

NZ RegCo

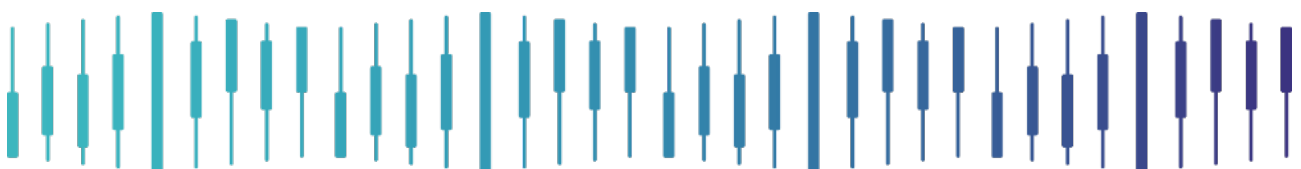
NZ'S LISTED
MARKET REGULATOR

23 February 2024

NZ RegCo Decision

Goodman Property Trust (NS) ("GMT")

Application for waivers from NZX Listing Rules 2.10.1
and 2.11.1



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.

Waiver from Listing Rule 2.10.1

Decision

4. Subject to the conditions set out in paragraph 5 below, and on the basis that the information provided by Goodman Property Trust (**GMT**) is complete and accurate in all material aspects, NZX Regulation Limited (**NZ RegCo**) grants GMT a waiver from NZX Listing Rule (**Rule**) 2.10.1 to allow the Independent Directors of GMT's manager (the **Manager**) to vote on any resolution necessary to consider, progress or give effect to the proposal for the internalisation of the management of GMT (**Internalisation**) and be counted in the quorum of any meeting of the Manager's Board for the consideration of such matters.
5. The waiver in paragraph 4 above is provided on the conditions that:
 - a. the Independent Directors of the Manager are only permitted to vote on such resolutions as are necessary to:
 - i. put the Internalisation proposal before a meeting of Unit Holders of GMT; and
 - ii. give effect to the Internalisation if the Internalisation has been approved by Unit Holders;
 - b. the waiver will only apply to any Director of the Manager who is considered to be "interested" within the meaning assigned to that term in section 139 of the Companies Act 1993, where that person is "interested" in the Internalisation proposal solely because that person is a Director of the Manager and/or a related company of the Manager, but for no other reason; and
 - c. the Notice of Meeting (**NoM**) seeking Unit Holder approval of the Internalisation proposal discloses GMT's reliance on this Waiver.

Reasons

6. In coming to the decision to provide the waiver set out in paragraph 4 above, NZ RegCo has considered that:
 - a. the policy behind Rule 2.10.1 is to prevent situations arising whereby Directors who have a material vested interest in a transaction may be involved in discussions or authorise the entry into, or implementation of, matters that are detrimental to the interests of Security Holders as a result of that "interest";

- b. each of the Directors of the Manager are “interested” parties in this instance by virtue of the unique operating, governance and management arrangements of GMT as a Unit Trust;
- c. each Director of the Manager will be “interested” in every transaction forming part of the Internalisation to which GMT is a party and absent the waiver, would not be able to be counted in the quorum for any Board meeting convened to consider the Internalisation or vote on any such transaction; this would frustrate the Directors’ ability to put the Internalisation proposal to Unit Holders and implement it if the proposal is approved by Unitholders;
- d. the resolutions to which this waiver applies are only those that will be required to take the necessary steps to progress the Internalisation proposal and to put it before Unit Holders, and to implement the Internalisation proposal if it is approved by Unit Holders;
- e. Unit Holders will have the opportunity to consider and vote on the Internalisation in accordance with the relevant provisions of the Trust Deed and the Rules; and
- f. there is precedent for the decision.

Waiver from Listing Rule 2.11.1

Decision

7. Subject to the conditions set out in paragraph 8 below, and on the basis that the information provided by GMT is complete and accurate in all material aspects, NZ RegCo grants GMT a waiver from Rule 2.11.1 so that the Directors of the Manager after completion of the Internalisation may be paid remuneration out of GMT at the same level currently paid by the existing Manager, without seeking separate Unit Holder approval under Rule 2.11.1.
8. The waiver in paragraph 7 above is granted on the following conditions:
 - a. GMT's Unit Holders approve the Internalisation proposal by Ordinary Resolution in accordance with Rule 5.2.1;
 - b. The Notice of Meeting (**NoM**) seeking Unit Holder approval of the Internalisation proposal discloses:
 - i. the quantum of the Directors’ current remuneration;
 - ii. the fact that GMT will bear the costs of Directors' remuneration for the Manager going forward if the Internalisation is approved; and
 - iii. that any increase to the existing level of Directors’ remuneration following completion of the Internalisation will need to be approved by Unit Holders in accordance with Rule 2.11.1,
 - c. the existence and effect of this waiver decision is disclosed in the NoM;
 - d. any increase to the existing level of Directors’ remuneration is approved by Unit Holders in accordance with Rule 2.11.1; and
 - e. NZ RegCo has an opportunity to review and approve the NoM.

Reasons

9. In coming to the decision to provide the waiver set out in paragraph 7 above, NZ RegCo has considered that:
 - a. the waiver will set the level of remuneration at the same level it is currently, and the only need for the waiver is due to the structure of the Internalisation. The Rules require GMT to seek Unit Holder approval for any future increases to Director remuneration;
 - b. the conditions set out in paragraph 8 will ensure that Unit Holders are aware that if they vote to approve the Internalisation, they are also voting to permit the Directors' remuneration to be paid out of the assets of GMT at the existing level if the Internalisation proceeds; and
 - c. due to the requirement to obtain Unit Holder approval of the Internalisation by Ordinary Resolution under Rule 5.2.1, an Appraisal Report will need to be prepared on the fairness of the transaction overall; this will take into account the costs to GMT going forward, of which the Directors' fees and other remuneration form part.

Confidentiality

10. GMT applied for these waivers in December 2023 as it began preparing for the Internalisation. GMT has requested that these decisions be kept confidential until an announcement of the Internalisation is released to the market.
11. In accordance with Rule 9.7.2(a), NZ RegCo grants GMT's request.

Appendix One

1. GMT is a Managed Investment Scheme Listed on the NZX Main Board and subject to the Rules.
2. GMT is managed by Goodman (NZ) Limited (**GNZ** or **Manager**), which is a wholly-owned subsidiary of Goodman Limited and a member of the Goodman Group (**GMG**).
3. GNZ has announced to the market a conditional proposal to internalise the management of GMT (**Internalisation**).
4. A summary of the proposed Internalisation is as follows:
 - a. GNZ will surrender and terminate its rights as manager of GMT under the trust deed for GMT as amended and restated on 28 May 2020 (**Trust Deed**), and to be further amended by a supplemental deed (**Supplemental Deed**) upon the completion of the Internalisation, in exchange for a termination fee. GNZ will also receive a performance fee in lieu of any performance fee that may be payable under the terms of the Trust Deed for the period between 1 April 2023 and completion of the Internalisation.
 - b. In order to comply with the requirements of the Financial Markets Conduct Act 2013 (**FMCA**), an independent third-party trustee selected by GMT (being Public Trust, the "**Independent Trustee**") will acquire all of the shares in Goodman Property Services (NZ) Limited (**GPSNZ**) from Goodman Limited, such shares being held subject to the direction of GMT's supervisor / unit holders pursuant to a shareholding deed to be entered into between the Independent Trustee, GMT's supervisor (in its capacity as trustee and supervisor of GMT) and GPSNZ in relation to the Independent Trustee's shareholding in GPSNZ.
 - c. Subject to the obtaining of the necessary approvals and licences (including, but not limited to, receipt by GPSNZ of a licence to act as manager of GMT pursuant to section 388(a) of the FMCA from the date of completion of the Internalisation), GPSNZ will become the new manager of GMT.
 - d. The Trust Deed will be amended pursuant to the Supplemental Deed to remove the provisions for the payment of management fees and performance fees, to provide for remuneration of GPSNZ to be on a cost recovery basis, and to make various other amendments arising out of and / or necessary to effect the Internalisation.
 - e. GMG will provide GMT with certain corporate services and a licence to continue to use the "Goodman" brand and associated logos for up to ten years from completion of the Internalisation, for so long as GMG holds at least 10% of the units in GMT.
 - f. GMG will sell its interests in certain New Zealand co-owned investment properties to GMT, the terms of such sale to be recorded in a property assets sale and purchase agreement and related documentation.
 - g. As GPSNZ is already the employing entity for GMT, it will not be necessary to transfer any employees as part of the Internalisation and existing employees are expected to continue in their current roles.
 - h. The aggregate net consideration to be paid to GMG entities and therefore the gross cost to GMT in a financial year in connection with the Internalisation (**Internalisation Payment**) will exceed 1% of the Average Market Capitalisation of GMT. As such, the Internalisation Proposal requires approval of unit holders of GMT pursuant to Rule 5.2.1.

- i. Goodman Funds Management Limited, as responsible entity for Goodman Industrial Trust (**GIT**) (which is a member of GMG) will subscribe for fully paid units in GMT through a placement to occur upon completion of the Internalisation. The aggregate issue price of these units will be satisfied by the Internalisation Payment referred to above. The proposed issue of units requires approval of unit holders of GMT pursuant to Rule 4.2.1.
- j. The proposal is conditional (among other things) on the approval of the unit holders of GMT in accordance with the applicable requirements of the FMCA, the Trust Deed and the Listing Rules.
- k. GNZ, Goodman Limited and the Associated Persons of both (including each of the Directors of GNZ) are disqualified by Rule 6.3.1 and the FMCA from voting in favour of, or acting as a discretionary proxy in relation to, the resolutions under Rules 5.2.1 and 4.2.1.

Waiver from Listing Rule 2.10.1 – Further Background

5. The Directors of the Manager will need to pass resolutions in connection with the Internalisation proposal, including resolutions to approve the entry into and performance of various agreements relating to the Internalisation proposal, to convene a meeting of Unit Holders to consider the proposal, and to effect the Internalisation if approved by Unit Holders and other conditions satisfied.

Waiver from Listing Rule 2.11.1 – Further Background

6. One of the amendments to the Trust Deed that will be effected if Unit Holders approve the Internalisation is the payment of Directors' fees to the Directors of the new Manager, which would be reimbursable out of the assets of GMT. Initially, it is proposed that these fees would be equal to the amount of Directors' fees which are currently paid to the Directors of the Manager but which are borne by the Manager as a member of GMG.
7. It is a feature of GMT's current external management structure that Directors' fees are borne by the Manager from the fees it earns under the Trust Deed for performance of management responsibilities. Consequently, GMT was granted a waiver from Rule 2.11 on 6 May 2019 to allow it to remunerate Directors of the Manager directly from the income of the Manager. GMT was granted waivers from the equivalent provisions of the Listing Rules which applied before 1 January 2020, in decisions dated 21 April 2005 and 18 October 2010. As a result, the Unit Holders of GMT have never directly approved the Directors' remuneration in accordance with Rule 2.11.1, although Unit Holders have approved (and most recently did so in August 2014) amendments to the management fee construct in the Trust Deed, pursuant to which the existing waivers were granted. Accordingly, in the absence of a waiver from Rule 2.11.1, GMT would be required to seek Unit Holder approval for the Directors' remuneration to be paid out of the assets of GMT at the same level as is currently paid by the Manager after completion of the Internalisation.

Appendix Two

Rule 2.10.1 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.

Rule 2.11.1 Directors' Remuneration

2.11.1 No remuneration may be paid by an Issuer, or its Subsidiaries (unless such Subsidiary is Listed), to a Director in his or her capacity as a Director without prior authorisation by Ordinary Resolution. Such resolution must express Directors' remuneration as either a monetary sum per annum payable to:

- (a) all Directors of the Issuer in aggregate, or
- (b) any person who from time to time holds office as a Director of the Issuer.