

NZ RegCo

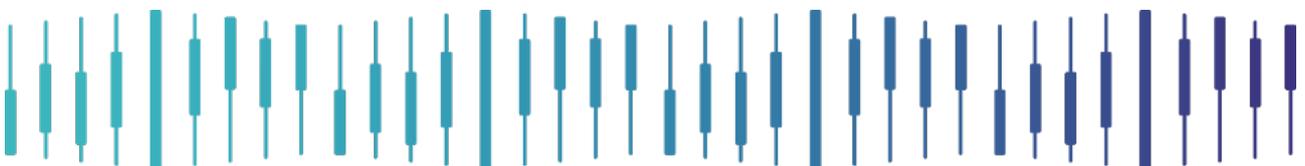
NZ'S LISTED
MARKET REGULATOR

28 March 2024

NZ RegCo Decision

Goodman Property Trust (NS) ("GMT")

Application for Rulings on GMT's Listing Status and
Governing Document, and Waiver from NZX Listing Rule
2.10



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 this decision relates are set out in Appendix Two to this decision.
3. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.

Ruling on Listing Rule 1.1.2

Decision

4. On the basis that the information provided to NZX Regulation Limited (**NZ RegCo**) is full and accurate in all material respects, NZ RegCo rules that:
 - a. the listing status of GMT is as an Issuer of Equity Securities under the Rules; and
 - b. GMT's Units are therefore considered Equity Securities under the Rules.

Reasons

5. In coming to the decision to provide the ruling set out in paragraph 4 above, NZ RegCo has considered that Rule 1.1.2 was included as a pragmatic solution for Issuers where Listing as an Issuer of Equity Securities would be preferable to being automatically Listed as an Issuer of Fund Securities. Due to GMT's historical listing status under the pre-2019 Rules, it was appropriate for NZX Regulation to approve the listing as an Issuer of Equity Securities in 2019 to assist GMT in ensuring it maintains the same level of protection for Unitholders as was in place prior to the 2019 Rules taking effect. NZ RegCo now re-confirms GMT's listing status as an Equity Issuer as part of its Internalisation.

Ruling on GMT's Governing Document

Decision

6. On the basis that the information provided to NZ RegCo is full and accurate in all material respects, NZ RegCo confirms that GMT's Trust Deed is GMT's sole Governing Document under the Rules.
7. This Ruling in paragraph 6 is granted on the condition that the Trust Deed complies with the Rule requirements, as modified by any rulings and waivers granted by NZ RegCo.

Reasons

8. In coming to the decision in paragraph 6, NZ RegCo has considered that by confirming GMT as an Issuer of Equity Securities, both the Trust Deed and the Manager's constitution could be considered Governing Documents of GMT based on the definition of Governing Document in the Rules. Accordingly, NZ RegCo considers it is appropriate to clarify that the Trust Deed is GMT's sole Governing Document.

Waiver from Listing Rule 2.10

Decision

9. On the basis that the information provided to NZ RegCo is full and accurate in all material respects, NZ RegCo grants GMT a waiver from Rule 2.10 to the extent that Directors of the Manager are “interested” (as defined by Rule 2.10.1) solely due to being a Director of the Manager, in transactions which the Manager is entering for the purposes of the day-to-day management of GMT.
10. The waiver in paragraph 9 above is granted on the conditions that:
 - a. any Director abstaining from voting on any transactions entered into by the Manager on behalf of GMT with another entity in respect of which the Director would be otherwise “interested”.
 - b. GMT having a Non-Standard (**NS**) designation in accordance with Rule 1.18.1

Reasons

11. In coming to the decision to provide the waiver set out in paragraph 9 above, NZ RegCo has considered that:
 - a. the unique operating and management make-up of a managed investment scheme (**MIS**) which would potentially result in every director of a management company being deemed to be “interested” in virtually every decision relating to the investment of the MIS funds given the relationship between the management company, the MIS and unitholders, with such directors therefore unable to vote on these decisions; and
 - b. GMT has previously been granted a waiver from this Rule in 2019 as part of its redocumentation of waivers, and from an equivalent provision in the pre-2019 Rules in an NZX Regulation decision dated 21 April 2005.

Appendix One

Background

1. Goodman Property Trust (**GMT**) is a Listed Issuer with ordinary units (**Units**) quoted on the NZX Main Board. GMT is a managed investment scheme (**MIS**) established under a trust deed dated 23 April 1999 (as amended) (the **Trust Deed**).
2. On 26 February 2024, Goodman (NZ) Limited (**GNZ**) announced to the market a conditional proposal to internalise the management of GMT (**Internalisation**), the effect of which would be that GNZ would be replaced as manager of GMT by Goodman Property Services (NZ) Limited (**GPSNZ** or the **Manager**).
3. The Internalisation was approved by the unit holders of GMT at a special meeting held on 26 March 2024, and effected on 28 March 2024. As a result of the Internalisation, GPSNZ has replaced GNZ as the Issuer for the purposes of the Listing Rules (**Rules**).
4. GMT is regulated under Part 4 of the Financial Markets Conduct Act 2013 (the **FMC Act**). As the Units issued by the Manager/GMT are managed investment products for the purposes of the FMC Act, Units fall within the definition of Fund Security in the Rules. Accordingly, absent a Ruling from NZ RegCo, GMT would be considered an Issuer of Fund Securities for the purposes of the Rules.
5. GNZ, in its role as Issuer prior to the Internalisation, was the beneficiary of certain approvals, rulings and waivers pursuant to an NZX Regulation (**NZXR**) decision dated 6 May 2019 (**2019 Waiver Decision**).
6. As a consequence of the Internalisation, GPSNZ is seeking the re-documentation of certain rulings and waivers contained in the 2019 Waiver Decision that will continue to be required by GPSNZ and GMT following the Internalisation.

Application for ruling to deem Units as Equity Securities, and to List as an Issuer of Equity Securities

7. Due to the existence of a specific regime for MIS in the Rules, certain requirements that apply to Issuers of Equity Securities do not apply to GMT if it is an Issuer of Fund Securities.
8. Following the Internalisation, GMT wishes to offer its investors the same level of protection afforded to them pursuant to the 2019 Waiver Decision.
9. Accordingly, GMT has sought the redocumentation of the declaration from NZ RegCo that:
 - a. the listing status of GMT is as an Issuer of Equity Securities under the Rules; and
 - b. GMT's Units are therefore considered Equity Securities under the Rules.

Application for ruling in relation to GMT's Governing Document

10. Subject to GMT receiving NZ RegCo's confirmation of GMT's listing status as an Issuer of Equity Securities, there is potential for both GMT's Trust Deed and the Manager's constitution to be considered Governing Documents pursuant to limbs (a) and (d) of the definition of Governing Document in the Rules.
11. As such, there may be unintended consequences such as the requirement for the Manager's constitution to incorporate certain provisions from the Rules that are inappropriate given GMT's structure.
12. GMT has therefore sought redocumentation of the clarification provided in the 2019 Waiver

Decision that, for the purposes of the Rules, GMT's Governing Document means only the Trust Deed.

Application for waiver from Listing Rule 2.10 – Interested Directors

13. Rule 2.10 provides that a Director must not vote on a Board resolution for, or be counted in a quorum for the consideration of, any matter in which that Director is interested. The term "interested" bears the same meaning as in section 139 of the Companies Act 1993.
14. GMT's structure as a MIS means that, if the reference to the "company" in section 139 of the Companies Act 1993 is read as being a reference to GMT, the Directors will be "interested" (for the purposes of Rule 2.10) in all transactions that are entered into in relation to the day to day operations of GMT, with the result that the Directors would be unable to vote on those transactions.
15. Prior to the Internalisation, GMT benefitted from a waiver from Rule 2.10 pursuant to the 2019 Waiver Decision.
16. NZXR considered that it was appropriate to grant the waiver from Rule 2.10 as it recognised the unique operating and management make-up of unit trusts which would potentially result in every director of a management company being deemed to be "interested" in most decisions relating to the investment of the unit trust funds given the relationship between the management company, the unit trust and Unitholders.
17. Accordingly, GMT has sought the redocumentation of the waiver granted from Rule 2.10 in the 2019 Waiver Decision to reflect the change in Issuer following Internalisation.

Appendix Two

Definitions **Equity Security**

has the meaning given in section 8(2) and 8(5) of the FMC Act and also includes a Right, subject to NZX's sole discretion to declare, by way of a Ruling, a Financial Product to be, or not to be, an Equity Security (and includes any Fund Security deemed to be an Equity Security under Rule 1.1.2)

Fund Security

means a "managed investment product" as defined in section 8(3) and 8(5) of the FMC Act in relation to a Managed Investment Scheme, subject to NZX's sole discretion to declare, by way of a Ruling, a Financial Product to be, or not to be, a Fund Security.

Governing Document

means:

- (a) in the case of an Issuer of Equity Securities, its constitution, articles of association or other constituent documents,
- (b) in the case of an issuer of Debt Securities, a trust deed or the one or more deeds, agreements, or instruments that constitute those Debt Securities,
- (c) in the case of a Managed Investment Scheme constituted as a trust, the one or more trust deeds that constitutes the scheme, or
- (d) in the case of any other Managed Investment Scheme where (c) does not apply, the one or more deeds, agreements, or instruments that constitute or govern the scheme

and including (in each case) any amendments to a document referred to in paragraph (a) to (d)

Rule 1.1.2 Eligibility for Listing as an Issuer of Equity Securities and Quotation of Equity Securities

The Manager of a Managed Investment Scheme may apply to List as an Issuer of Equity Securities, and to have the Financial Products of the Managed Investment Scheme Quoted as Equity Securities, rather than as Fund Securities. If NZX accepts such an application, the Financial Products will be deemed to be Equity Securities and not Fund Securities, and the Rules (including Appendix 3) will apply accordingly.

Rule 2.10 Interested Directors

2.10.1 A Director must not vote on a Board resolution for, or be counted in a quorum for the consideration of, any matter in which that Director is interested. For this purpose, the term "interested" bears the meaning assigned in section 139 of the Companies Act 1993. If the issuer is not a company registered under that Act, the reference to the "company" in that section will be read as a reference to the issuer.

2.10.2 Notwithstanding Rule 2.10.1, a Director of an Issuer incorporated under the Companies Act 1993 may vote on a Board resolution for, and be counted in a quorum for the consideration of, A matter in which that Director has an interest, if the matter:

- (a) is one in respect of which Directors are expressly required under that Act to sign a certificate, or
- (b) relates to the grant of indemnity under section 162 of that Act.