



NZX Regulation Decision

TRS Investments Limited (TRS)

Application for a waiver from NZX Main Board Listing Rule
3.4.3

30 June 2016



Waiver from NZX Main Board Listing Rule 3.4.3

Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by TRS Investments Limited (**TRS**) is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants TRS a waiver from NZX Main Board Listing Rule (**Rule**) 3.4.3 to the extent that this Rule would otherwise prohibit any Director from voting on the Transaction Resolutions and being counted in the quorum at the relevant Board meeting(s) due to the Interested Directors direct and indirect interests in the Transactions.
2. The waiver in paragraph 1 above is provided on the conditions that:
 - a. the Interested Directors are only permitted to vote on the Transaction Resolutions which are necessary to give effect to the Transactions, on the basis that they have been described in the Notice and the Report;
 - b. each of the Directors shall certify to NZX that the Interested Directors' "interests", as defined in Rule 3.4.3, are confined to their interests in the Share Issue, the Share Acquisition, the Tasman Settlement Deed, the Beconwood Settlement Deed, and the LFA;
 - c. the Notice clearly and prominently discloses:
 - i. all of the Interested Directors' interests under the Transactions;
 - ii. the material aspects of these interests;
 - d. this waiver, and its implications are clearly and prominently disclosed in the Notice; and
 - e. any Director who is a Non-Interested Director, shall certify to NZX that he or she was:
 - i. part of the quorum for all of the Board meetings that considered the Transaction Resolutions which were necessary to give effect to the Transactions; and
 - ii. he or she voted in favour of all Transaction Resolutions which were necessary to give effect to the Transactions.
3. The information on which this decision is based is set out in Appendix One to this decision. This waiver will not apply if that information is not or ceases to be full and accurate in all material respects.
4. The Rules to which this decision relates are set out in Appendix Two to this decision.
5. Capitalised terms that are not defined in the decision have the meanings given to them in the Rules.

Reasons

6. In coming to the decision to provide the waiver set out in paragraph 1 above, NZXR has considered that:
 - a. the policy behind Rule 3.4.3 is to prevent situations arising where Directors who have a vested interest in a transaction, may authorise the entry into, or implementation of, matters that are detrimental to the interests of security holders as a result of that interest. The granting of this waiver does not offend the policy of the Rule;

- b. it would be detrimental to security holders if they were unable to vote on the Transactions, due solely to the Board's inability to form a quorum and the Interested Directors' inability to approve the Transaction Resolutions;
- c. the conditions at paragraphs 2(c) and (d) provide comfort that shareholders will be aware of the Interested Directors interests in the Transaction and the implications of their interests in the Transaction Resolutions;
- d. the condition at paragraph 2(e) provides comfort that Directors who are not interested in the Transactions, such as the Non-Interested Director, considered themselves to be compliant with their fiduciary duties to TRS when they approved the Transaction Resolutions;
- e. the condition at paragraph 2(d) will ensure that the Transactions, along with their background information, will be sufficiently disclosed in the Notice. The Notice will be accompanied by the Report, and both documents will be available to TRS shareholders for their consideration before they contemplate the approval or rejection of the Transactions. The condition at paragraph 2(d) will help to ensure that TRS shareholders will be able to make an informed decision regarding the Transactions; and
- f. the Interested Directors and their Associated Persons are restricted from voting on four out of the five shareholder resolutions in the Notice. As all of the shareholder resolutions are conditional of each other, TRS shareholders who are not associated to the Interested Directors and to the Transactions, are essentially approving the Transactions.



Appendix One

1. TRS Investments Limited (**TRS**) is a Listed Issuer with shares Quoted on the NZX Main Board.
2. On 22 March 2016, TRS entered into a non-binding conditional terms sheet (**Terms Sheet**) with HuaHan International Holdings (Hong Kong) Co. Limited (**HuaHan**) in which HuaHan would acquire 55% of all of TRS' shares on issue.
3. The Terms Sheet contains the key commercial terms for the following transactions:
 - a. Share Transfer: a transfer of TRS shares for nil consideration (**Share Transfer**) from Beconwood Securities Pty Limited (**Beconwood**) to:
 - i. Trinity Portfolio Limited (a company associated with Joseph van Wijk);
 - ii. Keith Jackson; and
 - iii. Andrew Fiori-Dea;(together, the **Interested Directors**), who are receiving total aggregate value of \$340,979.24 in shares;
 - b. Share Acquisition: Beconwood Superannuation Pty Limited (**Beconwood Superannuation**) and the Interested Directors' sale of TRS shares to HuaHan, where the Interested Directors realise \$270,071.68 of value in cash and retain value of \$70,907.56 in TRS shares (**Share Acquisition**);
 - c. Director's Fees: the payment of Director's fees of \$90,000 (a one off payment) to the Interested Directors as remuneration to be satisfied by the issuance of shares (**Directors' Fees**);
 - d. TRS settling its outstanding debt, comprising of :
 - i. Tasman Settlement Deed: a \$60,000 settlement payment to Tasman Capital Limited (**Tasman**), for a \$40,000 debt (**Tasman Settlement Deed**);
 - ii. Beconwood Settlement Deed: a \$20,000 settlement payment to Beconwood, for a \$94,233.23 debt. (**Beconwood Settlement Deed**); and
 - e. LFA: TRS entering into a loan facility agreement with HuaHan, for an on-call unsecured debt facility of up to \$1 million (**LFA**). The main terms of the LFA are:
 - i. HuaHan may, no earlier than two years from completion of the Transactions, elect to convert, as full or partial repayment, the amount outstanding under the loan facility (**Facility**) to ordinary fully paid shares in TRS at \$0.003 per share. This right to convert the Facility into shares in TRS remains subject to any required approvals of the shareholders of TRS at the prevailing time. Shareholder approval to issue such shares would likely be sought under Rules 7.3.1(a) and 7.3.10 if it is necessary at the time;
 - ii. amounts outstanding under the Facility attract interest at a rate of 5% per annum;

- iii. the Facility is provided for a two year term and if it has not been converted at the conclusion of the term, a further term may be negotiated or HuaHan can give a six month termination notice at which time the Facility must be repaid; and
- iv. there are no restrictions in the LFA preventing the Company from securing alternative debt

(together, the **Transactions**).

4. All but one of the key commercial terms (as they relate to TRS) set out in the Terms Sheet have been surpassed by the Beconwood Settlement Deed, the Tasman Settlement Deed and the LFA. These documents contain the main terms of the Transactions. The only residual term of the Terms Sheet requires TRS to repay Huahan \$120,000 for costs reimbursement (**Reimbursement**), within 30 days of TRS' shareholders' meeting if shareholder approval is not obtained. The Reimbursement can be paid in cash or TRS shares, at a price which will result in Huahan holding 19.99% of TRS' shares on issue.
5. Board approval of the Beconwood Settlement Deed, the Tasman Settlement Deed and the LFA is required before the Transactions can be completed. Rule 3.4.3 precludes a Director, from voting on a matter in which the Director is "interested" in, and from being counted in the quorum for the purposes of consideration of that matter. The term "interested" bears the same meaning as the term defined in section 139 of the Companies Act 1993.
6. The Interested Directors have the following interests in the Transactions:
 - a. Beconwood Settlement Deed: the Interested Directors are receiving shares from Beconwood Securities and the Board is proposing to ratify entry into and performance of the Beconwood Settlement Deed;
 - b. LFA: the Interested Directors are receiving consideration from HuaHan for shares that they will own and the Board is proposing to implement the LFA;
 - c. Director's Fees: the Interested Directors are proposed to receive the Directors Fees through the issuance of \$90,000 worth of shares; and
 - d. Tasman Settlement Deed: two of the Interested Directors (Joseph van Wijk and Keith Jackson) are also Directors of Tasman and the Board is proposing to ratify entry into and performance of the Tasman Settlement Deed.
7. Mr John Cilliers is the only member of the TRS board (**Board**) who is not "interested" in the Transactions (**Non-Interested Director**). The Non-Interested Director has engaged an independent advisor to report on the fairness, merits and interests of the Transaction on TRS shareholders (**Report**). The Report is dated 29 June 2016.
8. TRS has applied for a waiver from Rule 3.4.3 to allow the Interested Directors to vote on and be counted in quorum in relation to any approvals necessary for TRS to enter into and complete the Beconwood Settlement Deed, the Tasman Settlement Deed and the LFA (**Transaction Resolutions**).
9. TRS' entry into the Transactions is subject to shareholder approval. The relevant shareholder resolutions and their approval thresholds are set out in TRS' notice of special meeting, dated 29 June 2016 (**Notice**).



10. Rule 3.4.4 permits the Interested Directors to vote on, and be counted in the quorum for, the board resolution to approve the Director's Fees.



Appendix Two

Rule 3.4 Proceeding and Powers of Directors [...]

Rule 3.4.3 Subject to Rule 3.4.4, a Director shall not vote on a Board resolution in respect of any matter in which that Director is interested, nor shall the Director be counted in the quorum for the purposes of consideration of that matter. For this purpose, the term “interested” bears the meaning assigned to that term in section 139 of the Companies Act 1993, on the basis that if an Issuer is not a company registered under that Act, the reference to the “company” in that section shall be read as a reference to the Issuer.

Rule 3.4.4 Notwithstanding Rule 3.4.3, a Director of an Issuer which is a company registered under the Companies Act 1993 may vote in respect of and be counted in the quorum for the Board for the purposes of a matter in which that Director is interested if that matter is one in respect of which, pursuant to an express provision of that Act, Directors are required to sign a certificate or one which relates to the grant of an indemnity pursuant to section 162 of the Companies Act

