



NZX Regulation Decision

TruScreen Limited (“TRU”)

Waivers from NZX Main Board Listing Rules 5.1.1, 5.1.2(e), 5.1.2(i), 5.2.1, 5.2.2(b), 5.2.2(c), 5.2.2(d) and 5.2.2(f)

Rulings from NZX Main Board Listing Rules 3.3.3(a), 3.3.6, 3.3.10, 3.3.14, 3.3.15, 3.5.1, 6.1.1, 7.3.1(a), 7.3.3(c), 7.3.5, 7.3.6, 7.3.8, 7.3.9, 7.3.10, 7.6.1, 7.6.4, 7.6.5, 10.4.4, 10.4.5(g), 10.4.5(m), 10.4.8, 11.1.5, 11.2.2 and 11.2.4(b)

5 December 2018



Background

1. The information on which this decision is based is set out in Appendix One to this decision. These waivers will not apply if that information is not, or ceases to be, full and accurate in all material respects.
2. The Rules to which these decisions relate are set out in Appendices Two and Three.
3. Capitalised terms that are not defined in these decisions have the meanings given to them in the Rules, unless the terms are not defined in the Rules, in which case they shall have the meanings given to them in the NZAX Listing Rules as the context requires.

Waivers from Main Board Rules 5.1.1, 5.1.2(e), 5.1.2(i), 5.2.1, 5.2.2(b), 5.2.2(c), 5.2.2(d) and 5.2.2(f)

Decision

4. Subject to the conditions in paragraph 5 below, NZXR grants TRU waivers from:
 - a. Rules 5.1.1 and 5.2.1, to the extent that those Rules require that an applicant submitting an application for Listing and Quotation of a Class of Securities submit that application through a Primary Market Participant acting as an Organising Participant;
 - b. Rules 5.1.2(e), 5.1.2(i), 5.2.2(d) and 5.2.2(f) in their entirety;
 - c. Rule 5.2.2(b), to the extent that the Rule requires that an application for Quotation by an applicant under Rule 5.2.1 be submitted with evidence that the Primary Market Participant has sought assurance from NZX that Authority to Act has not been withdrawn in respect of Securities for which Quotation is sought; and
 - d. Rule 5.2.2(c), to the extent that the Rule requires a draft Offering Document, Prospectus or Profile to be provided in respect of any Securities then on issue for which Quotation is sought.
5. The waiver set out in paragraph 4 above is provided on the conditions that:
 - a. TRU makes an application for Listing and Quotation in accordance with the Rules as modified by the waivers granted; and
 - b. TRU makes no offer of a Class of Securities that is not Quoted on the NZAX together with the application for migration to the NZX Main Board.

Reasons

6. In coming to the decision to provide the waivers set out in paragraph 4 above, NZXR has considered that:
 - a. Rules 5.1.1, 5.2.1 and 5.2.2(b) generally require that new Listings and Quotations are made through a Primary Market Participant, in order to help new Issuers prepare for Listing and Quotation and assist Issuers with any public offer being

made. The granting of this waiver will not offend the policy behind Rule 5.1.1, 5.2.1 and 5.2.2(b);

- b. TRU is already Listed, with its shares Quoted on the NZAX and seeks to migrate the Quotation of its shares to the NZX Main Board. There will be no public offer of a new Class of Securities associated with the Migration;
- c. imposing the requirement that the application for Listing and Quotation be submitted through a Primary Market Participant would provide no benefit to the TRU's security holders, the market as a whole, or NZX;
- d. the matters set out in Rules 5.1.2(i), 5.2.2(c), 5.2.2(d) and 5.2.2(f) are largely administrative in the context of a migration and therefore enforcing these requirements would provide no benefit to the TRU's security holders, the market as a whole, or NZX; and
- e. there is precedent for this decision.

Waiver from Main Board Listing Rule 3.1.1

Decision

- 7. Subject to the conditions set out in paragraph 8 below, NZXR grants TRU a waiver from Rule 3.1.1, to the extent that that Rule would require TRU to have a Constitution which complies with the Rules from the time it Lists on the Main Board.
- 8. The waiver set out in paragraph 7 above is provided on the conditions that TRU provides to NZXR, with its application to List on the NZX Main Board, the following undertakings:
 - a. an undertaking to put a resolution to shareholders at its next scheduled annual meeting (or earlier, if a special meeting of shareholders is called (other than a meeting called by the Board following a request by shareholders pursuant to section 121(b) of the Companies Act 1993) prior to the scheduled annual meeting) to approve a Rules compliant Constitution; and
 - b. an undertaking that until a Rules compliant Constitution is adopted, TRU and its directors will comply with the Rules from the time TRU is Listed, as if the content requirements of Rule 3.1.1 were contained in the Constitution of TRU (**Directors' Undertaking Condition**).

Reasons

- 9. In coming to the decision to provide the waiver set out in paragraph 7 above, NZXR has considered that:
 - c. the policy behind Rule 3.1.1 is to ensure that Constitutions of Issuers are consistent with the Rules. This consistency helps to reinforce the protections that the Rules provide shareholders, and it ensures that Issuers are not conflicted in complying with both the Rules and their Constitutions;

- d. the Directors' Undertaking Condition provides NZXR comfort that shareholders will not be disadvantaged by the Constitution of TRU not including the requirements set out in Rule 3.1.1, and its protections will resemble the requirement for a Constitution to be consistent with the Rules;
- e. TRU will be required to enter into, and be bound by, a Listing agreement with NZX. In accordance with the Listing agreement, TRU will be required to comply with all of its obligations under the Rules, upon Quotation of its Securities on the NZX Main Board;
- f. in accordance with Rule 2.2.2, NZX will receive acknowledgements from each TRU Director, that they are aware that upon Listing, that TRU will be contractually bound to observe its obligations under the Listing agreement and the Rules, and that they will use their best endeavours to procure TRU's compliance with the Rules;
- g. the waiver is temporary, and will only apply until TRU's next scheduled annual meeting (or next special meeting of shareholders, if such a meeting is called prior to the scheduled annual meeting (other than a meeting called by the Board following a request by shareholders pursuant to section 121(b) of the Companies Act 1993)); and
- h. there is precedent for this decision.

Rulings in relation to Main Board Listing Rules as listed in Appendix Two

Decision

A number of Rules refer to matters done under other Rules, which means that TRU may not be able to comply with the Rules in respect of these matters, notwithstanding that the equivalent NZAX Listing Rules have been complied with. NZXR therefore grants a ruling that matters undertaken under certain NZAX Listing Rules as set out in the table in Appendix Two are deemed to have been undertaken under the equivalent Rules.

Appendix One

1. TruScreen Limited (**TRU**) is a Listed Issuer with ordinary shares (**Shares**) Quoted on the NZX Alternative Market (**NZAX**).
2. TRU has applied to NZX Regulation (**NZXR**) to migrate the Quotation of its Shares from the NZAX to the NZX Main Board (**Migration**). Upon completion of the Migration, TRU will be bound by the NZX Main Board Listing Rules (**Rules**).
3. On 28 November 2018, TRU released an announcement in respect of the Migration.
4. TRU intends to commence the quotation of its Shares on the NZX Main Board on 17 December 2018, subject to meeting all of NZXR's requirements.
5. As TRU is already Listed, with its Shares Quoted on the NZAX, TRU proposes only to migrate the Listing and Quotation of its Shares from NZAX to the NZX Main Board. There is no public offer associated with the Migration.
6. As at 5 December 2018, TRU had a total of 882 Security holders.
7. NZXR considers that the waivers and the rulings adequately balance the interests of TRU, and the protections for its Security holders and, other than the waivers of the Rules granted in this decision, TRU will be required to fully comply with the Rules in all other respects.

Appendix Two

Rule	Application of NZAX Rules in the Migration of TRU
3.3.3(a)	If the most recently published annual report of TRU included a statement as to which of its Directors are Independent Directors and which of its Directors are not Independent Directors, as at the balance date of TRU, then such disclosure shall be deemed to have been made under Rule 10.4.5(l) for the purposes of Rule 3.3.3(a).
3.3.6	Any person who is appointed as a Director by the Directors prior to the TRU Listing on the NZX Main Board who has not retired from office in accordance with NZAX Listing Rule 3.2.3 shall be required to retire from office at the next annual meeting of TRU in accordance with Rule 3.3.6
3.3.10 and 10.4.5(m)	A Director appointed under NZAX Listing Rule 3.2.4 shall be deemed to have been appointed under Rule 3.3.8 for the purposes of Rule 3.3.10 and Rule 10.4.5(m).
3.3.14	An approval by NZX under NZAX Listing Rule 3.2.8 shall be deemed to be an approval under Rule 3.3.14.
3.3.15	A holder of a special office in terms of NZAX Listing Rule 3.2.9 shall be deemed to have been appointed the holder of a special office in terms of Rule 3.3.14 for the purposes of Rule 3.3.15.
3.5.1	The remuneration which an TRU is authorised to pay under NZAX Listing Rule 3.4.1 shall be deemed to be authorised under Rule 3.5.1.
6.1.1	An approval by NZX under NZAX Listing Rule 6.1.1 shall be deemed to be an approval by NZX of the relevant document under Rule 6.1.1.
7.3.1(a)	A resolution passed pursuant to NZAX Listing Rule 7.3.1(a) shall be deemed to be a resolution passed pursuant to Rule 7.3.1(a).
7.3.3(c)	A resolution passed pursuant to NZAX Listing Rule 7.3.3(c) shall be deemed to be a resolution passed pursuant to Rule 7.3.3(c).

Rule	Application of NZAX Rules in the Migration of TRU
7.3.5 and 7.3.6	<p>For the purposes of Rule 7.3.5 and 7.3.6:</p> <ul style="list-style-type: none"> • Equity Securities issued pursuant to NZAX Listing Rules 7.3.1(a), 7.3.4, 7.3.5, 7.3.6 or 7.3.11 shall be deemed to have been issued under Rules 7.3.1(a), 7.3.4, 7.3.5, 7.3.6 and 7.3.10 respectively; • Equity Securities issued pursuant to NZAX Listing Rule 7.3.5, the issue of which has been ratified by an Ordinary Resolution of the TRU, shall be counted in Rule 7.3.5(c) as if they had been issued and ratified under the Rules; • TRU shall be deemed to have been Listed on the NZX Main Board on the date on which it was listed on the NZAX; and • TRU shall not be in breach of Rule 7.3.5 or 7.3.6 if the Equity Securities issued by it prior to its Listing on the NZX Main Board exceeds the aggregate permitted by those Rules in circumstances where TRU issued those Equity Securities in compliance with NZAX Listing Rule 7.3.5 or 7.3.6 respectively.
7.3.8	A resolution passed pursuant to NZAX Listing Rule 3.4.1 shall be deemed to be a resolution passed pursuant to Rule 3.5.1 for the purposes of Rule 7.3.8.
7.3.9	An approval by NZX under NZAX Listing Rule 7.3.10 shall be deemed to be an approval under Rule 7.3.9.
7.3.10	<p>For the purposes of Rule 7.3.10:</p> <ul style="list-style-type: none"> • Securities issued in accordance with any of NZAX Listing Rules 7.3.1(a), 7.3.4, 7.3.5, 7.3.6, 7.3.11(a) or 7.3.11(e) shall be deemed to have been issued in accordance with Rules 7.3.1(a), 7.3.4, 7.3.5, 7.3.10(a) and 7.3.10(e) respectively; and • Securities, the issue of which was approved in the manner set out in NZAX Listing Rule 7.3.1(a), shall be deemed to have been approved in the manner set out in Rule 7.3.1(a).
7.6.1	For the purposes of Rule 7.6.1 Equity Securities issued in compliance with, or under, NZAX Listing Rules 7.3.1(a), 7.3.4 or 7.3.6 shall be deemed to have been issued in compliance with, or under, Rules 7.3.1(a), 7.3.4 or 7.3.6 respectively.
7.6.4	<p>For the purposes of Rule 7.6.4:</p> <ul style="list-style-type: none"> • financial assistance given under NZAX Listing Rule 7.6.4(b)(i) shall be deemed to have been given under Rule 7.6.4(b)(i); and • TRU shall be deemed to have been Listed on the NZX Main Board on the date on which it was listed on the NZAX.
7.6.5	A proposal authorised by resolutions passed pursuant to NZAX Listing Rule 7.6.5 shall be deemed to be a Proposal authorised by resolutions passed pursuant to Rule 7.6.5.

Rule	Application of NZAX Rules in the Migration of TRU
10.4.4	A reference in TRU's most recent annual notification under section 209(1)(b) of the Companies Act to the next half-yearly report under the NZAX Listing Rules shall be deemed to be a reference to TRU's next half-year report under the Rules for the purposes of Rule 10.4.4 such that TRU shall be deemed to have made its next half year report available to Quoted Security holders.
10.4.5(g)	An exercise of NZX's powers under NZAX Listing Rule 5.4.2 shall be deemed to be an exercise of NZX's powers under Rule 5.4.2.
10.4.8	A document referred to in NZAX Listing Rules 10.4 and 10.5 shall be deemed to be a document referred to in Rules 10.3 and 10.4 for the purposes of Rule 10.4.8.
11.1.5	An approval by NZX under NZAX Listing Rule 11.1.5 shall be deemed to be an approval under Rule 11.1.5.
11.2.2	A statement required by NZAX Listing Rule 11.2.1 or 11.2.3 shall be deemed to be a Statement required by Rules 11.2.1 and 11.2.3 respectively for the purposes of Rule 11.2.2.
11.2.4(b)	A statement of holding of Securities complying with NZAX Listing Rule 11.2 shall be deemed to be a Statement for the purposes of Rule 11.2.4(b).

Appendix Two

NZSX/ NZDX Listing Rules

Section 5: Listing and Quotation

Rule 5.1 Listing

5.1.1 Any person may apply to NZX for Listing either:

- (a) with NZX as the Home Exchange; or
- (b) with a Recognised Stock Exchange as the Home Exchange, if that person is domiciled or incorporated outside New Zealand and listed on a Recognised Stock Exchange (an “Overseas Listed Issuer”); or
- (c) as a Dual Listed Issuer.

Application shall be made through a Primary Market Participant acting as Organising Participant.

5.1.2 The following information and material shall be submitted with an application under Rule 5.1.1:

[...]

- (e) a copy of the applicant’s certificate of incorporation or commensurate document for the Issuer’s entity (if applicable); and

[...]

- (i) copies of annual reports for the last five years, if available; and

[...]

Rule 5.2 Quotation of Securities

5.2.1 An Issuer, or applicant for Listing, may apply to NZX for a Class or Classes of its Securities to be Quoted on the NZSX or NZDX. Separate application must be made for each Class of Securities, through a Primary Market Participant acting as Organising Participant, except that the application need not be made through an Organising Participant in the case of an application to Quote a Class of Securities where the Securities to be Quoted are rights to Securities that are already Quoted.

5.2.2 The following information and material shall be submitted with an application under Rule 5.2.1:

[...]

- (b) evidence that the Primary Market Participant has sought assurance from NZX that Authority to Act has not been withdrawn in respect of Securities for which Quotation is sought or a certificate is provided under Rule 7.4 of the NZX Participant Rules (whichever is applicable); and
- (c) a draft Offering Document, Prospectus, or Profile in respect of the Securities (which shall include, without limiting any other provision of the Rules, the timetable required by Rule 7.1.5(b)); and
- (d) any Advertisement that is proposed to be issued before the date of Quotation in respect of the Securities; and

[...]

- (f) details of proposed arrangements to ensure that persons subscribing for the Securities in the offer have an opportunity to trade on Quotation of the Securities.