Top Shelf International Holdings Ltd

Principal Place of Business:
16-18 National Boulevard
Campbellfield
Victoria
Australia 3061

19 January 2024

Not for release to US wire services or distribution in the United States

REPORT OF INDEPENDENT EXPERT ON BREACH OF ASX LISTING RULE 10.11

Top Shelf International Holdings Limited (**Top Shelf** or the **Company**) refers to the announcement dated 30 November 2023 relating to the engagement of an independent expert to prepare a report (**Report**) relating to the breach of ASX Listing Rule 10.11 announced to the ASX on 20 July 2023.

The independent expert, Becketts Lawyers (ABN 36 277 955 909), has now completed the report. A copy of the Report is attached to this announcement as **Attachment 1**. Capitalised terms used in this announcement which are not otherwise defined have the meaning given to those terms in the Report.

Independent Expert Report – findings and conclusions

The findings and conclusions of the independent expert as set out in the Report are summarised below:

- the Company inadvertently issued 3,840,584 shares (**Excess Shares**) to an entity controlled by Top Shelf director Adem Karafili over and above the entity's entitlement to subscribe for shares under the Entitlement Offer, and in doing so breached ASX Listing Rule 10.11;
- the cause of the issue of the Excess Shares was an erroneous calculation which incorrectly calculated the aggregate entitlement of Mr Karafili's controlled entities (**Controlled Entities**) under the Entitlement Offer on the basis of their pro rata participation across the entire proposed $40 million capital raising (rather than the Entitlement Offer);
- in addition to the breach of ASX Listing Rule 10.11, the shares were incorrectly issued to one of the Controlled Entities which had no direct entitlement to subscribe for shares under the Entitlement Offer, due to its interests being held through a number of custodial holders (of which the Company was not aware, due to Mr Karafili not being requested to complete a Securityholder Declaration form[1]), and by other entities controlled by Mr Karafili.[2] This did not impact the Controlled Entities' post-issue relevant interest in shares;
- at the instruction of ASX, the required number of Excess Shares were transferred to the entitled controlled entity, and the balance of the Excess Shares were disposed of to unrelated third parties via on- and off-market transactions, resulting in a total loss to the Controlled Entities of approximately $108,855;

[1] In the form of the template provided in the Master ECM Terms published by the Australian Financial Markets Association (at Schedule 6).

[2] Pursuant to section 9A of the *Corporations Act 2001* (Cth), only the registered holder of shares is entitled to participate in an entitlement offer.

- the Board undertook training on Chapter 10 of the ASX Listing Rules, provided by an independent external provider, Julie McLellan, on 8 November 2023 and intends to undertake further additional training on Module 4 of the ASX Listing Rules Compliance Course; and
- the Company completed a review of its corporate governance and risk management policies in relation to issues of equity securities to persons of influence, related party transactions and risk management and the circumstances surrounding the Breach Event. Taking into account the results of this review, the Board determined that no changes to the Company's existing policies were required and no new policy shall be adopted required other than the Listing Rule 10.11 Policy.

Recommendations of the independent expert

The recommendations of the independent expert as set out in the Report, as well as the status of the Company's compliance with each recommendation as at the date of this announcement, are summarised in the table below. The independent expert is of the view that assuming each recommendation is adopted, implemented and properly followed, it has no further recommendations for changes to Top Shelf's policies or processes, or additional actions it considers the Company should undertake, to ensure the Company does not breach Listing Rule 10.11 in the future.

Section of Report	**Recommendation**	**Status**
3.11	Each of Mr Karafili's controlled entities transfer such shares as required to such related entities or custodial holders so as the correct number of shares is held by each controlled entity and custodial holder following the transfers.	The Company is advised that this transfer is being completed.
3.11	The Company lodge an updated Appendix 3Y in respect of Mr Karafili that reflects the correct registered shareholdings of each of his controlled entities and relevant custodial holders (and, when completed, the recommended share transfers).	An updated Appendix 3Y in respect of Mr Karafili will be lodged with ASX today following this announcement.
3.11	The Appendices 3Y for each other Top Shelf director be reviewed by reference to the relevant underlying holding statements or transaction history reports in order to confirm the correct registered shareholdings, with any required changes to the registered shareholdings to be notified to ASX via an updated Appendix 3Y.	The Company is presently undertaking this review and will release updated Appendices 3Y to ASX as required and as soon as possible.
4.1	That the 'notification of personal interests' section of the standard director appointment letter utilised by Top Shelf be	The Company has made the recommended change to its standard director appointment letter.

Section of Report	Recommendation	Status
	amended to set out the specific obligations in Listing Rule 3.19A in greater detail.	
5.2	That the Company Secretary or the Company's external legal advisers provide the Board with specific training on Module 4 of the ASX Listing Rules Compliance Course.	The Company is in the process of scheduling the recommended training, and intends to complete it as soon as practicable.
6.3	That the Company's Listing Rule 10.11 Policy as adopted on 29 November 2023 be amended and updated to incorporate the changes recommended by the independent expert as set out at section 6.3 of the Report.	The Listing Rule 10.11 Policy has been updated in accordance with the recommendations in the Report. A copy of the proposed final version of the Policy is attached to this announcement as **Attachment 2**.

ASX timetable for additional steps

The Company notes that on 29 September 2023, ASX imposed on the Company a timetable for completing certain steps in relation to the breach of ASX Listing Rule 10.11 and stipulated that the Company was to complete each step as soon as possible and by no later than the dates set out in the table below. The steps and timetable as advised to the Company by ASX are set out in the table below, along with the actual dates of the Company's compliance with each step, and, where applicable, reasons as to why the Company did not meet the timetable stipulated by ASX. ASX has advised the Company that the failure to meet any deadlines was a breach of Listing Rule 18.8.

Step	ASX's original stipulated compliance date	Actual compliance date
Announce details about TSI's review of its procedures for ensuring compliance with the ASX Listing Rules	4 October 2023	6 October 2023. The Company requested an extension of the original deadline on 29 September 2023, and the ASX confirmed it would not take enforcement action in respect of that requirement provided the announcement was released by 6 October 2023.
Announce the outcome of that review	25 October 2023	25 October 2023

Step	ASX's original stipulated compliance date	Actual compliance date
Provide a new draft policy to ensure compliance with Listing Rule 10.11 to ASX	25 October 2023	A draft policy was provided to ASX on 3 October 2023. ASX advised of changes required to be made to the policy on 4 October 2023. The Company subsequently provided a draft policy acceptable to ASX on 18 January 2024, which policy is attached as Attachment 2.
Appoint independent expert (including agreed terms of engagement) and announce the independent expert's review to the market	25 October 2023	30 November 2023. The Company did not meet the ASX deadline due to the time taken to identify and appoint a suitable independent expert.
Provide independent expert's report in full to ASX	22 November 2023	5 January 2024. The Company did not meet the ASX deadline due to the time required by the independent expert to review materials provided to it by the Company and to finalise the Report. This period was lengthened by the Christmas holiday break in December 2023 and January 2024.
Announce findings of Report on MAP and attach the final version of TSI's new policy to ensure compliance with Listing Rule 10.11	13 December 2023	19 January 2024. The Company did not meet the ASX deadline due to the time required by the ASX to review the Report after it was delivered on 5 January 2024 and the time required by the Company to finalise the materials the ASX required to be delivered to it by no later than 19 January 2024. This period was lengthened by office closures over January 2024.

Ends

This announcement was authorised for release by the Top Shelf Board.

For more information (investors and media) For further information, please visit our investor website https://www.topshelfgroup.com.au/investors or contact investor relations at info@topshelfgroup.com.au or on (03) 8317 9990.

Media enquiries, please contact Matt Slade 0409 916 474.

About Top Shelf

Top Shelf International is a Melbourne based distiller and marketer of premium Australian spirits, with distinctive brands in NED Australian Whisky and Grainshaker Hand Made Australian Vodka. The Company has a track record of success creating high quality, premium Australian products and brands; each in its own way encapsulating a distinctive Aussie attitude, social experience and flavour profile.

The Company has expertise in the development and production of distilled spirits, undertakes a significant level of research and development and operates modern fermentation, distillation and packaging facilities in Campbellfield, Victoria. The Company is creating Australia's first agave spirit range and is developing an Agave farm in The Whitsundays region of Queensland specifically chosen for the suitability of its climate for growing blue agave. In development of the farm the Company has committed to the application of up-to-date and innovative horticultural practices.

In addition to distilling and manufacturing its own portfolio of spirit brands, Top Shelf also provides canning, bottling and packaging services to a range of customers.

Attachment 1 – Independent Expert Report

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19 January 2024

The Directors
Top Shelf International Holdings Ltd
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Campbellfield VIC 3061

ASX Limited
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Melbourne VIC 3000

Dear Sirs / Mesdames

Independent Expert Report

1 Introduction

1.1 Background

On 20 July 2023, Top Shelf International Holdings Ltd (**Top Shelf** or the **Company**) announced to ASX that it had breached Listing Rule 10.11 as a result of the participation by an entity controlled by a Top Shelf director, Adem Karafili, in the institutional component of an Entitlement Offer which the Company was undertaking at the time (the **Breach Event**). The level of participation by the entity, Ankara Holdings Pty Ltd <A&N Karafili Family A/C>, exceeded its entitlement in circumstances where an exception in Listing Rule 10.12 did not apply.

1.2 This Report

In a letter to the Company dated 28 September 2023 (**ASX Notification Letter**), ASX required the Company to (among other things):

(a) introduce a written policy that it will follow before it issues new securities to ensure compliance with Listing Rule 10.11 (**Listing Rule 10.11 Policy**);[1] and

(b) engage an independent expert to report on the Breach Event, the Company's response to it and the Company's Listing Rule 10.11 Policy.[2]

Becketts Lawyers was appointed by the Company to provide the independent expert's report required by ASX and this document constitutes such independent expert's report as required by ASX (**Report**). This Report is being provided for this purpose and for no other purpose.

1.3 Scope of the Report

The scope of this Report (the **Scope**) has been determined according to the ASX Notification Letter, and is as follows:[3]

[1] The requirement for the Company to introduce a written policy to ensure compliance with Listing Rule 10.11 was imposed on the Company pursuant to Listing Rule 18.8(k).
[2] The requirement for the Company to commission an independent expert report was imposed on the Company pursuant to Listing Rule 18.8(l).
[3] The Company announced the appointment of Becketts Lawyers as independent expert, and the scope of the report to be prepared by Becketts, on 30 November 2023.

(a) Provide a detailed description of the Breach Event (section 3 of this Report).

(b) Provide a detailed description of the Company's policies and processes that were in place at the time that the Breach Event occurred (section 4 of this Report). Consistent with the ASX Notification Letter, this description focuses on the Company's policies and processes to comply with Listing Rule 10.11 that were in place at the relevant time.

(c) Describe the actions the Company has taken to review its policies and processes for ensuring compliance with the Listing Rules since the Breach Event occurred (section 5 of this Report).

(d) Review any new or revised policy prepared by the Company in response to the Breach Event to ensure its compliance with Listing Rule 10.11 (section 6 of this Report).

(e) Provide a detailed description of any consequences imposed by the Company on Mr Karafili, the other directors of the Company, the Company's external legal adviser (Gilbert + Tobin) or the lead manager (Salter Brothers Capital Pty Ltd) as a result of the Breach Event (section 7 of this Report).

(f) Provide any recommendations for changes to the Company's policies and processes which we consider the Company should make, or additional actions that we consider the Company should undertake, to ensure the Company does not breach Listing Rule 10.11 in the future (section 8 of this Report).

In order to provide appropriate context and report on the Scope, this Report also provides a description of the Capital Raising (as defined in section 2.1) in section 2 of this Report.

1.4 ASIC Regulatory Guides

As required by ASX, Becketts has complied with the guidelines for preparing independent expert reports in *ASIC Regulatory Guide 111: Content of Expert Reports* (**RG 111**) and *ASIC Regulatory Guide 112: Independence of Experts* (**RG 112**), to the extent those guidelines are applicable to our engagement or this Report.[4]

1.5 Nature of the Report – no financial product advice

This Report:

(a) does not contain any recommendation intended to influence investors in making any investment decision, including in relation to the Company's financial products;

(b) has not been prepared in connection with a transaction that the Company's shareholders will vote on;

(c) does not include a valuation; and

(d) does not include any general or personal financial product advice.

Becketts does not have an Australian Financial Services Licence and is not licensed to provide financial services. We do not provide any financial product advice in connection with this Report, and accordingly this Report does not include a Financial Services Guide.

[4] RG 111 and RG 112 focus principally on reports prepared for transactions under Chapters 2E, 5, 6 and 6A of the *Corporations Act 2001* (Cth) (the **Corporations Act**). Each of RG 111 and RG 112 notes that the principles in the respective guides may be relevant to independent expert reports prepared for other purposes.

1.6 Disclosures and sources of information

Becketts provides the disclosures set out at Appendix 1.

This Report and our findings are based solely on publicly available information and information made available to us during the course of preparing this Report, as described in Appendix 2.

1.7 Top Shelf Board, key management and advisers

The composition of the Board and key management of Top Shelf underwent significant change in 2023.

On 21 April 2023, Top Shelf announced the appointment of Trent Fraser as Chief Executive Officer and the resignation of Managing Director (and co-founder) Drew Fairchild.

On 26 April 2023, Top Shelf announced the formal appointment of Julian Davidson as a Non-Executive Director (Mr Davidson's provisional appointment – pending receipt of an Australian Director ID – was announced on 13 February 2023).

On 11 May 2023, Top Shelf announced the resignation of Michael East as a Non-Executive Director.

During the period from 11 May 2023 to 31 July 2023, the Board and key management of Top Shelf comprised:

(a) Executive Chair – Adem Karafili;

(b) Non-Executive Directors – Peter Cudlipp, Lynette Mayne and Julian Davidson;

(c) Chief Executive Officer – Trent Fraser;

(d) Chief Financial Officer – Ben Kennare; and

(e) Company Secretary – Carlie Hodges (whose services are provided via a retainer agreement between the Company and cdPlus Corporate Services Pty Ltd).

On 31 July 2023, Top Shelf announced that:

(a) Adem Karafili had stepped down as Executive Chair to become Executive Director (after which he would transition to Non-Executive Director);

(b) Lynette Mayne had resigned as Non-Executive Director;

(c) Peter Cudlipp had confirmed that he would not seek re-election at the 2023 Annual General Meeting;

(d) Julian Davidson had assumed the role as interim Chair; and

(e) Stephen Grove had been appointed as Non-Executive Director.

2 The Capital Raising

2.1 Background

On Monday, 29 May 2023 Top Shelf announced a capital raising of up to $40 million at an offer price of $0.25 per share (the **Offer Price**) comprising:

(a) a placement to institutional investors to raise $19 million, subject to shareholder approval (the **Conditional Placement**); and

(b) if the Conditional Placement was approved, a one for one, accelerated, non-renounceable pro rata entitlement offer to raise up to $21 million (the **Entitlement Offer**, and together with the Conditional Placement, the **Capital Raising**).

The Company also announced that the lead manager of the Capital Raising, Salter Brothers Capital Pty Ltd (**SB Capital**) had formally confirmed that it had procured $8 million of pre-commitments from investors (including institutional shareholders of the Company) in respect of the Entitlement Offer. These pre-commitments were conditional on the Entitlement Offer raising at least $16 million (or an aggregate minimum raising of $35 million across the Entitlement Offer and Conditional Placement).

The Capital Raising was not underwritten by SB Capital.

The securities of Top Shelf, which had been in trading halt or voluntary suspension for a total of five consecutive trading days up to and including Friday, 26 May 2023, recommenced normal trading on Monday, 29 May 2023.

The Company's legal adviser for the Capital Raising was Gilbert + Tobin.

2.2 Structure of the Capital Raising

The Entitlement Offer was structured as a non-renounceable offer, which meant that the ratio of securities offered could not be greater than one security for each security held.[5] The Company had approximately 84.17 million shares on issue at the record date of the Entitlement Offer and accordingly the Entitlement Offer could result in the issue of a maximum of approximately 84.17 million shares (or approximately $21 million worth of shares at the Offer Price of $0.25 per share).

In conjunction with the Entitlement Offer, the Company sought to raise a total of $19 million under the Conditional Placement (representing approximately 76 million shares at the Offer Price) for an aggregate raising of up to $40 million for the Capital Raising.

At the time of announcing the Capital Raising we understand that the Company had available placement capacity of approximately 5.4 million shares under Listing Rule 7.1 and no capacity available under Listing Rule 7.1A. Given the Conditional Placement contemplated issuing a greater number of shares than was available for placement under Listing Rules 7.1 and 7.1A, the Conditional Placement was conditional on shareholder approval for the purposes of Listing Rule 7.1.[6]

The terms of the Capital Raising provided that if the Conditional Placement was not approved neither the Conditional Placement nor the Entitlement Offer would proceed. This is because each component of the Capital Raising was required in order to raise the amount of equity capital that the Board determined at the time was needed in order to fund the Company's business model. As required under the Listing Rules, the Company could only announce and launch the Entitlement Offer after shareholder approval of the Conditional Placement had been obtained.

[5] Refer to Listing Rule 7.11.3.

[6] A small proportion of the Conditional Placement (being the issue of $100,000 worth of shares to Chief Executive Officer Trent Fraser) was conditional on approval for the purposes of Listing Rule 10.11. Listing Rule 7.1 does not apply to an issue of equity securities made with the approval of shareholders under Listing Rule 10.11 – see Listing Rule 7.2, Exception 14.

2.3 Implications of the Capital Raising structure

As noted in section 2.1, on 29 May 2023 the Company announced that it had received a total of $27 million in committed funds (comprising the $19 million Conditional Placement and $8 million in Entitlement Offer pre-commitments), conditional on at least $35 million in aggregate being raised under the Capital Raising. Accordingly, the Company was required to raise an additional $8 million in order to meet the minimum raising requirement of $35 million, which it sought to procure via pre-commitments for Entitlement Offer shares (including shortfall pre-commitments) during the period from 29 May 2023 to the launch of the Entitlement Offer.

The minimum raising amount was required to be committed, at the very latest, at the time of completion of the institutional component of the Entitlement Offer, in order to give:

(a) the committed institutional investors certainty that the minimum raising would be achieved before settlement of the institutional component of the Entitlement Offer and the Conditional Placement; and

(b) the Company certainty that the Capital Raising would proceed.

It appears that the requirement to meet the minimum raising amount at an Offer Price of $0.25 per share was adversely affected by the Company's share price trajectory between 29 May 2023 and 7 July 2023 (the date that the Entitlement Offer was announced): on 29 May 2023 the Company's share price closed at $0.20; on 4 July 2023 it closed at $0.145; and on 6 July 2023 it closed at $0.18.

When the Entitlement Offer was announced on 7 July 2023, the Offer Price of $0.25 represented a 38.9% premium to the last close price of $0.18 (on 6 July 2023).

2.4 Extraordinary General Meeting

At 9am on Friday, 7 July 2023, the Company held an Extraordinary General Meeting (**EGM**) to approve:

(a) the issue of 75,830,467 shares (to raise gross proceeds of $18,957,617) pursuant to the Conditional Placement, for the purposes of Listing Rule 7.1;

(b) the issue of 400,000 shares (to raise gross proceeds of $100,000) to Trent Fraser (or nominee) pursuant to the Conditional Placement, for the purposes of Listing Rule 10.11; and

(c) the issue of up to 1,440,000 shares to SB Capital (or nominee) for the purposes of Listing Rule 7.1 (in lieu of up to 15% of SB Capital's management and selling fee in respect of the Capital Raising).

All of the resolutions considered at the EGM were approved by Top Shelf shareholders by the requisite majorities (the votes cast in favour of each resolution exceeded 99% of the voting shares).

After the conclusion of the EGM the Company immediately requested – and was granted – a trading halt and announced the Entitlement Offer.

2.5 The Entitlement Offer

The Entitlement Offer was announced on Friday, 7 July 2023. At this time, the Company disclosed that:

(a) the pre-committed Capital Raising investors had agreed to lower the minimum raising requirement from $35 million to $30 million; and

(b) the Company had received pre-commitments of $11 million from investors in respect of the Entitlement Offer, including an amount of $2.125 million in respect of any shortfall from the retail component of the Entitlement Offer (to the extent that it did not raise at least that amount).

The $11 million of Entitlement Offer commitments, together with the $19 million of Conditional Placement commitments, was sufficient to meet the amended minimum raising requirement imposed by the pre-committed investors. This gave the Company certainty that the Capital Raising would proceed and would raise sufficient equity capital to fund the business.

On Monday, 10 July 2023 the Company announced that it had raised gross proceeds of approximately $8.9 million under the institutional component of the Entitlement Offer.

The issue of shares pursuant to the Conditional Placement and the institutional component of the Entitlement Offer occurred on 13 July 2023.

On Friday, 4 August 2023, the Company announced that it had raised a total of $2.125 million under the retail component of the Entitlement Offer, comprising:

(a) approximately $381,000 raised from retail shareholders who participated in the Entitlement Offer; and

(b) approximately $1,744,000 raised from investors who had pre-committed to acquire retail Entitlement Offer shortfall shares.

The issue of shares pursuant to the retail component of the Entitlement Offer occurred on 4 August 2023 and the shortfall shares were issued on 28 August 2023.

3 The Breach Event

3.1 Listing Rule 10.11 and relevant defined terms

Listing Rule 10.11 provides as follows (with defined terms[7] marked with an asterisk):

*10.11 Unless one of the exceptions in rule 10.12 applies, an entity must not issue or agree to issue *equity securities to any of the following *persons without the approval of holders of its *ordinary securities.*

*10.11.1 A *related party.*

*10.11.2 A *person who is, or was at any time in the 6 months before the issue or agreement, a *substantial (30%+) holder in the entity.*

*10.11.3 A *person who is, or was at any time in the 6 months before the issue or agreement, a *substantial (10%+) holder in the entity and who has nominated a director to the board of the entity (in the case of a trust, to the board of the *responsible entity of the trust) pursuant to a relevant agreement which gives them a right or expectation to do so.*

[7] The definitions of defined terms that are used in the Listing Rules are set out in Listing Rule 19.

*10.11.4 An *associate of a *person referred to in rules 10.11.1 to 10.11.3.*

*10.11.5 A *person whose relationship with the entity or a *person referred to in rules 10.11.1 to 10.11.4 is such that, in ASX's opinion, the issue or agreement should be approved by *security holders.*

The notice of meeting to obtain approval must comply with rule 10.13.

The following defined terms are relevant to Listing Rule 10.11 and their meanings are summarised below:

(a) **equity securities* includes a share;

(b) a **person* includes a body corporate;

(c) **ordinary securities* means ordinary shares (or ordinary units);

(d) a **related party* in relation to a body corporate includes a director of the body corporate and an entity controlled by a director (unless the entity is also controlled by the body corporate); and

(e) an **associate*, in the case of a natural person, is an entity that the person controls.

The effect of Listing Rule 10.11 is that Top Shelf cannot issue or agree to issue equity securities to a Top Shelf director or an entity controlled by a Top Shelf director (unless, in the case of a controlled entity, the entity is also controlled by Top Shelf) without shareholder approval, unless one of the exceptions in Listing Rule 10.12 applies.

3.2 Policy rationale of Listing Rule 10.11

ASX describes the policy rationale for Listing Rule 10.11 in the following terms:[8]

The policy that underpins Listing Rule 10.11 starts from the premise that a 10.11 party [Note: a 10.11 party is a party mentioned in Listing Rules 10.11.1 to 10.11.5] *is likely to be in a position to influence whether the entity issues, or agrees to issue, equity securities to them, as well as the terms on which the issue or agreement is made. The harm it seeks to protect against is that the 10.11 party will exercise that influence to favour themselves at the expense of the entity.*

To address the potential conflicts involved and to minimise the risk of this harm occurring, Listing Rule 10.11 displaces the general rule that the board of directors…..is responsible for managing the business of the entity to the exclusion of its security holders and requires the issue or agreement to be approved by the holders of ordinary securities in the entity [Note: unless an exception in Listing Rule 10.12 applies]*. 10.11 parties who will participate in the issue and their associates are precluded from voting on the resolution to approve it.*

3.3 Exceptions in Listing Rule 10.12

There are 12 exceptions to Listing Rule 10.11 that are set out in Listing Rule 10.12. For the purposes of this Report, two exceptions are relevant and those exceptions are summarised below (with defined terms marked with an asterisk):

[8] Refer to *ASX Guidance Note 25 - Issues of Equity Securities to Persons in a Position of Influence* (at section 2.2).

(a) *Exception 1* of Listing Rule 10.12 is an issue of *securities to holders of *ordinary securities made under a *pro rata issue[9] and to holders of other *equity securities to the extent that the terms of issue of the *equity securities permit participation in the *pro rata issue.

Exception 1 only applies to securities taken up as part of a pro rata issue. It does not apply to a director (or a director's controlled entity) taking up all or part of the shortfall of a pro rata issue (even if the shortfall is allocated on a pro rata basis to those participating in the shortfall).

(b) *Exception 11* of Listing Rule 10.12 is an agreement to issue *securities that is conditional on the holders of the entity's *ordinary securities approving the issue under rule 10.11 before the issue is made. If an entity relies on this exception it must not issue the *securities without such approval.

3.4 Adem Karafili's interests in Top Shelf shares on the record date of the Entitlement Offer

An eligible shareholder's entitlement to participate in a pro rata entitlement offer is calculated using the eligible shareholder's registered shareholding on the record date and the entitlement offer ratio: for example, an eligible shareholder who holds 1,000,000 shares in an entity on the record date of the entity's pro rata entitlement offer is entitled to apply for 1,000,000 shares in the entitlement offer if the ratio is "one for one" (or 500,000 shares if the ratio is "one for two").[10]

The record date of the Entitlement Offer was Tuesday, 11 July 2023.

On the record date, according to the most recent Appendix 3Y lodged by the Company in respect of Mr Karafili dated 14 March 2023 (**14 March Appendix 3Y**), Mr Karafili had the following relevant interests in Top Shelf ordinary shares:[11]

(a) an indirect interest in 1,959,416 shares held by Ankara Holdings Pty Ltd <A&N Karafili Family A/C> (**Ankara**); and

(b) an indirect interest in 1,663,490 shares held by Glankara Investments Pty Ltd <Glankara Super Fund A/C> (**Glankara**),

and Mr Karafili's relevant interest in the securities held by each of Ankara and Glankara was stated to arise by virtue of his power to:

(c) exercise, or control the exercise of, the right to vote attached to the securities; and

(d) dispose of, or control the exercise of a power to dispose of, the securities.[12]

At all relevant times, Mr Karafili was a related party of Top Shelf (ie a 'Listing Rule 10.11 Party' pursuant to Listing Rule 10.11.1) and Ankara and Glankara were Listing Rule 10.11 Parties pursuant to Listing Rules 10.11.1 and 10.11.4 by virtue of being controlled by Mr Karafili.

[9] A pro rata issue is an issue which has been offered to all holders of securities (other than holders in jurisdictions that have been excluded in accordance with the Listing Rules) in a class on a pro rata basis, including, without limitation, a rights issue. A rights issue has the meaning in section 9A of the Corporations Act as modified by any instrument or class order.
[10] Shareholders are also often permitted by the terms of an entitlement offer to apply for shares in excess of their entitlement (subject to the Listing Rules).
[11] Refer to the Appendix 3Y lodged with ASX on 14 March 2023.
[12] Refer to section 608(1) of the Corporations Act.

Accordingly, provided the requirements in Listing Rule 10.12, Exception 1 were met in connection with the Entitlement Offer (and based on the shareholdings disclosed in the 14 March Appendix 3Y):

(a) Ankara was entitled to subscribe for a maximum of 1,959,416 shares in the Entitlement Offer (the **Ankara Entitlement**); and

(b) Glankara was entitled to subscribe for a maximum of 1,663,490 shares in the Entitlement Offer (the **Glankara Entitlement**),

absent any other available exception in Listing Rule 10.12.

3.5 The Breach Event

On Wednesday, 19 July 2023, Top Shelf lodged an Appendix 3Y (Change of Director's Interest Notice) in respect of changes to the indirect interests of Mr Karafili in Top Shelf shares (the **19 July Appendix 3Y**).

The 19 July Appendix 3Y disclosed that Ankara had acquired 5,800,000 shares as a result of its participation in the institutional component of the Entitlement Offer.[13]

The Ankara Entitlement was 1,959,416 shares, calculated on the basis of the 14 March Appendix 3Y. Accordingly, Ankara's acquisition of 5,800,000 shares in the Entitlement Offer exceeded the Ankara Entitlement by 3,840,584 shares (the **Ankara Excess Shares**). Exception 1 of Listing Rule 10.12 was not available in respect of the Ankara Excess Shares and none of the other exceptions in Listing Rule 10.12 applied in the circumstances.

As a result, the Company breached Listing Rule 10.11 by issuing the Ankara Excess Shares to Ankara.

Top Shelf's Company Secretary discovered the Breach Event when finalising and lodging the 19 July Appendix 3Y on behalf of the Company.

The Company notified ASX that the Breach Event had occurred on Wednesday, 19 July 2023, at which time trading in the Company's securities was temporarily paused by ASX. The trading pause was followed by a one day trading halt for the trading day of 19 July 2023.

The Company announced the Breach Event on Thursday, 20 July 2023 and its securities resumed trading on that date.

3.6 ASX Query letters and responses

ASX issued 'Query' letters to the Company in respect of the Breach Event on 3 August 2023 (**First Query Letter**) and 16 August 2023 (**Second Query Letter**).[14]

The ASX Query letters were responded to by the Company (and disclosed on the Market Announcements Platform) on 10 August 2023 (**First Company Response**) and 31 August 2023 (**Second Company Response**) respectively.

3.7 Initial bookbuild spreadsheet – cause of the misapprehension

In the First Company Response, Top Shelf disclosed that Mr Karafili believed that his entitlement through Ankara and Glankara was a total of 6.8 million shares because of an 'initial bookbuild

[13] All of the 5,800,000 shares were issued to Ankara and none were issued to Glankara.
[14] The ASX Query letters and requests for information were made under Listing Rule 18.7.

spreadsheet' prepared by SB Capital prior to the launch of the Conditional Placement (ie prior to 29 May 2023).

ASX requested a copy of the initial bookbuild spreadsheet in the Second Query Letter (which was provided to ASX by the Company with the Second Company Response). Becketts has also been provided with a copy of the initial bookbuild spreadsheet for the purposes of preparing this Report.

The initial bookbuild spreadsheet identifies Mr Karafili's aggregate record date shareholding of 3,622,906 shares (being the sum of the 1,959,416 shares held by Ankara and the 1,663,490 shares held by Glankara, consistent with the 14 March Appendix 3Y) and the aggregate dollar value of the entitlement associated with the 3,622,906 shares (being $905,727 at the Offer Price of $0.25 per share). It also identifies that Mr Karafili's percentage interest in the Company at the record date was approximately 4.30%.

The misapprehension as to Mr Karafili's entitlement appears to have arisen because subsequent cells in the initial bookbuild spreadsheet reference Mr Karafili's "Total New Investment – Full Pro Rata" on the basis of Mr Karafili's 'pro rata' (ie 4.30%) participation in the entire Capital Raising, being the Entitlement Offer and the Conditional Placement. The Capital Raising was targeting a total of $40,000,000: 4.30% of $40,000,000 represents approximately $1,720,000 worth of shares, being approximately 6.88 million shares at the Offer Price (which Mr Karafili appears to have mistakenly believed was his entitlement under the Entitlement Offer).

The words "Full Pro Rata" were incorrectly associated with Mr Karafili's "pro rata entitlement" under the Entitlement Offer. In fact, the "Full Pro Rata" number of shares included Mr Karafili's entitlement under the Entitlement Offer *and* his 4.30% "proportionate share" of the Conditional Placement. The calculation of Mr Karafili's pro rata entitlement should not have included his 4.30% proportionate share of the Conditional Placement, as the Conditional Placement shares were not issued as at the record date of the Entitlement Offer (and in any event were not approved to be issued to Mr Karafili (or nominee(s)) by shareholders at the EGM).

Further, the initial bookbuild spreadsheet did not distinguish the individual holdings of Ankara and Glankara – it aggregated them into one holding of 'Adem Karafili'.

As at 29 May 2023, we understand that Mr Karafili had committed to acquire $1,000,000 worth of shares (being 4,000,000 shares) in the Capital Raising. Accordingly, Mr Karafili's initial commitment was in excess of the aggregate Ankara Entitlement and Glankara Entitlement (of 3,622,906 shares) by 377,094 shares (or $94,273 worth of shares).

In order for Mr Karafili to acquire this number of shares in excess of his correct entitlement in the Capital Raising without breaching Listing Rule 10.11:

(a) each of Ankara and Glankara would have needed to have been allocated their correct entitlements (in circumstances where 100% of the shares was incorrectly allocated to Ankara – see section 3.9 of this Report); and

(b) the additional 377,094 shares would have needed to be either:

  (i) subject to shareholder approval at the EGM as part of the Conditional Placement (in order to rely on Listing Rule 10.12, Exception 11); or

  (ii) underwritten (or sub-underwritten) by Mr Karafili (such that Listing Rule 10.12, Exception 2 could have been relied on, provided the other conditions of Exception 2 were met).

Alternatively, all of the initial allocation could have been included in the Conditional Placement. We understand that this approval was not sought at the EGM (nor either of the other potential avenues

explored) because of the misapprehension that Mr Karafili's intended level of participation (of 4,000,000 shares) was less than his aggregate entitlement under the Entitlement Offer.

As disclosed by Top Shelf in the Second Company Response, the Board delegated finalisation of the allocation of shares in the bookbuild to Mr Karafili. The Company also disclosed that, other than Mr Karafili's review, there were 'no additional steps taken' by Top Shelf to review the final allocation in the institutional bookbuild process in order to identify whether a Listing Rule 10.11 party was being issued securities in circumstances that required security holder approval under Listing Rule 10.11.

3.8 Increased participation by Mr Karafili prior to launch of the Entitlement Offer

Over the period from 7 July 2023 to 10 July 2023, Mr Karafili's level of participation in the Entitlement Offer increased from 4,000,000 shares ($1,000,000) to 5,800,000 shares ($1,450,000). This occurred at a time when the Offer Price represented a 38.9% premium to the last closing price of Top Shelf shares (on 6 July 2023).

In its announcement of 20 July 2023, the Company disclosed that Mr Karafili subscribed for the shares "….in order to meet conditions applying to pre-commitments from other investors."

Notwithstanding that the Company disclosed $30 million worth of commitments on Friday, 7 July 2023 (sufficient to meet the revised minimum raising requirement), we understand that certain of the pre-commitments were withdrawn or did not eventuate and the Company needed to procure additional commitments (over the period from 7 July 2023 to 10 July 2023) to ensure the minimum raising requirement was met.

This subsequent increase in Mr Karafili's participation compounded the scale of the Breach Event.

We note that if the Company had been aware of the Breach Event on or before 10 July 2023, it would have been open to the Company and Mr Karafili to either:

(a) agree that a proportion of his commitment would be via a conditional placement (and seek approval at a subsequent general meeting); or

(b) enter into an underwriting agreement in respect of the shares in excess of Mr Karafili's aggregate entitlement and rely on Listing Rule 10.12, Exception 2 (provided the other conditions of Exception 2 were met).

3.9 Completion of CARD form and incorrect allocation of 100% of shares to Ankara

Mr Karafili's participation in the Entitlement Offer was documented by a CARD Form substantially in the form of Appendix 3 to the model form of 'Confirmation' contained in the Master Equity Capital Markets Terms published by the Australian Financial Markets Association.

The CARD Form was completed in Mr Karafili's personal name and did not allocate shares to Ankara or Glankara. Subsequently, Mr Karafili's entire allocation of 5,800,000 shares was incorrectly allocated to Ankara in circumstances where the shares should have been allocated between Ankara and Glankara.

This compounded the scale of the Breach Event insofar as it related to Ankara: Ankara received 3,840,584 shares in excess of the Ankara Entitlement (ie the Ankara Excess Shares) and Glankara received no shares. If Glankara had been allocated the Glankara Entitlement of 1,663,490 shares, Ankara would have received 2,177,094 shares in excess of the Ankara Entitlement.[15]

[15] The Ankara Entitlement and Glankara Entitlement are explained in section 3.4 and are based on the 14 March Appendix 3Y.

3.10 Steps to remedy the Breach Event

All of the Ankara Excess Shares were placed on a temporary holding lock on 20 July 2023.

ASX required the Company and Mr Karafili to undertake the following steps to remedy the Breach Event (consistent with section 6 of ASX Guidance Note 25) by 19 August 2023:

(a) Ankara was required to transfer 1,663,490 shares to Glankara (representing the Glankara Entitlement), the completion of which was announced on 21 August 2023; and

(b) the remaining 2,177,094 shares that Ankara held in excess of its entitlement were required to be disposed of. The disposals occurred via a combination of on-market trades and an off-market transfer to a person who was not related to or associated with Mr Karafili between 19 September and 17 October 2023.[16]

Ankara realised an average price of approximately $0.20 per share for the 2,177,094 shares that it disposed of (excluding the shares transferred to Glankara), resulting in a loss of approximately $108,855.

The Company stated on 20 July 2023 that it was undertaking a review of its administrative policies and procedures for ensuring compliance with the Listing Rules.

3.11 Additional findings in respect of Top Shelf shareholdings

In order to verify the Ankara Entitlement and Glankara Entitlement (as reflected in the 14 March Appendix 3Y) Becketts requested (and has been provided with) 'transaction history statements' for each of Ankara and Glankara from the Company's share registry, Boardroom Pty Ltd. The transaction history statements show the changes in numbers of ordinary shares held by each of Ankara and Glankara from the time that Top Shelf was admitted to the official list of ASX in December 2020 to 22 December 2023.

On the record date of the Entitlement Offer (11 July 2023), the transaction history statements evidence the following Top Shelf shareholdings of each of Ankara and Glankara:

(a) 0 ordinary shares held by Ankara as registered holder; and

(b) 1,022,156 ordinary shares held by Glankara as registered holder.

Becketts requested and has been provided with a copy of the Company's share register as at 11 July 2023 (the record date of the Entitlement Offer) and the share register reconciles with the transaction history statements described above.

We understand that HSBC Custody Nominees (Australia) Limited (**HSBC Custody**) was the registered holder of 1,959,416 Top Shelf ordinary shares on 11 July 2023 (the record date of the Entitlement Offer) in its capacity as custodian for Ankara. We understand that HSBC Custody received the shares via a transfer from Ankara on 4 May 2023.

We also understand that HSBC Custody was the registered holder of 641,334 Top Shelf ordinary shares on 11 July 2023 (the record date of the Entitlement Offer) in its capacity as custodian for Glankara.

[16] ASX agreed to extend the 19 August deadline to dispose of these shares to 19 October 2023.

HSBC Custody's registered shareholdings as custodian for Ankara and Glankara have been confirmed by email confirmations received by Mr Karafili from his brokers (which have been provided to us) and a document provided to us by Mr Karafili.

The entitlement to participate in a pro rata non-renounceable entitlement offer is an entitlement that accrues to the holder of the entity's shares on the record date (and not an underlying holder of the beneficial interest in the relevant shares, on whose behalf a registered holder may hold shares).[17] The entitlement to participate cannot be renounced or assigned in a non-renounceable entitlement offer.

On this basis:

(a) Ankara's entitlement to participate in the Entitlement Offer was in fact 0 shares (as it was not a registered Top Shelf shareholder on the record date of the Entitlement Offer) and the entitlement to subscribe for 1,959,416 shares under the Entitlement Offer was an entitlement of HSBC Custody as the registered holder of 1,959,416 shares (in its capacity as custodian for Ankara); and

(b) Glankara's entitlement to participate in the Entitlement Offer was 1,022,156 shares (as this was its registered shareholding on the record date of the Entitlement Offer) and HSBC Custody (in its capacity as custodian for Glankara) had an entitlement to subscribe for 641,334 shares as the registered holder of these shares.

If each of Ankara and Glankara wanted to participate in the Entitlement Offer in respect of all of the Top Shelf shares which they had a relevant interest in, HSBC Custody, as registered holder of certain of the relevant shares, should have been allotted:

(a) 1,959,416 shares in its capacity as custodian for Ankara; and

(b) 641,334 shares in its capacity as custodian for Glankara.

Accordingly, we consider that additional technical breaches of Listing Rule 10.11 have occurred because:

(a) Ankara acquired shares in the Entitlement Offer when it had no entitlement to do so because it was not a registered shareholder on the record date; and

(b) Glankara acquired 1,663,490 shares from Ankara, which correlated with Glankara's entitlement as disclosed in the 14 March Appendix 3Y but in fact exceeded its direct entitlement under the Entitlement Offer by 641,334 shares,

in circumstances where Listing Rule 10.12, Exception 1 was not able to be relied on (given that the participation of each of Ankara and Glankara exceeded their pro rata entitlements as registered holders).

In order to remedy these further technical breaches of Listing Rule 10.11, we recommend that:

(a) Ankara be required to transfer 1,959,416 shares to HSBC Custody, after which Ankara's registered shareholding would be 0 shares and the shareholding of HSBC Custody in its capacity as custodian for Ankara would be 3,918,832 shares;

[17] See section 9A of the Corporations Act.

(b) Glankara be required to transfer 641,334 shares to HSBC Custody, after which Glankara's registered shareholding would be 2,044,312 shares and the shareholding of HSBC Custody in its capacity as custodian for Glankara would be 1,282,668 shares;

(c) the Company lodge an updated Appendix 3Y in respect of Mr Karafili that reflects the correct registered shareholdings of Ankara and HSBC Custody as custodian for Ankara and Glankara and HSBC Custody as custodian for Glankara (and, when completed, the recommended share transfers); and

(d) the Appendices 3Y for each other Top Shelf director be reviewed by reference to the relevant underlying holding statements or transaction history reports in order to confirm the correct registered shareholdings, with any required changes to the registered shareholdings to be notified to ASX via an updated Appendix 3Y.

We note that the misallocation of Entitlement Offer shares between Ankara, Glankara and HSBC Custody does not give rise to any change in Mr Karafili's relevant interest in Top Shelf shares.

The Master ECM Terms published by the Australian Financial Markets Association provide (at Schedule 6) a template form of Securityholding Declaration which may be completed by participants in institutional entitlement offers. The Securityholding Declaration asks for the following entities to be identified in respect of the participant:

(a) 'Registered Holder (Nominee/Custodian)';

(b) 'Sub Custodian (if applicable)'; and

(c) 'Beneficial Owner'.

We understand that a Securityholding Declaration form was not provided to Mr Karafili for completion as part of the institutional component of the Entitlement Offer by SB Capital. If a Securityholding Declaration form had been provided and completed by Mr Karafili we consider that this may have brought the Breach Event and our additional finding in this section 3.11 to the Company's attention prior to them occurring.

4 The Company's relevant policies and processes

4.1 Director appointment letter and Listing Rules 3.19A and 3.19B

As a listed entity, Top Shelf is subject to the disclosure of director interest requirements in Listing Rule 3.19A. The notification requirements in Listing Rule 3.19A complement the director notification requirements of section 205G of the Corporations Act and there is considerable overlap between Listing Rule 3.19A and section 205G.

Listing Rule 3.19B requires an entity to make such arrangements as are necessary with a director to ensure that the director discloses to the entity all the information required by the entity to give ASX completed Appendices 3X, 3Y and 3Z within the time period allowed by Listing Rule 3.19A.

The Company requires each director to enter into a director appointment letter or engagement agreement.

The engagement agreement between Top Shelf and Mr Karafili dated 2 October 2020 draws Mr Karafili's attention to the Company's Securities Dealing Policy and Mr Karafili's obligation to disclose any transactions in the Company's securities to the Company. It also requires Mr Karafili to enter into a discrete "Listing Rule 3.19B Agreement".

Top Shelf and Mr Karafili entered into a discrete Listing Rule 3.19B Agreement dated 28 October 2020 (shortly before the Company's admission to the official list of ASX). The Listing Rule 3.19B Agreement is substantially in the form of the pro forma agreement set out in Attachment 1 to ASX Guidance Note 22.

We understand that Top Shelf directors no longer enter into discrete "Listing Rule 3.19B Agreements" with the Company, but that the Company discharges its obligations under Listing Rule 3.19B via the appointment letter entered into between the Company and each director. We have been provided with a copy of the template director appointment letter.

Each Top Shelf director acknowledges in their appointment letter that they will notify the Company of their interests in Top Shelf securities and contracts and any changes in those interests from time to time and agrees to provide all required information to the Company in accordance with the Listing Rules from time to time.

We recommend that the 'notification of personal interests' section of the standard director appointment letter utilised by Top Shelf be amended to set out the specific obligations in Listing Rule 3.19A in greater detail.

4.2 Compliance with Listing Rule 3.19A

We note that Top Shelf issued shares to Ankara in connection with the institutional component of the Entitlement Offer on Thursday, 13 July 2023. The change in Mr Karafili's interests was notified to the Company Secretary on a timely basis and the Company lodged an Appendix 3Y in respect of Mr Karafili on Wednesday, 19 July 2023.

The notification of Mr Karafili's change of interests occurred four business days after the change occurred and accordingly complied with Listing Rule 3.19A.

4.3 Securities Dealing Policy

The Company has a Securities Dealing Policy in place that governs the dealing in Company securities by 'Employees' (which includes directors). The primary focus of the Securities Dealing Policy is to ensure that the Company has adequate processes in place to promote compliance with the insider trading provisions of the Corporations Act,[18] however the Securities Dealing Policy is also relevant to promote compliance with Listing Rule 10.11.

We note that the Company's Securities Dealing Policy provides that blackout period dealing restrictions and the prior notification and consent requirements that apply to Director dealings in Company securities are exempted in a range of cases, including for the following categories of trades:

(a) participation in an employee, executive or director equity plan operated by the Company;

(b) acquisition of Company securities through a dividend reinvestment plan;

(c) acquisition of Company securities through a share purchase plan available to all retail shareholders; and

(d) acquisition of Company securities through a rights issue.

[18] Refer to Part 7.10, Division 3 of the Corporations Act.

4.4 Disclosure of interests at Board meetings

We are advised that the Company has a standing item at Board meetings whereby each Director confirms that the register of interests contained in the Board materials for the meeting is accurate as it relates to their stated interests and that no additional interests are required to be disclosed (or alternatively, interests may be disclosed at the meeting).

4.5 Due diligence process for the Capital Raising

Top Shelf undertook a due diligence process for the Capital Raising, which was described in the Second Company Response.

The due diligence process was conducted by a Due Diligence Committee established by the Board in accordance with a Due Diligence Process Outline which was prepared by Gilbert + Tobin. The members of the Due Diligence Committee were Adem Karafili, Julian Davidson and Ben Kennare.

We have reviewed the Due Diligence Process Outline and note that, consistent with similar documents adopted by entities undertaking secondary capital raisings in reliance on the 'cleansing notice' regime,[19] the primary objectives of the due diligence process (as described in the Due Diligence Process Outline) were to put in place a system of inquiry to ensure that (amongst other things):

(a) Top Shelf is entitled to rely on the cleansing notice regime;

(b) the relevant ASX releases contain all 'excluded information' and are not misleading or deceptive; and

(c) the cleansing notices comply with the content requirements of the Corporations Act and are not 'defective'.

The due diligence questionnaire completed by certain officers of the Company in relation to the Capital Raising asked the Company to identify each director's respective shareholdings in the Company. The share holdings were identified by reference to a separate report.

Consistent with our view of market practice, compliance with Listing Rule 10.11 was not an expressly stated objective of the due diligence process adopted by the Company.

4.6 Findings

At the time the Breach Event occurred Top Shelf had a customary suite of written policies in place (subject to our recommendation at section 4.1 in relation to the director appointment letter) and undertook a customary due diligence process for the Capital Raising.

In the First Company Response, Top Shelf acknowledged that:

"…the entitlement the subject of the Breaching Agreement should have been confirmed and verified…."

and that:

"The controls were not appropriately applied in the final allocation in the institutional bookbuild process."

[19] Refer to sections 708A and 708AA of the Corporations Act.

As noted in section 3.7 above, in the Second Company Response Top Shelf advised that the Company did not take any additional steps to review the final allocation in the bookbuild process to ensure compliance with Listing Rule 10.11 (other than a review of the final allocation spreadsheet by Mr Karafili as delegate of the Board).

Consistent with the Company's acknowledgements above we consider that – as a matter of process – the allocation of shares in the Capital Raising should have been confirmed and verified by the full Board, or alternatively a committee of the Board comprising more than one director,[20] together with the Company Secretary (with assistance from external legal counsel as required), for the purposes of ensuring compliance with Listing Rule 10.11. This should have occurred: (i) on or around 29 May 2023; and (ii) on or around 10 July 2023.

The Company has introduced the Listing Rule 10.11 Policy in order to establish and document appropriate processes to ensure that the Company complies with Listing Rule 10.11 in the future.

5 Actions the Company has taken to review its policies and processes

5.1 Internal review

On 20 July 2023, the Company announced that it was undertaking a review of its administrative policies and procedures for ensuring compliance with the Listing Rules.

Top Shelf disclosed the scope of that review, and its outcomes, in its announcement of 6 October 2023. In connection with the review, Top Shelf disclosed that it had:

(a) reviewed communications and correspondence between senior management, directors, officers and advisers relating to the bookbuild and allocation process, with the assistance of the Company Secretary and external legal counsel;

(b) requested further information and explanations from relevant directors and advisers;

(c) reconstructed the institutional bookbuild and allocation process, including the allocation of the Ankara Excess Shares; and

(d) summarised the findings of the review in the First Response Letter and Second Response Letter.

5.2 Compliance training

The Board determined that it would be appropriate for each director to receive external training on Listing Rule 10 (including Module 4 of the ASX Listing Rules Compliance Course). The training was provided by an external provider, Julie McLellan, on 8 November 2023.

We have been provided with the training materials that the external provider presented and note that Module 4 of the ASX Listing Rules Compliance Course was not specifically included in the training materials (although the materials contained much of the same information).

We recommend that the Company Secretary or the Company's external legal advisers provide the Board with specific training on Module 4 of the ASX Listing Rules Compliance Course.

[20] In our experience, such a committee would typically be in addition to the Due Diligence Committee established by the Board (the stated focus of the Due Diligence Committee is described in section 4.5 of this Report).

5.3 Company policies and processes

As noted in section 1.1, the Company was required by ASX to introduce the Listing Rule 10.11 Policy as a result of the Breach Event.

We are advised that the Board – taking into account the results of the internal review – determined that:

(a) no changes to the Company's existing policies were required; and

(b) no new policy was required (other than the Listing Rule 10.11 Policy),

as a result of the Breach Event, subject to the findings and recommendations in this Report.

5.4 Listing Rule 10.11 Policy

The Board has adopted the Listing Rule 10.11 Policy in order to establish and document appropriate processes to ensure that the Company complies with Listing Rule 10.11 in the future.

Our findings and recommendations in relation to the Listing Rule 10.11 Policy are set out in section 6 of this Report.

5.5 Engagement of independent expert and production of this Report

Becketts has been engaged by the Company as independent expert to report on the Scope and prepare this Report.

6 Review of any new or revised policy

6.1 Review findings

In response to the Breach Event the Company engaged its external legal adviser (Gilbert + Tobin) to prepare a new 'Listing Rule 10.11 Policy'. The Listing Rule 10.11 Policy was adopted by the Board on 29 November 2023, subject to any further changes being recommended as a result of our review or required by ASX.[21]

6.2 Listing Rule 10.11 Policy

A summary of the Listing Rule 10.11 Policy dated 29 November 2023 is provided below:

(a) Prior to issuing or agreeing to issue any securities, the Company must seek written confirmation from its company secretary and (if requested by the company secretary) external legal counsel in relation to the application of Listing Rule 10.11 and any applicable exceptions.

(b) Where the Company (or a lead manager, underwriter or arranger on its behalf) conducts a bookbuild or similar allocation process in relation to the issue of securities, the final proposed allocation list will be reviewed by each director to identify any Listing Rule 10.11 Party on the list that is associated with the director.

(c) Prior to the issue of securities, each director must confirm in writing that:

[21] The adoption of the Listing Rule 10.11 Policy was required by ASX in the ASX Notification Letter.

(i) they have considered the application of Listing Rule 10.11 to each person on the allocation list;

(ii) they are satisfied that Listing Rule 10.11 has been complied with in relation to each person on the allocation list; and

(iii) they are satisfied that the Company has received appropriate external advice to the extent required to enable them to give the confirmations in sub-paragraphs (i) and (ii) above.

(d) Each director must inform relevant Listing Rule 10.11 Parties associated with them of the restrictions that apply to them under Listing Rule 10.11 and request those persons notify them prior to applying for any new issue of the Company's securities, in each case to the extent that such persons are associated with and known to the director.

(e) The Company will make available to the directors and company secretaries external training in relation to the application of Listing Rule 10 on a regular basis.

(f) In the event of a breach of Listing Rule 10.11 involving a director, related party or associate, the relevant director must promptly rectify that breach in a manner acceptable to ASX, which may include agreeing to cancel or dispose of excess securities and donate any profits to an approved charity.

6.3 Recommendations

Our recommendations in relation to the Listing Rule 10.11 Policy are set out below.

(a) Preamble

We recommend that the Listing Rule 10.11 Policy include a brief preamble setting out the policy rationale of Listing Rule 10.11 and the harm it seeks to prevent (described in section 3.2 of this Report).

We also recommend the Listing Rule 10.11 Policy include words that indicate that the policy should be read together with the Company's Securities Dealing Policy and the directors' obligations under the arrangements made between the Company and each director pursuant to Listing Rule 3.19B.

(b) Summary of Listing Rule 10.11 and defined terms

We recommend that the Listing Rule 10.11 Policy:

(i) include a summary or extract of Listing Rule 10.11;

(ii) provide an explanation of the relevant defined terms that are contained in Listing Rule 10.11 (for example, 'related party' and 'associate'); and

(iii) utilise, where appropriate, terms defined in the Listing Rules.

(c) Summary of key exceptions

We recommend that the Listing Rule 10.11 Policy contain a brief overview of the key exceptions in Listing Rule 10.12.

(d) Scope of Listing Rule 10.11 Policy

The current Listing Rule 10.11 Policy prescribes a detailed procedure that applies "Where TSI conducts (or a lead manager, underwriter or arranger conducts on TSI's behalf) a bookbuild or similar allocation process in relation to the issue of securities….".

We recommend that this procedure apply where the Company conducts any capital raising.[22]

(e) Initial consideration of Listing Rule 10.11

In the context of a capital raising, the existing Listing Rule 10.11 Policy addresses compliance at the conclusion of the allocation process.

We recommend that an initial step also be included whereby the company secretary should identify the Listing Rule 10.11 Parties (and the security holdings of the relevant Listing Rule 10.11 Parties) during the due diligence process in preparation for a capital raising. This information should be required to be communicated to any lead manager, underwriter or arranger (and, if required, the external legal adviser on the capital raising), and the company secretary should verify this information against the most recent Appendix 3Y (or Appendix 3X) for each director.

(f) Related parties and associates

We recommend that the requirement to inform persons of the Listing Rule 10.11 provisions include reference to persons falling within paragraphs (g) and (i), if applicable (as well as persons falling within paragraphs (b) to (e)).

(g) Training

We recommend that the Listing Rule 10.11 Policy should require the company secretary (or, if appropriate, external legal advisers) to provide the directors with training in relation to the Listing Rule 10.11 Policy (and Listing Rule 10 generally) on an annual basis.

(h) If there is a question as to whether a person is a Listing Rule 10.11 Party

We recommend that the Listing Rule 10.11 Policy include a paragraph that advises directors that, if they are in any doubt as to whether a person is a Listing 10.11 Party, they should contact the company secretary (who may seek external legal advice at the Company's expense).

(i) Appendix 3Y process

We recommend that the Listing Rule 10.11 Policy establish a process for verifying each Appendix 3Y lodged by the Company which requires the company secretary to verify a director's direct and indirect relevant interests against the share registry's holding statements prior to lodging an Appendix 3Y (and Appendices 3X and 3Z) in relation to the director.

7 Description of any consequences imposed by the Company

It is the Company's responsibility to ensure it complies with Listing Rule 10.11. Consistent with this obligation, we note that the lead manager engagement letter between the Company and SB Capital dated 29 May 2023 (**Engagement Agreement**) contains representations and warranties given by the Company in favour of SB Capital that: (i) performance of the Engagement Agreement will not

[22] We note that the first paragraph of the current Listing Rule 10.11 Policy covers all issuances of securities (not just issues of securities pursuant to a bookbuild or similar process).

infringe the Listing Rules; and (ii) the Company will ensure that it has procedures in place to ensure continued compliance with the Listing Rules.

As described in section 5, since the Breach Event occurred:

(a) the Company completed a review of its corporate governance and risk management policies in relation to issues of equity securities to persons of influence, related party transactions and risk management and the circumstances surrounding the Breach Event;

(b) the Board participated in a training course on Listing Rule 10 which was provided by an external adviser, Julie McLellan;

(c) the Listing Rule 10.11 Policy was prepared by the Company's external legal advisers and adopted by the Company. The Listing Rule 10.11 Policy provides that regular training on Listing Rule 10 will be made available to the directors and company secretaries; and

(d) the Company engaged Becketts to prepare this Report.

In its announcement of 6 October 2023, the Company stated that:

Given that the Excess Allocation [Note: the Ankara Excess Shares] *was issued at a price higher than the price at which TSI shares were available on market, the breach was inadvertent and there was no benefit to Mr Karafili, the Board did not consider it appropriate to impose any penalty on Mr Karafili.*

We note that Ankara subscribed for the Ankara Excess Shares at a 38.9% premium to the last close price and realised a loss of approximately $108,855 on the disposal of 2,177,094 shares (excluding the shares transferred to Glankara).

The Company also noted in its announcement of 20 July 2023 that:

The institutional component of the Entitlement Offer was not fully subscribed, and thus Mr Karafili's participation did not limit any other subscriptions for securities.

Other than the steps taken by the Company described in sub-paragraphs (a) to (d) above, we are advised that no direct consequences have been imposed by the Company on Mr Karafili, the other directors of the Company, the Company's legal advisers (Gilbert + Tobin) or the lead manager (SB Capital) as a result of the Breach Event.

8 Summary of recommendations

We have provided a recommendation regarding the content of the Company's standard director appointment letter in section 4.1 of this Report.

We have provided a recommendation for additional training in section 5.2 of this Report.

We have provided recommendations in relation to the Listing Rule 10.11 Policy in section 6.3 of this Report.

We have also identified, and provided recommendations to rectify, certain additional technical breaches of Listing Rule 10.11 in section 3.11 of this Report, which we identified in the course of preparing this Report.

Assuming our recommendations in this Report are adopted, implemented and properly followed, we have no further recommendations for changes to Top Shelf's policies or processes, or additional

actions we consider the Company should undertake, to ensure the Company does not breach Listing Rule 10.11 in the future.

* * * * *

Yours faithfully,

Nick Golding
Partner
Becketts Lawyers

Appendix 1 – Becketts Lawyers disclosures

1. Independent Expert and Qualifications

The individual responsible for preparing this Report on behalf of Becketts Lawyers is Nick Golding.

Nick has a Bachelor of Law degree from the University of Western Australia and was admitted to practice in 2006.

Nick is a Principal of Becketts and has a significant number of years of experience in the provision of advice to ASX-listed issuers and lead managers on equity capital raisings.

2. Disclaimers

It is not intended that this Report should be used or relied upon for any purpose other than Becketts' findings in relation to the Scope. Becketts expressly disclaims any liability to any Top Shelf shareholder (or any other person) who relies or purports to rely on this Report for any other purpose.

Becketts is not acting for any person connected with the Breach Event (other than Top Shelf in relation to the provision of this Report).

3. Independence and Disclosure of Interests

Becketts and the individuals responsible for preparing this Report have acted independently.

RG 112 (at RG112.34) provides that an expert should disclose relationships or interests existing at the time of preparation of the report or existing in the previous two years.

Becketts has not acted for Top Shelf or Salter Brothers Capital Pty Ltd at any time since Becketts was established in February 2021 (other than, in the case of Top Shelf, in connection with this Report).

Becketts was not involved in the Capital Raising in any capacity (other than as independent expert in order to prepare this Report).

Adem Karafili is an interested party in relation to this Report. Mr Karafili is a non-executive director and shareholder of The Hydration Pharmaceuticals Company Limited (**ASX:HPC**). Becketts has acted as Australian legal adviser to The Hydration Pharmaceuticals Company Limited since February 2021.

4. Fees

Becketts charges fees on a time cost basis. Top Shelf has agreed to pay Becketts a fee of approximately $47,000 (plus GST) for time spent preparing this Report. Further fees may be payable by Top Shelf if time is spent by Becketts after the date of this Report.

5. Consent

Becketts consents to lodgement of a copy of this Report by Top Shelf on the ASX Market Announcements Platform.

Neither the whole nor any part of this Report, nor any reference to it, may be included in any other document without the prior written consent of Becketts as to the form and context in which it appears.

Appendix 2 – Sources of information

In preparing this Report Becketts has been provided with, considered and relied on the following sources of information:

Publicly available information

ASX announcements lodged by Top Shelf on the Market Announcements Platform.

Non-public information

Information and documents provided to Becketts by Top Shelf, its relevant officers, Gilbert + Tobin and Salter Brothers Capital Pty Ltd in response to requests from us.

In addition, we have held discussions with, and obtained information from, certain relevant officers of Top Shelf and representatives of Gilbert + Tobin and Salter Brothers Capital Pty Ltd.

Attachment 2 – Listing Rule 10.11 Policy

ASX LR 10.11 Compliance Policy

ASX Listing Rule 10.11

As at the date of this policy, ASX Listing Rule 10.11 provides that:

> *Unless one of the exceptions in rule 10.12 applies, an entity must not issue or agree to issue *equity securities to any of the following *persons without the approval of holders of its *ordinary securities.*
>
> *10.11.1* *A *related party.*
>
> *10.11.2* *A *person who is, or was at any time in the 6 months before the issue or agreement, a *substantial (30%+) holder in the entity.*
>
> *10.11.3* *A *person who is, or was at any time in the 6 months before the issue or agreement, a *substantial (10%+) holder in the entity and who has nominated a director to the board of the entity […] pursuant to a relevant agreement which gives them a right or expectation to do so.*
>
> *10.11.4* *An *associate of a *person referred to in rules 10.11.1 to 10.11.3.*
>
> *10.11.5* *A *person whose relationship with the entity or a *person referred to in rules 10.11.1 to 10.11.4 is such that, in ASX's opinion, the issue or agreement should be approved by security holders.*
>
> *The notice of meeting to obtain approval must comply with rule 10.13.*

Exceptions to ASX Listing Rule 10.11

As at the date of this policy, ASX Listing Rule 10.12 provides various exceptions to the shareholder approval requirement in ASX Listing Rule 10.11. Those exceptions are summarised below.

> *Exception 1* *An issue under a pro rata issue (also known as an entitlement offer).*
>
> *Exception 2* *An issue to an underwriter or sub-underwriter of a pro rata issue within 15 Business Days of the close of that offer, provided the underwriting or sub-underwriting arrangements are disclosed to the ASX.*
>
> *Exception 3* *An issue under a dividend or distribution plan, provided there is no limit on participation and excluding any issue under an agreement to underwrite the shortfall on that plan.*
>
> *Exception 4* *An issue under a security purchase plan, excluding any issue under an agreement underwrite the shortfall on that plan and subject to additional requirements set out in ASX Listing Rule 10.12.*
>
> *Exception 5* *An issue under a takeover bid or merger a merger by way of a scheme of arrangement under Part 5.1 of the Corporations Act.*
>
> *Exception 6* *An issue that is approved for the purposes of item 7 of section 611 of the Corporations Act.*

Exception 7 *An issue resulting from the conversion of convertible securities, provided that the issue of those convertible securities complied with the ASX Listing Rules.*

Exception 8 *An issue under an employee incentive scheme made, or taken to have been made, with shareholder approval under ASX Listing Rule 10.14.*

Exception 9 *A grant of options or other rights to acquire equity securities under an employee incentive scheme, where the securities to be acquired upon exercise of the options or rights are required under that scheme to be purchased on-market.*

Exception 10 *An issue resulting from an agreement to issue securities, provided that entry into that agreement complied with the ASX Listing Rules.*

Exception 11 *An issue under an agreement that is conditional on shareholder approval under ASX Listing Rule 10.11, provided that shareholder approval is obtained prior to the issue of those securities.*

Exception 12 *An issue under an agreement or transaction with a person who would not otherwise be a related party, but for the fact that they believe, or have reasonable grounds to believe, that they are likely to become a related party in the future because of that agreement or transaction.*

Definitions

Defined terms in ASX Listing Rule 10.11 above are marked with an asterisk. The definitions of those terms under ASX Listing Rule 19 as at the date of this policy as they apply to the company are set out below.

Defined Term	**Meaning**
associate	Save as set out below, a person (the *second person*) is an associate of another person (the *primary person*) in relation to the company if, and only if, one or more of the following paragraphs applies: (i) In the case of a primary person who is a natural person, the second person is an entity the primary person controls; (ii) in the case of a primary person who is an entity, the second person is: (x) an entity the primary person *controls; (y) an entity that *controls the primary person; or (z) an entity that is controlled by an entity that *control the primary person; (iii) the second person is a person with whom the primary person has, or proposes to enter into, a relevant agreement for the purpose of controlling or influencing the composition of the company's board or the conduct of the company's affairs;

Defined Term	Meaning
	(iv) the second person is a person with whom the primary person is acting, or proposing to act, in concert in relation to the company's affairs. In paragraphs (i) and (ii) above, "entity" means a body corporate, partnership, unincorporated body or a trust and includes, in the case of a trust, the *responsible entity of the trust. A related party of a natural person is to be taken to be an associate of the natural person unless the contrary is established. However, a person is not an associate of another person merely because of one or more of the following: (i) one gives advice to the other, or acts on the other's behalf, in the proper performance of the functions attaching to a professional capacity or a business relationship; (ii) one, a client, gives specific instructions to the other, who ordinary business includes dealing in financial products, to acquire financial products on the client's behalf in the ordinary course of that business; (iii) one had sent, or proposes to send, to the other an offer under a takeover bid for securities held by the other; or (iv) one has appointed the other, otherwise than for valuable consideration given by the other or by an associate of the other, to vote as a proxy or representative at a meeting of members, or of a class of members, of the company.
control	For the purposes of these rules, an entity controls a second entity if the first entity has the capacity to determine the outcome of decisions above the second entity's financial and operating policies. In determining whether the first entity has this capacity: (i) the practical influence the first entity can exert (rather than the rights it can enforce) is the issue to be considered; and (ii) any practice or pattern of behaviour affecting the second entity's financial or operating policies is to be taken into account (even if it involves a breach of an agreement or a breach of trust).

Defined Term	Meaning
	The first entity does not control the second entity merely because the first entity and a third entity jointly have the capacity to determine the outcome of decisions above the second entity's financial and operating policies. If the first entity is a body corporate, it will not be taken to control a second entity if it is under a legal obligation to exercise its capacity to influence decisions about the second entity's financial and operating policies of the benefit of someone other than its members. If the first entity is a trust, the trust will be taken to control an entity that the *responsible entity of the trust controls in its capacity as *responsible entity of the trust. It will not be taken to control an entity that the *responsible entity of the trust controls in some other capacity.
equity securities	In relation to the company: (i) a share; (ii) an option over an issued or unissued share; (iii) a right to an issued or unissued share; (iv) an option over, or right to, a security referred to (iii) or (iv) above; (v) a security that is convertible by the holder, by the issuer or otherwise by its terms of issue, into a security referred to in (i) to (iv) above or (vi) below ; and (vi) any security that ASX decides to classify as an equity security, but not a security the ASX decides to classify as a debt security.
ordinary securities	Ordinary shares in the company.
person	Includes an individual, body corporate, body politic, firm, association, authority or other entity.

Defined Term	Meaning
related party	In relation to the company: (i) an entity that controls the body corporate; (ii) if a body corporate is controlled by an entity that is not a body corporate, the persons making up that entity; (iii) directors of the body corporate or of an entity that controls the body corporate; (iv) spouses and de facto spouses of anyone referred to in (ii) and (iii) above; (v) parents and children of anyone referred to in (ii), (iii) and (iv) above; (vi) an entity controlled by anyone referred to in (i) – (v) above unless it is also controlled by the body corporate; (vii) anyone who has fallen within (i) – (vi) above within the past 6 months; (viii) anyone who believes or has reasonable grounds to believe that they are likely to fall within (i) – (vi) at any time in the future; and (ix) anyone acting in concert with someone referred to in (i) – (viii) above.
responsible entity	(i) in relation to a registered scheme, the same meaning as in the Corporations Act; (ii) in relation to a trust that is not registered scheme, the entity that in ASX's opinion performs a substantially equivalent role in relation to the trust as the responsible entity performs in relation to a registered scheme.
substantial (10%+) holder	A person who would have a "substantial holding" in the company under paragraph (a) of the definition of that term in section 9 of the Corporations Act if the reference in that paragraph to 5% was 10%.
substantial (30%+) holder	A person who would have a "substantial holding" in the company under paragraph (a) of the definition of that term in section 9 of the Corporations Act if the reference in that paragraph to 5% was 30%.

Policy rationale

The policy that underpins ASX Listing Rule 10.11 starts from the premise that a person falling within ASX Listing Rule 10.11.1 to 10.11.5 (as set out above) is likely to be in a position to influence whether the entity issues, or agrees to issue, equity securities to them, as well as the terms on which the issue or agreement is made.

It seeks to protect again the potential harm that those persons will exercise that influence to favour themselves at the expense of the entity.

To address the potential conflicts involved and to minimise the risk of this harm occurring, ASX Listing Rule 10.11 displaces the general rule that the board of directors is responsible for managing the business of the entity to the exclusion of its security holders and requires the issue or agreement to be approved by the holders of ordinary securities in the entity, unless an exception in ASX Listing Rule 10.12 applies.

Top Shelf International Holdings Limited (**TSI**) has adopted this policy to ensure compliance with ASX Listing Rule 10.11. This policy should be read together with TSI's securities trading policy from time to time, and the agreements between each director and TSI pursuant to ASX Listing Rule 3.19B.

ASX Listing Rule 10.11 Policy

Prior to issuing or agreeing to issue any securities:

(a) the company secretary must:

(i) identify each person falling within ASX Listing Rule 10.11.1 to 10.11.5 (as set out above) that holds TSI securities; and

(ii) verify the security holding of each such person against the most recent Appendix 3Y or Appendix 3X lodged in respect of the relevant director(s),

and provide a list of those persons and their holdings of TSI securities to:

(iii) the TSI board; and

(iv) any lead manager, underwriter or arranger (if any) of any proposed equity raising;

(b) TSI will ensure that it seeks written confirmation from its company secretary and (if requested by the company secretary) external legal counsel in relation to the application of ASX Listing Rule 10.11 and any applicable exceptions; and

(c) the final proposed allocation list shall be reviewed by each director of TSI to identify any person on that list which is:

(i) an entity that controls TSI (if any);

(ii) any director of TSI or any director of an entity that controls TSI (if any);

(iii) spouses and de facto spouses of anyone referred to in (c)(ii) above;

(iv) parents and children of anyone referred to in (c)(ii) or (iii) above;

(v) any entity controlled by anyone referred to (c)(i) to (iv) above, unless it is controlled by TSI;

(vi) anyone that:

(A) has satisfied the criteria in (c)(i) to (v) above within the past 6 months; or

(B) believes or has reasonable grounds to believe that they are likely to fall within the criteria in (c)(i) to (v) above at any time in the future;

(vii) anyone acting in concert with anyone referred to in (c)(i) to (vi) above;

(viii) a person who is (or has within the past 6 months been):

(A) the holder of 30% or more of TSI shares, either alone or together with their associates; or

(B) the holder of 10% or more of TSI shares, either alone or together with their associates, and who has nominated a director to the TSI board pursuant to an agreement with TSI.

(ix) any entity or person:

(A) controlled by or under common control with anyone referred to in (c)(i) to (viii) above;

(B) who has entered into (or proposes to enter into) an agreement for the purpose of controlling or influencing the composition of the TSI board or the conduct of TSI's affairs with anyone referred to in (c)(i) to (viii) above; or

(C) who is acting (or proposing to act) in concert in relation to the affairs of TSI with anyone referred to in (c)(i) to (viii) above,

and prior to the issue of any securities each director must confirm in writing that:

(x) they have considered the application of ASX Listing Rule 10.11 to each person on that list;

(y) they are satisfied that ASX Listing Rule 10.11 has been complied with in relation to each person on that list; and

(z) they are satisfied that TSI has received appropriate external advice to the extent required to enable them to give the confirmations in paragraphs (x) and (y) above.

Each director of TSI must inform any person falling within paragraphs (c)(ii) to (v), (c)(vii) or (c)(viii) above of the restrictions that apply to them under ASX Listing Rule 10.11 and request that those persons notify them prior to applying for any new issue of TSI securities, in each case to the extent that such persons are associated with and known to that director.

If a director of TSI is unclear or has any doubt concerning whether a person falls within any of paragraphs (c)(i) to (ix), they should contact the company secretary (who may seek external legal advice at the Company's expense).

TSI's company secretary must provide the directors with training in relation to this policy and the application of ASX Listing Rule 10 more generally (or arrange the provision of such training by external legal advisers, if appropriate) on an annual basis.

In the event of a breach of ASX Listing Rule 10.11 involving an issue of securities to a person falling within paragraphs (c)(ii) to (v), (c)(vii) or (c)(viii) above, the associated director of TSI must promptly rectify that breach in a manner acceptable to the ASX, which may include agreeing to cancel or dispose of excess securities and donate any profits to an approved charity.

Notification of Directors' interests

Prior to lodging any Appendix 3X, Appendix 3Y or Appendix 3Z on the ASX, the company secretary must verify the relevant director's direct and/or indirect relevant interests against TSI's share registry's holding statements.