



## Top Shelf International Holdings Ltd

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

**10 August 2023**

**By email**

Jonathan Bisset  
Senior Adviser, Listings Compliance (Melbourne)  
Level 4, North Tower, Rialto  
525 Collins Street, Melbourne VIC 3000

Dear Jonathan

### **Top Shelf International Holdings Limited - Response to ASX Query Letter**

We refer to your letter dated 3 August 2023, with subject line "Top Shelf International Holdings Ltd ('TSI'): Query – Listing Rule 10.11 Breach" (**Letter**) which requested certain information to be provided by Top Shelf International Holdings Limited (**Top Shelf**).

Please see the responses of Top Shelf to the queries raised in your Letter set out below. Capitalised terms used in this letter have the meaning given in your Letter, unless the context otherwise requires.

We adopt the same numbering of the queries set out in your Letter.

1. Top Shelf conducted a customary diligence process in respect of the Conditional Placement and ANREO, including seeking external legal advice in relation to both. In launching the Conditional Placement, TSI was aware of the approval requirements under Listing Rule 10.11 and considered this in the allocation of pre-commitments as between the Conditional Placement and ANREO.

The Breaching Agreement arose in the context of the final allocation decisions in the institutional bookbuild conducted in relation to the ANREO. TSI acknowledges that the entitlement the subject of the Breaching Agreement should have been confirmed and verified, but it was not identified until after the issue of shares in relation to the Conditional Placement and the institutional component of the ANREO.

2. The Proposed LR 10.11 Resolution was included because at the time the first draft was prepared the Lead Manager had not finalised the allocation of pre-commitments between the ANREO and the Conditional Placement.

In the Lead Manager's final allocation of pre-commitments between the Conditional Placement and ANREO, Mr Karafili was not allocated any TSI shares in the Conditional Placement and it was not necessary to seek approval under Listing Rule 10.11. The Proposed LR 10.11 Resolution was therefore removed from the Final NoM.

3. Mr Karafili was not aware that the Breaching Agreement would breach Listing Rule 10.11.
- 4.

4.1. Yes.

- 4.2. Yes.
- 4.3. Mr Karafili's belief that his entitlement through his two associated entities was ~6.8 million TSI shares arose from an initial spreadsheet produced by the Lead Manager prior to launch of the Conditional Placement.
- 4.4. Mr Karafili did not separately verify his entitlement.
5. None of the directors, officers or key management personnel of TSI were specifically aware of the Breaching Agreement prior to the release of the Results Announcement. Mr Karafili's subscription amount was included in the bookbuild allocation spreadsheet maintained by the Lead Manager, but as the Breaching Agreement had not been identified at that time it was not flagged to any of those persons.
6. N/A.
7. No, the Lead Manager was not aware that the allocation to Ankara would breach Listing Rule 10.11.
- 8.
- 8.1. No – the First Draft NoM was not provided to the Lead Manager.
- 8.2. No, the Lead Manager was not aware that the allocation to Ankara would breach Listing Rule 10.11
- 8.3. The Lead Manager made a number of standard enquiries and steps (which are typically undertaken in a transaction of this nature), including issuing and reviewing a management due diligence questionnaire requesting the provision of certain information and a number of confirmations including the receipt of necessary approvals and compliance with the listing rules.
9. As flagged in the response to question 1, TSI was aware of the approval requirements under Listing Rule 10.11 and considered this in the allocation of pre-commitments as between the Conditional Placement and ANREO. The controls were not appropriately applied in the final allocation in the institutional bookbuild process. TSI is conducting a review of its procedures for ensuring compliance with the ASX Listing Rules, to ensure an error such as the Breaching Agreement is not made again. The review will include a review of the current corporate governance policy to ensure that TSI's policies and procedures in relation to issues of equity securities to persons of influence, related party transactions and its risk management policy are appropriate. TSI will also undertake additional internal training to ensure the processes outlined in the corporate governance plan are adhered to.
10. These responses have been authorised and approved by the Board of TSI.

Yours sincerely



**Carlie Hodges**  
**Company Secretary**  
**Top Shelf International Holdings Limited**



3 August 2023

Reference: ODIN77431

Ms Carlie Hodges  
Company Secretary  
Top Shelf International Holdings Ltd

By email:

Dear Ms Hodges

**Top Shelf International Holdings Ltd ('TSI'): Query – Listing Rule 10.11 Breach**

ASX refers to the following:

- A. TSI's announcement entitled 'Notice of Breach of ASX Listing Rule 10.11' lodged on the ASX Market Announcements Platform on 20 July 2023, disclosing that:
  - (a) on the record date for TSI's 1:1 non-renounceable entitlement offer ('Entitlement Offer'), Ankara Holdings Pty Ltd as trustee for A&N Karafili Family ('Ankara'), an entity associated with Mr Adem Karafili, a director of TSI, was entitled to subscribe for 1,959,416 TSI shares in the Entitlement Offer;
  - (b) Ankara was allocated 5,800,000 TSI shares in the Entitlement Offer;
  - (c) *'due to an administrative oversight'*, 3,840,584 TSI shares were issued to Ankara in excess of its entitlement ('Excess Shares'); and
  - (d) there are no exceptions to ASX Listing Rule 10.11 that would facilitate the issue of the Excess Shares and accordingly, Mr Karafili's participation in the institutional component of the Entitlement Offer involved a breach of ASX Listing Rule 10.11.
- B. The draft Notice of Extraordinary General Meeting submitted to ASX on 29 May 2023 by representatives of TSI (the 'First Draft NoM'), containing a proposed resolution for shareholders to approve the issue of a yet-to-be-determined number of shares to Mr Karafili (or his nominee) for the purposes of Listing Rule 10.11 (the 'Proposed LR 10.11 Resolution').
- C. The Notice of Extraordinary General Meeting lodged on the ASX Market Announcements Platform on 7 June 2023 (the 'Final NoM') which did not contain the Proposed LR 10.11 Resolution.
- D. TSI's announcement entitled 'Top Shelf International Successfully Completes Institutional Entitlement Offer and Conditional Placement' lodged on the ASX Market Announcements Platform on 10 July 2023 (the 'Results Announcement').
- E. The email from representatives of TSI to ASX at 11:42am AEST on 19 July 2023 entitled 'TSI – ASX LR 10.11 breach' containing the following statements:
  - (a) 'In order to reach the minimum offer size, Mr Karafili agreed to take up additional amounts in the institutional component of the entitlement offer. Mr Karafili incorrectly believed that his entitlement under the pro rata offer was ~6.8 million New Shares or A\$1.7 million [worth of shares].'
  - (b) 'The Lead Manager was either not aware of the available entitlement, or that ASX LR 10.11 required shareholder approval for an allocation to directors in excess of their entitlement. A total allocation of 5,800,000 New Shares or ~\$1.45 million [worth of shares] was given to Mr Karafili in the final book.'

F. Listing Rule 10.11, which provides as follows:

*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 the holders of its \*ordinary securities.*

*10.11.1 A \*related party.*

*...*

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

G. Listing Rule 10.12 Exception 1, which provides as follows:

*10.12 The exceptions referred to in rule 10.11 are as follows.*

*Exception 1 An issue of \*securities to holders of \*ordinary securities made under a \*pro rata issue 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.*

*Note: ... Exception 1 only applies to securities taken up as part of a pro rata issue. It does not apply to a person taking up all or part of the shortfall of a pro rata issue. For example, a director who has taken up their entitlement in a pro rata issue cannot take up shortfall securities under this exception, even if the shortfall is allocated on a pro rata basis to those participating in the shortfall.*

H. Section 2.9 of Guidance Note 25 – Issues of Equity Securities to Persons in a Position of Influence, which provides as follows:

*It is the responsibility of a listed entity to identify whether it is issuing equity securities to a 10.11 party in circumstances that require security holder approval under Listing Rule 10.11 and, if so, to seek that approval ahead of the issue being made.*

### **Request for information**

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

1. Please describe the steps, if any, TSI took to ensure compliance with Listing Rule 10.11 in connection with the Entitlement Offer.
2. Why did TSI withdraw the Proposed LR 10.11 Resolution from the Final NoM?
3. At the time when Adem Karafili agreed for Ankara to subscribe for 5,800,000 TSI shares in the Entitlement Offer (the 'Breaching Agreement'), was Mr Karafili aware that the Breaching Agreement would breach Listing Rule 10.11?
4. If the answer to question 2 is "no":
  - 4.1 Was Mr Karafili aware of the contents of the First Draft NoM and, in particular, the Proposed LR 10.11 Resolution, at any time before agreeing to the Breaching Agreement?
  - 4.2 At the time of agreeing to the Breaching Agreement, was Mr Karafili aware that Listing Rule 10.11 restricted Ankara from subscribing for TSI shares in the Entitlement Offer in excess of Ankara's pro rata entitlement?
  - 4.3 What was the basis for Mr Karafili's belief that his entitlement under the pro rata offer was ~6.8 million TSI shares or A\$1.7 million worth of shares?

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- 4.4 What steps did Mr Karafili take to verify the accuracy of the belief referred to in question 4.3?
5. Other than Adem Karafili, which directors, officers and key management personnel of TSI were aware of the Breaching Agreement prior to the release of the Results Announcement?
6. For each relevant person named under question 5:
- 6.1 Was that person aware of the contents of the First Draft NoM and, in particular, the Proposed LR 10.11 Resolution, at any time prior to the release of the Results Announcement?
- 6.2 Was that person aware that Listing Rule 10.11 restricted Ankara from subscribing for TSI shares in the Entitlement Offer in excess of Ankara's pro rata entitlement?
- 6.3 What steps, if any, did that person take to verify that the Breaching Agreement complied with Listing Rule 10.11?
7. At the time when Salter Brothers Capital Pty Limited (the 'Lead Manager') agreed to allocate Ankara shares in the Breaching Agreement (the 'Breaching Allocation'), was the Lead Manager aware that the Breaching Allocation would breach Listing Rule 10.11?
8. If the answer to question 7 is "no":
- 8.1 Was the Lead Manager aware of the contents of the First Draft NoM and, in particular, the Proposed LR 10.11 Resolution, at any time prior to making the Breaching Allocation?
- 8.2 At the time of making the Breaching Allocation, was the Lead Manager aware that Listing Rule 10.11 restricted Ankara from subscribing for TSI shares in the Entitlement Offer in excess of Ankara's pro rata entitlement?
- 8.3 What steps, if any, did the Lead Manager take to verify that the Breaching Agreement complied with Listing Rule 10.11?
9. Please provide details of the controls that TSI has implemented to ensure such a breach does not occur in the future and why these controls were not implemented before the Entitlement Offer.
10. Please confirm that TSI'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 TSI with delegated authority from the board to respond to ASX on disclosure matters.

In respect of any questions or requests for information regarding the knowledge or awareness of persons or entities other than TSI, ASX expects TSI to make reasonable enquiries necessary to put itself in a position to answer the question or request for information.

#### **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 **9:00 AM AEST Thursday, 10 August 2023**.

Your response should be sent to me by e-mail at **ListingsComplianceMelbourne@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.

#### **Suspension**

If you are unable to respond to this letter by the time specified above, ASX will likely suspend trading in TSI's securities under Listing Rule 17.3.

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**Release of correspondence between ASX and entity**

ASX reserves the right to release all or any part of this letter, your reply and any other related correspondence between us to the market under Listing Rule 18.7A.

**Questions**

If you have any questions in relation to the above, please do not hesitate to contact me.

Yours sincerely

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**Jonathan Bisset**  
Senior Adviser, Listings Compliance