

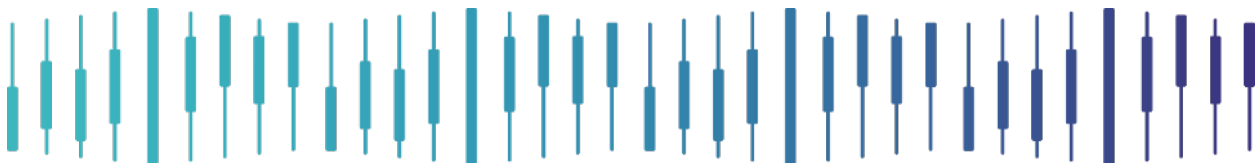
NZ RegCo

NZ'S LISTED
MARKET REGULATOR

23 October 2024

NZ RegCo Decision

The a2 Milk Company Limited (“ATM”)
Application for waiver from NZX Listing Rule 7.8.5(b)



Background

1. 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.
2. The NZX Listing Rule (**Rules**) to which this decision relates is set out in Appendix Two.
3. Capitalised terms that are not defined have the meanings given to them in the Rules.

Waiver from NZX Listing Rule 7.8.5(b)

Decision

4. On the basis that the information provided by ATM is complete and accurate in all material respects, NZ RegCo grants ATM a waiver from Rule 7.8.5(b) to the extent that this Rule requires ATM to provide an appraisal report to accompany a notice of meeting provided to ATM shareholders to consider a resolution to approve the grant of performance rights to the CEO and Managing Director.

Reasons

5. 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 7.8.5(b) is to ensure that security holders being asked to vote on resolutions to approve transactions to which Rule 7.8.5(b) applies receive the benefit of an independent evaluation that allows them to understand and scrutinise the merits of a transaction. This policy is not offended where:
 - i. the notice of meeting to consider the CEO Rights Resolution sets out sufficient information to enable shareholders to understand the effect and consequences of the resolution. NZ RegCo has reviewed the notice of meeting and is satisfied that it contains sufficient information regarding the grant of the CEO Performance Rights to enable shareholders to understand the effects of the grant;
 - ii. the terms of Mr Bortolussi's participation in the LTI plan and terms of the CEO Performance Rights themselves will comply with the LTI plan and will be determined on a basis consistent with participation in prior years and against performance measures applying to other participants in the LTI plan;
 - (b) the number of CEO Performance Rights that may be granted to Mr Bortolussi will be fixed and known at the time of the meeting, so ATM shareholders will have certainty as to what they are approving. At any point in time, shareholders can ascertain what ATM's outstanding obligations in respect of the CEO Performance Rights are, through the disclosures that are required to be made by ATM and Mr Bortolussi under the NZX Listing Rules, the ASX Listing Rules and the Financial Markets Conduct Act 2013;
 - (c) the material terms of Mr Bortolussi's employment agreement (including his participation in the LTI plan) were negotiated on an arm's length, commercial basis, prior to the commencement of his employment and directorship with ATM;

- (d) the terms of the CEO Performance Rights and Mr Bortolussi's participation in the LTI plan will be determined by the Independent Directors of ATM at their sole discretion. Mr Bortolussi will not participate in that board decision;
- (e) the need for an Appraisal Report only arises because Mr Bortolussi is a director of ATM (and is expected to continue to be a director), as well as its chief executive officer. Mr Bortolussi's participation in the LTI plan, and the grant of the CEO Performance Rights, are part of his remuneration package and reflects payment to him in his role as CEO and do not relate to his role as a director of ATM;
- (f) if shareholder approval were not sought on an advisory basis and under the ASX Listing Rules for Mr Bortolussi to acquire performance rights under the LTI plan, ATM would be able to grant the CEO Performance Rights without first obtaining shareholder approval and providing an Appraisal Report under NZX Rule 4.6.1;
- (g) ATM's shareholders will be asked to consider the CEO Rights Resolution with the knowledge of the waiver sought having been granted; and
- (h) there is precedent for the decision.

Confidentiality

6. ATM has requested that this decision be kept confidential until ATM issues its 2024 notice of annual meeting.
7. In accordance with Rule 9.7.2(a), NZ RegCo grants ATM's request.

Appendix One

1. The a2 Milk Company Limited (**ATM**) is a Listed Issuer with ordinary shares Quoted on the NZX Main Board and quoted on the ASX.
2. ATM operates a Long-Term Incentive (LTI) plan. Participation in the plan is by invitation only, at the discretion of the ATM board. Under the LTI plan, participants are offered awards of performance rights. Each performance right entitles the participant to receive one fully paid share in ATM, subject to meeting performance measures and vesting conditions set by the board, and subject to compliance with applicable laws at the time shares are issued or transferred to a participant following vesting of performance rights.
3. ATM's CEO, David Bortolussi, is also the Managing Director of ATM.¹ Subject to board discretion, on an annual basis, Mr Bortolussi is invited to participate in the LTI plan and be granted performance rights under the plan. The granting of performance rights to Mr Bortolussi and any subsequent issue of shares to him on vesting of any performance rights is permitted under Rules 4.1.2(c) and 4.6.1 and does not require ATM shareholder approval under the Rules. ATM considers that the grant of the CEO Performance Rights to Mr Bortolussi is advantageous to ATM because it will further align Mr Bortolussi's interests with ATM and its shareholders.
4. By contrast, NZ RegCo is advised that under the ASX listing rules (**ASX Rules**):
 - (a) ATM must not issue or agree to issue to a director of the company or his/her associate, and must not permit a director of the company or his/her associate to acquire under an employee incentive scheme, equity securities without the approval of shareholders (ASX Rules 10.11 and 10.14); and
 - (b) ASX Rules 10.11 and 10.14 do not apply to a grant of rights to acquire equity securities to directors or their associates under an employee incentive scheme, where the equity securities to be acquired in satisfaction of the rights are required by the terms of the scheme to be purchased on-market (ASX Rules 10.12 and 10.16).
5. ATM sought and received shareholder approval at its 2023 annual meeting both on an advisory basis and for the purposes of ASX Rule 10.14 such that ATM would be authorised to issue new shares to Mr Bortolussi following the vesting of his performance rights. Prior to the passing of the resolution at the 2023 annual meeting, the practice had been for ATM shares that had been acquired on-market to be transferred to Mr Bortolussi following vesting of the relevant performance rights. The passing of the resolution at the 2023 annual meeting means ATM has the ability to either issue new ATM shares or transfer existing ATM shares that have been acquired on-market to Mr Bortolussi following vesting of the FY24 performance rights granted after the 2023 annual meeting.
6. At the 2024 annual meeting, ATM is again proposing to seek shareholder approval, on an advisory basis, to the grant of a specified number of performance rights to Mr Bortolussi or an associate of his under the LTI plan (**CEO Performance Rights**). In anticipation of Mr Bortolussi being re-elected as the Managing Director of ATM at ATM's 2024 annual meeting, it is proposed, as with last year that:
 - (a) the approval be sought on an advisory basis, since the grant of the CEO Performance Rights does not require ATM shareholder approval under the ASX Rules if the grant complies with the relevant exceptions in the ASX Rules; and

¹ Mr Bortolussi will be retiring as a Director at ATM's 2024 annual meeting in accordance with ATM's constitution and the NZX Listing Rules, and will offer himself up for re-election. ASX Rules 10.11 and 10.14 as described in paragraph 4 will not apply if Mr Bortolussi ceases to be a Director of ATM.

- (b) ATM will also seek the approval for the purposes of ASX Listing Rule 10.14 (such approval then operating as an exception to ASX Listing Rule 10.11). If the resolution is passed, ATM will have the flexibility to satisfy vested CEO Performance Rights through an issue of shares rather than only being able to satisfy them through an acquisition of shares on-market. If the resolution is not passed, ATM can still satisfy the vested CEO Performance Rights through an acquisition of shares on-market (as it has done in the past).
- 7. Rule 7.8.5(b) requires that a notice of meeting to consider a resolution of the nature referred to in Rule 7.8.4 must be accompanied by an Appraisal Report if more than 50% of the Financial Products to be issued are intended or likely to be acquired by Directors or Associated Persons of Directors.
- 8. As the resolution to approve the grant of CEO Performance Rights (**CEO Rights Resolution**) relates solely to the grant of performance rights to Mr Bortolussi (who is a director and will continue to be a director of ATM should he be re-elected at ATM's 2024 annual meeting), Rule 7.8.5(b) applies to the 2024 notice of meeting containing that resolution.

Appendix Two

Rule 7.8.5

A notice of meeting to consider a resolution of the nature referred to in Rule 7.4.8 (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.