

The logo for Kernel Holding S.A. consists of the word "KERNEL" in a white, serif, all-caps font, centered within a dark green rectangular background.

Current report no 14/2023

dated 18 April 2023

**COMMUNICATION WITH SOME OF THE SHAREHOLDERS OF KERNEL HOLDING S.A.
REGARDING THE DELISTING**

Kernel Holding S.A., a company with a registered office in Luxembourg (the “**Company**”) hereby informs that on 17 April 2023 the Company received a letter from some of the Company's shareholders regarding delisting addressed to the Kernel Holding S.A. and Namsen Limited, which is enclosed as an Appendix 1 to this current report.

Additionally, the Company informs that on 18 April 2023 the Company replied to such letter, with the reply being enclosed as an Appendix 2 to this current report.

Legal grounds: Legal grounds: Art. 17 of REGULATION (EU) No 596/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.

Signatures of individuals authorised to represent the Company:

Anastasiia Usachova

Viktoriia Lukianenko

Warsaw, 17 April 2023.

1. **Open Pension Fund PZU "Złota Jesień"** based in Warsaw, Poland
2. **UNIQA Open Pension Fund** based in Warsaw, Poland
3. **Nationale-Nederlanden Open Pension Fund**, based in Warsaw, Poland
4. **Nationale-Nederlanden Voluntary Pension Fund** based in Warsaw, Poland
5. **FRAM Closed-end Investment Fund** based in Warsaw, Poland
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12. **PKO Zabezpieczenia Emerytalne - Specialized Open Investment Fund** based in Warsaw, Poland
13. **PKP Employee Ownership Fund Specialized Open Investment Fund** based in Warsaw, Poland
14. **Lind Value II ApS**, based in Denmark.
15. **Kopernik Global Investors**, based in Florida, United States

hereinafter referred to as: "**Shareholders**"
represented by:

[REDACTED]
RKKW - KWAŚNICKI, WRÓBEL & Partners
46 Wilcza St., 4th floor, 00-679 Warsaw

Kernel Holding S.A., based in Luxembourg,
9 Rue De Bitbourg, L-1273 Luxembourg,
registered in the Luxembourg Trade and Companies
Register (Registre de commerce et des sociétés -
RCS) under number B109173
„**Company**”

Namsen Limited based in Nicosia, Cyprus
Agiou Prokopiou, 13, Egkomi, 2406, Nicosia,
Cyprus 2 Registry number: HE 175712
„**Namsen**”

Dear Sirs,

acting on behalf of the Shareholders and considering that:

- (i) The Company is a public company whose shares are admitted to trading and listed on the regulated market - the primary market operated by the Warsaw Stock Exchange ("WSE") since 2007, and its shares have the ISIN code LU0327357389,
- (ii) Shareholders are shareholders of the Company holding a total of 18,139,437 shares in the Company representing a total of 21.59% of the Company's share capital, entitling them to a total of 18,139,437 votes at the Company's General Meetings, representing 21.59% of the total number of votes in the Company
- (iii) The Company's major shareholder, Namsen Limited, a company based in Nicosia, Cyprus ("**Namsen**"), announced on March 30, 2023, in accordance with Article 91 (5) of the Act on Offering¹ a tender offer for the sale of the Company's shares (the "**Tender Offer**");
- (iv) Namsen's intention is to **delist the** Company's shares from the WSE pursuant to Article 91 of the Act on Offering ("**Delisting**");
- (v) according to the announcement made to the public, Namsen and the Company believe that the requirement under Article 91(3) of the Act on Public Offering will allegedly be met if the decision to delist the Company's shares from the WSE is made not by the Company's ownership body, but solely by the Company's *Board of Directors (Board of Directors)*, i.e. without the participation or even discussion of all the Company's interested shareholders;
- (vi) **in the Shareholders' opinion, depriving the Company's shareholders of the opportunity to express their opinion on Delisting is obviously contrary to Article 91(3) of the Act, since, in accordance with the cited provision, a legally relevant resolution regarding the withdrawal of the Company's shares from trading on the WSE should be adopted by the ownership body (i.e., composed of the Company's**

¹ Act of July 29, 2005 on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organized Trading, and Public Companies; i.e., Journal of Laws 2022, item 2554 ("**Act on Offering**").

shareholders), by a majority of 9/10 votes cast in the presence of shareholders representing at least half of the share capital;

Shareholders hereby, demand that

the Company and Namsen act in compliance with Polish generally applicable law, in particular Article 91(3) of the Act on Public Offering, and respect the corporate and property rights of the Company's shareholders, and **create conditions for the adoption of a resolution on Delisting by the Company's competent constituent body, i.e. the General Meeting of Shareholders, and recognize this resolution as adopted only if it is adopted by a majority of 9/10 votes cast in the presence of shareholders representing at least half of the share capital.**

JUSTIFICATION

1. **In the opinion of the Shareholders, the claim that a legally relevant corporate decision on Delisting can be made by a body that does not directly consist of shareholders of a public company directly contradicts the literal and functional interpretation of Article 91(3) of the Act, as well as violates the fundamental corporate and property rights of shareholders.**
2. First of all, it should be emphasized that the Delisting procedure set forth in Article 91 of the Act on Offering is fully applicable to any public company whose shares have been admitted to trading on a regulated market in Poland. The literal wording of Article 91 Section 1 Sentence 1 of the Act on Offering, in the version in effect as of November 30, 2019, clearly states that:

*"The Commission, at the request of a public company, shall grant permission to withdraw shares from trading on a regulated market or in an alternative trading system, if the conditions set forth in paragraphs 3-5, 9 and 10 are met."*² .

Lege non distinguente, the norm resulting from the cited provision (and subsequent ones contained in Article 91 of the Act on Offering) refers to any "public company," i.e. a company at least one share of which is admitted to trading on a regulated market or introduced to trading in an alternative trading system on the territory of the Republic of Poland (cf. the legal definition contained in Article 4(20) of the Act on Offering). The registered office of the said issuer, by contrast, is irrelevant, including whether it is located within or outside the territory of Poland.

3. In turn, according to Article 91(3) of the Act on Offering:

*"The application referred to in paragraph 1 may be filed if the **general meeting or other competent body constituting the public company**, by a majority of 9/10 of*

² Until the date indicated, the first sentence of Article 91 Section 1 of the Act on Offering read: "The Commission, at the request of an issuer with its registered office in the territory of the Republic of Poland, shall grant permission for shares to be restored to documentary form (abolition of dematerialization of shares), if the conditions set forth in paragraphs 5-8 have been met."

*the votes cast in the **presence of shareholders representing at least half of the share capital**, has adopted a resolution to withdraw the shares from trading on the regulated market or in the alternative trading system. A copy of the resolution must be attached to the application."*

4. In light of the above-mentioned provision, the national legislator has set two corporate conditions necessary to be met for granting permission to withdraw shares of any public company from trading on a regulated market in the territory of the Republic of Poland:
 - (i) adoption of an appropriate decision by the general assembly or other competent decision-making body;
 - (ii) adoption of the aforementioned resolution by a qualified majority of 9/10 of the votes cast in the presence always of shareholders (not members of the managerial body, including directors) representing at least half of the share capital.

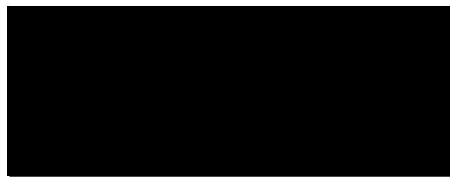
These are two independent prerequisites that must be met together in order for the condition provided for in Article 91(3) of the Act on Offering to be fulfilled.

5. The legislator, in Article 91(3) of the Act on Offering, clearly indicates that the decision to delist shares of a public company must come from a (qualified majority) of shareholders. First, it explicitly refers to the body with authority in the subject matter as the "general meeting." Secondly, if a specific company lacks a body with the cited name (e.g., in an issuer registered outside Poland), then the cited provision clearly requires a resolution (i.e., a collective decision) of "another competent constituent body of a public company." The use of the word "competent" in this case is not coincidental (in accordance with the prohibition of *per non est* interpretation), but should be read to mean that the resolution in question is not to come from any constituent body of the issuer, but only one within which the decision is made by shareholders. Article 91(3) of the Act on Offering accentuates this by establishing a uniform (both for the decision of the general meeting and for the decision of any other body of the competent constituent body of a public company) requirement of "the presence of shareholders" in the formulation of a legally relevant corporate decision. Therefore, it is not possible to consider that the resolution specified in Article 91(3) of the Act on Offering may be adopted by a body other than one consisting precisely of shareholders.
6. In particular, the condition in question cannot be considered fulfilled in a situation where a resolution to withdraw the shares of a public company from trading on a regulated market in the territory of the Republic of Poland is adopted by a governing body (regardless of its name) that does not consist of shareholders.

In conclusion, it should be firmly stated that in light of the unambiguous wording of Article 91(3) of the Act on Offering, a prerequisite for any Delisting is an appropriate resolution of the Company's *General Meeting of Shareholders*.

7. Notwithstanding the above, it should be taken into account that depriving minority shareholders, particularly funds managing the funds of Polish pensioners, of a say in

Delisting, and thus depriving them of the protection for their assets under management guaranteed by the Polish Act on Offering, is certainly contrary to the fundamental principles of the legal order of the Republic of Poland. Property remains under the protection of the state, as explicitly expressed in the Polish Constitution³. This circumstance remains relevant particularly in view of the fact that the potential Delisting forces some minority shareholders (including Shareholders) to sell shares under the Tender Offer as a consequence of the fund's legal inability to invest its assets in shares of private companies⁴. Pension funds will not be able to hold the Company's shares in their portfolio once they cease to be traded on the organized market.



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³ Article 21(1) of the Polish Constitution: "*The Republic of Poland protects property and the right of inheritance.*"

⁴ Article 141 of the Act of August 28, 1997 on the organization and operation of pension funds (i.e., Journal of Laws 2022, item 2342).

Appendix 2

18 April 2023

From:

Kernel Holding S.A.

9, rue de Bitbourg

L-1273 Luxembourg,

Grand Duchy of Luxembourg

(the "**Company**")

To:

[REDACTED]
RKKW - KWASNICKI, WRÓBEL & Partners
ul. Wilcza 46, 4th floor, 00-679 Warsaw
attorneys representing:

1. **Open Pension Fund PZU "Złota Jesien"** based in Warsaw, Poland
2. **UNIQA Open Pension Fund** based in Warsaw, Poland
3. **Nationale-Nederlanden Open Pension Fund** based in Warsaw, Poland
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13. **PKP Employee Ownership Fund Specialized Open Investment Fund** based in Warsaw, Poland
14. **Lind Value II ApS** based in Denmark.
15. **Kopernik Global Investors** based in Florida, United States

(the "**Shareholders**")

Dear Sirs and Mesdames,

We, the Company, represented by the board of directors of the Company (the "**Board of Directors**"):

1. Acknowledge the receipt of the Shareholders' letter dated and delivered to the Company on 17 April 2023 (the "**Shareholders' Letter**").
2. Do not agree with the Shareholders' interpretation and the arguments presented in the Shareholders' Letter. Under applicable provisions of law the Company does not have any obligations to create conditions for the adoption of a resolution on withdrawal of the Company's

shares from trading on the regulated market operated by the Warsaw Stock Exchange (the "WSE") (the "**Delisting**") by the Company's General Meeting of Shareholders and recognize this resolution as adopted only if it is adopted by a majority of 9/10th of the votes cast in the presence of shareholders representing at least half of the share capital, pursuant to Polish law, in particular, Art. 91(3) of the Act on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organized Trading and Public Companies, dated 29 July 1995 (the "**Act on Public Offering**").

3. Assure the Shareholders that the Board of Directors made its decision after a very careful legal consideration of the subject and before adoption of the appropriate resolution obtained an independent legal advice in respect of the procedure and applicable laws governing the delisting of the Company's shares from trading on the regulated market operated by the WSE.
4. Pursuant to Art. 91(3) of the Act on Public Offering, to which the Shareholders' Letter refers, the application to the Polish Financial Supervision Authority (the "PFSA") for consent to the company's delisting from the WSE may be filed with the PFSA if the general meeting or **another competent decision-making body of a public company** adopts a resolution on the withdrawal of its shares from trading on the WSE, which should be adopted by a majority of 9/10th of the votes cast in the presence of shareholders representing at least half of the share capital.
5. However, contrary to the views expressed in the Shareholders' Letter, the above obligations resulting from the Act on Public Offering **are not applicable to companies having their registered offices outside of the territory of Poland**. It is clear that an obligation to obtain a general meeting's or other competent corporate body's approval for the delisting should be classified as a requirement of a corporate nature, and, in accordance with the Polish Act of 4 February 2011 - Private international law (the "**Private International Law**"), the scope of the legal entity's corporate matters is governed **by the laws of the country in which it is incorporated**.
6. The law of the country of the registered office regulates, in particular, competences and rules of functioning of an entity's corporate bodies. Since the Company has its registered office in Luxembourg, **rules regulating the corporate body competent to decide on a delisting, the manner of adoption of this resolution (in particular the quorum and the majority necessary for such resolution to be adopted), provided for in the relevant Luxembourg law apply exclusively**, and Polish law requirements are not applicable in this respect.
7. It is indisputable that the phrase "**another competent decision-making body of a public company**" mentioned in Art. 91 (3) of the Act on Public Offering refers to a foreign company if the regulations governing that company grant such power to a body other than the general meeting. It is also clear that the requirements of the aforementioned provision cannot be applied to the body of a foreign company, if only by virtue of the wording used, which may apply to a company under Polish law. The phrase "majority of 9/10th of the votes cast" refers to the provisions of the Polish Act of 15 September 2000, the Commercial Companies Code (the "CCC") and should be interpreted on the basis of the provisions of the CCC.
8. The above conclusion is consistent with the PFSA's view on that matter, on the basis of which the obligation of obtaining a general meeting's decision on the withdrawal of a public company's shares from trading on the WSE by a majority of 9/10th of the votes cast in the presence of shareholders representing at least half of the share capital will not be applicable to companies with their registered offices outside of Poland. The PFSA is of the opinion that the verification of the fulfilment of these conditions should be carried out on the basis of regulations of the country in which the public company has its registered office. The same rules will prevail for

verification of the correctness of the procedure for convening the meeting of a relevant body and the inclusion of the matter of the proposed delisting on the agenda of that meeting¹.

9. With regard to the **competent decision-making body** of the Company, as the Company has its registered office in Luxembourg, it should be determined pursuant to the Luxembourg law of 10 August 1915 on commercial companies, as amended (the "**Luxembourg Companies Law**"), as well as according to the consolidated articles of association of the Company dated 23 September 2022 (the "**Articles**"), pursuant to which **the Board of Directors is vested with the broadest powers to perform all acts of management and dispositions in compliance with the corporate object**. Furthermore, in accordance with Luxembourg law, all powers not expressly reserved by prevailing Luxembourg law provisions or by the Articles to the general meeting of shareholders fall within the competence of the Board of Directors. Luxembourg law, in particular the Luxembourg Companies Law, does not expressly address the decision on the delisting of company's shares from trading on a stock exchange to the general meeting of shareholders. Likewise, the Articles do not expressly require a decision on the delisting of the Company's shares from trading on a stock exchange to be taken by the general meeting of shareholders. Further to the above, and in particular on the basis of article 441-5 of the Luxembourg Companies Law, **it may be concluded that from the Luxembourg legal perspective the decision on the delisting of the Company's shares from trading on the WSE falls within the exclusive competence of the Board of Directors of the Company.**
10. The Act on Public Offering requires that before the resolution on the withdrawal of a public company's shares from trading on the WSE is adopted, a delisting tender offer for subscription for the sale of shares of that company by all other shareholder is announced (Art. 91 (5) of the Act on Public Offering). Therefore, on 30 March 2023, Namsen Limited with its registered office in Nicosia, Cyprus, the major shareholder of the Company ("**Namsen**") announced a tender offer for the sale of shares in the Company (the "**Tender Offer**") and published an appropriate Tender Offer circular. In the Tender Offer circular, which is publicly available, it is clearly stated, that *"during the Tender Offer (irrespective of its results) Namsen intends to request the Company's Board of Directors to consider a resolution concerning delisting of the Company's Shares from the WSE. After adoption of a relevant delisting resolution by the Company's Board of Directors, the Company will apply to the PFSA for approval on delisting of the Company's Shares from the WSE."* In pursuance of this, Namsen duly requested the Company's Board of Directors to adopt a relevant Delisting resolution, which was made publicly available on the Company's website in a current report, No. 08/2023.
11. As far as the Company is aware, pursuant to applicable provisions of Polish law, in particular, Article 77a of the Act on Public Offering, the Tender Offer circular was submitted to the PFSA together with the intention of Namsen to announce the Tender Offer at least 17 business days prior to the announcement of the Tender Offer, i.e. 6 March 2023 and, in accordance with Article 77b of the Act on Public Offering, the PFSA did not raise any objections and did not have any comments to the Tender Offer circular or the planned process of the Company's delisting as set out in the Tender Offer circular.
12. Based on the view set out above, it must therefore be concluded that the obligations of a strictly corporate legal nature provided for in Article 91 of the Public Offering Act do not apply to the Company. Consequently, the obligation provided for in Article 91(3) of the Act on Public Offering (nor, of course, the obligation provided for in Article 91(4)) regarding the adoption of a resolution by the general meeting by a certain majority using a certain quorum do not apply to the Company. This means that in matters of the relevant body of the Company competent to

¹ See answer to Q10 and Q11 of the PFSA's Q&A on the procedure of withdrawal of a company's shares from trading on the regulated market or in the ASO available at: https://www.knf.gov.pl/dla_rynku/Informacje_dla_podmiotow_nadzorowanych/Rynek_kapitalowy/Q&A_dot_zezwozenia_KNF_na_wycofanie_akcji_spolki#:~:text=Komisja%20okre%C5%9Blaj%C4%85c%20przedmiotowy%20termin%20mo%C5%BCe,na%20wycofanie%20akcji%20z%20obrotu

adopt the resolution on Delisting and formal requirements applying to such resolution (e.g. regarding the majority of votes) the laws of the Principality of Luxembourg shall be determinative, so the relevant resolution on the Delisting was adopted by the Company's Board of Directors on 13 April 2023 and published on the Company's website in a current report, No. 13/2023.

13. The interpretation of Polish law on delisting matters, including in the Shareholders' Letter, in particular, the Art. 91 (3) of the Act on Public Offering, adopted by the Shareholders, is not correct and is misleading for other shareholders of the Company. In order to protect and respect the corporate and property rights of the Company's shareholders, it is worth mentioning, that in the event of any legal action being brought against the Company, the Company's Board of Directors and/or any director individually, the position and interpretation described above will be defended by all available means.

Yours faithfully,

DocuSigned by:
Anastasiia Usachova
4C1718ABF45E47D...

Name: Anastasiia Usachova

Position: Director

DocuSigned by:
Viktoriiia lukianenko
403619718D984FF

Name: Viktoriiia lukianenko

Position: Director