Current report no. 21/2024

dated 14 May 2024

KERNEL'S POSITION ON COMPLIANCE WITH CORPORATE GOVERNANCE BEST PRACTICES FOR WSE-LISTED COMPANIES

Kernel Holding S.A. (the "**Company**") hereby informs that the Company obtained the report of the independent capital markets and corporate governance expert, Ph.D. in law, and licensed securities broker in Poland (the "**Report**") with respect to the position of the Warsaw Stock Exchange's Corporate Governance Consultation Committee (the "**Committee**") disclosed in the Company's current report No 3/2024 and claiming about the violation of the Principle 4.13. of the "Best Practices for WSE Listed Companies 2021" by the Company when carrying the share issue in August-September 2023.

Specifically, the Report concluded that Principle 4.13 of the Best Practice for WSE Listed Companies 2021 does not apply to the Company's offering, but even if applicable, the Company complied with all conditions of that principle.

The Report also specifies that the Committee has no mandate in the generally applicable Polish capital markets regulations or even in the internal regulations of the Warsaw Stock Exchange. Finally, the Report demonstrates an apparent conflict of interest for at least five persons participating in the works of the Committee.

The full text of the Report is disclosed in the attachment to this current report.

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 authorized to represent the Company:

Anastasiia Usachova

Sergiy Volkov

Attachment

EXPERT'S OPINION

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I. Introduction

1.1. Kernel Holding S.A. commissioned an expert in capital markets and corporate governance (hereinafter: "the expert"), to prepare an opinion in which the expert would provide answers to the following questions:

1) Did the reasons stated by Kernel Holding S.A. for the new offering constitute a rational, economically justified need to urgently raise capital in accordance with Rule 4.13 of the Best Practice for WSE Listed Companies 2021?
2) Did Kernel Holding S.A.'s decision to address the new offering only to qualified investors being shareholders of the Company comply with Rule 4.13(b) of the Best Practice for WSE Listed Companies 2021, i.e. were qualified investors *"selected according to objective general criteria"*?
3) Could the schedule for the subscription of shares in Kernel's new offering, have prevented any categories of eligible investors from participating in it, and thus effectively limited the opportunity for eligible investors to subscribe for shares in the new issue?
4) Was the determination of the issue price of the shares according to the rules of the so-called Dutch auction in compliance with Rule 4.13(c) of the Best Practice for WSE Listed Companies 2021, i.e. was the issue price *"determined in book-building on the market*"?
5) Would the offers of the investors who sought to participate in the share offering, but were not allowed to do so due to formal deficiencies, change the issue price, making it in a more *"rational relation with the current share price",* in accordance with Rule 4.13(c) of the Best Practice for WSE Listed Companies 2021?
6) What is the legal status of the WSE's Corporate Governance Consultation Committee under Polish capital markets regulations and the WSE's internal regulations, in particular what is the composition of the Committee and how is it established, particularly in the context of preventing potential conflicts of interest?
7) Do the Committee's positions or opinions have any binding or indirect legal effect and can they be subject to any formal appeal process?
8) Was the communication between the Committee and Kernel Holding S.A. preceding the publishing of the Committee's position of 24 January 2024 sufficient from a fact-finding perspective and did it provide Kernel Holding S.A. with sufficient opportunity to present its arguments?

1.2. The expert was granted access to the following documents on which he based his opinion:

a) Kernel's current report No. 30/2023 of 22 August 2023,
b) Kernel's current report No. 42/2022 of 23 September 2022,
c) Committee's letter of 7 December 2023,
d) Kernel's e-mail reply of 19 December 2023,
e) Position of the Committee on breach of Principle 4.13 by Kernel dated 25 January 2024,
f) Kernel's current report No. 03/2024 of 31 January 2014.

1.3. The expert has also based his opinion on documents acquired by himself:

a) Information on the WSE Corporate Governance Committee (in Polish and English), downloaded from the WSE website on 2.04.2024,
b) ESPI current reports 42/2022, 30/2023, 3/2024 with annexes, downloaded from the infostrefa.com website on 2.04.2024,
c) Position of the Corporate Governance Committee on breach of Principle 4.13 of the "Best Practive for WSE Listed Companies 2021" by Kernel Holding S.A. (in Polish and English), downloaded from the WSE website on 2.04.2024,
d) Best Practice for WSE Listed Companies 2021 (in Polish and English), downloaded from the WSE website on 3.04.2024,
e) Information on the activities of the Association of Individual Investors in the Kernel's case, downloaded from the www.sii.org.pl/tag/kernel.html website on 22.04.2024,

1.4. In Part II, the expert provided a chronology of events related to the issuance of new shares by Kernel Holding S.A. (hereinafter: "Kernel"), in Part III - an analysis of the content of Rule 4.13 of the Best Practice for WSE Listed Companies 2021, in Part IV – an analysis showing that Rule 4.13 does not apply to the issuance of new shares by Kernel, and in Part V - answers to the questions raised by Kernel.

1.5. Executive summary

The main conclusions of the report are as follows:

A) Kernel Holding S.A.'s new offering was in compliance with Rule 4.13 of the Best Practice for WSE Listed Companies 2021, and consequently, the WSE's Corporate Governance Committee's opinion is unjustified and does not correspond with the regulation in place.

In this regard the expert has found that:

a. Rule 4.13 is not applicable to Kernel's new offering as no investor has been granted priority rights in this case;
b. Even if Rule 4.13 was applicable, Kernel complied with all conditions (a), (b), (c) set out therein;
c. The schedule for the subscription of shares in the new issue of Kernel could not in any way prevent any category of eligible investors form participating;
d. The determination of whether the offers of the investors who sought to participate in the new share offering, but were not allowed to do so due to formal deficiencies would have made the market price more reasonable in relation to the current share price is irrelevant to the assessment of compliance with Rule 4.13;
e. Even if the condition from above was relevant, Kernel proved that such offers would not change the issue price.

B) In any case, the Committee's opinions are not legally binding.

In this regards the expert has found that:

a. The Committee has no mandate in the generally applicable Polish capital markets regulations or even in the internal regulations of the Exchange.
b. Although the composition of the Committee has been presented on the Exchange's website, doubts remain as to whether it is up to date and what role is played by each of the persons specified on the website.
c. An apparent conflict of interest was demonstrated for at least five persons participating in the works of the Committee.

II. Chronology of selected events related to the issue of new shares

2.1. On 23 September 2022 at 19:36, Kernel published on ESPI[1] current report ESPI 42/2022, presenting the resolutions adopted that day by the Extraordinary General Meeting of Shareholders. This report was downloaded[2] from the website infostrefa.com, jointly operated by the Warsaw Stock Exchange S.A. (hereinafter: "WSE" or "Exchange" or "GPW") and the Polish Press Agency.

2.2. The report (Appendix 1 to the opinion) was accompanied by an annex (Appendix 2 to the opinion), in which the full communication of Kernel in English with the resolutions of the general meeting was presented, signed by persons authorised to represent the company: Yuriy Kovalchuk and Viktoriia Lukianenko. The information in the report itself (Appendix 1) was also presented in English and duplicates the information presented in Appendix 2, except for the final information.

2.3. It follows from the second resolution that the general meeting approved *"the creation of an authorized share capital of the Company, excluding the current issued share capital"* and by the third resolution the general meeting authorised *"the board of directors of the Company for a period of five (5) years (....) to, from time to time, issue shares, to grant options to subscribe for shares (...) within the limits of the authorized capital to such persons and on such terms as they shall see fit and specifically to proceed with such issue without reserving a preferential right to subscribe to the shares issued for the existing shareholders (...)".*

2.4. On 22 August 2023 at 7:40 a.m. (i.e. at the beginning of the business day, before the start of the trading session), Kernel published current report ESPI 30/2023, in which it reported that on the previous day, 21 August 2023, *"the Board of Directors of the Company adopted resolutions launching the share offering (...) exclusively directed towards the qualified investors"*. This report was also downloaded from the infostrefa.com website. The report itself (Appendix 3 to the opinion) provides a brief summary of this resolution and the annex to this report (Appendix 4 to the opinion) provides the full text of the *"Subscription rules for ordinary registered shares to be issued and offered by Kernel Holding S.A. with its*

[1] ESPI system - a system operated by the Polish Financial Supervision Authority in which issuers of shares listed on a regulated market in Poland are obliged to publish current and periodic reports.
[2] This report and the other ESPI reports were downloaded from the infostrefa.com website on 2.04.2024.

registered office in Luxembourg to qualified investors - existing shareholders of Kernel Holding S.A.".

2.5. In ESPI current report 30/2023 and in the annex to that report, Kernel provided a detailed justification for its decision to conduct a public offering of new shares within the meaning of Article 2(d) Prospectus Regulation[3], *"addressed solely to qualified investors" in* accordance with Article 1(4)(a) of that Regulation. In particular, Kernel has comprehensively described the full rules of book-building, with detailed information on who can participate in the process and how.

2.6. Just over three months later, dated 7 December 2023 the GPW Corporate Governance Committee sent to Mr Andriy Verevskyj, Chairman of the Board of Directors, Kernel Holding S.A., a letter[4] with four questions regarding the conducted share issue (Appendix 5), with the final information that *"responses to the above question will be taken into consideration when formulating the Committee's position on the violation by Kernel Holding S.A. of Rule 4.13 of the Best Practice for GPW Listed Companies 2021".*

2.7. A full analysis of this letter, together with Kernel's responses, will be conducted in Part IV of this opinion. At this point, however, it should be noted that the letter was signed by Agnieszka Gontarek, a *"Chairwoman of the GPW Corporate Governance Consultation Committee".* Another version of the name of this committee appears here: *"The GPW Corporate Governance Consultation Committee",* different from the name in the letter's heading *"Warsaw Stock Exchange's Corporate Governance Consultation Committee"* and different from the name of this committee appearing on the Exchange's website *"The GPW Corporate Governance Committee",* further emphasising its informal and not fully defined nature.

2.8. In addition, it should be pointed out here that although Agnieszka Gontarek signed this letter as chairwoman of the Committee, she is at the same time Director of the Issuers' Department of the WSE, which further supports the conclusion that there is a conflict of interest, as discussed later in paragraphs 4.6.21 - 4.6.22 of the opinion.

[3] Regulation (EU) 2017/1129 of the European Parliament and of the Counsil of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.

[4] The expert received a copy of this letter from Kernel.

2.9. In accordance with the request to respond by 20 December 2023 to the email address indicated, Michael Iavorskyi, Corporate Secretary, Kernel, sent extensive clarifications to this address[5] , at 9:36 a.m. on 19 December, providing comprehensive answers to all four questions (Appendix 6).

2.10. The last sentence of this email was worded as follows: *"We remain at your disposal should you have any additional enquiries",* which is tantamount to declaring a willingness to provide further clarification should the Committee need to ask additional questions.

2.11. However, the Committee did not ask any further questions, but a little over a month later, with a date of 25 January 2024, published on the Exchange*'s* website the *'Position of the Corporate Governance Committee on breach of Principle 4.13 of the "Best Practice for GPW Listed Companies 2021" by Kernel Holding S.A.'* in Polish (Appendix 7) and English (Appendix 8) versions[6] .

2.12. On 31 January 2024 at 8:00 a.m., Kernel published the current report ESPI 3/2024. The report as such (Appendix 9 to the opinion) only contained information on the legal basis, while the full content of Kernel's communication is included in the annex to this ESPI report (Appendix 10 to the opinion). In that report, Kernel explained in detail why it disagreed with the Committee's position indicated above.

III. Content analysis of Rule 4.13 of the Best Practice for WSE Listed Companies 2021

3.1. Before proceeding with further analysis, it is necessary to conduct a detailed analysis of the content of Rule 4.13 of Best Practice for WSE Listed Companies 2021 (hereinafter: "Rule 4.13") and a comparative analysis of this rule as formulated by the Exchange in Polish and English. The full content of Best Practice in Polish is attached as Appendix 11 to the opinion and in English as Appendix 12[7].

[5] The expert received a copy of this email from Kernel.
[6] Both of these documents were downloaded by the expert from the WSE website on 2.04.2024.
[7] Both documents were downloaded by the expert from the WSE website on 3.04.2024.

3.2. It is important to note here that Rule 4.13 was only introduced in the 2021 version of Best Practice and came into effect on 1 July 2021. In earlier versions of Best Practice, there was no rule relating to a new share issue with exclusion of pre-emptive rights.

3.3. Furthermore, one must bear in mind that Rule 4.13 was formulated by the Exchange taking into account the terminology adopted in Poland, i.e. that used in particular in the Polish Commercial Companies Code and the Polish Bond Act. Thus, it is necessary to carry out an analysis based on the Polish language version of these three documents (Best Practice, Commercial Companies Code and Bond Act), in confrontation with their English language versions.

3.4. Unfortunately, as shown in the analysis below, Rule 4.13 has not been translated into English very precisely by the Exchange, with the Exchange not indicating which of the two versions should be taken as the primary one in case interpretative doubts arise due to language differences. This adds to the confusion and makes it much more difficult to determine the actual scope of Rule 4.13. **In order to fully clarify these difficulties and to have a good understanding of the actual meaning of Rule 4.13, it was necessary to carry out a meticulous and painstaking analysis, which the expert has set out below in Parts III and IV of the Opinion. The final result of this analysis is set out in paragraphs 4.9 to 4.16, concluding Part IV of the Opinion.**

3.5. The main part (without subsections) of Rule 4.13 reads as follows in Polish (i.e. in the official basic version): *"Uchwała o nowej emisji akcji z wyłączeniem prawa poboru, która jednocześnie przyznaje prawo pierwszeństwa objęcia akcji nowej emisji wybranym akcjonariuszom lub innym podmiotom, może być podjęta, jeżeli spełnione są co najmniej poniższe przesłanki: (...)"*.

3.6. Although there is no official English version of the Commercial Companies Code, according to the terminology commonly used in the Polish legal system, *"prawo poboru"* is translated into English as *"pre-emptive right"* or *"pre-emptive rigths"*. In particular, in the commonly used Polish legal information system "Lex" maintained by Wolters Kluwer, the latter version of *"pre-emptive rights"* (in the plural) appears[8].

[8] This and further quotations from the Commercial Companies Code, and by extension the Bond Act, were downloaded in English from the "Lex" system.

3.7. In Article 433 § 1 of the Commercial Companies Code, "pre-emptive rights" are defined as follows: *"Shareholders shall have the priority right to take up the newly issued shares in proportion to the number of shares currently held (pre-emptive rights)"* and Article 433 § 2 provides that *"Acting in the interest of the company, the general meeting may deprive shareholders, in whole or in part, of their pre-emptive rights",* subject to the conditions formulated further in these provisions and in the provisions that follow.

3.8. Consequently, the content of the main part of Rule 4.13 should have been translated into English as follows: *"A resolution on a new share issue with exclusion of pre-emptive rights, which at the same time grants the priority right to subscribe for the new issue shares to selected shareholders or other entities, may be adopted if at least the following conditions are met: (...)".*

3.9. The second condition necessary for the application of Rule 4.13, is formulated as: *"which at the same time grants the priority right to subscribe for the new issue shares to selected shareholders or other entities".* The Polish legal system does not explicitly provide for such a possibility of granting priority rights other than pre-emptive rights (pol. *"prawo poboru"*) *to "**selected** shareholders"* (expert's own emphasis). The only specifically formulated case is the one set out in Article 448 § 2 of the Commercial Companies Code, in conjunction with the Bond Act, *"A resolution on conditional increase in the share capital may be adopted with the aim to: 1) confer rights to take up shares upon holders of convertible bonds or senior bonds",* however, this does not give the possibility to "elect" such eligible shareholders but refers to all holders of such bonds. Nevertheless, it does not exclude other possibilities where both conditions of Rule 4.13 can be fulfilled simultaneously.

3.10. Given that *'senior bonds' as* used in the English version of this provision is the equivalent of ***'obligacje z prawem pierwszeństwa'*** in the original Polish version of this provision, it is necessary to refer to the provision of Article 20(1) of the Bond Act, where this particular type of bond is defined as follows in the Polish version: *'Spółka może emitować obligacje uprawniające obligatariusza – oprócz innych świadczeń – do subskrybowania akcji spółki z pierwszeństwem przed jej akcjonariuszami, zwane dalej **„obligacjami z prawem pierwszeństwa"**'* (expert's own emphasis), which in the English (albeit unofficial) version is formulated as: *'A company may issue bonds entitling a bondholder – apart from other*

considerations – to subscribe for the company's shares before its shareholders, hereinafter referred to as "preemptive right bonds"'.

3.11. In this context, attention should also be drawn to the provision of Article 21 of the Bond Act, which in the Polish version reads *"Jeżeli akcjonariuszom przysługuje **prawo poboru** nowych akcji, prawo to należy wyłączyć w uchwale, o której mowa w art. 19 ust. 3, art. 20 ust. 2 lub art. 27n ust. 1, z zachowaniem odrębnych przepisów, w zakresie niezbędnym do wykonania uprawnień obligatariuszy",* and in the English (unofficial) version *"If shareholders have a **pre-emptive right**, that right shall be excluded in the resolution referred to in Article 19.3, Article 20.2 or Article 27n.1, subject to separate regulations, within the scope necessary for the exercise of the bondholders' rights"* (expert's own emphasis).

3.12. While it is rather unfortunate that the Bond Act uses the English wording *"preemptive right bonds"* and the Commercial Companies Code uses the distinctly different wording *"senior bonds"*, the two terms for this particular type of bond must be regarded as equivalent, but completely different from the term *"pre-emptive rights"* (or *"preemptive right"*) (pol. *"prawo poboru*") as applied to entitlements arising from shares held.

3.13. This distinction is also clearly visible in the Bond Act. Indeed, in Article 20 of that law, the *"preemptive right"* (which in the expert's opinion should be consequently called *"priority right"*) refers to a particular type of bond (and consequently it is a right of the holders of these bonds, i.e. bondholders), and it is a right that cannot be excluded in any way. By contrast, in Article 21 of the same law, the *"preemptive right"* refers to shareholders, and, moreover, in order to exercise the preemptive right (actually "priority right") arising from the holding of bonds, it is necessary to exclude (by resolution of the general meeting) the preemptive right arising from the holding of shares.

3.14. An additional complication is that in the English version of The Warsaw Stock Exchange Rules, § 29(1) translates *"obligacje z prawem pierwszeństwa"* as *"bonds with priority rights",* i.e. in a way that is even different from the Code of Commercial Companies *("senior bonds")* and different from the Bond Act *("preemptive right bonds").*

3.15. It is clear from the analysis presented above that the "preemptive right" used in the phrase "preemptive right bonds" does not refer to different groups of shareholders, but to all without

exception holders of such bonds who may not hold any shares in the company, i.e. they do not have to be shareholders of the company at the same time.

3.16. Thus, no matter how one translates the content of Article 448 § 2 of the Commercial Companies Code into English, no doubt arises that it can only be applied to the entire group of such particularly privileged bondholders, without the possibility of directing the issue of new shares to *"**selected** shareholders or other entities"* (expert's own emphasis).

3.17. As can be seen from the above, Rule 4.13 was formulated by the Exchange in English in such an unfortunate manner (either through oversight or lack of due diligence in translation), that it would be difficult to find it applicable to any share offering conducted under Polish law. However, it cannot be ruled out that it could find application in the case of share offering conducted in accordance with the law of another country. On the other hand, Rule 4.13 in the original Polish wording does not raise such problems, so it could be applied to a specific case under the Polish law. However, the expert has not noticed such a case on the capital market in Poland since the introduction of Rule 4.13 in July 2021.

3.18. However, it cannot be ruled out that it could find application in the case of a share offering conducted in accordance with the law of another country, which would explicitly allow for the issue of new shares directed to *"**selected** shareholders or other entities"* (expert's own emphasis).

3.19. However, since the Exchange has published on its website Best Practice for WSE Listed Companies 2011 in two language versions, Polish and English, both versions must be treated as official and mutually equivalent. An additional need therefore arises to compare the main part of Rule 4.13 as it is correctly translated into English, i.e. *"A resolution on a new share issue with the exclusion of pre-emptive rights, which at the same time grants the priority right to subscribe for the new issue shares to selected shareholders or other entities, may be adopted if at least the following conditions are met: (...)"* , with the official English language version published by the Exchange as *"Resolutions concerning a new issue of shares with the exclusion of subscription rights which grant pre-emptive rights for new issue shares to selected shareholders or other entities may pass subject at least to the following three criteria:"*.

3.20. It is clear from the summary presented above that *"prawo poboru"* (*"pre-emptive rights"* in the correct English translation) have been erroneously translated by the Exchange as *"subscription rights"* instead of *"pre-emptive rights",* with the additional indication that this is a right deriving from shares, while *"prawo pierwszeństwa objęcia akcji nowej emisji"* (*"priority right to subscribe for the new issue shares"* in the correct English translation) have been translated by the Exchange as *"pre-emptive rights for new issue shares",* but without explaining that this is a different type of right, deriving, for example, from a specific type of bond. Consequently, the terms used in Polish and English have become completely confused, making it even more difficult to understand what Rule 4.13 refers to.

IV. Inapplicability of Rule 4.13 to the issue of shares by Kernel

4.1. Leaving aside all the inconsistencies shown earlier in Part III of the opinion, it was also explained there in detail that Rule 4.13 only applies when two circumstances are present together:

a) a resolution concerning a new issue of shares with the exclusion of pre-emptive rights was passed,

and

b) this resolution simultaneously grants the priority right to subscribe for the new issue shares to selected shareholders.

4.2. It is evident from current report ESPI 30/2023 that *"the Board of Directors of the Company adopted resolutions launching the share offering exclusively directed towards the qualified investors",* acting on the basis of *"resolution No. 3 of the Extraordinary General Meeting of the Company dated 23 September 2022* The content of this resolution of the General Meeting was published in the current report ESPI 42/2022. *".* The Subscription Rules attached to the current report ESPI 30/2023 explicitly stated that the offered shares were to be issued with the exclusion of pre-emptive rights. It can therefore be considered that the circumstance indicated above in paragraph 4.1(a) has occurred.

4.3. In the Subscription rules, constituting Addendum 1 to ESPI Report 30/2023, it is clearly and specifically indicated and comprehensively explained that this is an offer to all *"qualified investors"* who are at the same time *"existing shareholders of Kernel Holding S.A."*, *and* only to shareholders meeting both conditions simultaneously.

4.4. There is no indication in this report that any shareholders have been granted **the priority right to subscribe for shares in the** new issue. Indeed, such a right is that a specific group of persons/entities will be given priority in the share allocation process in such a way that if subscriptions for shares made by such persons/entities exhaust the entire pool of shares to be taken up, then the subscription process will be closed. Consequently, shares of the new issue will be allotted only to such persons/entities, proportionally to the number of shares submitted in subscriptions made by such persons/entities.

4.5. If, on the other hand, the entire pool of new shares is not taken up in this way, the subscriptions made by these specific persons/entities will be fully executed, i.e. they will be allotted shares in the numbers in accordance with their subscriptions. Afterwards, the remaining shares will be allotted to a broader group of investors (with or without excluding persons/entities taking part in the first step described above in paragraph 4.4), without any additional preference, until the full pool of shares is exhausted.

4.6. No such additional possibility to allocate shares to other investors is specified in the Subscription rules; on the contrary, it is explicitly stated there that the issue of new shares is addressed exclusively to a strictly defined group of investors (i.e. qualified investors who are also current shareholders of the company), without any additional preference.

4.7. It follows therefore clear from this that the circumstance indicated above in paragraph 4.1(b) has not occurred.

4.8. According to basic principles of logic, a compound sentence that is a conjunction (i.e. two clauses connected by a conjunction "and") is true if and only if both clauses are true - in other words, if both circumstances specified by the clauses occur.

4.9. Leaving aside the linguistic discrepancies between the Polish and English language versions of Rule 4.13, the detailed analysis carried out above in Parts III and IV of the

opinion can be summarised as follows. In doing so, the expert used here - instead of the strict (and linguistically divergent) terms - a descriptive discussion of the two conditions of Rule 4.13 set out above in paragraph 4.1 of the opinion. With this approach, it appears that both language versions (Polish and English) describe exactly the same situation, regardless of the fact that there are linguistic discrepancies.

4.10. The first condition of Rule 4.13, set out in paragraph 4.1(a) of the opinion, refers to a situation where all existing shareholders have priority to acquire shares (a pre-emptive right), but if they themselves do not exhaust the full pool of available shares, then the offer is extended to all other potential investors. Pursuant to the Polish Commercial Company Code, such a situation occurs by operation of law, and an appropriate resolution of the general meeting is required to exclude it.

4.11. The second condition of Rule 4.13, set out in paragraph 4.1(b) of the opinion, refers to an analogous situation where, however, such a privileged group is not all existing shareholders, but a differently defined group of potential investors. Such a group may be comprised of non-shareholder investors, holders of senior bonds, or yet otherwise named investors. In particular, such a group may also consist of existing shareholders, but with some additional characteristic, for example, being qualified investors at the same time. It is important to note, however, that if the group so defined does not exhaust the full pool of available shares, then also - as in the case of the first condition of Rule 4.13 - the offer is extended to a larger group of potential investors.

4.12. Rule 4.13 therefore applies when the pre-emptive right described above in paragraph 4.10 has been excluded by the relevant resolution, while the privilege described above in paragraph 4.11 has been applied. The two circumstances are cumulative, so that the absence of even one of them means that the rule does not apply.

4.13. In the case of the share issue in question by Kernel, the first of these circumstances occurred, while the second did not. Indeed, as was precisely shown above in paragraph 4.11 of the opinion, the second condition of Rule 4.13 refers to a situation where the offer is addressed to a narrow group of investors and, if unsuccessful, could be redirected to a broader group of investors. In such a case, it could be inferred that those investors who did not qualify for this narrow group, but could qualify for the wider group, were treated on discriminatory

terms compared to the favoured investors in this narrow group. This is precisely the condition formulated in the second part of Rule 4.13.

4.14. However, in the case of this particular share issue, the target group was unambiguously defined, without any possibility to extend it to additional investors. This was a consequence of Kernel's use of the exception formulated in Article 1(4) of the EU Prospectus Regulation (as further discussed later in paragraphs 5.2.3 - 5.2.7 of the opinion) allowing the offer to be made without the preparation of a prospectus. In these circumstances, there are no grounds to conclude that any group of potential investors was treated on discriminatory terms, as no such group was indicated. The offer was only addressed to a strictly defined group, with no possibility to expand it and no other qualifications or limitations that the status of Qualified Investor and existing shareholder of Kernel.

4.15. Consequently, it must be pointed out that, under a different construction of the offer (with priority right), this second condition of Rule 4.13 could apply, but it does not apply to this particular construction, where the pre-emptive rights have been excluded and no additional priority right has been applied.

4.16. Therefore, since Rule 4.13 refers to a case in which there is a conjunction of two circumstances, the absence of the occurrence of even one of them (in this case: the one set out in paragraph 4.1(b) of the opinion) means that this rule does not apply to the share issue in question. In other words, Rule 4.13 did not apply to the offering of new shares by Kernel.

V. Answers to Kernel questions

V.1 Question 1

1. *Did the reasons stated by Kernel Holding S.A. for the new offering constitute a rational, economically justified need to urgently raise capital in accordance with Rule 4.13 of the Best Practice for WSE Listed Companies 2021?*

5.1.1. Kernel had explained the reasons for the new offering in detail and at length, and the Committee did not in any substantive way negate these explanations. It must therefore be considered that the reasons given by Kernel represented a rational, economically justifiable need to raise capital urgently, notwithstanding that, as demonstrated earlier in the opinion, Rule 4.13 did not apply to this issue.

5.1.2. In an emailed response to the WSE's Corporate Governance Committee (the "Committee") (Appendix 6 to the opinion), Kernel explained that in 2023 it made a net profit of USD 299 million, however, the total comprehensive profit was much lower at only USD 59 million. This was still a reasonably good result compared to a loss of USD 103 million in the preceding year 2022. However, when *"Russia started blocking the Black Sea and ultimately exited the Black Sea Grain Initiative in July 2023, the Kernel Group's grain exports dropped to almost zero".* As a result, Kernel was forced to undertake *"the third-in-a-row debt restructuring process since the beginning of the war".*

5.1.3. As a result of the negotiations, Kernel's lenders agreed to restructure Kernel's debt portfolio, subject to a key condition of a USD 60 million share capital increase. As a result, Kernel's Board of Directors faced a difficult choice: either to reject the agreed terms *"and face risks of some creditors becoming more aggressive against the Group and putting the Group in the unfavourable position",* or to accept the terms and *"reach out to its shareholders for their support".* In the end, Kernel opted for the latter, assuming that it would be able to raise the amount quickly among shareholders willing to support the company in the long term.

5.1.4. In the expert's opinion, the above explanations fully justify the urgency of raising capital. In its opinion of 25 January 2024, the Corporate Governance Committee did not even attempt to challenge this reasoning, which further confirms that Kernel's decision in this regard was fully justified and rational.

V.2 Question 2

2. *Did Kernel Holding S.A.'s decision to address the new offering only to qualified investors being shareholders of the Company comply with Rule 4.13(b) of the Best Practice for*

WSE Listed Companies 2021, i.e. were qualified investors "selected according to objective general criteria"?

5.2.1. Kernel explained in detail and at length the decision to address the new offering only to qualified investors who were also existing shareholders. While in its opinion the Committee raised some reservations about the (in its view) too narrowly defined circle of potential investors, it did not find a breach of Rule 4.13(b). The Kernel's decision to offer new shares only to qualified investor can therefore be considered as compliant with Rule 4.13(b), even regardless of the fact that Rule 4.13 did not apply to the case at hand.

5.2.2. In response to question 1, the expert stated that the need to urgently raise capital by issuing new shares for a total value of USD 60 million was fully justified by Kernel. Furthermore, in the introduction to the email response dated 19 December 2023 (Appendix 6), Kernel stated that, in this situation, it was not possible for it to address the offer to all shareholders, as this would require the drafting, approval and publication of a prospectus, which is a lengthy process. Going through such a full procedure would therefore be virtually impossible "in the reasonably quick timeframe".

5.2.3. Article 1(4) of the EU Prospectus Regulation [9] provides for 10 situations in which it is possible to make a public offering without a prospectus, of which only the first four apply in the case of a "straightforward" share issue, without being linked to other, additional conditions. These are:

a) an offer of securities addressed solely to qualified investors;
b) an offer of securities addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors;
c) an offer of securities whose denomination per unit amounts to at least EUR 100 000;
d) an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 100 000 per investor, for each separate offer.

5.2.4. Conducting the offering in the manner set out in subpoint b above would only be possible if Kernel itself selected investors in a number of no more than 150, i.e. it could not address

[9] Regulation (EU) 2017/1129 of the European Parliament and of the Counsil of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.

the offer to all shareholders but only to a named, therefore authoritatively selected and relatively small group of them. This could clearly lead to a charge of discriminatory treatment of the other shareholders.

5.2.5. Even more obviously, the condition set out in subpoint c, above, could not apply, as the unit denomination of Kernel's shares is many times less than EUR 100,000.

5.2.6. On the other hand, as pointed out by Kernel, the exercise of the option set out in subpoint d above would further limit the circle of potential investors, as it would clearly have the effect of excluding the vast majority of individual investors with limited financial resources, even if they met the condition of being qualified investors.

5.2.7. This left Kernel with the sole option of conducting a public offering without a prospectus, as being addressed solely to qualified investors, in accordance with the aforementioned subpoint a. In addition, Kernel narrowed the circle of potential investors by specifying in Subscription Rules that only qualified investors who are also shareholders of the company may participate in the book-building process. In this way, Kernel not only did not discriminate against existing shareholders, but, on the contrary, addressed the offer to purchase new issue shares only to them.

5.2.8. In this context, the allegation made by the Committee in its opinion of 25 January 2024 that *"considering the group of entities entitled to subscribe (qualified investors only; however, in view of the intention not to list the shares on the stock exchange, the group was in fact limited to the exclusion of investors most relevant to the Polish capital market, such as pension funds and open-ended investment funds)"* seems completely misplaced.

5.2.9. This allegation is wrong for at least two reasons:

a) pension funds and open-ended investment funds are clearly qualified investors, so that the subscription conditions thus defined do not exclude them in any way;

b) although, Polish regulations restrict the possibility of investing funds of pension funds and open-ended investment funds in shares not traded on a regulated market, they provide for the possibility of such investments to a limited extent; thus, the potential exclusion of one (or some) of these funds from the possibility of increasing their shareholding in Kernel would not be the result of a decision by Kernel, but

only of the degree of involvement of a given fund in shares not traded on a regulated market in Poland.

5.2.10. In conclusion, it must be stated that by addressing the offer to purchase the shares of the new issue to those shareholders who also meet the condition of being qualified investors, Kernel not only did not discriminate against certain shareholders, but on the contrary narrowed the circle of potential investors exclusively to existing shareholders (including pension funds and open-ended investment funds) who, however, meet the additional condition of being qualified investors. This is a non-discriminatory condition, meeting the principle set out in Article 20 of the Commercial Companies Code that *'shareholders of a company shall be treated equally in the same circumstances'.*

V.3 Question 3

3. *Could the schedule for the subscription of shares in Kernel Holding S.A's new offering, have prevented any categories of eligible investors from participating in it, and thus effectively limited the possibility for eligible investors to subscribe for shares in the new issue?*

5.3.1. As previously indicated in paragraph 2.4 of the opinion, the ESPI current report 30/2023 was published on 22 August 2023 (Tuesday) at 7:40 p.m., i.e. at the beginning of the business day, before the start of the trading session. As can be seen from this report, the subscription deadline for the new issue shares was set for 31 August 2023 (Monday) at 18:00, i.e. at the end of the business day, after the end of the trading session. There were no public holidays during this period (apart from Saturdays and Sundays off), so potential investors had 5 working days to submit their subscriptions. In contrast, the Committee erroneously and contrary to the facts stated in its position that *"investors had to submit a complete subscription within the next four business days",* excluding the first business day of 22 August 2023 from this period.

5.3.2. In accordance with the second subparagraph of Article 21(1) of the EU Prospectus Regulation*, "in the case of an initial offer to the public of a class of shares that is admitted to trading on a regulated market for the first time, the prospectus shall be made available*

to the public at least six working days before the end of the offer". This means that in the case of such a public offer, i.e. to all potential investors, the publication of the prospectus should be done in such a way that investors have at least six working days to decide and subscribe for shares.

5.3.3. It is therefore clear that in an offering addressed exclusively to qualified investors this period may be somewhat shorter, and in specific cases even significantly shorter. It is not unheard of in practice to have far tighter subscription deadlines than the one employed by Kernel in this case. In instances of ABB type transactions (accelerated book-building) the book building process can take between 24 to 48 hours. There are numerous reported examples of such transactions occurring on the Polish market, including earlier share offerings by Kernel (cf. Baker Tilly TPA report of November 2022[10]).

5.3.4. As indicated above in paragraph 5.3.1, Kernel published the ESPI current report 30/2023 in such a way that it gave qualified investors 5 business days to decide and subscribe for shares - only 1 business day less than in the case of a public offering to all investors.

5.3.5. It is therefore impossible to agree in any way with the Committee's assertion, indirectly and rather vaguely expressed in its position, that the schedule for the subscription of shares in the new issue of Kernel Holding S.A. may have prevented any category of eligible investors from participating in it and thus effectively limited the opportunity for eligible investors to subscribe for shares in the new offering.

V.4 Question 4

4. Was the determination of the issue price of the shares according to the rules of the so-called Dutch auction in compliance with Rule 4.13(c) of the Best Practice for WSE Listed Companies 2021, i.e. was the issue price "determined in book-building on the market"?

5.4.1. In the analysis presented below the expert demonstrated that the setting of the issue price of the shares in accordance with the rules of the so-called Dutch auction was fully in line

[10] Available under the following address: https://publikacje-tpa.pl/wp-content/uploads/sites/12/2022/11/Baker-Tilly-TPA_Dyskonto-w-transakcjach-ABB-w-Polsce_11-2022.pdf

with Rule 4.13(c), even though the Rule 4.13 as a whole did not apply to the offering in question.

5.4.2. Rule 4.13(c), is formulated as an alternative, i.e. two propositions joined by the conjunction 'or':

(i) *"the purchase price of the shares is in a rational relation with the current share price of the company*",

or

(ii) *"is to be determined in book-building on the market"*.

5.4.3. According to basic principles of logic, a compound sentence that is an alternative (i.e. two clauses connected by the conjunction "or") is always true if at least one of these clauses is true, regardless of the truth or falsity of the other clause - in other words, if at least one circumstance specified in one of these clauses has occurred.

5.4.4. According to the explanations provided by Kernel to the Committee, the issue price was set at USD 0.2777 (i.e. approximately PLN 1.16), which was very different from the current market price of PLN 12.80 at the close of trading on 22 August 2023. Therefore, the premise indicated above in section 5.4.2(i) was clearly not fulfilled.

5.4.5. In these circumstances, it had to be examined whether the issue price was to be and had been determined in book-building on the market, with Rule 4.13 in no way specifying in which market this book-building process should be carried out, and how the exact procedure should look like.

5.4.6. In Subscription Rules (Appendix 4), Kernel explained that the book-building would be based on the Dutch auction principle and described the procedure in detail. In his practice, the expert did not come across a case of this type of book-building being used in the Polish market. However, according to common knowledge, Dutch auctions have been praised as being more efficient and fairer, compared to the standard book building method, as they can prevent underwriters from allocating stocks to known or favoured clients. It is public information that the United States Department of the Treasury, through the Federal Reserve Bank of New York (FRBNY), commonly raises funds for the U.S. government using a Dutch auction process (source: Wikipedia).

5.4.7. It follows from the above that although the Dutch auction is not used (or is rarely used) in the Polish market, it is well known and used in other capital markets. It is therefore a process that meets the condition indicated above in paragraph 5.4.2(ii), as formulated in Rule 4.13 that *"is to be determined in book-building on the market"*.

5.4.8. In the Subscription Rules, Kernel specifically indicated that *"the Company will offer not less than 1 and not more than 216,000,000 Offer Shares to be subscribed for under the Offering",* whereby *"the issue price per Offer Share (the "**Issue Price**") shall not be lower than the accounting par value of shares (USD 0.026406 per share), as determined from the limits specified for the authorised share capital of the Company".* In addition, Kernel explained that *"if the Offering results in raising less than USD 50 million (the "**Minimum Proceeds**"), the Board of Directors has the right at its sole discretion to cancel the Offering".*

5.4.9. **From the foregoing, it is clear that the premise indicated above in paragraph 5.4.2(ii) was clearly fulfilled, and therefore, in accordance with basic principles of logic, it must be concluded that the entire premise formulated in Rule 4.13(c) was fulfilled by Kernel. Thus, Kernel did not violate Rule 4.13 in any way, regardless the fact that this rule did not apply to the share issue in question.**

5.4.10. Meanwhile, in its position, the Committee authoritatively stated that the issue price of the new shares *"cannot be considered to have been set as a result of a market-based process"* placing this *"in view of the fundamental limitations imposed as regards investors who could subscribe for the Company's shares".* However, the Committee did not justify in any way why, in its view, this was not a *"book-building on the market"*, claiming only - without further justification - that it was an *"atypical subscription process".* Such a statement can only indicate that the Committee is unfamiliar with the ways in which book-building is conducted on the capital markets outside of Poland.

5.4.11. In addition, the Committee was unjustifiably considering Kernel's fulfilment or non-fulfilment of the book-building premise, making its negative assessment dependent on other, additional conditions, formulated *ad hoc* by itself. The Committee stated that it could not consider that the premise in question was fulfilled because the issue price set in the

book-building process was *"significantly lower even than the price of the Company's shares just before the announcement of its intention to issue shares with the exclusion of subscription rights"*. This is a gross over-interpretation of the premise set out in Rule 4.13(c), since, according to the rules of logic, the truth of each proposition of an alternative is assessed independently of the content of the other proposition. In other words, when assessing the truth of one proposition of an alternative, the content of the other proposition cannot be invoked at the same time.

5.4.12. At this point, it is necessary to refer to the document published in Polish on the Exchange's website, where, in addition to the Best Practice for WSE Listed Companies 2021, the Committee's guidance on the application of these Best Practices is also published[11]. In Appendix 13 (original Polish version) and Appendix 14 (translated into English), an expert has provided an excerpt from this document, referring to Rule 4.13.

5.4.13. There, the Committee provided an explanation that *"in the case of a rescue issue, on the other hand, the protection of the interests of the company's shareholders dictates that the issue price of the shares should be set in such a way that it is possible to raise capital at the highest possible valuation, but it should be understood that* ***in specific circumstances this may be a price that deviates significantly from the current stock market price****"* (expert's own emphasis). Undoubtedly, this particular share issue carried out by Kernel can be described as a "rescue issue". It can therefore be concluded that the Committee ignored its own indication quoted here with regard to the share price, in its position denying such possibility of a material price reduction.

5.4.14. Furthermore, the Committee demonstrated lack of due diligence in exact reading the stock exchange's corporate governance rules by citing the alleged content of the introduction to section 4 of the Best Practice for WSE Listed Companies 2021 out of context, claiming contrary to fact that **public limited companies** should respect the *"legitimate interests of different groups of* ***investors****"* (expert's own emphasis).

5.4.15. In order to address this fairly, it is necessary to quote the entire content of this sentence, which reads as follows: *"The* ***general meeting*** *should proceed by respecting rights of all*

[11] Guidelines to the Best Practice 2021 – downloaded by the expert from the WSE website on 24.04.2024.

shareholders and ensuring that passed resolutions do not infringe on legitimate interests of different groups of ***shareholders****"* (expert's own emphasis).

5.4.16. From a comparison of the above two quotations, it is clear that the fragment of the sentence quoted by the Committee has been taken out of context, as this sentence does not refer to public limited companies as such, but only to one of the organs of these companies, namely the general meeting. Moreover, even this small passage has been manipulated by the Committee, as it actually refers to shareholders and not to investors.

V.5 Question 5

5. *Would the offers of the investors who sought to participate in the new share offering, but were not allowed to do so due to formal deficiencies, change the issue price, making it in a more "rational relation with the current share price", in accordance with Rule 4.13(c) of the Best Practice for WSE Listed Companies 2021?*

5.5.1. It is clear from the explanations provided by Kernel in its email of 19 December 2023 (Appendix 8) that the offers of investors who applied to subscribe for shares in the new offering but were not admitted due to formal deficiencies would not change the issue price, and the Committee did not challenge these explanations whatsoever.

5.5.2. As demonstrated in detail in paragraphs 5.4.2 to 5.4.13 of the opinion, in the case at hand, the determination of whether these offers would have made the market price more reasonable in relation to the current share price does not and cannot have any bearing on whether the condition formulated in Rule 4.13(c) was breached. Indeed, in the case in question, it was sufficient to determine whether the issue price was *"determined in book-building on the market",* irrespective of what the current market price of Kernel's shares was.

V.6. Question 6

6. *What is the legal status of the WSE's Corporate Governance Consultation Committee under Polish capital markets regulations and the WSE's internal regulations, in particular what is the composition of the Committee and how is it established, particularly in the context of preventing potential conflicts of interest?*

5.6.1. As a result of the analysis presented below the expert has shown that:

a) The WSE's Corporate Governance Committee has no mandate in the generally applicable Polish capital markets regulations or even in the internal regulations of the Exchange.

b) It can only be inferred that the Committee was established by a resolution of the Exchange Board, but no such resolution is publicly available.

c) Since its establishment, the Committee has published only two external positions, one on general matters and the other on Kernel.

d) Although the composition of the Committee has been presented on the Exchange's website, doubts remain as to whether it is up to date and what role (full members or only persons participating in the work of the Committee without being members) is played by each of the persons specified on the website.

e) In particular, there are serious doubts as to whether Wojciech Krysztofik and Rafał Mikusiński are still members of the Committee.

f) The work of the Committee is chaired, as Chairman, by Agnieszka Gontarek, who is also Director of WSE's Listing Department; however, there is no information as to whether she is a member of the Committee or merely directs its work without being a full member.

g) In addition, Monika Gorgoń, Member of the Management Board of the Warsaw Stock Exchange, who is also the direct superior of Agnieszka Gontarek, participates in the work of the Committee with a limited voice (advisory voice only). However, this information is only provided on the Exchange's website in English, while there is no such information on the website in Polish. Again, there is no information as to whether Monika Gorgoń is a member of the Committee or whether she has only an advisory vote, not being a member.

h) No information is available as to whether there are any regulations relating to potential conflicts of interest.

i) In contrast, an apparent conflict of interest was demonstrated for at least five persons participating in the works of the Committee.

5.6.2. In view of the nature of the case, the analysis must begin with an attempt to answer the question of what the WSE's Corporate Governance Committee (the "Committee") is in essence.

5.6.3. The Committee has no mandate in any legal act, neither in the WSE Articles of Association nor even in the WSE Rules. The only information on its establishment, composition, tasks and method of operation can be found on the website of the Exchange, in the Polish version entitled *"Komitet ds. Ładu Korporacyjnego"* and in the English version under *"The GPW Corporate Governance Committee"*. A printout of the content of these websites is presented in Appendix 15 (Polish version) and Appendix 16 (English version)[12].

5.6.4. In order to facilitate an understanding of how the current Commitee came into being and how its scope of action has been shaped, a brief historical overview is necessary.

5.6.5. In 2002 the Exchange adopted its first set of corporate governance principles, entitled *"Good Practices in Public Companies in 2002"* (pol. "*Dobre praktyki w spółkach publicznych w 2002"*), recommending its application by listed companies on a "comply or explain" basis. This document was drafted by a team of eminent capital market authorities, set up in 2001 under the name of the *"Good Practices Committee" (*pol*. "Komitet Dobrych Praktyk"*), while unofficially being respectfully titled the *"Wise Men Committee"*. This team had no specific structure and was headed by Professor Grzegorz Domański, one of the co-founders of the Polish capital market, which was reborn in the early 1990s. It should also be noted that this was a team independent of the Exchange, and the Exchange Board strongly emphasised that the Exchange was not the author of this set of principles, but only its "depositary".

5.6.6. A radical change took place in 2007, as the Exchange took over the authorship of the Corporate Governance Principles, adopting a new text of the set, in a new layout, under the name *"Best Practice for WSE Listed Companies"* (pol. *"Dobre Praktyki Spółek*

[12] This information and other information and documents from the WSE website were downloaded on 2.04.2024.

Notowanych na GPW") by resolution of the Exchange Council of 4 July 2007. As a consequence, the Good Practices Committee was self-dissolved.

5.6.7. As can be seen from both documents specified above in paragraph 5.6.3, six years later, in 2013 a new Committee was established, but there is no information as to who specifically appointed it or how. The further content shows that on 26 April 2019 the Board of Directors of the Exchange adopted a resolution, which clarified the responsibilities and the operating model of the Corporate Governance Committee. Based on this information, it can be inferred that the Committee was also established in 2013 by the Exchange Board. Unfortunately, a search of the Exchange Board's archive of resolutions on the WSE's website was not able to find any Board resolution on this matter - neither the one from 2013 nor the one from 26 April 2019. Considering also the discrepancies in the language versions regarding the composition, competences and modus operandi of the Committee, these documents can only be treated as informative, with no certainty as to their conformity with the facts.

5.6.8. There is a significant discrepancy between the language versions already in the first sentence: in particular, the Polish version shows that the Committee is *"stałym ciałem doradczym w sprawach* ***dotyczących stosowania*** *zasad ładu korporacyjnego na rynkach prowadzonych przez GPW" [*en. *"standing advisory body on issues* ***concerning the application*** *of corporate governance rules on the markets operated by the WSE"]*, while the English version shows that it is *"a standing advisory body* ***responsible for compliance*** *with the corporate governance principles on the markets operated by GPW"* (expert's own emphasis). Already here there is the first discrepancy, further emphasised by the title of point 3: in the Polish version these are *"Zadania Komitetu" ["Tasks of the Committee"* or *"Mission of the Committee"]* and in the English version *"Responsibilities of the Committee".* The English version thus implies the Committee's responsibility (towards whom?), which is not the case in the Polish version, which only defines the Committee's tasks.

5.6.9. As indicated in paragraph 5.6.7 above, the current Committee was established in 2013, but initially even its exact composition was not widely known. Instead, from the information provided by the Exchange, it appeared that it was only concerned with collecting comments on the existing set of good practices, elaborating on them, and proposing relevant

amendments and additions. The results of this work were communicated to the Exchange, which published successive versions of the Good Practice it had developed every few years.

5.6.10. Although the terms of reference of the Committee published on the Exchange's website were formulated very broadly, for a long time the Committee functioned mainly as an internal advisory body to the Exchange. As can be seen from the documents indicated earlier in paragraph 4.6.3, it was only on 26 June 2019 that the Committee published its first (and so far - only) external position on general matters: *"opinion on the effectiveness of supervision in public companies"*.

5.6.11. However, the Committee did not publish any positions or opinions relating to individual cases of specific listed companies. The only such position - on Kernel - was published by the Committee on 25 January 2024.

5.6.12. Another problem arises when analysing the composition of the Committee. The two language versions show that two groups of actors are involved in the work of the Committee.

5.6.13. The first group is: representatives of the key institutions of the Polish capital market:

a) Ministry of State Assets (Wojciech Krysztofik),
b) Polish Financial Supervision Authority (Rafał Mikusiński),
c) Association of Individual Investors (Jarosław Dominiak, Piotr Cieślak),
d) Chamber of Fund and Asset Management (Andrzej Sołdek),
e) CFA Society Poland (Milena Olszewska-Miszuris),
f) Bank Pekao S.A. (Piotr Kozłowski).

5.6.14. The second group is: capital governance experts and employees of the Warsaw Stock Exchange:

a) Sebastian Buczek,
b) Leszek Koziorowski,
c) Andrzej S. Nartowski - the black border indicates that he is no longer alive, so he is a former member of the Committee,
d) Ilona Pieczyńska-Czerny,
e) Janusz Sochański - widely known as the Exchange employee,

f) Krzysztof Szułdrzyński.

5.6.15. This is where another discrepancy arises between the language versions: it is clear from the English version that all of these persons are members of the Committee, whereas there is no such certainty in the Polish version, since it implies that the persons referred to in paragraph 5.6.14 above "*take part*" [pol. *"biorą udział"*] in the work of the Committee, without clarifying whether they are all members of the Committee or whether perhaps some of them only take part in the work of the Committee but are not full members. This is a significant doubt, not least in the context of yet another discrepancy, discussed below in paragraph 5.6.17.

5.6.16. Furthermore, both language versions indicate that the Committee is chaired by Agnieszka Gontarek, Director of GPW's Listing Department. However, it is not clear from this whether Agnieszka Gontarek is a voting member of the Committee (full or only advisory) and as such directs its work, or whether she only directs its work without being a member.

5.6.17. In addition, the English version shows that Monika Gorgoń, Member of the Management Board of the Warsaw Stock Exchange, has an advisory vote on the Committee. This information is not present in the Polish version, which is another discrepancy between the language versions. It is not possible to deduce whether Monika Gorgoń is a member of the Committee with limited voting rights (only to an advisory vote) or whether she has this advisory vote, but as a non-member of the Committee.

5.6.18. There are also serious doubts as to whether the information on the composition of the Committee is actually correct. The biggest such doubt is in the case of the Polish Financial Supervision Authority (hereinafter: "PFSA"), represented - as reported on the WSE's website - by Rafał Mikusiński. Indeed, Rafał Mikusiński was deputy chairman of the PFSA, but he resigned from this function as of 7 December 2023 and was replaced by Sebastian Skuza as of 8 December 2023. Therefore, with effect from 8 December 2023, Rafal Mikusiński lost his right to represent the PFSA, meanwhile, according to information as of 28 March 2024, he continues to represent the PFSA on the Committee.

5.6.19. There is also a clear conflict of interest here: the person overseeing the capital market, including the Exchange, is at the same time advising the Exchange on matters relating to the operation of the market run by the Exchange.

5.6.20. Similar doubts also exist in the case of Wojciech Krysztofik, representing - according to the WSE's website - the Ministry of State Assets. According to online information, Wojciech Krysztofik was the Director of the Supervision Department in this Ministry, but information on the Ministry's website shows that there is currently no such department in its structures, but there are two departments with a similar name: Supervision Department I and Supervision Department II. The directors of these departments are persons other than Wojciech Krysztofik. The question therefore arises whether Wojciech Krysztofik still has the right to represent the Ministry of State Assets on the Committee or whether he has lost this right.

5.6.21. A special situation exists in the case of Agnieszka Gontarek and Dominika Gorgoń. Indeed, as one can see from point 3 of the documents discussed here, *"The Committee is an advisory body* ***independent*** *of WSE"* (expert's own emphasis). Meanwhile, Agnieszka Gontarek is the Director of the Issuers' Department at the WSE, i.e. the department which manages the affairs of issuers of instruments listed on the WSE and supervises the fulfilment of information duties by issuers, including duties related to reporting on the manner of application or non-application of stock exchange corporate governance rules.

5.6.22. So, on the one hand, Agnieszka Gontarek oversees issuers' disclosure obligations in relation to corporate governance, while on the other hand, as chair of the Committee, she advises the Exchange (in essence: advises herself) on the same. An even stranger situation exists in the case of Dominika Gorgoń. For, as is apparent from the organisational structure of the Exchange and the division of tasks between the individual members of the Exchange Management Board, the Issuers' Department reports directly to Dominika Gorgoń, so she is the direct superior of Agnieszka Gontarek.

5.6.23. Thus, there is a loop in that the work of the Committee (theoretically independent of the Exchange) is headed by a person who is at the same time the addressee of the recommendations developed by the Committee. Taking into account also the dual role of Dominika Gorgoń, it can be said in some simplistic terms that the Exchange has generated

a strange system in which the Exchange Board advises the Committee, which advises the Exchange Board.

5.6.24. A different type of conflict of interest appears in the case of Jarosław Dominiak and Piotr Cieślak, representing the Association of Individual Investors (SII - pol. Stowarzyszenie Inwestorów Indywidualnych). Indeed, the information on the Association's website[13] (Appendix 17 - original Polish version, and Appendix 18 - translated into English), shows that the Association is an active participant in the movement directed at challenging the legality of Kernel's actions:

a) Delisting Kernel S.A. SII applies to the PFSA for admission to the procedure - information dated 14.07.2023,
b) Kernel Holding in the eye of the cyclone. An important issue for the entire Polish market - information dated 4.09.2023,
c) Market Echoes #291 - Kernel shareholder drama - information dated 11/09/2023
d) SII and delisting Kernel Holding. Information on actions taken - information dated 27.09.2023,
e) Delisting Kernel Holding. SII is still counting on being admitted to the proceedings at the PFSA - information dated 1.12.2023,
f) SII and delisting Kernel Holding. PFSA says no again, but we're going ahead - information dated 18.12.2023,
g) Kernel spotted by the WSE Consultation Committee. "Violation of fundamental rules" – information dated 26.01.2024
h) Kernel Holding affair enters 2024. Investors don't give up - information dated 20.02.2024,
i) Kernel Holding affair. The case will be dealt with by a court in Luxembourg - information dated 26.02.2024,
j) Kernel Holding affair. The PFSA suspended the delisting proceedings - information dated 5.03.2024.

5.6.25. Out of the ten pieces of information indicated above, six were published before the publication of the Corporate Governance Committee's position on 25.01.2024. In the seventh release, the Association boasts that the Committee, with the Association's representatives on board, found a "breach of fundamental principles" by Kernel. And in

[13] www.sii.org.pl/tag/kernel.html, downloaded on 22.04.2024.

a further three the Association refers to the matter as an "affair". It is therefore clear that Jarosław Dominiak and Piotr Cieślak took part in the work of the Committee in a situation of obvious conflict of interest.

5.6.26. In the description of the Corporate Governance Committee presented on the Exchange's website (both in Polish and English), there is no information as to whether any regulations have been formulated with respect to the prevention of potential conflicts of interest. Given the existence of the obvious conflicts of interest described above, it is reasonable to conclude that no such regulations exist.

5.6.27. Leaving aside the discrepancies shown earlier in the title of point 3 of the documents discussed herein ("Tasks of the Committee"/"Mission of the Committee", or "Responsibilities of the Committee"), it is apparent from this point in particular that the Committee takes positions on certain corporate governance matters, issues opinions and recommendations in this regard, and gives opinions on projects and initiatives. However, there is no information on how the Committee decides on these matters or whether there is any document setting out the rules for such decisions. As there is not even a mention of this in the documents discussed here (Appendices 17 and 18), it is reasonable to conclude that such a document does not exist and that decisions are taken *ad hoc,* in a highly disorganised and chaotic manner.

5.6.28. The above analysis shows that the way in which the Committee was set up, its composition and its modus operandi are highly non-transparent. Meanwhile, a basic and obvious principle of corporate governance is transparency. Taking into account also the existence of an obvious conflict of interest in the case of at least five persons participating in the work of the Committee (Rafał Mikusiński, Agnieszka Gontarek, Dominika Gorgoń, Jarosław Dominiak and Piotr Cieślak), it must be concluded that the Corporate Governance Committee, one of whose tasks is to monitor the corporate governance activities of listed issuers, itself acts in a manner inconsistent with the basic principles of corporate governance. Consequently, all the Committee's findings lack the attribute of impartiality and authoritativeness.

5.6.29. As pointed out earlier in paragraph 5.6.3, the Committee has no legal basis in any applicable legal act, and it can only be inferred (without even being certain about it) that it was created by an internal decision of the WSE, without being anchored even

in the WSE Articles of Association or in the WSE Rules. Thus, any study, position or opinion of the Committee can only be considered as ancillary to the Exchange, without being able to have any direct or indirect legal effect. Furthermore, from the information available on the WSE's website, it does not in any way appear that the Committee's positions or opinions could be subject to any appeal process, so it is reasonable to conclude that no such appeal route exists.

5.6.30. In addition, it must be pointed out that the Committee has no competence to request explanations from any other entity, including listed issuers.

V.7 Question 7

7. Do the Committee's positions or opinions have any binding or indirect legal effect and can they be subject to any formal appeal process?

5.7.1. The above section V.6 of the opinion demonstrates that the way the Committee was set up, its composition and its modus operandi are highly non-transparent, which, given the existence of an obvious conflict of interest, leads to the conclusion that the Committee acts in a manner inconsistent with the fundamental principles of corporate governance.

5.7.2. Moreover, as the Committee has no basis in the generally applicable Polish capital markets regulations or even in the internal regulations of the Exchange, the Committee's positions and opinions cannot have any binding or indirect legal effect, nor is there any known regulation (even if only an internal Exchange regulation) allowing for any formal or informal appeal process.

5.7.3. At this point, it should be noted that the Committee's position published on the Exchange's website (in both Polish and English versions) remains unsigned whatsoever. Therefore, we do not know how it was taken or whether it is an official final document or perhaps some draft version or just a draft position. It is also unclear by whom specifically it was drafted, adopted, or enacted - whether by the Committee as a whole or perhaps only by one person (for example, only by Agnieszka Gontarek, introducing herself as Chairwoman of the WSE

Corporate Governance Consultation Committee[14] , who is also Director of WSE's Listing Department).

5.7.4. In these circumstances, the fact that this quasi-document was published on the official website of the WSE must be considered as having been authorised by the Exchange. Nevertheless, a listed issuer has no means to appeal against the Committee's position or opinion in any way.

V.8 Question 8

8. Was the communication between the Committee and Kernel Holding S.A. preceding the publishing of the Committee's position of 24 January 2024 sufficient from a fact-finding perspective and did it provide Kernel Holding S.A. with sufficient opportunity to present its arguments?

5.8.1. In paragraphs 2.9 and 2.10 of the opinion, the expert pointed out that by email of 19 December 2023 (Appendix 6), Kernel had comprehensively answered the questions raised by the Committee by letter of 7 December 2023 (Appendix 5), while also expressing its willingness to provide further clarification should the need for additional questions arise.

5.8.2. The Committee, however, did not ask such additional questions, thus deeming that Kernel had presented its position in a comprehensive manner. Subsequently, the Committee published on the Exchange's website the *'Position of the Corporate Governance Committee on breach of Principle 4.13 of the "Best Practice for GPW Listed Companies 2021" by Kernel Holding S.A.'* in Polish (Appendix 11) and English (Appendix 12) versions, both dated 25 January 2024.

5.8.3. Considering also the extensive content of the ESPI current report 30/2023, previously published by Kernel on 22 August 2023, one must conclude that Kernel has sufficiently provided all the information necessary to establish the material facts relating to the new shares offering.

[14] See caption to the Committee's letter of 7 December 2023 to Kernel (Appendix 5).

5.8.4. However, as indicated earlier in paragraph 5.6.27 of the opinion, it can reasonably be inferred that there is no document regulating the Committee's modus operandi, in particular specifying the procedure for the contact of the Committee with issuers of listed shares, and the Committee's decisions are taken *ad hoc*, in a highly disorganised and chaotic manner. On the other hand, as the expert pointed out in paragraph 5.6.10 of the opinion, the Committee has so far published only one opinion on general matters, and the opinion on Kernel was the Committee's first public statement on an individual matter (as indicated in paragraph 5.6.11 of the opinion).

5.8.5. This further confirms the conclusion reached earlier that the Committee did not have established methods of communication with issuers. It is therefore impossible to say whether, in this particular situation, the Committee acted in accordance with its regulations, but it can and must be said that the manner in which the Committee conducted its correspondence with Kernel was highly unsatisfactory. As a consequence, Kernel was deprived of the opportunity to present a full argumentation, clarifying any doubts and addressing the allegations made by the Committee.

Warsaw, 8 May, 2024

Appendices

1. ESPI current report 42/2022 of 23 September 2022
2. Annex to ESPI Report 42/2022 with the full Kernel message in English
3. ESPI current report 30/2023 of 22 August 2023
4. Annex to ESPI Report 30/2022 with the full Kernel message in English
5. Letter from the WSE Corporate Governance Committee, dated 7 December 2023
6. Kernel's email response dated 19 December 2023.
7. Opinion of the Corporate Governance Committee on breach of Principle 4.13 of the "Best Practice for WSE Listed Companies 2021" by Kernel Holding S.A. (in Polish)
8. Opinion of the Corporate Governance Committee on breach of Principle 4.13 of the "Best Practice for WSE Listed Companies 2021" by Kernel Holding S.A. (in English)
9. ESPI current report 3/2024 of 31 January 2024
10. Annex to ESPI Report 3/2024 with the full Kernel message in English
11. Best Practice for WSE Listed Companies 2021 (in Polish)
12. Best Practice for WSE Listed Companies 2021 (in English)

13. Guidelines to the Best Practice 2021 (in Polish)
14. Guidelines to the Best Practice 2021 (translated into English)
15. Corporate Governance Committee - information on the WSE website in Polish https://www.gpw.pl/komitet-ladu-korporacyjnego2
16. The WSE Corporate Governance Committee - information on the WSE website in English https://www.gpw.pl/best-practice2021
17. Information on the activities of the Association of Individual Investors in the Kernel's case (in Polish)
18. Information on the activities of the Association of Individual Investors in the Kernel's case (translated into English)