



Top Shelf International Holdings Ltd

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

31 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 16 August 2023, with subject line "Top Shelf International Holdings Ltd ('TSI'): Further 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. *Please provide the following documents, in each case for provision to ASX and not for release to the market:*
 - 1.1. *A copy of the initial spreadsheet provided by the Lead Manager to Mr Karafili described in paragraph 4.3 of the Response Letter and any accompanying contextual material provided to Mr Karafili.*

Attached separately.
 - 1.2. *A confirmation from the Lead Manager that the spreadsheet and any accompanying contextual material provided to ASX in response to request 1.1 above is a true and complete copy of the materials provided to Mr Karafili and that nothing has been omitted from this response.*

Attached separately.
 - 1.3. *Any advice or correspondence relating to compliance with Listing Rule 10.11 provided to TSI or its directors in the course of the customary diligence process described in paragraph 1 of the Response Letter.*

Not provided – see response to question 2 below.

- 1.4. *A copy of the management due diligence questionnaire described in paragraph 8.3 of the Response Letter.*

Attached separately. Personal information and responses to commercial questions have been redacted.

- 1.5. *A copy of Mr Karafili's response to the management due diligence questionnaire described in paragraph 8.3 of the Response Letter.*

N/A.

- 1.6. *Copies of written application(s) for shares provided by Adem Karafili, Ankara or any other related party of Adem Karafili.*

Attached separately.

- 1.7. *Copies of any written confirmations provided by TSI or its directors to the Lead Manager confirming their compliance with the Listing Rules.*

N/A.

2. *If for any reason any of the documents referred to in request 1 above cannot be provided, please either explain the reason why they cannot be provided or confirm that no such documents exist, as applicable.*

The advice and correspondence requested under paragraph 1.3 are communications to which legal professional privilege applies, and accordingly have not been provided.

Mr Karafili did not prepare a separate response to the management due diligence questionnaire contemplated under paragraph 1.5 – the response to the questionnaire was managed by senior executives.

The Lead Manager has confirmed that it is not able to locate anything responsive to paragraph 1.7 above. TSI is not aware of any such written confirmation.

3. *Please describe the steps taken in the customary diligence process described in paragraph 1 of the Response Letter.*

The Board established a due diligence committee consisting of Adem Karafili (executive chair), Julian Davidson (independent non-executive director) and Ben Kennare (Chief Financial Officer). That committee received delegated authority to conduct a customary due diligence process as set out in a Due Diligence Planning Outline, which included an outline of the 'low doc' disclosure regime and content requirements.

In connection with the diligence process:

- (a) Gilbert + Tobin gave a legal opinion relating to the content requirements and form of the offer documents;
- (b) Top Shelf's Chief Executive Officer and Chief Financial Officer each signed a management sign-off confirming that they were not aware of any omissions from the offer documents or any 'excluded information' within the meaning of s708A or 708AA;

- (c) each member of the due diligence committee signed the due diligence planning outline and the DDC Report addressed to Top Shelf and its directors; and
 - (d) each member of the due diligence committee and each management reporting person signed a new circumstances certificate on the institutional settlement date confirming that they were not aware of any omissions from the offer documents or any 'excluded information' within the meaning of s708A or 708AA.
4. *Please describe the steps, if any, that TSI took 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 require security holder approval under Listing Rule 10.11.*

The Board delegated finalisation of the bookbuild to Mr Karafili, who reviewed the final allocation spreadsheet. As previously disclosed to the ASX, Mr Karafili mistakenly believed his maximum pro rata allocation was 6.8m shares or \$1.7m. There were no additional steps taken by TSI.

5. *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.*

These responses have been authorised and approved by the Board of TSI.

Yours sincerely



Carlie Hodges
Company Secretary
Top Shelf International Holdings Limited



16 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'): Further Query – Listing Rule 10.11 Breach

ASX refers to the following:

- A. The letter from ASX to TSI dated 3 August 2023 (the 'Initial Query Letter'). Unless otherwise indicated, capitalised terms used and not defined in this letter have the meanings assigned to those terms in the Initial Query Letter.
- B. The letter from TSI to ASX dated 10 August 2023 in response to the Initial Query Letter (the 'Response Letter').
- C. The following statement in TSI's announcement entitled 'Notice of Breach of ASX Listing Rule 10.11' lodged on the ASX Market Announcements Platform on 20 July 2023:

The Company notes that ... Mr Karafili subscribed for shares at this premium in order to meet conditions applying to pre-commitments from other investors.

- D. Accordingly, TSI met the conditions applying to pre-commitments from other investors by agreeing to the Breaching Agreement and allocating shares in the Breaching Allocation, in each case in breach of Listing Rule 10.11.
- E. 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.*

- F. 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.

- G. 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 provide the following documents, in each case for provision to ASX and not for release to the market:
 - 1.1 A copy of the initial spreadsheet provided by the Lead Manager to Mr Karafili described in paragraph 4.3 of the Response Letter and any accompanying contextual material provided to Mr Karafili.
 - 1.2 A confirmation from the Lead Manager that the spreadsheet and any accompanying contextual material provided to ASX in response to request 1.1 above is a true and complete copy of the materials provided to Mr Karafili and that nothing has been omitted from this response.
 - 1.3 Any advice or correspondence relating to compliance with Listing Rule 10.11 provided to TSI or its directors in the course of the customary diligence process described in paragraph 1 of the Response Letter.
 - 1.4 A copy of the management due diligence questionnaire described in paragraph 8.3 of the Response Letter.
 - 1.5 A copy of Mr Karafili's response to the management due diligence questionnaire described in paragraph 8.3 of the Response Letter.
 - 1.6 Copies of written application(s) for shares provided by Adem Karafili, Ankara or any other related party of Adem Karafili.
 - 1.7 Copies of any written confirmations provided by TSI or its directors to the Lead Manager confirming their compliance with the Listing Rules.
2. If for any reason any of the documents referred to in request 1 above cannot be provided, please either explain the reason why they cannot be provided or confirm that no such documents exist, as applicable.
3. Please describe the steps taken in the customary diligence process described in paragraph 1 of the Response Letter.
4. Please describe the steps, if any, that TSI took 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 require security holder approval under Listing Rule 10.11.
5. 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 Wednesday, 30 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.

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

Jonathan Bisset
Senior Adviser, Listings Compliance