

February 16, 2016

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
100 F Street, N.E.  
Washington, D.C. 20549  
Attention: Ted Yu, Chief  
Daniel F. Duchovny, Special Counsel  
Office of Mergers & Acquisitions

Re: *Request for Exemption from the Provisions of Rule 14d-7(a)(1) and No-Action Relief under the Provisions of Rule 14e-1(c), promulgated under the Securities Exchange Act of 1934, as amended*

Dear Sirs:

We are submitting this request for an exemption and no-action relief on behalf of our client, Top Alpha Capital S.M. Ltd., a corporation organized under the laws of the State of Israel (the "Bidder").

The Bidder has commenced a tender offer (the "Offer") to purchase Ordinary Shares, par value NIS 1.00 per share (the "Ordinary Shares"), of Metalink Ltd. (the "Company") so as to increase its ownership percentage in the Company from approximately 24.9% to approximately 45.34%, which amounts to an increase of 550,000 Ordinary Shares.

The Bidder hereby requests that the Staff of the U.S. Securities and Exchange Commission (the "Commission") grant an exemption from the provisions of Rule 14d-7(a)(1) and no-action relief from the provisions of Rule 14e-1(c), in each case promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to allow the Bidder to extend its tender offer and conduct a four-calendar day additional offering period as mandated by applicable Israeli law. It should be noted that a substantially similar exemption was granted by the Staff of the Commission on November 24, 2014 in connection with a similar special tender offer by FIMI to purchase Ordinary Shares of Gilat Satellite Networks Ltd. (See, Exemption Letter to FIMI/Orrick, Herrington & Sutcliffe LLP (November 24, 2014)).

## **Background**

### *The Company*

The Company is a "foreign private issuer" as defined in Rule 3b-4(c) under the Exchange Act. The Company is incorporated under the laws of the State of Israel and is headquartered in Israel.

From the Company's inception through the third quarter of 1994, its operating activities related primarily to establishing a research and development organization, developing prototype chip designs which meet industry standards and developing strategic OEM partnerships with leading telecommunications equipment manufacturers. The Company shipped its first chipset in the fourth quarter of 1994. From that time until February 2010, the Company focused on developing additional products and applications, shaping new industry standards and building its worldwide indirect sales and distribution channels. In February 2010, the Company sold its wireless local area network (WLAN) business to Lantiq. The Company currently does not engage in any business. Its plan of operation is to consider strategic alternatives, including a possible business combination, other strategic transaction with a domestic or foreign, private or public operating entity or a "going private" transaction, including with any of our affiliates, and voluntary liquidation.

The Company's Ordinary Shares began trading on the NASDAQ Global Market on December 2, 1999 under the symbol "MTLK". In March 2009, the Company's Ordinary Shares were transferred to the NASDAQ Capital Market. As of December 3, 2000, the Company's Ordinary Shares began trading also on the Tel Aviv Stock Exchange, or TASE, under the symbol "MTLK." The Company voluntarily delisted its Ordinary Shares from trade on the TASE, effective June 14, 2010. On April 21, 2011, the Company's Ordinary Shares were delisted from the NASDAQ Capital Market and are quoted on the OTCQB under the symbol "MTLK".

In the United States, the Ordinary Shares are registered pursuant to Section 12(g) of the Exchange Act.

### *The Bidder*

The Bidder invests in companies that are predominantly located in Israel or that have significant ties or relations to Israel. The Bidder is wholly owned (100%) by Daniel Magen, who also serves as the Bidder's sole director and executive officer. Mr. Magen, a certified accountant, is a financial investor and businessman.

As of December 31, 2015, the Bidder beneficially owned an aggregate of 670,000 Ordinary Shares, which represent approximately 24.9% of the outstanding Ordinary Shares of the Company.

### *Applicable Israeli Law*

Since the Company is organized under the laws of the State of Israel, the Bidder's transactions in the Ordinary Shares are governed by the Israeli Companies Law, 5759-1999 (as amended, the

"Israeli Companies Law"). The Israeli Companies Law primarily specifies requirements for matters such as corporate formation, corporate governance and related substantive matters. Section 328(a) of the Israeli Companies Law specifies, *inter alia*, that a purchase of the shares of a public company may not be made other than by means of a tender offer in accordance with Part VIII, Chapter 2 of the Israeli Companies Law ("Special Tender Offer") if:

- the result of the purchase would be that the purchaser will own more than 45% of the voting power of the company; and
  - no other person owns in excess of 45% of the voting power of the company.
- or
- the result of the purchase would be that the purchaser will own more than 25% of the voting power of the company; and
  - no other person owns in excess of 25% of the voting power of the company.

If the Offer is consummated, the Bidder's ownership percentage of the Company's voting power would increase from 24.9% to approximately 45.34%. Accordingly, the Bidder is required to conduct a Special Tender Offer pursuant to the requirements and proceedings set forth under Israeli law.

Once a purchase is made pursuant to a Special Tender Offer that results in a purchaser acquiring over 25% of the voting power of a company, the purchaser is not required to conduct a Special Tender Offer to further increase its ownership thereafter, and thus it may acquire additional shares in the open market (although a purchaser is again required to conduct a tender offer under Israeli law if it desires to increase its ownership above 45% and no other person owns in excess of 45% of the voting power of the Company).

Based on the Israeli Companies Law, a Special Tender Offer must meet specified conditions which are applicable to all of the Company's shareholders, wherever located, including the following:

- the Special Tender Offer must be made available to all of the Company's shareholders under Section 331 (a) of the Israeli Companies Law;
- the Special Tender Offer must result in a purchase of shares representing no less than 5% of the voting power of the Company under Section 332 of the Israeli Companies Law;
- as a condition to the completion of the Special Tender Offer, the aggregate number of shares tendered in the Special Tender Offer must exceed the number of shares represented by objections to the Special Tender Offer (under Israeli law, shareholders may accept the offer, not respond to the offer or object to the offer) under Section 331 (b) of the Israeli Companies Law. (Pursuant to Section 331 (c)

of the Israeli Companies Law, in making this calculation, shares held by (i) any party holding 25% or more of the voting power of the Company, (ii) any party controlling the Bidder, (iii) anyone acting on behalf of any of the foregoing, and (iv) their respective family members and entities controlled by these family members, are generally excluded.); and

- upon satisfaction (or, subject to applicable law, waiver by the Bidder) of all of the conditions to the Special Tender Offer, the Special Tender Offer is deemed completed and the Bidder is irrevocably required to purchase the shares tendered during the initial offer period (subject to proration as described below), except that the Bidder must provide a four-calendar day additional offering period, without withdrawal rights for shares tendered during the initial offering period, to allow all other shareholders who have not tendered their shares an opportunity to tender in accordance with Section 331(d) of the Israeli Companies Law. Upon completion of the four-calendar day additional offering period, the Special Tender Offer is completed and the Bidder must purchase all of (i) the shares tendered (and not properly withdrawn) prior to the completion of the initial offering period and (ii) the shares tendered prior to the completion of the four-calendar day additional offering period, subject to proration, if applicable, based on the maximum number of shares sought in the Special Tender Offer.

Subject to the requested relief, the Bidder has structured the Offer in the United States and Israel such that it complies with the requirements of the Exchange Act as well as the requirements of the Israeli Companies Law.

#### *Proposed Offer Structure*

The Bidder is offering to purchase 550,000 Ordinary Shares (representing approximately 25% of the issued and outstanding share capital of the Company) in a tender offer conducted in both the United States and Israel.

If more than 550,000 Ordinary Shares are tendered, the Bidder will purchase a *pro rata* number of Ordinary Shares from all tendering shareholders to reach the 550,000 Ordinary Shares sought in the Offer

The proration factor, if any, is calculated by dividing (x) the maximum number of shares that the Bidder is offering to purchase, by (y) the aggregate number of shares validly tendered (and not properly withdrawn during the initial offering period) in the Special Tender Offer during both the initial offering period and the additional offering period.

The Offer will be open for an initial offering period of not less than 20 U.S. business days. Under Israeli law, if the applicable conditions to a Special Tender Offer have been satisfied at the completion of the initial offering period, the shareholders who have not yet responded to the Offer and/ or who have objected to the Offer must be provided a four-calendar day additional offering period during which they may tender their Ordinary Shares. By 9:00 a.m. Eastern time on the U.S. business day following completion of the initial offering period, the Bidder will

announce to the shareholders (i) the results of the initial offering period, including whether or not the conditions to the Offer have been satisfied and the approximate number and percentage of Ordinary Shares tendered to date and (ii) if the conditions to the Offer have been satisfied, that it is extending the offering period following the completion of the initial offering period by a four-calendar day additional offering period. There will be no withdrawal rights during such four-calendar day additional offering period for Ordinary Shares previously tendered in the Offer. The Bidder has disclosed in the offer to purchase that there will be an extension of the initial offering period to provide for an additional offering period of four calendar days following the completion of the initial offering period.

All conditions to the Offer will be satisfied or waived before commencement of the additional offering period. If the Bidder waives an Offer condition, the Offer will be extended, and withdrawal rights will be provided, to the extent required under U.S. rules. The Bidder intends to announce the completion of the initial offer period by distributing a press release and filing the announcement as an exhibit to the Schedule TO.

The Bidder will pay for Ordinary Shares that are tendered in the initial offering period and the additional offering period promptly following the expiration of the additional offering period, subject to proration, if any. Such proration would be determined promptly following the expiration of the additional offering period. This information has been prominently disclosed in the offer to purchase distributed to the Company's shareholders.

Because of the potential effects of the application of a proration factor based on the combined results of the Offer during the initial offering period and the additional offering period, payments cannot be made for shares tendered during the initial offering period until the results of the additional offering period are available.

The Bidder estimates that shareholders (both in Israel and the U.S.) would be paid no more than four U.S. business days following the expiration of the additional offering period. If the Bidder is able to make the payments to tendering shareholders sooner than the estimated four U.S. business days, it will do so. This payment period will comply with the law and practice in Israel for a Special Tender Offer for equity securities that are traded both in Israel and in the U.S., and represents the Bidder's best estimate of the minimum time period necessary to pay for securities tendered in the Offer.

As described above, the Offer is structured as a single offer made in both the United States and in Israel. The Offer is being made in the United States and in Israel pursuant to an English language offer to purchase. The consideration offered, and all other terms of the Offer, will be identical for all holders of Ordinary Shares.

Except for the relief requested in this letter, the Offer will be conducted in accordance with the Exchange Act and all applicable rules promulgated thereunder.

## **Conflict Between Israeli Law and U.S. Law**

### *Israeli Law*

Under Section 331(d) of the Israeli Companies Law, if a Special Tender Offer has been accepted (*i.e.*, all the conditions to such Special Tender Offer, including the minimum condition, have been satisfied) at the end of the initial offering period, a bidder is required to provide to the shareholders that have not responded to the Special Tender Offer or have objected to the Special Tender Offer a four-calendar day additional offering period (counted from the end of the initial offering period) during which they may tender their shares. Section 331(d) and the Israeli Securities Regulations prohibit withdrawal rights for tendering shareholders for shares previously tendered during the four-calendar day additional offering period.

Further, once a bidder has announced at the end of the initial offering period that the Special Tender Offer has been accepted, no further conditions to the Special Tender Offer apply and such bidder becomes irrevocably bound to purchase, subject to proration, the shares tendered in the Special Tender Offer (*i.e.*, in both the initial offering period and the four-calendar day additional offering period). The purpose of this requirement under Israeli law is to provide shareholders with additional protection by allowing the shareholders the opportunity to wait and see if the Special Tender Offer is indeed accepted (*i.e.*, all of the conditions to the Special Tender Offer have been satisfied) and only then decide whether to tender their shares. It also enables shareholders who initially objected to the Special Tender Offer during the initial offering period to tender their shares during the additional offering period once it is clear that the Special Tender Offer will be successfully completed.

If withdrawal rights were not prohibited, withdrawals during the additional offering period of shares previously tendered could cause the minimum condition to become unsatisfied (despite previously having been satisfied upon the completion of the initial offering period). All Special Tender Offers subject to the Israeli Securities Regulations are structured without withdrawal rights during the four-calendar day additional offering period with respect to shares previously tendered.

Although under the Israeli Companies Law the Minister of Justice may adopt regulations, including regulations which provide general exemptions from provisions of the Israeli Companies Law, the Israeli Companies Law does not grant the Minister of Justice or any other governmental body the authority to grant exemptive relief on a case-by-case basis. While the Minister of Justice has adopted certain regulations under the Israeli Companies Law, none of them are applicable to the Offer. Moreover, there is no Israeli regulatory body or other governmental body that has statutory authority to grant such exemptions on a case-by-case basis.

### *U.S. Law*

#### *Extension of Offering Period*

Rule 14d-7(a)(1) under the Exchange Act requires a bidder to permit securities tendered pursuant to a tender offer to be withdrawn during the period such tender offer remains open.

In order to permit the Bidder to conduct the four-calendar day additional offering period in accordance with Israeli law, the Bidder must extend the offering period following the completion of the initial offering period by a four-calendar day additional offering period. In accordance with Section 331(d) of the Israeli Companies Law, during such four-calendar day additional offering period, shareholders who have previously tendered their shares during the initial offering period shall not have withdrawal rights.

Accordingly, the Bidder is requesting an exemption from the provisions of Rule 14d-7(a)(1) in order to permit the Bidder to extend the offering period following the completion of the initial offering period by the four-calendar day additional offering period as required by Israeli law without offering withdrawal rights during such four-calendar day additional offering period to shareholders who have previously tendered their Ordinary Shares in the Offer.

Subject to the relief requested herein, the extension of the initial offering period to provide for the four-calendar day additional offering period will constitute an extension of the initial offering period. It will not be a separate tender offer in respect of which a new offering period with a minimum duration of 20 U.S. business days must be provided in accordance with Rule 14e-1(a) under the Exchange Act, nor will it be a subsequent offering period subject to Rule 14d-11.

Pursuant to Rule 14e-1(c) under the Exchange Act, a bidder making a tender offer is required to pay the consideration offered promptly after the termination of the offer. As explained above, as a result of the requirement of Israeli law to provide the four-calendar day additional offering period, the Bidder expects the proration, if any, to be determined, and the payment for the tendered Ordinary Shares to be made, within no more than four business days following the completion of the additional offering period. The Bidder is requesting no-action relief from the provisions of Rule 14e-1(c) to the extent that the above contemplated payment schedule does not satisfy the requirement of prompt payment. In seeking this relief, we note that the payment for the shares tendered in the Offer will be made as promptly as practicable following the expiration of the additional offering period taking account of applicable Israeli law and payment practices in Israel and the U.S.

#### *Importance of Requested Relief to the Bidder*

Requiring a four-calendar day additional offering period without withdrawal rights for shares previously tendered is a critical protective feature provided to shareholders under Israeli law, for which no Israeli exemptive relief is available under the Israeli Companies Law. In order for the Bidder to purchase any Ordinary Shares in a transaction that may result in the Bidder owning more than 45% or more than 25% of the Company's voting power, the Bidder must conduct a tender offer that complies with this requirement. Based on the above, there is a direct conflict between the requirements of Israeli law and the requirements of U.S. law. Without obtaining the relief requested herein, conducting the Offer in a manner that would allow withdrawal rights during the four-calendar day additional offering period for shares previously tendered in the Offer (as would otherwise be required by U.S. law) would violate Israeli law.

*The Grant of the Requested Relief will not Compromise Protection of U.S. Shareholders*

The additional offering period under Israeli law *is* designed to provide additional protection to shareholders. Shareholders will be afforded the right to "wait and see" *if* all conditions to the Offer have been satisfied prior to tendering their Ordinary Shares or to seek to defeat the Special Tender Offer by objecting to the Offer during the initial offering period with the knowledge that they will be able to tender during the additional offering period *if* the Offer *is* nonetheless successful. The Bidder has disclosed *its* intention to extend the initial offering period in the Offer to Purchase that is related to the Offer. U.S. holders of the Ordinary Shares who are concerned about tendering their Ordinary Shares in a manner that will leave them without withdrawal rights during any part of the Offer may wait until the initial offering period has ended before tendering their Ordinary Shares in the additional offering period.

As described above, *(i)* once the Bidder has announced at the end of the initial offering period that the Offer has been accepted, no further conditions to the Offer apply and the Bidder becomes irrevocably bound to purchase, subject to proration, the Ordinary Shares tendered in the Offer, and *(ii)* the offer price for Ordinary Shares that are validly tendered (subject to proration) will be paid in accordance with Israeli law and practice as soon as practicable following the four-calendar day additional offering period without further involvement of the Bidder. Such payment procedures, coupled with the irrevocability of the Offer following *its* acceptance at the end of the initial offering period, ensure that the Bidder will not be able to capitalize at the expense of the Company's shareholders on market information that becomes available following the completion of the initial offering period. Because all of the conditions to the Offer are irrevocably satisfied prior to the commencement of the additional offering period, the Bidder is not able to exercise any discretion that would allow it to shift the economic risk of ownership of the Ordinary Shares (by either waiving conditions or deeming conditions to not have been fulfilled) to shareholders who may have tendered their the Ordinary Shares in the Offer.

Further, we submit that the direct conflict between Israeli law and U.S. law is not otherwise resolvable absent a grant of the requested relief from the staff of the Commission. As discussed above, no Israeli regulatory body or other governmental body has statutory authority to grant exemptive relief on a case-by-case basis from the requirement of the Israeli Companies Law to provide the four-calendar day additional offering period without withdrawal rights. In light of the forgoing, we believe that the relief requested herein is consistent with the guidance contained in the Commission's release: Cross Border Tender and Exchange Offers, Business Combinations and Rights Offerings, Securities Act Release No. 33-7759 (October 26, 1999) (the "Cross Border Release"). The Cross Border Release provides that "[w]hen U.S. ownership is greater than 40 percent, the staff will consider relief on a case by case basis only when there is a direct conflict between the U.S. laws and practice and those of the home jurisdiction. Any relief would be limited to what is necessary to accommodate conflicts between regulatory schemes and practices." As described above, a direct conflict between U.S. and Israeli law does exist and the relief sought is limited to what is necessary to accommodate conflicts between the U.S. and Israeli regulatory schemes and practices.

We also believe that the requested relief under Rule 14d-7 (a)(1) is consistent with the relief granted in a number of instances by the staff of the Commission with respect to the lack of

withdrawal rights during an additional period after the expiration of the initial offering period, (See, e.g., No-Action Letters in connection with Barclays plc tender offer for ABN AMRO Holding N.V. (August 7, 2007); Royal Bank of Scotland Group plc tender offer for ABN AMRO Holding N.V. (July 23, 2007); Endesa, S.A. (July 3, 2007); E.ON Aktiengesellschaft (December 6, 2006); Bayer AG (April 28, 2006); and Madison Dearborn Partners, LLC (July 9, 2002)), including prior relief granted by the Commission with respect to the same conflict between U.S. and Israeli law described herein (Exemptive Letter to FIMI/Orrick, Herrington & Sutcliffe LLP (November 24, 2014), and No-Action Letters to KCPS PE Investment Management (June 5, 2009); Retalix Ltd. (December 18, 2008); Elron Electronics Industries Ltd. (May 15, 2008); Clal Industries and Investments Ltd. (March 3, 2008); and Discount Investment Corporation Ltd. (June 14, 2004)).

In addition to the foregoing, compliance with the Israeli Special Tender Offer statutory provisions arguably provides benefits that U.S. holders would not otherwise have if the Company were incorporated in a U.S. jurisdiction. This is because, under the U.S. securities laws, the Bidder would have been able to effect its desired ownership increase by means of open market purchases or a block purchase, without being subject to the disclosure and process requirements of a formal tender offer.

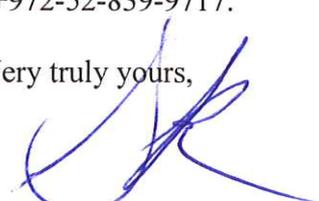
#### **Requested Relief**

Based on the foregoing, the Bidder respectfully requests an exemption from Rule 14d-7(a)(1), which requires that any person who has deposited securities pursuant to a tender offer will have the right to withdraw any such securities during the period such offer remains open, and no-action relief for the Offer from Rule 14e-1(c), which requires a bidder making a tender offer to pay the consideration offered promptly after the termination of the offer. The exemption will enable the Bidder to conduct a four-calendar day additional offering period following the completion of the initial offering period, during which no withdrawal rights will be available, as required by Israeli law.

I hereby confirm that the descriptions of the applicable Israeli law relating to the Offer described in this Letter are accurate and complete. I am a member of the Bar of the State of Israel and a member of the Bar of the State of New York.

If you require any further information or have any questions or comments with respect to this matter, please call me at +972-8-936-0999 or +972-52-839-9717.

Very truly yours,

  
Steve Kronengold