

Advokatfirmaet BAHR AS  
Att: Lars Knem Christie

Sent by e-mail: lkc@bahr.no

15 October 2019

## Norske Skog ASA – Exemption from the mandatory bid obligation

### 1 The application

Reference is made to the letter from the law firm BAHR AS ("**BAHR**") dated 2 October 2019 and the subsequent e-mail from BAHR dated 9 October 2019 (together the "**Application**"), where BAHR, on behalf of Oceanwood Opportunities Special Situation Malta Limited ("**Oceanwood**") applies for an exemption from the mandatory bid obligation, cf. the Norwegian Securities Trading Act ("**STA**") section 6-2 (3), in connection with a contemplated transfer of shares in Norske Skog ASA ("**Norske Skog**") from a subsidiary to the parent company.

Norske Skog is contemplated to list its shares on Oslo Børs (the "**IPO**"), which it expected to be contemplated within October 2019.

Oceanwood currently owns 100% of the shares and voting rights in NS Norway Holding AS ("**NS Norway Holding**"), which in turn owns 100% of the shares and voting rights in Norske Skog. As part of the IPO, NS Norway Holding contemplates to sell approximately 40 to 60% of its shareholding to the public market. In connection with and subsequent to the IPO, Oceanwood also plans to complete an intra-group reorganization where the residual shareholding of 60 to 40% Norske Skog shares shall be sold from NS Norway Holding to Oceanwood (the "**Share Sale**"). Following this, NS Norway Holding will own zero shares in Norske Skog and shall be liquidated.

The Application for exemption is based on that the transaction does not represent a change of control or is part of a chain of transactions that may lead to a change of control.

In regard to subsequent acquisitions, it is in the Application assumed that Oceanwood will undertake the same position as NS Norway Holding has per the date of the transaction, and Oceanwood would like to get this confirmed by Oslo Børs ASA ("**Oslo Børs**").

### 2 Legal basis

STA section 6-1 (1) regarding the mandatory bid obligation in connection with share acquisitions states:

*"Any person who through acquisition becomes the owner of shares representing more than 1/3 of the voting rights in a Norwegian company the shares of which are quoted on a Norwegian regulated market is obliged to make a bid for the purchase of the remaining shares in the company."*

Pursuant to the STA section 6-1 (6) the mandatory bid obligation is triggered in the event of acquisition by someone with whom the acquirer is consolidated:

*"Subsection (1) applies correspondingly in the event of acquisition by someone with whom the acquirer is consolidated pursuant to section 6-5, when the acquirer alone or together with one or more of the related parties crosses the mandatory offer threshold as a result of the acquisition."*

The legal basis for the resolution for exemption is stated in the STA section 6-2 (3):

*"The takeover supervisory authority may in special cases make exceptions from the mandatory bid obligation in the case of acquisition by someone with whom the acquirer is consolidated pursuant to section 6-5; see section 6-1 subsection (6)."*

Regarding subsequent acquisitions the STA section 6-6 (2) states:

*"A shareholder who has crossed a mandatory bid threshold as mentioned in 6-1 or section 6-6 subsection (1) in such a way as not to trigger the mandatory bid obligation, and has therefore not made a mandatory bid, is obliged in the case of each subsequent acquisition that increases his proportion of the voting rights to make an offer to buy the remaining shares of the company."*

### **3 Actual circumstances**

As mentioned above, Norske Skog is contemplated to carry out the IPO on Oslo Børs within October 2019. Oceanwood currently owns 100% of the shares and voting rights in NS Norway Holding, which in turn owns 100% of the shares and voting rights in Norske Skog.

Following the IPO and the Share Sale, NS Norway Holding will not own any shares in Norske Skog, but Oceanwood will own the shares in Norske Skog, expected to be between 40 to 60%. Oslo Børs has been informed that it is not an unlikely scenario that Oceanwood will retain an ownership in Norske Skog of more than 50%. Oceanwood will based on this become a direct shareholder in Norske Skog, instead of an indirect shareholder in Norske Skog through NS Norway Holding. NS Norway Holding shall be liquidated after the Share Sale.

The price per share in the Share Sale shall equal the IPO price per share. The proceeds from the sale of Norske Skog share in the IPO and the Share Sale are expected to be applied towards repayment of existing debt in Oceanwood and, if there are any excess capital, such capital will be distributed in connection with a liquidation of NS Norway Holding.

The purpose of the reorganization is to simplify the structure of the group by collapsing an intermediate company.

### **4 Oslo Børs' assessment**

#### **4.1 The exemption**

Pursuant to the STA section 6-1 (6) the mandatory bid obligation is triggered in the event of acquisition by someone with whom the acquirer is consolidated, when the acquirer crosses the

mandatory bid threshold. Oslo Børs, in its capacity as takeover supervisory authority, may in special cases (*Nw: "særlige tilfeller"*) make exceptions from the mandatory bid obligation in the case of acquisition by someone with whom the acquirer is consolidated, cf. the STA section 6-2 (3). In the preparatory works for the STA, cf. NOU 2005:17 and Ot.prp. no. 34 (2006-2007), regarding whether or not an exemption from the mandatory bid obligation should be granted, it is expressed that it shall be placed emphasis on whether the transfer represents a change of control or is part of a chain of transactions that may lead to a change of control.

Oslo Børs considers that the reorganization of the ownership in Norske Skog does not imply a change of control or is part of a chain of transactions that may lead to a change of control. Oslo Børs is of the opinion that such special cases exist in the present situation and that an exemption from the mandatory bid obligation can be granted pursuant to the STA section 6-2 (3) for the transfer of shares in Norske Skog to Oceanwood. Exemptions from the mandatory bid obligation should contain a time frame for carrying out the transaction. Within 31 December 2019 is considered to be adequate for this transaction.

#### **4.2 Subsequent acquisitions**

Pursuant to the rules regarding subsequent acquisitions, cf. the STA section 6-6 (2), a shareholder who has crossed a mandatory bid threshold in such a way as not to trigger the mandatory bid obligation, is obliged in the case of each subsequent acquisition that increases its proportion of the voting rights to make an offer to buy the remaining shares of the company.

In accordance with previous statements from Oslo Børs, regarding continuity in conjunction with a transfer on the basis of exemption from a mandatory bid obligation, Oslo Børs' view is that Oceanwood after the acquisition of the shares in Norske Skog, according to the rules on mandatory obligation bids, will be in equal position as NS Norway Holding before the transfer. Oceanwood will undertake the same position as NS Norway Holding has today. This implies that if e.g. NS Norway Holding owns shares representing more than 50% of the voting rights in Norske Skog, at the time of the IPO and the Share Sale and at all times between the IPO and the Share Sale, Oceanwood can acquire further shares in Norske Skog without triggering a mandatory bid.

Oslo Børs' considerations regarding the bid obligation in connection with subsequent acquisitions is not a part of Oslo Børs' authority to grant exemptions, and should therefore only be regarded as a statement on the statutory interpretation.

#### **5 Resolution**

Oslo Børs, in its capacity as takeover supervisory authority, has on this basis made the following resolution:

*"An exemption from the mandatory bid obligation will be granted to Oceanwood Opportunities Special Situation Malta Limited pursuant to the STA section 6-2 (3) in connection with the transfer of shares in Norske Skog ASA.*

*The transfer must be carried out within 31 December 2019.*

*No later than the agreement or decision regarding the transfer is executed, Oceanwood Opportunities Special Situation Malta Limited shall make sure that an ordinary stock exchange notice is published, stating that Oslo Børs, in its capacity as takeover supervisory authority, has resolved to grant an exemption pursuant to the STA section 6-2 (3) for the transfer. Oslo Børs shall at the same time be notified about the disclosure."*

For the sake of good order Oslo Børs informs that this resolution may be appealed by persons having a legal interest in an appeal (*Nw: rettslig klageinteresse*).

Oslo Børs shall be notified if the transfer is not carried out.

Yours sincerely  
OSLO BØRS ASA

Gunnar Eckhoff  
Attorney

**Norske Skog ASA – Regarding exemption above, 18 October 2019:**

From representative of Oceanwood to Oslo Børs:

We refer to the Letter and the exemption decision made by Oslo Børs on 16 October 2019 related thereto (the “**OSE Decision**”). Defined terms in this email shall be the same as in our email of 9 October 2019 below.

As per our discussion, OSSML would like to have confirmed with Oslo Børs that the OSE Decision does not assume that the Transfer need to take place by one single transfer of all shares in NS held by NS NH, from NS NH to OSSML, prior to 31 December 2019 to be within the scope of the OSE Decision. Consequently, NS NH may carry out the Transfer (meaning NS NH’s shares in NS from NS NH to OSSML) on two or more single transfers (as opposed to one transfer of all shares in “one block”) without triggering the Mandatory Offer Rules, as long as such transfers are carried out prior to 31 December 2019.

Decision by Oslo Børs:

We refer to your e-mail below. In our resolution of 15 October 2019, referred to as the OSE Decision below, there is a premise that the transfer shall be made in one single transfer, prior to 31 December 2019.

However, based on your request below, Oslo Børs hereby decides to amend the resolution as of 15 October 2019, to also comprise two or more single transfers of shares in Norske Skog, prior to 31 December 2019, from NS Norway Holding to Oceanwood, without triggering the mandatory bid obligation. Defined terms are used as in our resolution letter of 15 October 2019.