



21 May 2020

Ms Elizabeth Harris
Manager, Listings Compliance (Perth)
Australian Stock Exchange

Dear Elizabeth

Skin Elements Limited (SKN) – Query Letter

Skin Elements Limited (SKN) provides the following response to ASX query letter of 18 May 2020:

Questions and Requests for Information

Having regard to the above, ASX asks SKN to respond separately to each of the following questions and requests for information:

Underwriting

1. Please explain SKN's rationale for appointing State Securities to underwrite the exercise of the Options. In your answer to this question, please specifically address:

1.1 Given the Options do not expire until 31 December 2020, why SKN considered it necessary or appropriate to enter into the Underwriting Agreement on 16 April 2020?

1.2 Given the 3 Cent Options were well in the money at the time the Underwriting Agreement was entered into on 16 April 2020, why SKN considered it necessary or appropriate to underwrite the exercise of the 3 cent options?

1.3 Why SKN felt it necessary to underwrite the exercise of the Director Options?

As a junior company, SKN is constantly managing its capital requirements and looking for opportunities to reduce its risk of funding. In late December 2019, SKN commenced preparation in relation to a proposed rights issue. As part of this process, the Company discussed the underwriting of the proposed rights issue and was introduced to State Securities as an investor which potentially had the capacity and appetite to commit to this type of investment.

After an arms' length negotiation, State Securities agreed to underwrite a \$1m non-renounceable rights issue which was completed in March 2020 ("Rights Issue").

Following the completion of the Rights Issue State Securities offered to underwrite the two classes of options expiring on 31 December 2020 for aggregate exercise consideration of \$10.6m, comprising \$9,548,864 from 95,488,641 options exercisable at \$0.10 and \$1,094,798 from 36,493,274 options exercisable at \$0.03. At the time, SKN's one month VWAP was \$0.069, its three month VWAP was \$0.068 and its six month VWAP was \$0.067.

Notwithstanding the deal involved the underwriting of a limited number of \$0.03 options which were in the money at the time, the package was (and remains) compelling for SKN because it provides SKN with guaranteed access to capital in volatile and uncertain times which are likely to persist for the foreseeable future. Given the challenges often faced by junior companies in raising capital, such an opportunity (particularly with limited conditionality) presented a great opportunity for SKN to de-risk its access to funds. The fact that the deal was struck in April when the relevant options do not expire until December was simply a commercial decision made by SKN's directors in the exercise of their duties.

As is customary in such arrangements, the underwriting is for all of the options in both classes, and does not exclude options held by directors. This does not imply that the directors will not exercise such options and provides the Company with the maximum access to capital under this arrangement.

2. Please provide details of what (if any) due diligence enquiries were undertaken by or on behalf of SKN in relation to State Securities and its sole director prior to entering into the Underwriting Agreement. In your answer to this question, please specifically address:

2.1 Whether SKN enquired as to whether State Securities held an AFSL, or was the authorised representative of an AFSL holder, authorising it to undertake underwriting activities and, if not, why not?

2.2 What enquiries SKN made about State Securities' capacity to meet its financial obligations under the Underwriting Agreement and, if it made no such enquiries, why not?

2.3 What, if any, background checks were undertaken by SKN in relation to Mr Nick Meletsis and his associates and, if SKN undertook no such checks, why not?

SKN undertook due diligence enquiries which it considers to be reasonable for a transaction of this nature, including:

- Direct enquiries of State Securities and its website to obtain an understanding of its business and its financial capacity.
- Search of ASIC register to confirm good standing of State Securities.
- Google searches with no adverse findings identified.
- Advice from Mr Meletsis as the sole director and shareholder of State Securities, that State Securities would have the financial capacity to meet the obligations under the Underwriting Agreement.

Based on the above, SKN was satisfied both State Securities and Mr Meletsis were credible counterparties to deal with, and that State Securities would be able to subscribe for any shortfall under the Underwriting Agreement if required to do so on 31 December 2020. SKN expresses no view as to whether the execution of the options underwriting agreement constitutes carrying on a financial service business as suggested by ASX. However, SKN notes, as ASX is aware, that it is common, for example, for both directors and shareholders of ASX companies to underwrite entitlement offers, often on multiple occasions.

3. Please explain why, as described in paragraph C.a. above, the Underwriting Agreement came to be prepared by SKN's lawyers rather than lawyers acting for State Securities.

Once SKN had resolved that the proposed deal was in the best interests of the Company and that it wanted to formalize the transaction as soon as possible, it instructed its lawyers to draft the relevant document immediately to ensure the relevant terms were captured in accordance with the Company's instructions. SKN had conviction to do the deal and did not want to rely on its counterparty to produce the documentation.

4. Please explain why, as described in paragraph C.b. above, are there no provisions in the Underwriting agreement entitling State Securities to terminate the Underwriting Agreement upon the occurrence of certain events, as would be standard in an underwriting agreement of this nature?

This was simply one aspect of the negotiation of the commercial terms between SKN and State Securities. As stated above, while State Securities received the benefit of underwriting a limited number of options that were already in the money (even though there is no guarantee they will continue to be so at the time they expire), they were only granted such right on the basis that they were not able to terminate the transaction as a whole. Such certainty was critical for SKN and is often seen in contracts relating to transactions which do not complete for an extended period of time.

5. Please explain why, as described in paragraph C.c. above, there is provision in the Underwriting Agreement for shortfall shares to be transferred to State Securities upon the exercise of Options without State Securities having paid SKN to exercise those Options and for the amount payable to exercise any such Options to be a debt owed by State Securities to SKN ('Debt')?

This is a standard term in any subscription agreement or underwriting agreement. The reason for such a term is that if the underwriter fails to perform its obligation to subscribe for the relevant shares, the outcome of the issuer suing for a breach of contract is uncertain as the measure of damages will not necessarily be the aggregate exercise price of the options (given the relevant shares will not be issued). The inclusion of such a term provides SKN with the right but not the obligation to subscribe for shares on behalf of State Securities (if they breach their obligation to subscribe) then recover the aggregate subscription price as a debt rather than a claim for damages.

6. As ASX reads the Underwriting Agreement, State Securities is entitled to:

- dispose of the SKN shares it is issued on the exercise of the Options; and
- to be paid its underwriting fee,

without actually paying for the Options, leaving the amount due to be paid for the Options outstanding as a Debt. Does SKN agree with this reading? If so, please comment on the appropriateness of this provision from SKN's perspective?

As above, this clause provides SKN with optionality. It does not obligate SKN to exercise such right. SKN would only exercise such right if it resolved that it was in the best interests of the Company to do so. In any contractual arrangement, there is no way to guarantee that a party will perform its contractual obligations. From SKN's point of view, the inclusion of this right simply provides optionality in the event a contractual obligation is not performed.

7. If a Debt were incurred, what agreement (if any) do SKN and the Underwriter have with respect to the payment of the Debt? Please provide any relevant documents (not for release to the market).

There are no additional documents. The debt is created upon subscription for the shares and payable on demand.

Testing

8. Please confirm that the 'world-recognised, ISO 9002:2015 certified, independent microbiology testing laboratory in the United Kingdom' referred to in the 30 April Announcement is Microbiological Solutions Ltd ("MSL") (website <https://www.msl.io/>)?

Confirmed

9. *When was the Invisi Shield® Natural Sanitiser submitted to MSL for testing?*

SKN dispatched the test samples of the SE Formula (Invisi-Shield) on 3 April 2020 which arrived at the test lab in the UK on 17 April 2020. The testing period of analysis was 23 April 2020 to 30 April 2020. The report was delivered on 7 May 2020.

10. *ASX understands SKN has received test results back from MSL in relation to the Invisi Shield® Natural Sanitiser. Please provide a copy of the full test results to ASX so that ASX can consider what should be announced to the market by SKN in relation to those test results?*

A copy has been provided to ASX.

11. *Is MSL the laboratory referred to in the Interview which Mr Malone said would be conducting a test of the Invisi Shield® Natural Sanitiser 'in the next couple of days'?*

Yes

12. *If the answer to question 11 is 'yes', please reconcile the statements in the Interview on 9 April 2020 by Mr Malone that the test results would be available 'in the next couple of days' and that the results would be made public 'as soon as we get the release of those results', with the statements regarding the timing of the laboratory tests in the 30 April Announcement.*

The test samples were dispatched from SKN on 3 April 2020 with an expected delivery to the UK on 5 April 2020 with the test results expected to be undertaken and delivered within a week. The statements made on the 9 April 2020 by Mr Malone were on this basis.

Subsequent to the interview of the 9 April 2020, SKN was advised by the Company's shipping agent that due to the COVID global crisis, air freight to the UK has been disrupted and that the delivery date to the UK was on hold. The samples subsequently arrived on 17 April 2020. The testing laboratory further advised that due to the significant twenty fold increase in the number of tests being conducted by the laboratory that month, further delays would be encountered. The testing analysis was undertaken during the period 23 April 2020 to 30 April 2020 with the test report delivered on 7 May 2020.

13. *If the answer to question 11 is 'no':*

13.1 *What is the name of the laboratory in the United Kingdom referred to in the Interview?*

13.2 *When was the Invisi Shield® Natural Sanitiser submitted to that laboratory for testing?*

13.3 *Has SKN received any test results back from that laboratory? If so, please provide a copy for release to the market. If not, please explain the delay.*

N/A.

Compliance and authorisation

14. *Please confirm that SKN is complying with the Listing Rules and, in particular, Listing Rule 3.1.*

SKN confirms that it is complying with the Listing Rules and, in particular, Listing Rule 3.1. and there is no information that should be given to ASX under that rule that has not already been released to the market.

15. Please confirm that SKN's responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of SKN with delegated authority from the board to respond to ASX on disclosure matters.

SKN's responses to the questions above have been authorised and approved by the Board of Directors in accordance with its published continuous disclosure policy.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Craig Piercy', with a stylized flourish at the end.

Craig Piercy
Company Secretary



18 May 2020

Mr Craig Piercy
Company Secretary
Skin Elements Ltd
32 Ord Street
West Perth WA 6005

By email: craig@senatural.com

Dear Mr Piercy

Skin Elements Ltd ('SKN'): Query Letter

ASX refers to the following:

- A. SKN's announcement titled '*\$10.5 million Options Underwriting Agreement*' released on the ASX Market Announcements Platform ('MAP') on 16 April 2020 which stated, among other things, that:

'Skin Elements Limited (SKN) is pleased to announce that it has secured \$10.5 million funding through an Underwriting Agreement with State Securities Pty Ltd to underwrite the exercise of its options expiring on 31 December 2020.

The Underwriting Agreement will guarantee the Company receives \$10.5 million (Underwritten Amount) from the exercise of the SKN Options, before costs. ...

Underwriting Agreement

Pursuant to the Underwriting Agreement, State Securities Pty Ltd (the Underwriter) has agreed to underwrite the exercise of 95,488,641 quoted options exercisable at \$0.10 on or before 31 December 2020, and 36,493,274 unquoted options exercisable at \$0.03 on or before 31 December 2020 (collectively, the SKN Options) (Underwriting Agreement).

The Underwriter will subscribe for fully paid ordinary shares in the capital of the Company (Shares) and pay the option exercise price payable for the number of SKN Options that remain unexercised on the expiry date of 31 December 2020 (Shortfall Shares).

The Underwriter will receive an underwriting fee of 6% (excluding GST) on the Underwritten Amount.

Pursuant to Listing Rule 7.2 (Exception 10), the Company will issue the Shortfall Shares within 10 business days of the expiry date of the SKN Options.

The Underwriting Agreement is subject to the Company giving a shortfall notice to the Underwriter within 2 business days of the expiry date of the SKN Options. The Underwriting Agreement is otherwise subject to the standard terms and conditions for an agreement of this type.'

ASX notes that State Securities Pty Ltd ('State Securities' or the 'Underwriter') has previously underwritten an issue of shares by SKN (see SKN's announcement titled '*Skin Elements Entitlement Issue to Raise \$1.0M*' released on MAP on 21 January 2020 and SKN's prospectus with respect to that entitlement issue released on MAP on 5 February 2020. This suggests that State Securities is carrying on a business of underwriting securities in Australia, requiring it to hold an Australian Financial Services Licence ('AFSL'), or to be an authorised representative of a person who holds an AFSL, that authorises them to carry on that business.

- B. The agreement ('Underwriting Agreement') dated 16 April 2020 between SKN and State Securities relating to the underwriting of the following SKN options (as described in SKN's 16 April 2020 announcement):
- a. 95,488,641 quoted options exercisable at \$0.10 on or before 31 December 2020 ('10 Cent Options'); and

b. 36,493,274 unquoted options exercisable at \$0.03 on or before 31 December 2020 ('3 Cent Options'), (together, the 10 Cent Options and 3 Cent Options are referred to in this letter as the 'Options'). The Underwriting Agreement has not been released on MAP but, at ASX's request, a copy has been provided to ASX by SKN.

C. The Underwriting Agreement:

- a. which appears to have been prepared by lawyers acting for SKN;
- b. does not contain any termination events which would entitle the Underwriter to terminate the Underwriting Agreement; and
- c. appoints SKN as agent and attorney for the Underwriter, authorising SKN to apply for shortfall securities on behalf of and in the name of the Underwriter in the event that the Underwriter fails to apply for shortfall securities and to apply for such shortfall securities on behalf of and in the name of the Underwriter and to instruct the directors to issue those shortfall securities to the Underwriter with the price for the shortfall securities being a debt immediately recoverable by SKN from the Underwriter.

In ASX's experience, the matters described in a. – c. above are most unusual for an arm's length underwriting agreement.

The Underwriting Agreement provides for an underwriting fee of 6% of the underwritten amount, or \$638,619.74. It also contains representations and warranties by the Underwriter that it has obtained all approval and authorities that may be required to permit the Underwriter to enter into the Underwriting Agreement and to perform its obligations under the Underwriting Agreement including the obtaining and holding of all licences and permits required by the Corporations Act.

- D. A search of ASIC registers for State Securities, obtained by ASX on 13 May 2020, which discloses that State Securities has one share on issue and a sole director and company secretary, being a Mr Nick Meletsis, and that while State Securities holds an Australian Credit Licence, it does not hold an AFSL and has not been appointed the authorised representative of an AFSL holder.
- E. The closing price of SKN's shares on 16 April 2020 (the date that the Underwriting Agreement was entered into), being \$0.11, and the most recent trading price of SKN's shares on 8 May 2020 of \$0.08 prior to the securities of SKN being placed in a trading halt and subsequent suspension on 12 May 2020.
- F. The holding by the current directors of SKN of the following Options (together, the 'Director Options') as disclosed in the Appendices 3Y for each director lodged on MAP on 26 March 2020:
 - a. Peter Malone – 11,397,128 10 Cent Options and 2,814,106 3 Cent Options
 - b. Filippo Giglia – 378,690 10 Cent Options and 420,882 3 Cent Options
 - c. Craig Piercy – 8,118,822 10 Cent Options and 2,250,766 3 Cent Options.
- G. The interview of SKN's Executive Chairman, Mr Peter Malone, by Proactive Investors on 9 April 2020 with the title '*Skin Elements Ltd's Peter Malone unveils world-first all natural anti-viral sanitiser*', which is available online at <https://www.proactiveinvestors.com.au/companies/news/917032/skin-elements-ltd-s-peter-malone-unveils-world-first-all-natural-anti-viral-sanitiser-917032.html> ('Interview'). In the Interview, in response to a question about the testing done on SKN's hand sanitiser '*around COVID-19 coronavirus*', Mr Malone states:

'The good news is we have sent our product over there already. It's in London today. It's getting reviewed today in fact. So, in the next couple of days we're looking with candid eyes to see the results of the test but I think it will show that it's a very good sanitiser. I don't want to pre-empt or jinx any results from the good lab we have got – one of the best labs in the UK – but it is designed to give us very good

credibility with the COVID-19 issue and they will be made public as soon as we get the release of those results.'

- H. SKN's announcement entitled 'Invisi Shield® Natural Sanitiser Update' and released to the market on 30 April 2020 ('30 April Announcement') stating:

'Independent laboratory testing of Invisi Shield® against COVID-19 surrogate is underway at a leading world-recognised, ISO 9002:2015 certified, independent microbiology testing laboratory in the United Kingdom. The testing program is being performed to accepted testing protocols (BS EN 14476), and is designed to test the Invisi Shield® hand sanitiser's efficacy against the Feline Coronavirus, a surrogate of the COVID-19 coronavirus.'

'Completion of the testing program is expected shortly, and once the results of the testing program have been analysed and interpreted, an assessment of any applicable regulatory framework will be undertaken, and this information will be advised to the market at this time.'

Questions and Requests for Information

Having regard to the above, ASX asks SKN to respond separately to each of the following questions and requests for information:

Underwriting

1. Please explain SKN's rationale for appointing State Securities to underwrite the exercise of the Options. In your answer to this question, please specifically address:
 - 1.1 Given the Options do not expire until 31 December 2020, why SKN considered it necessary or appropriate to enter into the Underwriting Agreement on 16 April 2020?
 - 1.2 Given the 3 Cent Options were well in the money at the time the Underwriting Agreement was entered into on 16 April 2020, why SKN considered it necessary or appropriate to underwrite the exercise of the 3 cent options?
 - 1.3 Why SKN felt it necessary to underwrite the exercise of the Director Options?
2. Please provide details of what (if any) due diligence enquiries were undertaken by or on behalf of SKN in relation to State Securities and its sole director prior to entering into the Underwriting Agreement. In your answer to this question, please specifically address:
 - 2.1 Whether SKN enquired as to whether State Securities held an AFSL, or was the authorised representative of an AFSL holder, authorising it to undertake underwriting activities and, if not, why not?
 - 2.2 What enquiries SKN made about State Securities' capacity to meet its financial obligations under the Underwriting Agreement and, if it made no such enquiries, why not?
 - 2.3 What, if any, background checks were undertaken by SKN in relation to Mr Nick Meletsis and his associates and, if SKN undertook no such checks, why not?
3. Please explain why, as described in paragraph C.a. above, the Underwriting Agreement came to be prepared by SKN's lawyers rather than lawyers acting for State Securities.
4. Please explain why, as described in paragraph C.b. above, are there no provisions in the Underwriting Agreement entitling State Securities to terminate the Underwriting Agreement upon the occurrence of certain events, as would be standard in an underwriting agreement of this nature?
5. Please explain why, as described in paragraph C.c. above, there is provision in the Underwriting Agreement for shortfall shares to be transferred to State Securities upon the exercise of Options without State Securities

having paid SKN to exercise those Options and for the amount payable to exercise any such Options to be a debt owed by State Securities to SKN ('Debt')?

6. As ASX reads the Underwriting Agreement, State Securities is entitled to:

- dispose of the SKN shares it is issued on the exercise of the Options; and
- to be paid its underwriting fee,

without actually paying for the Options, leaving the amount due to be paid for the Options outstanding as a Debt. Does SKN agree with this reading? If so, please comment on the appropriateness of this provision from SKN's perspective?

7. If a Debt were incurred, what agreement (if any) do SKN and the Underwriter have with respect to the payment of the Debt? Please provide any relevant documents (not for release to the market).

Testing

8. Please confirm that the 'world-recognised, ISO 9002:2015 certified, independent microbiology testing laboratory in the United Kingdom' referred to in the 30 April Announcement is Microbiological Solutions Ltd ("MSL") (website <https://www.msl.io/>)?

9. When was the Invisi Shield® Natural Sanitiser submitted to MSL for testing?

10. ASX understands SKN has received test results back from MSL in relation to the Invisi Shield® Natural Sanitiser. Please provide a copy of the full test results to ASX so that ASX can consider what should be announced to the market by SKN in relation to those test results?

11. Is MSL the laboratory referred to in the Interview which Mr Malone said would be conducting a test of the Invisi Shield® Natural Sanitiser *'in the next couple of days'*?

12. If the answer to question 11 is 'yes', please reconcile the statements in the Interview on 9 April 2020 by Mr Malone that the test results would be available *'in the next couple of days'* and that the results would be made public *'as soon as we get the release of those results'*, with the statements regarding the timing of the laboratory tests in the 30 April Announcement.

13. If the answer to question 11 is 'no':

13.1 What is the name of the laboratory in the United Kingdom referred to in the Interview?

13.2 When was the Invisi Shield® Natural Sanitiser submitted to that laboratory for testing?

13.3 Has SKN received any test results back from that laboratory? If so, please provide a copy for release to the market. If not, please explain the delay.

Compliance and authorisation

14. Please confirm that SKN is complying with the Listing Rules and, in particular, Listing Rule 3.1.

15. Please confirm that SKN's responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of SKN with delegated authority from the board to respond to ASX on disclosure matters.

When and where to send your response

This request is made under Listing Rule 18.7. Your response is required as soon as reasonably possible and, in any event, by no later than **3:00 pm AWST Thursday, 21 May 2020**.

You should note that if the information requested by this letter is information required to be given to ASX under Listing Rule 3.1 and it does not fall within the exceptions mentioned in Listing Rule 3.1A, SKN's obligation is to

disclose the information 'immediately'. This may require the information to be disclosed before the deadline set out in the previous paragraph.

Your response should be sent to me by e-mail at **ListingsCompliancePerth@asx.com.au**. It should not be sent directly to the ASX Market Announcements Office. This is to allow me to review your response to confirm that it is in a form appropriate for release to the market, before it is published on the ASX Market Announcements Platform.

Listing Rules 3.1 and 3.1A

In responding to this letter, you should have regard to SKN's obligations under Listing Rules 3.1 and 3.1A and also to Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*. It should be noted that SKN's obligation to disclose information under Listing Rule 3.1 is not confined to, nor is it necessarily satisfied by, answering the questions set out in this letter.

Enquiries

If you have any queries or concerns about any of the above, please contact me immediately.

Yours sincerely

Elizabeth Harris
Manager, Listings Compliance (Perth)