

NZ RegCo

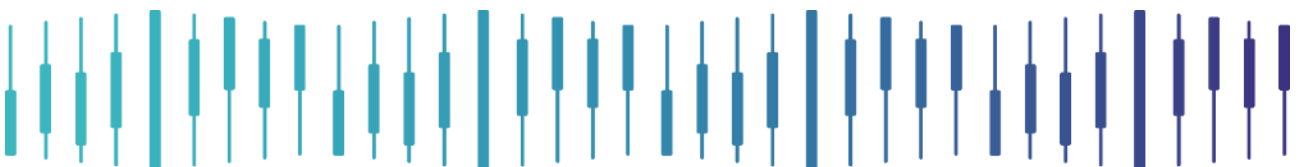
NZ'S LISTED
MARKET REGULATOR

22.01.2021

NZ RegCo Decision

Gentrack Group Limited (GTK)

Application for waiver from NZX Listing Rule 7.8.5(b)



Waiver from Listing Rule 7.8.5(b)

Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by Gentrack Group Limited (**GTK**) is complete and accurate in all material respects, NZX Regulation Limited (**NZ RegCo**) grants GTK a waiver from NZX Listing Rule 7.8.5(b) (**Rule**), to the extent that this Rule would otherwise require GTK to provide an appraisal report to accompany its 2021 notice of annual meeting (**Notice**).
2. The waiver in paragraph 1 above is provided on the condition that the current independent directors of GTK who were directors at the time of the negotiation and entry into Mr Miles' Employment Agreement certify to NZ RegCo that the terms of Mr Miles' Employment Agreement, including with respect to the grant of the CEO Performance Rights, were set on an arm's length commercial basis.
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 Rule to which this decision relates is set out in Appendix Two to this decision.
5. Capitalised terms which have not been defined in this 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, NZ RegCo has considered that:
 - a. the policy behind Rule 7.8.5(b) is to ensure that shareholders being asked to vote on a transaction to which Rule 7.8.5(b) applies receive the benefit of an independent evaluation that allows shareholders to understand and scrutinise the merits of the transaction;
 - b. GTK submits, and NZ RegCo has no reason not to accept, that this policy is not offended because:
 - i) the material terms of Mr Miles' Employment Agreement (including his participation in the LTIP) were negotiated on an arm's length, commercial basis, prior to the commencement of employment and directorship with GTK;
 - ii) the Notice sets out sufficient information to enable shareholders to understand the effect and consequences of the Resolution. NZ RegCo has reviewed the relevant Notice and is satisfied that it contains sufficient information regarding the issue of the CEO Performance Rights to enable shareholders to understand the effects of the issue;
 - iii) the need for an appraisal report only arises because Mr Miles is a director of GTK, as well as its chief executive officer. Mr Miles' participation in the LTIP, and the issue of the CEO Performance Rights to him, are terms of his employment as chief executive officer and do not relate to his role as a director;
 - iv) the issue of the CEO Performance Rights is advantageous to GTK on the basis that it will further align Mr Miles' interests with GTK and its shareholders;
 - v) GTK's shareholders will be asked to consider the Resolution to approve the issue of the CEO Performance Rights with the knowledge of the waiver sought having been granted; and
 - vi) there is precedent for this decision.

Confidentiality

7. GTK has requested this decision be kept confidential until GTK issues its Notice to shareholders.
8. In accordance with Rule 9.7.2, NZ RegCo grants GTK's request.

Appendix One

1. GTK is a Listed Issuer with Equity Securities Quoted on the NZX Main Board and the ASX.
2. In September 2020, GTK announced the appointment of Mr Miles as its chief executive officer and that Mr Miles would join the GTK board as an executive director with effect from 1 October 2020.
3. The terms of Mr Miles' employment were extensively negotiated between the board of GTK and Mr Miles, who subsequently entered into an employment agreement (**Employment Agreement**) recording those terms, including Mr Miles' remuneration.
4. As part of the negotiation of Mr Miles' remuneration, the GTK board agreed that Mr Miles would receive:
 - a. an annual base salary;
 - b. participation in GTK's short term incentive scheme, pursuant to which participants are eligible to receive annual bonus payments if certain performance targets are achieved; and
 - c. participation in GTK's long term incentive scheme (**LTIP**). This involves the grant of performance rights to Mr Miles (**CEO Performance Rights**) which, subject to certain performance hurdles and conditions, entitle him to be issued one ordinary share in GTK for each CEO Performance Right which vests.
5. Accordingly, in satisfaction of its obligations under the Employment Agreement, GTK proposes to seek shareholder approval at its 2021 annual general meeting to issue the CEO Performance Rights to Mr Miles.
6. Because the terms on which Mr Miles participates in the LTIP were negotiated, the terms of his participation, and his allocation criteria under the LTIP, are different to those that apply to employees generally. Further, when the CEO Performance Rights are aggregated with the performance rights to be issued to other participants under the LTIP, the total number of performance rights to be issued would exceed the 3% annual limit set under Rule 4.6. As a result, GTK proposes to obtain shareholder approval for the issue of the CEO Performance Rights by way of ordinary resolution pursuant to Rule 4.2.1 (the **Resolution**).
7. Rule 7.8.5(b) requires that a notice of meeting to consider a resolution for an issue of Equity Securities be accompanied by an appraisal report, if that issue is intended or is likely to result in more than 50% of those Equity Securities being issued to a director or an Associated Person of a director.
8. On the basis that Mr Miles is a director of GTK and the Resolution to approve the issue of the CEO Performance Rights contemplates 100% of the CEO Performance Rights being issued to Mr Miles, GTK's notice of meeting must be accompanied by an appraisal report which considers the issue.
9. Detailed information on the Resolution can be found in the Notice.

Appendix Two

Rule 7.8 Notices of Meeting

Rule 7.8.5 A notice of meeting to consider a resolution of the nature referred to in Rule 7.8.4 (other than a resolution to permit an issue under Rule 4.7.1) must be accompanied by an Appraisal Report if:

- (a) the resolution is required by Rule 4.13,
- (b) more than 50% of the Financial Products to be issued are intended or likely to be acquired by Directors or Associated Persons of Directors, or
- (c) more than 50% of the Financial Products to be acquired or redeemed or the financial assistance to be given is intended or likely to go to Directors or Associated Persons of Directors.