision in the Side Letter does not subject any notice period to the definitive and irrevocable decision to reduce the NASC production by 20% or more (for a period of 12 months or longer).

#### *(d) Other*

The Committee noted that there has been no broader renegotiation of the Supply Agreement, in particular, in relation to (i) the liability clause included in the Supply Agreement, which excludes Borealis' liability for *i.a.* "direct and consequential damages" and (ii) the broad definition of force majeure, which *a.o.* includes machinery breakdown.

With respect to this drawback, the Committee referred to its opinion of October 2020, which was included in the corresponding minutes of the meeting of the independent directors' committee.

### **3.3 Determination of whether the decision will result in a disadvantage for the Company which, in light of the strategy of the Company, is manifestly unreasonable.**

On the basis of a thorough assessment of the proposed Side Letter (including the above-described consequences and (dis)advantages), the Committee is of the opinion that the expected advantages of the Side Letter exceed the expected disadvantages thereof, in particular, as it will improve the plannability and reliability of NASC supply by Borealis, as such plannability and reliability are essential to enable the Company to plan and pursue its business in an effective and prosperous manner.

## **4. CONCLUSION**

The Committee has assessed the envisaged Side Letter in the light of the criteria included in article 7:97 of the BCCA and concluded that the expected advantages of the Side Letter exceed the expected disadvantages

thereof, which leads to the conclusion that the Side Letter is to the advantage and in the interest of the Company.

The Side Letter is in line with the Company's strategic policy and is not manifestly unreasonable and the Committee affirms its positive advice in relation to the Side Letter.

*[Signature page follows]*

DocuSigned by:

*Anne-Marie Baeyaert*

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Anba BV, represented by Anne-Marie Baeyaert  
Independent director

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*Dina De Haeck*

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Exploration BV, represented by Dina De Haeck  
Independent director

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*Nathalie De Ceulaer*

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NADECE BV, represented by Nathalie De Ceulaer  
Independent director