STOCK EXCHANGE APPEALS COMMITTEE – CASE 1/2015

Ruling issued on 24 August 2015 on an appeal by EVRY ASA against a decision by Oslo Børs ASA to refuse EVRY ASA's application for delisting from Oslo Børs on the basis of Section 25 of the Stock Exchange Act, cf. Section 15.1, fourth paragraph, of the *Continuing Obligations of Stock Exchange Listed Companies*.

1. The subject of the appeal and the composition of the Stock Exchange Appeals Committee for the consideration of the appeal

Oslo Børs ASA ("**Oslo Børs**" or the "**Stock Exchange**") adopted its decision on the case on 15 June 2015 with the following conclusion:

> The application made by EVRY ASA for the company's shares to be removed from listing is refused.

EVRY ASA ("**EVRY**" or the "**Company**") appealed the decision in a letter dated 29 June 2015. The appeal was submitted by the requisite deadline.

Oslo Børs did not find there to be sufficient grounds for its earlier decision to be changed. The case was therefore referred to the Stock Exchange Appeals Committee for consideration in a letter dated 27 July 2015, cf. Section 37, sixth paragraph, of the Stock Exchange Regulations, and Section 33, fourth paragraph, of the Public Administration Act.

The Stock Exchange Appeals Committee held a meeting to consider the case. The members of the committee present at the meeting were Liv Gjølstad (Chair), Espen Klitzing, Christian Lund, Andre Michaelsen and Bernt Zakariassen.

2. About the Company

EVRY has been listed on Oslo Børs since 1999. The Company is not listed on another marketplace. EVRY is one of the leading IT groups in the Nordic region. EVRY's head office is in Oslo, and the Company has around 10,000 employees and reports annual turnover approaching NOK 13 billion.

3. Background to the case

EVRY was the subject of an acquisition in the first six months of 2015. Lyngen Bidco AS ("Lyngen") put forward a voluntary offer in December 2014. Lyngen is owned by Apax, a leading private equity company. As a result of the voluntary offer, Lyngen acquired approximately 88% of the shares in EVRY in mid-March 2015. Lyngen then made a mandatory offer. The offer period expired at the start of May 2015. A proportionately small number of shares were acquired as a result of the mandatory offer.

An extraordinary general meeting of the Company was held on 23 March 2015 at which one of the resolutions that was passed was that the Company should apply for delisting from Oslo Børs.

More information on the extraordinary general meeting of 23 March 2015:
As a consequence of the restriction set out in Section 6-8, fifth paragraph, of the Securities Trading Act, Lyngen was only able to use the votes associated with one third of the total shares in the Company at the general meeting on 23 March 2015. Such a mandatory offer was put forward by Lyngen on 27 March 2015.

37.76% of the voting capital was represented at the extraordinary general meeting, and Lyngen was able to vote for only 33.33% of the voting capital.

The following shareholders voted for delisting:

- Lyngen Bidco AS (89,112,993 shares)
- Klas Forslund (1,527 shares)
- Arvid Hefte (88 shares)
- Dariush Massoumi (785 shares)

The following shareholders voted against the proposal to apply for delisting:

- Polygon European Equity Opportunity (7,711,296 shares)
- Blackwell Partners (4,105,807 shares)

The Company has explained that the proportion of votes in favour of delisting would have been 95.21% if Lyngen had been able to use the votes associated with all its shares.

Application for delisting
In its application for delisting of 21 May 2015, the Company put forward the following matters as the principal grounds in favour of its application:

- The Company is no longer suitable for listing.
- The Company has one large shareholder that owns 88% of the shares and voting rights. There is no prospect of the spread of ownership increasing.
- The general meeting resolved to apply for delisting. Only two shareholders voted against the proposal. These are institutional shareholders that do not have the same need for the Company to be listed as smaller shareholders.
- The Company has no need or intention to use its listing in order to access capital.
- There is limited liquidity in the Company's shares, which further reduces the need for listing and may lead to insufficient pricing with the potential for small trading volumes to influence the share price.
- The Company is not covered by analysts and is the subject of little or no interest in the capital markets.
- The shareholders have been given the opportunity to exit their investment through the voluntary and mandatory offers made by Lyngen.
- The number of shareholders in the Company has decreased significantly compared to the situation before the Company was acquired.

Information received from shareholders and the Norwegian Shareholders Association (Aksjonærforeningen):
Oslo Børs has received correspondence from Polygon Global Partners LLP as follows:

- 20.03.2015 – Letter. The letter points out that Polygon Global Partners is a shareholder with a 4.4% ownership interest, and comments inter alia that the election of the new board is not in accordance with the relevant recommendation in the Norwegian Code of Practice for Corporate Governance. The letter also emphasises the significance of

the Company continuing to be listed in terms of how this ensures fair treatment for minority shareholders.

- 27.03.2015 - Letter. The letter includes comments on the price of the offer and on Apax's conduct, and that there was significant opposition to delisting at the general meeting. The letter also argues against the Company's delisting.
- 29.04.2015 – Letter. The letter states that the company has engaged Computershare to carry out a survey of shareholders to gather their views on delisting. It states that of the 1,212 EVRY shareholders who were asked the question about delisting between 16 and 28 April 2015, 208 replied, and that 200 of these were against delisting, while 8 were in favour. A statement from Computershare confirming this was attached to the letter.
- 04.05.2015 - Email. The email states that of the 273 shareholders in total who had replied to Computershare, 258 opposed the delisting, while 15 were in favour.
- 26.05.2015 – Email. The email states that there are 650 minority shareholders in the Company, and that 206 of these had answered Computershare, with 201 against the delisting.

In addition, on 20 May 2015 Oslo Børs received a copy of an email from the Norwegian Shareholders Association (Aksjonærforeningen) sent by Bernt Bangstad to the Chair of EVRY's Board of Directors. The email received by Oslo Børs includes a copy of an enquiry sent to EVRY on 19 May 2015 that asks about incorrect information contained in the notice of the annual general meeting regarding the composition of the election committee.

4. Legal background

The Stock Exchange Act stipulates the following at Section 25, first paragraph:

> "A regulated market may resolve that a financial instrument be suspended from listing or removed from listing if it no longer satisfies the regulated market's business terms or rules, or if other special reasons so warrant. However, a regulated market cannot suspend from listing or delist a financial instrument if this can be expected to cause material disadvantage for the owners of the instrument or for the market's duties and function."

Furthermore, the July 2013 version of the *Continuing Obligations of Stock Exchange Listed Companies* stipulates the following at Section 15.1, fourth paragraph:

> "The company may apply to Oslo Børs to have its shares delisted if a general meeting has passed a resolution to this effect with the same majority as required for changes to the articles of association. Oslo Børs makes the final decision on delisting. Oslo Børs may in special circumstances grant an exemption from the first sentence."

5. Oslo Børs' decision

Oslo Børs adopted the decision set out in Section 1 on 15 June 2015.

5.1 Legal starting point

The legal starting point for Oslo Børs' decision was principally described as follows:

> The legal considerations that apply to removal from listing following an application by a listed company are considered in Section 4.2.1 of Oslo Børs' report on the case "24Seven Technology Group ASA – rejection of an application for removal of the company's shares from listing on Oslo Axess (Decision dated 21.03.2013)", as published in Decisions & Statements 2013, page 56 (in Norwegian).
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> The provision on delisting in Section 25, first paragraph of the Stock Exchange Act dates from 2007. The decision made by Oslo Børs in respect of the 24Seven case makes it clear that the practice applied prior to this date continues to be relevant.
>
> Oslo Børs has demonstrated through its practice which considerations are considered relevant for evaluating whether an application for removal from listing should be approved. The starting point is an assessment of the balance between the company's interest - as represented by delisting serving the interests of the majority of shareholders - and the interests of minority shareholders that will be served by the listing continuing. Oslo Børs has applied a strict approach in the sense that it has traditionally attached relatively great weight to the interests of minority shareholders and the disadvantages that delisting would cause them. Importance has also been attached to considerations of market integrity and confidence in the market when considering whether to approve an application for delisting. In this respect, the question whether a company no longer satisfies all the requirements for listing has been seen as one of a number of relevant matters in the overall assessment of an application for delisting.

5.2 Evaluation

The interests of the Company
Oslo Børs states that the Company's application for delisting is a result of the resolution approved at the extraordinary general meeting held on 23 March 2015, that the Company's application makes clear that only two shareholders voted against delisting at the general meeting, and that these can be assumed to be professional market participants. Oslo Børs expresses the view that when evaluating previous delisting cases Oslo Børs has attached some weight to the type of shareholder that votes against delisting.

Oslo Børs points out that the general meeting attracted only limited participation – six shareholders participated in the voting – and that it is difficult to conclude either that there was clear support or clear objection from minority shareholders on the basis of the limited participation at the general meeting.

Oslo Børs also states that the notice calling the meeting did not provide any further justification for the possible delisting, nor did it provide any explanation of the consequences.

Oslo Børs considers that it is difficult to attach any particular weight to the activities carried out via Computershare following the meeting, "since it must be assumed that shareholders who wished to express their support for, or opposition to, the proposal for delisting should have made their views known via the extraordinary general meeting".

Oslo Børs also made the following comments about the level of liquidity in the shares:

> While it is the case that liquidity in the shares is low, it is not particularly low by comparison with other companies listed on Oslo Børs. Lyngen owns 88% of the Company's shares. As of 19 May, 641 minority shareholders were registered in VPS, and 375 of these held shares worth in excess of NOK 10,000. The Company accordingly does not satisfy the requirements for spread

> of ownership and the number of shareholders stipulated in the Listing Rules, but it must nonetheless be assumed to have a relatively well spread ownership structure. The Company's market capitalisation is currently around NOK 4.1 billion. The market capitalisation is accordingly well in excess of the minimum requirement for listing on Oslo Børs (NOK 300 million), and this together with the relatively well spread ownership structure should mean that there is just as good an opportunity for liquidity in its shares as is the case for many other companies listed on Oslo Børs. 90,075 shares were traded during the period 11 May 2015 to 11 June 2015, representing total value of NOK 1,333,104. The volume-weighted average share price for the period (vwap) was NOK 14.79. With the exception of just a few minutes on some days, there have been orders in the order book at all times (buy orders and sell orders) which have provided a price picture for the share. The spread (difference in the order book between best buyer and best seller) has largely been around NOK 0.60 or lower during this period. In total 15 member firms have participated in carrying out trades. The highest and lowest share prices during the period were NOK 15.50 and NOK 14.40 respectively. The average daily volume of trading was 4,094 shares, equivalent to a daily average of NOK 60,595.

Oslo Børs assumes that the Company is not in breach of any listing requirements other than the requirements for free float and spread of ownership, and states that there are a number of companies listed on Oslo Børs and Oslo Axess where changes in the ownership structure following admission to listing have meant that the company no longer satisfies these particular listing requirements. Oslo Børs expresses the view that although liquidity in the Company's shares is low, it is not at such a low level that this in itself might mean the Company is not suitable for listing. Oslo Børs thinks that there is no information that indicates that the Company is in material breach of any continuing obligations or that there are circumstances that might mean that the Company is not able to carry out its duties as a stock exchange listed company.

Oslo Børs states that it has approved delisting in three cases where there was a relatively similar percentage split in the proportion of votes for and against delisting, namely Kristiansand Dyrepark ASA (85% to 15 %) [Decisions and Statements 2004, page 63], Fosen ASA (87.6 % to 12.4 %) [Decisions and Statements 2008, page 26], and Norman ASA (87.57% to 12.43%) [Decisions and Statements 2009, page 46]. Oslo Børs expresses the view that in all these cases there were also other considerations that supported the case for delisting and that were accorded significant weight, including that the company had been subject to major changes that resulted in breaches of the listing criteria, that the company had a locked ownership structure, that there was a prior takeover bid, that a merger was conditional on delisting, etc. In the case of the decision by the Board of Oslo Børs on Kosmos AS [Decision dated 30 April 1991], an application for delisting was refused even though the company's general meeting had approved the application with 88% of votes in favour and 12% of votes against, and despite the company being in breach of listing requirements. In this case, all the minority shareholders present at the general meeting voted against delisting. The company had over 5,000 shareholders, of which 495 held at least one round lot of shares.

Oslo Børs' evaluation is that in a situation where a company cannot justify an application for delisting on the basis that the company has undergone changes that have resulted in a breach of the listing requirements or on the basis of equivalent special circumstances, there must be some additional justification if the application is to be approved. The background for this approach according to Oslo Børs is that shareholders who have invested in the company will be less likely to expect delisting in such circumstances. Oslo Børs' evaluation is that it is particularly important in such cases to take into account minority shareholders' interest in listing continuing.

The interests of minority shareholders
Oslo Børs writes that if a company is delisted, its shareholders lose the protection that is provided by stock exchange legislation and securities legislation and the supervision associated with this, and that the rules regarding shareholder protection set out in the Public Limited Liability Companies Act would give shareholders a weaker level of protection in overall terms. Oslo Børs thinks that the rules contained in stock exchange legislation and securities legislation that require companies to provide ongoing and periodic information will be of particular benefit to minority shareholders in a situation in which changes initiated by a new principal owner are being made to a company. Oslo Børs also states that the shareholders will lose the organised trading apparatus and transparency of trading that are brought by listing, that delisting might additionally disadvantage shareholders in that it can only be expected to reduce liquidity in the shares further, and that shareholders may be subject to official or internal rules that prevent them from owning unlisted shares.

Oslo Børs also notes that it has previously declared, namely in the case of the delisting of Kristiansand Dyrepark ASA and in the case of the delisting of Fosen ASA, that in the event of a company being delisted institutional investors should be in a better position to exercise their rights than minority shareholders, and that accordingly the interests of institutional shareholders were not the determining factor in the two cases in question. According to Oslo Børs, the starting point cannot be, however, that an institutional investor's interest in continued listing should in general be ignored, even if the amount of importance attached to institutional investors is somewhat less than that attached to other, less professional, investors.

Oslo Børs states that a voluntary offer and a mandatory offer were made, and that consequently shareholders have had the chance to exit their investment in the Company. Oslo Børs further states that the shareholders also had access to an external assessment of the offer thanks to the statements on the offers issued by SEB as an independent expert, and that the Company's shareholders had every opportunity to decide to refuse the offers that were put forward, which was the course of action taken by a significant number of shareholders. Oslo Børs writes, however, that:

> EVRY has a significant number of shareholders. As of 19 May 2015 the Company has a total of 651 registered shareholders (including nominee accounts). 266 of these shareholders hold shares worth in excess of NOK 10,000 (based on a share price of NOK 15.00 on 19 May). The total value of the shares not owned by Lyngen is approximately NOK 480 million. Both the number of shareholders in itself, and the number of shareholders who have investments of a certain size, mean that EVRY should not be delisted. The situation would be worse for a significant number of small shareholders if EVRY were delisted. Considerations of market integrity and confidence in the market also mean caution is required in connection with delisting since the Company's ownership is so well spread.

Having considered the reasons that support delisting the Company and weighed these against the interests of the minority shareholders, Oslo Børs did not find it possible to approve the application for removal from listing. Oslo Børs affirms that it "has in particular taken into account the relatively large number of shareholders in the Company who decided not to sell their shares to Lyngen. The interests of these shareholders will best be served by the listing continuing". Oslo Børs also notes that "Account was also taken of the proportion of the shares that voted against the delisting (88.29% of the votes cast were in favour of delisting, 95.21% if the largest shareholder had been able to use all the votes associated with all its shares)".

Oslo Børs also expresses the view that "in this case the Company cannot justify delisting on the basis of breaches of the listing requirements or other special circumstances", and that "Oslo Børs is of the view that approving the application for delisting in this case would be inconsistent with the legal criteria for delisting as stipulated at Section 25 of the Stock Exchange Act, and with the established practice of Oslo Børs in connection with the delisting rules and the discretionary judgement that these entail".

6. The appellant's representations

The Company asked in its appeal dated 29 June 2015 for Oslo Børs' decision to be reversed, and for the Company's application for delisting to be granted. The Company's representations in support of its appeal were principally as follows:

6.1 Legal situation

The appellant writes that in accordance with former versions of the Stock Exchange Act there is a special provision in Oslo Børs' rules on delisting on a company's own initiative, cf. Section 15.1, fourth paragraph, of the *Continuing Obligations of Stock Exchange Listed Companies*, and states that the provision was originally introduced in the Stock Exchange Act of 1988. The appellant cites preparatory work related to the provision (NOU 1985:33, page 80 and page 118), and claims that there have been no decisions that deviate from the model provided in this preliminary work prior to Oslo Børs' refusal of EVRY's application.

6.2 Factual assumptions for the decision

The appellant claims that Oslo Børs' decision should be regarded as being predicated on an erroneous basis or misunderstanding in relation to the key points.

Firstly, the appellant thinks that it is incorrect for it to be assumed that the proportion of votes for delisting was relatively similar at the general meeting of EVRY in comparison to the Kristiansand Dyrepark ASA, Fosen ASA and Norman ASA cases, stating that "in all these cases approximately 85% voted for delisting, as opposed to effectively 95% in the case of EVRY".

Secondly, the appellant affirms that it is not correct to say that there are no *other considerations* that would support the case for delisting in the same way as there were in the three cases cited, but that "on the contrary, it is clear that there is a 'prior takeover bid' and that there is a 'locked ownership structure'". The appellant accordingly states that minority shareholders received two offers allowing them to exit their investment in the form of the voluntary and mandatory offers, and that as a consequence of this 88% of the shares in EVRY are now owned by the Company's largest shareholder and 11.7% by the six next-largest shareholders, all of whom are institutional investors or nominee accounts. The appellant writes that "the reality is that the ownership structure is more locked than in any of the previous cases to which Oslo Børs refers" and that "when Oslo Børs points out that in previous cases of delisting there were other considerations in favour of delisting such as that 'the merger was conditional on delisting', we think that this refers to the Fosen case, and point out that it is expressly made clear by Oslo Børs in its decision on delisting in this case that

this was not conditional on the merger being carried out, cf. Decisions and Statements 2008, page 26 (and indeed the merger did not take place)".

Thirdly, according to the appellant, it is not correct for Oslo Børs to assume that 6% of the shares in the Company are spread between the approximately 650 remaining minority shareholders. The appellant demonstrates (details below) that of the 649 remaining minority shareholders that together own 12% of the Company, six registered shareholders own approximately 11.7% of the Company. According to the appellant, if one ignores these relatively large institutional investors, only 0.3% of the shares in the Company are spread between 643 remaining shareholders.

6.3 Evaluation of the case for delisting

Starting point
The appellant argues that the starting point, as set out in the *Continuing Obligations of Stock Exchange Listed Companies*, Section 15.1, is that a company may apply to have its shares delisted if its general meeting has passed a resolution to this effect with the same majority as required for changes to its articles of association. According to the appellant, the question concerns Oslo Børs' discretionary evaluation of delisting when applied for by companies in a range of situations, which range from cases where one or more shareholders together just manage to establish such a qualified majority at a general meeting, to cases where a single shareholder has a 90% ownership interest and can squeeze out the minority shareholders. The appellant states that EVRY is at the top end of this scale, as Lyngen alone has an 88% ownership interest, which is near the squeeze out threshold, and claims that "for this reason it appears in principle to be somewhat unnatural for a strict view to be taken when evaluating delisting".

According to the appellant, it has been established through practice that Oslo Børs normally attaches importance to three elements when evaluating delisting: the company's desire to be delisted, the company's failure to fulfil the conditions for admission to listing, and the interests of minority shareholders in continued listing.

The Company's desire to be delisted
The appellant states that the Company's desire to be delisted was expressed by the application for delisting made by the Board, which was approved with the support of the Company's general meeting.

The appellant writes that the date of the general meeting was "determined by the Company's having to be refinanced as a result of its acquisition", that Lyngen's acquisition of the Company had led to it acquiring an ownership interest of 88%, and that it had sought to ensure that the initiative to delist the Company "was clearly communicated in both the voluntary offer document and the notice of the general meeting". The appellant is accordingly of the view that the fact that the mandatory offer had not yet been carried out had no significance to the general meeting's consideration of the question of delisting.

According to the applicant, any evaluation of the level of support amongst shareholders for the decision to apply for delisting must look at "what majority was achieved when all Lyngen's shares are included in the calculation. The resolution to apply for delisting was in reality approved by 95.21% of the votes and share capital represented at the general meeting,

compared to only 4.79% against the resolution". The appellant adds that it is "under no circumstances aware of any relevant practice where delisting has been refused when the general meeting's decision has met with a comparable majority".

The appellant also mentions that there was a majority in terms of the *number of shareholders* that voted for delisting, as four shareholders voted for delisting, three of which are small minority shareholders, and only two shareholders voted against, namely the institutional investors Polygon European Equity Opportunity and Blackwell Partners.

The appellant draws attention to Oslo Børs' point that "given the low level of participation at the extraordinary general meeting, it is difficult to conclude either that there was clear support or clear objection from minority shareholders for the proposal for delisting". According to the appellant, this is incorrect, because "the point is that the small number of votes cast shows that there was no clear objection to the proposal for delisting from minority shareholders. This is also made abundantly clear by the fact that of the three minority shareholders that actually did vote, all three voted *for* delisting". According to the appellant, what has been evaluated in previous practice is whether the result of the general meeting indicates significant opposition from a minority of shareholders in the company. The appellant cites Oslo Børs' reasoning in the case of Norman ASA from 2009 [Decisions and Statements 2009, page 46] as an example in which 15 shareholders voted against applying for delisting and two for, but Oslo Børs took the view that there were around 350 shareholders that had not taken part in the general meeting, and that consequently there was no basis for the assertion that there was "strong and broad opposition to delisting amongst the small minority shareholders", and that even if in terms of the number of shareholders there was a majority for delisting, the number that voted against was small, both in absolute numerical terms and in terms of ownership interest. The appellant writes that "equivalent views can, to an even greater extent, form the basis for EVRY's application for delisting".

The appellant thinks that, as "Oslo Børs rightly points out", little weight can be attached to Polygon's attempts to document opposition amongst minority shareholders by carrying out surveys through Computershare after the event, including because "shareholders in a stock exchange listed company must be expected to express any opposition to delisting at the company's general meeting rather than by using various forms of 'opinion polls' that are not verifiable by either the company or Oslo Børs".

Failure to satisfy the requirements for listing

The appellant states that, following completion of the takeover offers from Lyngen, the Company is in breach of the listing requirements in respect of the number of shareholders and the 25% ownership spread, and Oslo Børs seems to claim that an argument against delisting is that, other than this, the Company "is not in breach of any other listing criteria".

The appellant thinks this is a "perverse starting point for evaluation" and that the significance of the extent to which a company is in breach of the requirements for listing should be evaluated differently depending on whether it applies to delisting initiated by Oslo Børs or to delisting requested by a company. According to the appellant, all breaches of the listing rules or other stock exchange rules will be relevant if delisting is initiated by Oslo Børs, while it cannot be the case that a company can strengthen an application for delisting by infringing the requirements of the listing rules in respect of the company's legal form, the composition of its board, its management team, capital adequacy etc. or of the *Continuing Obligations*. According to the appellant, this means that in reality it is only the requirements relating to the

number of shareholders, the spread of ownership, regular trading and market capitalisation that are relevant when a company's application for delisting is being evaluated. The appellant states that the Company is in breach of two of these, namely the number of shareholders and the spread of ownership, but that it satisfies the requirement related to market capitalisation.

The appellant draws attention to the opinions referred to in preparatory work to legislation, and affirms that it is particularly breaches to legal admission requirements arising from the obligations associated with directives and "from which neither Norwegian authorities nor Oslo Børs can freely derogate" that call for a delisting application to be approved, while requirements set by Oslo Børs as a general rule carry less weight. The appellant states that the Stock Exchange Regulations stipulate only four requirements for admission to stock exchange listing: market capitalisation of over NOK 8 million, three years' history, free transferability of shares and a 25% spread of share ownership among the general public, cf. the Stock Exchange Regulations, Section 4. According to the appellant, the requirements relating to three years' history and the free transferability of shares are not deemed to be relevant topics in delisting cases, but significant weight should be attached to breaches to the requirement for there to be a 25% *spread of ownership*.

With regard to the *market capitalisation* requirement set by Oslo Børs' rules, the appellant affirms on the basis of the preparatory work that this carries relatively little weight when delisting is being evaluated, and that the company's market capitalisation is only a measure of the company's size, and not something that necessarily causes the company to be more or less suitable for listing, "cf. the fact that the minimum legal requirement for listing is set very low at NOK 8 million". The appellant writes that "there is nothing in the relevant source material that indicates that there should be a generally higher threshold for delisting a large company relative to a small company".

The appellant states that it does not satisfy the requirements in the listing rules regarding the *number of shareholders*, and thinks this is an argument in favour of its delisting application being granted and that it "also is a contributory factor to the very low level of liquidity".

With regard to *regular trading*, this, as far as the appellant is aware, is not in practice treated as a requirement for listing independently of the requirement for there to be a spread of ownership and shareholders, and has not been given particular weight in previous applications for delisting. However, the appellant states that, as was explained in its application, there is "a very low level of liquidity in the EVRY share, and that the level is lower than in, for example, the Norman ASA case where the application for delisting was approved". According to the appellant, the low level of liquidity has come about as a direct consequence of the takeover and the ownership structure that has arisen, and in itself implies a significant change.

The interests of minority shareholders

The appellant cannot see that the interests of minority shareholders weigh more heavily against delisting in its case than in the range of cases in which Oslo Børs has previously approved delisting, rather quite the contrary.

The appellant firstly points out that the proportion of the Company's shares spread among small minority shareholders stands at approximately only 0.3% of the Company's share capital. The remaining shares that are not owned by Lyngen are therefore essentially owned by a few large institutional investors. It is the ownership interests of these institutional investors alone that are preventing EVRY from achieving the 90% ownership interest that

enables a squeeze out to take place, while the shares that are owned by the small minority shareholders are of no significance. The appellant states that in several previous rulings it has been assumed that the interests of such shareholders should be accorded less weight than the interests of smaller minority shareholders, including in the delisting cases of Kristiansand Dyrepark ASA and 24Seven Technology Group ASA.

Secondly, according to the appellant, there is no basis for which the threshold for delisting a company with over 600 shareholders should be higher than the threshold for delisting a small company with fewer shareholders:

> Purely factually, in a company with more shareholders there will be a greater degree of probability that a certain number of minority shareholders will mobilise resistance at a general meeting. But when this does not occur, we cannot see that the norm for delisting should be higher simply due to the number of shareholders, cf. the fact that the number of shareholders will typically only be relative to the size of the company applying for delisting. The interests of minority shareholders that weigh in favour of companies being admitted to listing have little to do with there being a large number of shareholders, and it could just as well be said that the protection associated with stock exchange listing is particularly important for shareholders in small companies with few shareholders. In no circumstances is over 600 shareholders a particularly high number, cf. for example the minimum requirement for admission to listing of 500 shareholders each holding shares with a value of at least NOK 10,000. Oslo Børs also, for example, approved delisting both in the case of Fosen ASA and of Comrod Communications ASA, despite the numbers of remaining shareholders in these companies being higher than is the case with EVRY (1,345 and 734 shareholders respectively). In the Kosmos case, as stated above, the figure was over 5,000 shareholders. In comparison, there are circa 650 shareholders in EVRY, 263 of whom own shares with a value of at least NOK 10,000. Prior to the EVRY case, the number of remaining minority shareholders did not seem to be regarded as particularly significant unless they had protested actively against the delisting by exercising their voting rights at the company's general meeting.

The appellant thirdly draws attention to Oslo Børs' assertion in Section 6.2 of its decision that the rules contained in stock exchange legislation and securities legislation that require companies to provide ongoing and periodic information will be of particular benefit to minority shareholders in a situation in which changes are being made to a company that are being initiated by a new principal owner, and the appellant claims that it is difficult for the changes to the management structure and board of directors following its acquisition to weigh against its delisting, as a new principal owner will nearly always make such changes. According to the appellant, Oslo Børs' practice and its other statements mean that the fact that large changes are being made actually weigh more heavily in favour of delisting.

Fourthly, the appellant thinks that the possibility that the level of liquidity in the Company's shares might decrease further following delisting is not an argument for not approving delisting, including because in its practice Oslo Børs has assumed that any inconvenience caused by lower liquidity typically will be accorded lesser weight in situations in which liquidity in the company is already low, which, according to the appellant, is clearly the situation for EVRY following its acquisition.

Fifthly, according to the appellant, the fact that minority shareholders had "very good opportunities to sell their shares in EVRY at a price which the overwhelming majority of the shareholders regarded as acceptable" strongly supports its application for delisting. One of several other points that the appellant makes is that the application for delisting was put forward immediately after the Company's acquisition by Lyngen, and that its acquisition was

carried out following a comprehensive strategic sale and offer process initiated by the Company's Board of Directors and its previous principal shareholders.

6.4 Relationship to previous practice and consequences of the decision

The appellant claims that Oslo Børs' decision is in clear breach of its previous practice in relation to delisting, and that the way the decision on delisting was reached and other matters that support the Company's application for delisting seem to weigh more heavily in favour of delisting than in the cases of Kristiansand Dyrepark ASA, Fosen ASA and Norman ASA which feature in Oslo Børs' decision. The appellant states that the norm Oslo Børs has established via these three cases and the situations to which it applies were summarised in the first case, which concerned 24Seven Technology Group ASA in 2013 [Decisions and Statements 2013, page 56], and which saw the company refused delisting. The appellant writes:

> The proportion in percentage terms that voted for delisting in the case of 24Seven Technology Group ASA was comparable with the other three cases cited. There had, however, not been a prior takeover bid or other large changes prior to the application. The company was similarly not in breach of any key listing requirements. Oslo Børs emphasised in this regard that in such instances that some additional justification is required if an application for delisting is to be approved. Oslo Børs further stated that in such instances it will be particularly important to take into account shareholders' attitude to delisting as expressed at a general meeting, and to attach importance to any minority shareholders' interests in continued listing. This is because delisting will be more unexpected for the shareholders who have invested in a company when there has been no prior takeover bid or other large changes prior to a delisting application.
>
> […]
>
> In the case of EVRY, there has been a significant change to the Company in the form of Lyngen's takeover, which has resulted in a large decrease in the number of shareholders in the Company. 99.7% of the shares are owned by a handful of shareholders and the Company no longer satisfies key listing criteria. It was also foreseeable by shareholders that the Company's shares would be removed from listing on Oslo Børs; it was announced that an application for delisting would be made in both the voluntary and mandatory offer documents produced by Lyngen, and delisting is normally a consequence of such takeover processes. Despite this, none of the small minority shareholders voted against delisting. We are therefore unable to see why in the EVRY case this assessment was applied differently than in the Kristiansand Dyrepark ASA, Fosen ASA and Norman ASA cases, as Oslo Børs seems to indicate. The takeover bids for EVRY and the change in the shareholder structure constitute precisely such relevant circumstances as Oslo Børs refers to: "a prior takeover bid" and "a locked ownership structure". The distinction Oslo Børs establishes was particularly relevant in the 24Seven Technology ASA case, but is on the whole not relevant to the EVRY case.
>
> The only case that Oslo Børs cites in its decision as a precedent for its refusal to delist EVRY is the Kosmos case from 1991. This case, however, is not comparable with the EVRY case for several reasons. Firstly, the application from Kosmos was not made against the background of a company takeover, but only after the submission of a mandatory offer that increased the majority shareholders' ownership interest by 3.3%. Secondly, the majority in percentage terms at the general meeting was higher for EVRY than for Kosmos (circa 88% against circa 95% in reality). Thirdly, the number of minority shareholders was far higher in the Kosmos case, and was 5,705 as compared to EVRY's 649. Fourthly, all the remaining minority shareholders that took part in the general meeting of Kosmos voted against delisting, while of the minority

> shareholders that participated in EVRY's general meeting, only two large institutional minority shareholders voted against delisting (and the small minority shareholders voted in favour). There was also an entirely different and much stronger and broader level of opposition to delisting in the case of Kosmos than in the present case.
>
> Given the norm that Oslo Børs has applied in previous cases, it seems clear in short that the result in our case has to be delisting. This is illustrated by the overview attached as Appendix 7, which provides a comparison with recent previous cases where a company has applied for delisting without a single shareholder owning more than 90%.
>
> […]
>
> In short, the only reason for which EVRY has not had its application for delisting approved appears to be the number of remaining minority shareholders. This is the case despite their holding a very low proportion of the share capital, none of them having voted against delisting at the general meeting (indeed they voted in favour), there already being a very low level of liquidity in the share, and their having had multiple exit opportunities in connection with the delisting application, and the repeated times they were notified that delisting was a possibility. The consequence of Oslo Børs' decision in the EVRY case, if it stands, is that in reality the guidelines that have been developed through practice and the distinction that was established and clarified as recently as in the 24Seven Technology ASA case are no longer valid.

The appellant states that Oslo Børs' decision to decline the application for delisting therefore implies a clear change to current practice in relation to delisting cases where a party that is taking over a company has not acquired an acceptance rate of 90%. According to the appellant, it is unfortunate that "such a marked change is being made via a decision on an individual case", and this undermines predictability in an area precisely where predictability for all involved is particularly important. The appellant thinks, however, that Oslo Børs' decision does not suggest that its intention was to change its earlier practice, and the appellant "would also have expected such a significant and basic change to be considered by the Board of Oslo Børs".

The appellant also writes:

> If Oslo Børs' decision stands, it represents not only a marked change to its practice, but also a privileging of large minority shareholders who are in a position to block a squeeze out following a takeover. The implication of this is that a blocking minority of this sort could use the costs and resource usage incurred by a company in connection with stock exchange listing as a card in negotiations with acquirers in order to push for a higher price for their shares than that which other shareholders accepted via an offer. There is no basis for such a change in the balance of interests against acquirers in either the existing legal sources or other considerations, and such a change is, in our opinion, not in the interests of the Norwegian capital market.
>
> If an acquirer has achieved an ownership interest close to 90%, the company is in principle not suitable for continued stock exchange listing. If on this basis the company wishes to be delisted, the company should as a general rule be allowed to delist. This must particularly be the case in situations where a company's minority shareholders have in general not opposed delisting by voting against it at the general meeting. Should a principle be established that companies in such situations are not allowed to delist if – and for this reason alone – a sufficient number of shareholders remain, an undesirable degree of uncertainty will be created for acquirers. The only possible way in which the company and acquirer will be able to delist and to avoid being listed 'for all eternity' in such instances will be to offer the remaining shareholders a further purchase premium in addition to that received by other shareholders.

> This is particularly problematic when the remaining small minority shareholders own a marginal proportion of the share capital (0.3%) while squeeze out is blocked by a few institutional investors. The consequence of this could be that voluntary offers will fail more frequently if acquirers are not able to achieve the 90% acceptance rate, and over the long term there may be lower acceptance rates and ultimately fewer successful takeovers. Such a development would not be in the interests of any market participants.
>
> The above-mentioned aspects cannot be regarded as having been evaluated by Oslo Børs. Balancing the interests of acquirers against those of remaining shareholders raises important questions related to the efficient allocation of capital and the possibility of carrying out restructurings. The practice established by Oslo Børs in recent decades has, in our view, balanced the conflicting interests in a commendable and predictable manner.
>
> Oslo Børs' decision to decline EVRY's application breaks with this practice.

The appellant also thinks that Oslo Børs' decision seems to establish a considerably stricter norm than that practiced in Sweden and it refers to Swedish rules as well as to decisions taken by the Swedish Securities Council.

7. Oslo Børs' comments on the appeal

The appeal was sent for consideration by the Stock Exchange Appeals Committee with Oslo Børs' comments on the appeal in a letter dated 27 July 2015. Oslo Børs' comments include the following:

> The starting point for the case is that delisting EVRY must not cause material disadvantage to the shareholders or to the market's duties and function. Oslo Børs must, within the framework of the provisions of the Stock Exchange Act, exercise its judgement with particular attention to the interests of minority shareholders. This case is not directly parallel with previous delisting cases dealt with by Oslo Børs. Oslo Børs does not regard the rejection as in breach of or as a change to its previous practice. What is special about this case is the very low level of participation at the general meeting at which the proposal for delisting was considered and the large number of minority shareholders in the Company. In previous cases in which applications for delisting have been refused there has been significant opposition to delisting expressed via the vote held at the general meeting at which the proposal was considered.
>
> […]
>
> Information on the level of turnover and activity in the order book reveals that the conditions required for adequate price formation are present. This reduces the significance of the spread of ownership and the number of shareholders when the interests for and against delisting are being weighed against one another. Furthermore, minority shareholders in EVRY will clearly be disadvantaged if they lose access to the current functioning market for trading.
>
> […]
>
> The composition of shareholders is relevant when the interests of minority shareholders and the material disadvantage that delisting would cause are being evaluated. Institutional investors should be in a better position than minority shareholders to exercise their rights, even if the Company is delisted. This does not mean, however, that in general an institutional investor's interests in continued listing should be ignored, even if the amount of importance

> attached to institutional investors is somewhat less than that attached to other, less professional investors.
>
> […]
>
> Oslo Børs' evaluation is that in this instance the disadvantage for minority investors is sufficiently significant to mean that approving the application would not be compatible with the legal criteria for delisting. There is a relatively large number of shareholders (circa 650, approximately 260 of whom hold shares worth in excess of NOK 10,000) who in the event of delisting would lose the market for trading that currently is operating with order activity and satisfactory price formation. The minority shareholders in EVRY furthermore need the protection that is provided by stock exchange legislation and securities legislation and the supervision associated with this. The interests of these individuals will best be protected by the Company continuing to be listed. The interests of the minority shareholders will naturally enough be in conflict with the interests of the acquirer which has not been successful in achieving sufficient acceptance (90%) for its takeover bid. If delisting of a company causes material disadvantage to its shareholders, applications for delisting should be refused even if large, professional shareholders are the principal reason for which the bid did not achieve sufficient acceptance.

Oslo Børs maintains its decision for these reasons.

8. The appellant's comments

The appellant gave its opinion on Oslo Børs' comments in a letter dated 10 August 2015.

The appellant claims that Oslo Børs' justification for its decision has changed, and that its decision is invalid due to unfair discrimination. The appellant emphasises that its claim that there has been unfair discrimination is supplemental to the representations made in its appeal, and that Oslo Børs' decision should be set aside regardless of whether or not the decision is deemed to be invalid for this reason.

Changed justification
The appellant expresses the view that Oslo Børs' decision to decline EVRY's application for delisting was principally justified on the basis that in the EVRY case there were no considerations that favoured delisting other than the distribution of votes at the general meeting, and that the number of remaining shareholders and the number of shareholders with investments of a certain size were in Oslo Børs' view relatively high. As the appellant understands it on the basis of Oslo Børs' comments on its appeal, Oslo Børs' justification for declining the application now is that "the number of shareholders present at the general meeting was so low, that delisting would cause '*sufficiently material disadvantage*' to a '*relatively large number*' of the remaining shareholders", and "Oslo Børs states that there still exists liquidity in the shares, even if it is very limited".

Unfair discrimination
The appellant understands Oslo Børs' comments on the appeal to mean that the refusal does not constitute a breach or change to its current practice, and that this means the case should be evaluated on the basis of previous practice. The appellant claims that the decision for this reason is "not only an erroneous judgment that is unfortunate for the Norwegian capital market as explained in the appeal, but also is invalid as a consequence of unfair discrimination".

The appellant furthermore writes that "the fact that the justification for declining the application has changed during the process as stated above indicates that the decision is not sufficiently well founded. The justification that is now being advanced is in our opinion not sufficiently relevant and is not sufficiently weighty to constitute the justification for declining an application for delisting".

With regard to Oslo Børs' point that there was "a very low level of participation at the general meeting", the appellant writes that this is correct insofar as it was lower than in comparable cases, but that it is "in our view not a sufficient point as to justify refusing EVRY's application for delisting". The appellant writes: "firstly, the difference in the number of people attending is not significant, secondly "the majority of shareholders actually in attendance voted for delisting", "thirdly the issue of the number of shareholders attending has not previously been accorded any weight as a point of significance", and "fourthly a small number of participants present at the general meeting does not indicate that minority shareholders opposed delisting. On the contrary, low attendance indicates that there is no broad opposition to delisting", and, "fifthly, a small number of participants at the general meeting is not a sufficiently relevant measurement parameter in relation to weighing the interests of the Company in its desire to be delisted against the interests of minority shareholders in listing continuing". The appellant furthermore writes that the EVRY case is not a "new instance" where Oslo Børs can be free in its approach, but rather is a "fairly 'classic' instance where following a takeover there is only a small set of remaining shareholders in the Company that are sufficiently active and interested to attend the general meeting". According to the appellant, Oslo Børs should adhere to existing practice, whereby "the approach has been to not accord weight to the number of shareholders in attendance, but – as Oslo Børs itself points out – only to decline delisting where there is significant opposition to delisting at the general meeting at which the proposal is considered".

The appellant states that "the second part of the justification relates as noted to the number of remaining shareholders", and writes that "this cannot, however, be a decisive argument in any way, cf. the fact that there were considerably more remaining shareholders in Fosen ASA and, for that matter, in Comrod Communications ASA (1,345 and 734 respectively), without this being regarded as an obstacle to the companies being delisted, or, for that matter, being regarded as problematic by Oslo Børs". The appellant sets out the ownership structure of the Company and writes that "we understand that there is therefore now agreement that the statement in the decision that 6% is spread between 650 shareholders does not represent the full picture". The appellant adds that "to say that the Company has "a relatively large number of shareholders" is only correct if one is comparing EVRY with companies listed on Oslo Axess and with smaller companies listed on Oslo Børs. Moreover EVRY is a sizeable company, and the majority of these remaining shareholders have very small holdings".

With regard to the liquidity of the share, the appellant is of the view that "even the low figures given by Oslo Børs" create a "wholly misleading picture of the real level of liquidity of the share". The appellant runs through the daily turnover figures and writes, inter alia, that "the real daily level of liquidity in the share that is of significance for shareholders wishing to purchase or sell shares is therefore approximately NOK 10,000, equivalent to somewhere between 600 and 700 shares", and "it is in general not possible to characterise the level of activity in EVRY shares as a functioning secondary market, particularly because EVRY has a market capitalisation in excess of NOK 4 billion. The fundamental conditions for EVRY shares to be correctly priced no longer exist. Oslo Børs has in previous cases delisted

companies with significantly higher levels of liquidity than this, cf. for example the Normann ASA case, which is discussed in detail in our application".

The appellant concludes by pointing out that, among other considerations, it would be unfortunate if the nominal number of shareholders were to be regarded as the deciding factor, and that this would lead to it being difficult for large stock exchange listed companies to apply for delisting, and would create a specifically Norwegian practice that would make it possible for one or more hedge funds to actively oppose delisting for the purposes of achieving a higher offer price. According to the appellant, in terms of all the criteria that have previously been accorded weight in Oslo Børs' practice, EVRY scores more highly in favour of delisting than some of the comparable cases, and there are no other special circumstances in this case that should mean that the minority has a greater need for the Company to continue to be stock exchange listed than in previous cases where Oslo Børs has approved delisting. The appellant also thinks that Oslo Børs has attached too little importance to considerations related to the integrity of the market and to the functions that should be safeguarded by stock exchange listing, and that Oslo Børs has not discussed or evaluated EVRY's interest in being delisted in light of its acquisition by Lyngen. The appellant writes that "the reality in this case is that the minority shareholders that Oslo Børs is striving to protect did not protest against the resolution at the general meeting, and the real interests that Oslo Børs is safeguarding are those of the two shareholders who as far as we can tell bought into a takeover situation with a view to pushing for a higher price by opposing delisting, and the small handful of institutional investors who have hung on and are speculating that the strategy might be successful".

Oslo Børs responded with some short additional remarks on the appellant's comments in a letter dated 13 August 2015.

9. The Stock Exchange Appeals Committee's evaluation

The Stock Exchange Appeals Committee would like to remark:

The wording of Section 25, first paragraph, of the Stock Exchange Act of 2007 on the delisting of financial instruments is shaped by consideration for how delisting can constitute a tool for a stock exchange. Delisting "may" occur if the financial instrument "no longer satisfies the regulated market's business terms or rules" or "if other special reasons so warrant". The second sentence of the provision states, however, that delisting cannot occur if this can be expected to cause "material disadvantage" for the owners of the instrument or for the market's duties and function. The situation that arises when a company itself applies to be delisted is not explicitly discussed. This must be seen in conjunction with the fact that the provision should transpose the provisions of MiFID into Norwegian law.

The provision is, however, sufficiently broad so as also to apply in principle to so-called voluntary delisting. The preparatory work on the legislation states that current practice should be continued and that earlier provisions on delisting upon application could be continued due to the authority given in the fourth paragraph of Section 25 whereby further rules concerning suspension from listing and delisting may be issued, cf. NOU 2006: 3 "Markets for financial instruments", page 141, as referred to in Ot. Prp. No. 34 (2006-2007) page 452. Section 15.1, fourth paragraph, of the 2013 *Continuing Obligations of Stock Exchange Listed Companies* accordingly requires that a company may apply to have its shares delisted if a general meeting has passed a resolution to this effect with the same majority as required for changes to its articles of association. This provision is equivalent to Section 4-10, second paragraph, of the

Stock Exchange Act from 1988. The preparatory work stated that an application for delisting should not be automatically approved, but that an exchange must in such circumstances carry out an independent and specific assessment of the request, cf. Ot. Prp. No. 83 (1986-1987), page 70. The Ministry remarked on page 106 of this proposition that "the question of delisting will need to be evaluated if the conditions for admission to listing are no longer satisfied".

The provisions involve a high degree of discretion. Rulings on applications for delisting that are not supported by all shareholders will depend on balancing and evaluating the arguments for and against delisting. What will be key will thus be the company's – as represented by the majority's – interest in delisting as against the interests of minority shareholders in the company continuing to be listed. Such evaluations must be made in light of considerations concerning liquidity, the market's duties and function, and trust in the market. In this context, one possible factor will be whether the company satisfies the conditions for admission to listing.

Oslo Børs' practice has assumed that the interests of minority shareholders must be given special consideration in the discretionary assessment of such cases, and a strict practice has been followed. Minority protection is a relevant and key consideration in this area more generally, and in the Stock Exchange Appeals Committee's view such practice is well founded. However, the circumstances of the individual case have to be taken into account as part of the overall evaluation.

EVRY has claimed that the Company is no longer suitable for listing. The key points in its justification for its application are that a large shareholder owns a total of 88% of the shares and there is no prospect of the spread of ownership increasing. Only two shareholders, both of which are institutional investors, voted against delisting when the proposal was considered at the general meeting. The Company does not have any need or desire to be listed in order to gain access to capital. There is limited liquidity in the Company's shares and little interest in the Company in the capital markets. Minority shareholders were given exit opportunities in the form of the voluntary and mandatory offers, something which also led to a significant reduction in the number of shareholders. The Company's ownership structure is locked.

These considerations are in opposition to the interests and needs of minority shareholders. They will lose the protection that is provided by the provisions of stock exchange legislation and securities legislation, including in relation to the duty of disclosure and financial reporting, and they will also lose access to the trading apparatus with the investor protection and trading transparency associated with this. These are benefits that are normally assumed to be available when investors acquire shares that are listed on a regulated market.

In this instance the question concerns a company with approximately 650 shareholders, approximately 260 of whom hold shares worth in excess of NOK 10,000. The value of the shares not owned by Lyngen totals approximately NOK 480 million. The following information is provided in Oslo Børs' comments on EVRY's appeal, sent on 27 July 2015, on the composition of the Company's shareholders:

12% of the shares are owned by parties other than the principal shareholder. The two shareholders that voted against the delisting proposal, Polygon European Equity Opportunity Master Fund and Blackwell Partners LLC (that together own 4.42% of the shares), must be regarded as institutional investors. The same applies to Skandinaviska Enskilda Banken AB (publ) (3.11%), Danske Bank (1.31%) and Deutsche Bank (0.03%). These shareholders

together account for 8.87% of all the shares in the Company. It is certainly possible that the underlying shareholders behind nominee accounts are also institutional investors, but this is more uncertain. There are two large nominee accounts - one registered with Société Générale (1.90%) and another with JP Morgan (0.93%) – where the identity of the underlying shareholder is not known.

The Stock Exchange Appeals Committee assumes this information to be correct and additionally makes reference to the table in the same document that details the 15 largest shareholders at 26 June 2015. In its letter dated 10 August 2015 EVRY notes that subsequent to submitting its appeal it has been informed that the 2,846,000 shares that are registered on the nominee account with JP Morgan Chase Bank, N.A., are owned by Credit Suisse. This is not disputed in Oslo Børs' final remarks.

Existing practice has accorded weight to whether minority shareholders, or at least a significant proportion of them, protest against delisting or whether they accept it or have no objections. In general, there may be good reason to consider shareholders' attitude to the question. There will not normally be any reason to protect shareholders who accept delisting when weighing up the various interests, while the situation will normally be different if there is broad opposition to delisting.

All shareholders were informed in various ways that the question of delisting the Company would be considered at the general meeting. Few shareholders attended the meeting. Only six shareholders voted, with Lyngen voting in favour. The same applies to three small shareholders. The two others, Polygon European Equity Opportunity Master Fund and Blackwell Partners LLC, which are two institutional minority shareholders, voted against delisting.

Oslo Børs provided the following information about the level of liquidity and trading in the share in its decision:

> The Company's market capitalisation is currently around NOK 4.1 billion. The market capitalisation is accordingly well in excess of the minimum requirement for listing on Oslo Børs (NOK 300 million), and this, together with the relatively well spread ownership structure, should mean that there is just as good an opportunity for liquidity in its shares as is the case for many other companies listed on Oslo Børs. 90,075 shares were traded during the period 11 May 2015 to 11 June 2015, representing total value of NOK 1,333,104. The volume-weighted average share price for the period (vwap) was NOK 14.79. With the exception of just a few minutes on some days, there have been orders in the order book at all times (buy orders and sell orders) which have provided a price picture for the share. The spread (difference in the order book between best buyer and best seller) has largely been around NOK 0.60 or lower during this period. In total 15 member firms have participated in carrying out trades. The highest and lowest share prices during the period were NOK 15.50 and NOK 14.40 respectively. The average daily volume of trading was 4,094 shares, equivalent to a daily average of NOK 60,595.

The Stock Exchange Appeals Committee notes that the level of trading is almost imperceptible in relation to EVRY's sizeable market capitalisation, and no significant turnover in the shares can be expected. The information on turnover in the shares and on the level of activity in the order book indicates, however, that a certain degree of price formation is possible. No specific evidence is provided for the assertion that interest in the share is being

motivated by speculation regarding whether the company will be delisted or whether a higher offer will be made.

EVRY currently does not satisfy the listing criteria as neither the requirement in respect of the spread of ownership (25%) nor the requirement in respect of the number of shareholders (500 holding shares with a value of at least NOK 10,000) are satisfied. These are requirements that are normally significant for trading and price formation. The Company would not be admitted to listing on Oslo Børs with its current ownership structure.

The Stock Exchange Appeals Committee would also finally like to mention that minority shareholders were given the opportunity to withdraw from the Company, first by the voluntary offer and subsequently by the mandatory offer. The mandatory offer was put forward after the general meeting at which the question of delisting was considered. As a consequence of the takeover and of the 90% acceptance rate not being achieved, the ownership structure of the Company must currently be said to be locked.

EVRY makes a range of representations against the decision to refuse its application for delisting in its appeal and in its remarks in response to Oslo Børs' comments on its appeal. It is claimed that the decision is based on factually incorrect assumptions, that it goes against Oslo Børs' established practice, and that there has been unfair discrimination that should lead to the decision being regarded as invalid, or at least to it being revoked. It is also claimed that Oslo Børs in its comments on EVRY's appeal changed its justification for its decision.

With regard to what the decision states about the distribution of the votes for and against delisting in percentage terms in relation to this and other cases that are cited to support the claim that there has been discrimination, Oslo Børs' decision makes clear that it is acting on the basis of the rules on voting contained in the Section 6-8, fifth paragraph, of the Securities Trading Act, but also that it was aware that the proportion of votes for delisting would have been 95.21% if Lyngen had been able to vote with all its shares. In addition, Oslo Børs in its comments on the appeal sets out in detail the composition of the Company's shareholders in accordance with the supplementary information provided in EVRY's appeal and, having evaluated the case again, has not found that the information provides any basis for the decision to be changed. Even if there is some uncertainty associated with the information, the Stock Exchange Appeals Committee is not of the view that there are factual errors that could be regarded as of significance to the conclusion reached by Oslo Børs.

The Stock Exchange Appeals Committee is equally not of the view that Oslo Børs' evaluation has clearly changed between its original decision and its comments on the appeal. When in Section 6.1 of its decision of 15 June 2015 which addresses the Company's interests Oslo Børs states that in cases where a company is unable to demonstrate that it has undergone changes that result in breaches to the listing requirements or that there are equivalent special circumstances, there must be additional justification for an application to be granted, this seems to refer to the following:

> The Company is not in breach of any listing requirements other than the requirements for free float and spread of ownership. A number of companies are listed on Oslo Børs and Oslo Axess where changes in the ownership structure following admission to listing have meant that the company no longer satisfies these particular listing requirements. Liquidity in the Company's shares is low, but it is not at such a low level that this in itself might mean that the Company is not suitable for listing. Oslo Børs is not aware of any information that indicates that the Company is in breach of any continuing obligations or that there are any other circumstances

> that might mean that the Company is not able to carry out its duties as a stock exchange listed company.

Accordingly, it is apparent from this that Oslo Børs has not regarded the fact that the Company would not have been admitted to listing in its current form as of particular significance. In addition, its comments were produced in light of the appellant's representations. The key aspect of its decision and in its comments is its consideration for minority shareholders and its evaluation of their interests, together with other factors such as the level of trading in the share.

The relationship of the decision to Oslo Børs' practice in cases where a company has applied for delisting is discussed extensively by EVRY in its appeal and in its response to Oslo Børs' comments on its appeal. The Stock Exchange Appeals Committee notes that Oslo Børs has a duty when exercising the powers it has pursuant to Section 25 of the Stock Exchange Act and equivalent regulations to treat companies equally when their cases are the same in terms of the relevant, specific circumstances. Practice can be changed if the change is within the legal basis for its decision, but Oslo Børs' decision in this case is not considered to constitute a change of practice. If there is undue or unreasonable discrimination, this can invalidate a decision. Practice can also illuminate the considerations of a case.

As explained above, ruling on this type of case involves a significant degree of discretion. The various interests must be weighed up against one another and the various factors must be evaluated in detail. The relative importance of the various factors will depend on the specific circumstances. No fixed criteria for exercising such discretion, for example in the form of a proportion or number of minority shareholders or specific details on the composition of shareholders, liquidity or the level of trading, are included in the regulations or have been established through practice. The facts in such cases will rarely be alike, which is also the case here, and in marginal cases it can be that delisting is permitted in one case, without this necessarily giving other companies any legal claim to delisting, even though there may be other similarities. Whether a ruling is strict, and stricter than there are previous examples of, does not necessarily mean that there is discrimination that should lead to it being regarded as invalid.

The previous cases that are cited in this case concern Kristiansand Dyrepark ASA (Decisions and Statements 2004, page 63), Fosen ASA (Decisions and Statements 2008, page 26), and Norman ASA (Decisions and Statements 2009, page 46). The division of votes in these cases was 85% for and 15% against, 87.6% for and 12.4% against, and 87.57% for and 12.43% against, respectively. In these three cases the companies' applications for delisting were approved. Oslo Børs has highlighted in support of its position a decision that applied to Kosmos AS, Decision dated 30 April 1991, where the company's application for delisting was refused (88% for, 12% against), and additionally made more general reference to the 24Seven Technology Group ASA case where the company's application for delisting from Oslo Axess was refused (Decisions and Statements 2013, p. 56).

Oslo Børs has pointed out that in the three cases cited there were also other weighty considerations in favour of delisting, including that the company had undergone large changes that resulted in the listing criteria being breached, a locked ownership structure, that there was a prior takeover bid, and that a merger was conditional on delisting. Some of these arguments are also applicable in the current case. The decisions make it clear that the rulings depended on discretionary judgement where Oslo Børs, after taking all matters into account, came to the

decision that the interests of small minority shareholders were not sufficiently weighty for delisting to be denied. The rulings also seem to have been marginal cases as is expressly pointed out in the Norman ASA case. EVRY claims that no company with a shareholder that owns 88% of the shares has previously had an application for delisting refused. The Stock Exchange Appeals Committee is of the view that this does not mean there is any basis for the claim that existing practice is being altered, and that what is apparent on the basis of practice cannot generally give EVRY any legal claim to have its application approved.

However, the practice established by Oslo Børs will, as discussed, potentially inform the way in which discretionary judgment is exercised. Oslo Børs' decision in this case is strict, stricter than in previous decisions that the committee is aware of. This has also been made clear in the information about the composition of the minority shareholders that has emerged as part of the appeals process. Even if there is a sound basis for setting a high threshold for the protection of minority shareholders, there is no justification in the legal sources for it to be virtually impossible for a company's shares to be removed from listing unless 90% of the shares are owned and the minority shareholders can be squeezed out.

Approximately 12% of the shares in the Company are owned by parties other than Lyngen. As has now emerged, these parties are for all practical purposes institutional investors. Polygon European Equity Opportunity Master Fund and Blackwell Partners LLC together own 4.42%, and Skandinaviska Enskilda Banken AB, Danske Bank, Deutsche Bank and Credit Suisse together own 5.38%. It is also highly probable that many underlying investors are institutional investors. The proportion of shares owned by shareholders that cannot be characterised as professional – small shareholders – is thus very small, even if there is a certain number of these, noting that the Company has around 650 shareholders.

One topic in the case has been what it is possible to conclude on the basis of the voting at the general meeting about minority shareholders' attitude to the question of delisting and what significance should be attributed to this.

Three of the small shareholders attended the general meeting and voted for delisting. This is such a small number that the Stock Exchange Appeals Committee does not think it possible to attach importance to how they voted. Almost all the small shareholders did not attend the meeting. The Stock Exchange Appeals Committee's view is that it cannot be inferred from the low level of participation that the small shareholders who did not attend the meeting approved delisting. Equally, it cannot be assumed that they opposed it either. The question must as a consequence be evaluated on the basis of a more general consideration of the protection that is provided by rules of stock exchange legislation and securities trading legislation, without any weight being attached to small shareholders' attitude to delisting.

With regard to the institutional shareholders, the situation is different. They will be in a better position to attend to their interests, including in the event of delisting. The Stock Exchange Appeals Committee is not, however, of the view that their interests should be entirely ignored. These may carry a certain importance, but this will normally not be as weighty.

The two companies that attended the general meeting and voted against delisting together own 4.42% of the shares, while the other institutional minority shareholders own a somewhat larger proportion between them. Institutional shareholders must be expected to attend general meetings and to vote if they are opposed to delisting. The Stock Exchange Appeals Committee must therefore assume that institutional investors were divided in their view on

delisting. It is consequently difficult to see why their interests should be accorded special importance in this case.

In view of this, what remains as the central task is weighing up the company's interest in delisting against the interests of small shareholders.

As the result of a takeover a single principal shareholder owns 88% of the Company. This shareholder wishes the Company's shares to be removed from listing – an interest that must be taken into account.

The Stock Exchange Appeals Committee's view is that importance must be attached to the fact that the proportion of shares owned by small shareholders is very small, even if the number of small shareholders is not insignificant. There is admittedly a certain level of liquidity in the share that may be of significance for them. But the importance of this is limited somewhat by the turnover being particularly small in relation to the size of the Company and its market capitalisation. It is also significant that minority shareholders were given the opportunity to withdraw from the Company, initially by the voluntary offer, and not least by the mandatory offer after the general meeting. They could not then base their actions on Oslo Børs refusing delisting. It is also a fact that none of the small shareholders protested against delisting. The Stock Exchange Appeals Committee is not able to address here what importance might have been attached in reaching the decision if there had been significant protests.

Delisting is evidently not liable to cause material disadvantage for the market's duties and function. Taking everything into account, the Committee has also concluded that delisting would not cause material disadvantage for the minority shareholders.

The appeal is accordingly granted. Oslo Børs' resolution is repealed and delisting is approved.

The date for EVRY to be delisted must be determined by Oslo Børs.

The Stock Exchange Appeals Committee accordingly adopted the following resolution unanimously:

Resolution:

Oslo Børs ASA's resolution of 15 June 2015 to decline EVRY ASA's application for delisting is set aside. The application is granted.

Liv Gjølstad

Espen Klitzing

Christian Lund

André Michaelsen

Bernt Zakariassen